



The Soto Law Group, P.A.

CONSTRUCTION PRACTICE GROUP

Legal Information for the Construction Industry



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New Construction Project? First Things First: The Preliminary Notice & Protecting Your Rights to Payment

What are preliminary notices?

In Florida, preliminary notices come in the form of a Notice to Owner and/or Contractor. The distinction between a notice that goes to an owner as opposed to a contractor hinges on whether the project is privately or publically owned. Most preliminary notice companies err on the side of caution and issue a combined Notice to Owner/Contractor form which complies with both private (Fla. Stat. 713) and public (Miller Act, Fla. Stat. 255) project laws in Florida.

What is the purpose of a preliminary notice?

For the supplier or subcontractor, the most important role of the preliminary notice is to secure your potential lien or bond claim on a construction project. Additionally, the notice alerts the owner of a project to your participation/scope of work on a construction project and your possible future claim should you not receive payment for your labor, services and/or materials.

What is the procedure in Florida for a Preliminary Notice?

Generally, the preliminary notice (notice to owner/contractor) must be served within 45 days of beginning to furnish labor, materials or services to a project. The failure to serve the notice or to serve it untimely is a complete defense to a lien or bond claim. There is a special exception for specially fabricated materials which requires the preliminary notice to be served within 45 days of beginning to manufacture the specially fabricated materials.

Florida law requires that service of the notice be made by actual delivery (in person), registered mail or overnight/global guaranteed mail. Typically the notice is considered effective upon receipt. There is an exception however. If a claimant mails the notice within 40 days of first furnishing and maintains a registered or certified mail log then the notice is effective upon mailing.

Who Should Receive Copies of the Notice?

The Owner, General Contractor, your Subcontractor/Customer, Surety, and the Lender. The mailing address and legal discretion of property for all these parties can typically be found in the Notice of Commencement.

Preparing the Notice

The information and form required to be in a preliminary notice is detailed in Fla. Stat. § 713.06(2)(a) complying with this sector covers F13/295. That section provides that a notice must include: the lienor's name and address, a description sufficient for identification of the property and the nature of the labor, services or materials to be furnished.

Making sure you issue a proper and timely Notice to Owner/Contractor is vital to preserving your rights to payment, either under a lien (Fla. Stat. §713.06) or a payment bond (Fla. Stat. §713.23/§255.05). Consulting with experienced construction legal counsel well before furnishing materials to a project can go a very long way in determining what rights you actually have and how to preserve them.

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