



FIVE OPTIONS FOR RESPONDING TO A CONSTRUCTION LIEN

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Under Florida's Construction Lien Law (Chapter 713, Florida Statutes), a contractor or supplier only has 90 days from the last day they furnished labor or materials to the improved property to record a construction lien as security to their right to payment from the property owner. Given the short window, many construction liens get recorded even when the owner has a contractual or legitimate right to withhold payment from the prime contractor. Once a lien has been recorded in the County's public records, the owner generally has the following options:

Option 1: The property owner can "bond off" of the Claim of Lien pursuant to Section 713.24(1), F.S., which can take one of two forms: 1) deposit money into the Court Registry with the County's Clerk of Courts or 2) obtain and post a surety bond to clear title pursuant to Section 713.24, F.S. When you "bond off" the Claim of Lien, the lien is removed from being a lien against the property and, instead, the lien is transferred to either a cash bond or a surety bond. The amount to bond off the lien is 100% of the amount of the Claim of Lien, plus interest at the legal rate for three years, plus the greater of \$1,000.00 or 25% of the lien claim as security for costs and attorney fees.

Since this course of action removes the lien from the owner's property, it allows title to be insurable so the property can be sold or refinanced. It can maximize the owner's leverage and send a message to the lienor signifying that the lien is going to be put on the back burner until the lienor takes action to enforce it. If the lienor fails to file suit to enforce the lien within one year from the date of its recording, or as otherwise shortened by law, then the bond or cash deposit is returned to the person who posted or deposited it.

Option 2: The property owner can record a Notice of Contest of Lien in the public records pursuant to Section 713.22(1), F.S. This action shortens the amount of time the lienor has to file suit and enforce the lien from one year to 60 days. If the lienor fails to file suit to enforce the lien within 60 days from the date the Notice of Contest of Lien was recorded, then the Claim of Lien is extinguished.

Option 3: The property owner can file a lawsuit pursuant to Section 713.21 (4), F.S., to have the Clerk of the Court issue a summons to the lienor to show cause within 20 days as to why the lien should not be enforced by action or vacated and cancelled of record. The filing of the lawsuit requires the lienor to file a counterclaim to foreclose the Claim of Lien within 20 days to enforce the lien or the owner will receive a judgment setting the

lien aside. Unlike with traditional litigation, the case law has held that the Court does not have jurisdiction to extend the 20 day deadline. As such, this is generally the fastest way to bring a dispute to a head and can be especially effective if the owner has strong defenses or in cases where the lien is invalid. If the lienor recognizes deficiencies with its Claim of Lien, it will often forgo enforcement, recognizing that it may be subject to paying the owner's costs and attorney fees. The downside is that the owner is initiating the lawsuit and there is always the risk of the costs of litigation escalating and that prevailing party attorney fees come into play. However, if litigation is inevitable because the owner intends to bring other causes of action, such as to recover damages for defective work or because the lien is fraudulent, then it is often a "no brainer."

Option 4: The property owner can simply wait one year from the recordation of the Claim of Lien. If the lienor takes no action to enforce the lien, then it automatically expires.

Option 5: The property owner can pay the amount alleged by the lienor to be due and owing and have the lienor record a Satisfaction of Lien in the public records. Note that if a Claim of Lien has already been recorded, it is not enough to obtain a traditional lien waiver since that will not have the information required to clear the lien from the public records. In addition, prior to making payment, the owner must be sure that he or she is making a proper payment under Florida's Construction Lien Law, otherwise, the owner may risk paying the same monies again to another lienor. Furthermore, if the lienor is not the prime contractor, the owner may be required to give 10 days' advance notice to the contractor prior to making payment.

What About Condominium Parcels? Under Florida's Condominium Act (Chapter 718, Florida Statutes), condominium unit owners may exercise the options above with respect to the proportionate amount of the lien attributable to the unit owner's parcel (for example, 1/50th of the amount of the lien in a 50 unit condominium or 1/120th of the amount of the lien in a 120 unit condominium, and so on). See Section 718.121(3), F.S., which provides that each condominium unit owner may exercise any of the rights of a property owner under Chapter 713, F.S.

Prior to taking action, an owner should consult an attorney to consider the above options in conjunction with their specific facts and circumstances. In addition, it may be wise for the owner to exercise other rights or tools available under Chapter 713, F.S., such as demanding a sworn statement from the lienor, a list of subcontractors and suppliers, and/or an accounting of amounts paid or due.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

Questions regarding the content of this article may be emailed to Christopher Pope at chrispope@paveselaw.com. To view past articles, please click "Publications" on our firm website. Mr. Pope is 1 of only 2 attorneys in Florida that is Florida Bar Board Certified in both Construction Law and Condominium and Planned Development Law. He is a partner and an experienced construction and real estate attorney with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 336-6208; Fax: (239) 332-2243.