



The Soto Law Group, P.A.

# CONSTRUCTION PRACTICE GROUP

*Legal Information for the Construction Industry*



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## Conditional Payment Bonds: A Trap for the Unwary

On a typical private payment bond (Fla. Stat. §713.23) project, lienor's look to a bond issued and backed by a surety should their contractor or customer fail to pay for the lienor's work or materials. Claims against a §713.23 payment bond are perfected by serving a proper and timely preliminary notice to the owner, contractor and surety (as disclosed in the notice of commencement) and also serving a Notice of Non Payment within 90 days of last furnishing materials, services or labor to the project. These type of claims do not require the filing of a lien but rather the serving of a Notice of Non Payment.

However, there is another type of bond claim in Florida which does require the filing of a lien in addition to the serving of a Notice of Non Payment to perfect your rights to payment. These bonds are called conditional payment bonds and are governed by Fla. Stat. §713.245. These conditional payment bonds are conditioned on the owner having paid the contractor for those amounts being claimed by the potential lienor. If that event of payment occurs, then the surety's liability to the lienor is triggered. If that event of payment between the owner and the contractor has not occurred, then the lienor must look to the owner's property for recovery (i.e. record a Claim if Lien).

So how do you know if you have a typical §713.23 payment bond or a §713.245 conditional payment bond on a project?

The first clue will be in the Notice of Commencement. Florida Statute §713.245 requires that the notice of commencement identify the payment bond as a conditional bond, attaching a copy of it to the recorded Notice of Commencement. Additionally, the copy of the bond attached to the notice should carry the following specific language in large font:

**THIS BOND ONLY COVERS CLAIMS OF SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS AND LABORERS TO THE EXTENT THE CONTRACTOR HAS BEEN PAID FOR THE LABOR, SERVICES OR MATERIALS PROVIDED BY SUCH PERSONS. THIS BOND DOES NOT PRECLUDE YOU FROM SERVING A NOTICE TO OWNER OR FILING A CLAIM OF LIEN ON THIS PROJECT.**

The type of security available on a project (lien, bond or conditional bond) is not always clear and can change as a project evolves. Making sure you or a reputable and diligent notice to owner company has served a timely and proper preliminary notice is the first step. Once you have completed your work or payment issues arise, your lien or bond rights must be perfected. It is always advisable to contact legal counsel familiar with the intricacies of Florida lien law to help you determine what further steps should be followed. So what is the bottom line? Always timely serve your Notice of Non Payment and record your Lien- your attorney can then follow up with the appropriate next step. We at the Soto Law Group, P.A., welcome any questions you might have regarding your Florida lien and bond rights.

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