



The Soto Law Group, P.A.

CONSTRUCTION PRACTICE GROUP

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Lienable items under Florida Statute 713

Under Florida's construction lien law labor and services performed, as well as materials furnished for the improvement of real property are lienable (Fla. Stat. 713.05; 713.06). But what qualifies as an improvement of real property? As an initial matter, the labor, services and materials must bestow a *permanent* improvement to the real property. In one Florida case, an electrical contractor that hard wired a kiosk at a mall was held not to have lien rights. (*Palm Beach Mall, Inc. v. Southeast Millwork, Inc.*, 593 So. 2d 1121 (Fla. Dist. Ct. App. 4th Dist. 1992)). The Court in that case found that while the electrical outlet to which the Kiosk connected to was a permanent installation, the kiosk itself and its installation was not a permanent improvement to the property giving rise to lien rights. Examples materials which would bestow a permanent improvement would be structural steel, roof tiles and plumbing fixtures incorporated into a project. It is not difficult to imagine how these materials, once incorporated, benefit a property. Apart from materials, labor and services expended in the improvement of property is also lienable. The key phrase here is "the reasonable value of labor or services connected with improving real property". But apart from actual labor costs, what can be included in "reasonable value of labor". Under Florida's lien law, lost profits, unabsorbed home office overhead, carrying charges and restocking charges are not lienable. On the other hand, finance charges can be included in a lien.

So what happens if you include unalienable items in your claim of lien? Such a lien could be classified as a fraudulent lien. Under Florida Statutes 713.31(2)(a), any lien which is willfully exaggerated as to amount, willfully includes amounts for work not performed or materials not furnished to the property being lienated is deemed a fraudulent lien. The filing of a fraudulent lien is a complete defense to its enforcement and the lienor's rights under the lien forfeited. Additionally, a lienor who filed a fraudulent lien may be exposed to the property owner's attorney fees and costs. There are also criminal penalties that go along with the filing of a fraudulent lien. Under Florida Statutes 713.31(3) any person found to have willfully filed a fraudulent lien commits a felony of the 3rd degree.

Determining what to include in a claim of lien is not as straight forward as it may seem. If you have any doubts about the appropriateness of including any items of work, labor or charges in your claim of lien you should contact an attorney who is knowledgeable with Florida's construction law before proceeding to record it. Don't wait too long of course! Remember, a lien must be recorded within 90 days of last furnishing labor, services and/or materials to a project.

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