



2009 FLORIDA LEGISLATIVE LIEN LAW ACTIVITY

There are three lien law bills pre-filed for the 2009 session. Two of them, SB 466 and SB 696, do not have corresponding house bills, which are typically needed for the bills to progress. There is at least one bill addressing the effect of lack of a local license (SB 674) with no house companion. There will be filed an amendment to Chapter 558 Fla. Stats., the notice of defect and opportunity to cure statute.

SB 560/HB 299 is in play for this session, copy attached. The biggest issue with this bill is that it provides that the notice of commencement expires 90 days after construction is completed, or pursuant to a notice of termination of the notice of commencement. The notice of termination is not to be sent until everyone is paid. The title and lending industry are vigorously opposed to not being able to determine when a notice of commencement expires from a public record document.

Other significant changes in SB 560/HB299:

- No inspections, other than temporary electric or site work, on public jobs until there is proof to the building department of a recorded bond or statement from the government owner saying that a bond is not required.
- An ill advised change to the notice of contest of claim on the payment bond. This may be amended to address the problem of only allowing this once construction is complete
- Elimination of redundant second signature on notice of commencement
- Elimination of the ability to amend a notice of commencement to extend its effective date (which is in accordance with the concept that the NOC only expires 90 days after completion of construction, and thus does not include a specific expiration date).
- Include in the permit application a promise to deliver a recorded NOC to the building department
- Require the building department to verify the name and address of the owner, name of contractor, and location of the improvements on the NOC.
- Require the building department to furnish the Official Records Book and page number of the NOC upon request (written or oral).
- It appears that there may be intent to raise the threshold for non-privity liens to direct contracts of \$5,000, up from \$2,500. However this is not effectively in the language of the bill. The bill only says that inspections may be made without evidence of a NOC at the building department for direct contracts of \$5,000 or more (or for HVAC repair or replacement of \$7,500, which exemption from a notice of commencement exists under today's law.)
- Allows any lienor who has submitted or mailed the claim of lien in for recording (dangerous practice) to request the sworn statement of account from the owner under 713.16(5).
- Adds "global express guaranteed" as a means of delivery.

There is SB 674, which has no companion house bill, that seeks to amend Fla. Stat. 489.128 to say that if a contractor does not have a local license, that the contract with such contractor may not be considered unenforceable.

There will also be filed a bill to clarify many of the existing ambiguities in Chapter 558, Fla. Stats., the notice of defect and right to cure statute.

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