

Insights

How Lenders Can Reduce Their Potential Liability Under Florida's Construction Lien Law

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Construction lending in Florida presents risks that extend beyond the borrower's ability to repay the loan. A lender that fails to follow Florida's construction lien procedures may face direct liability, loss of mortgage priority, title complications, and disputes with owners, contractors, subcontractors, and suppliers.

Florida's construction lien law, primarily Fla. Stat. § 713. Part I, contains several provisions directed specifically at construction lenders. The following practices can help lenders protect their collateral and reduce potential liability.

Protect the Mortgage's Priority Before Construction Begins

Florida construction liens generally take priority from the date a Notice of Commencement (NOC) is recorded. A mortgage recorded before that date ordinarily has priority over liens arising under the NOC, regardless of when the lender later disburses the mortgage proceeds. Conversely, an existing NOC recorded before the mortgage creates a serious priority problem, since liens for work done pursuant to the NOC generally relate back to the recording date of the NOC. Fla. Stat. § 713.07.

The safest closing sequence is generally:

- Confirm that no prior construction has begun and that there are no existing NOCs or construction liens.
- Record the construction mortgage.
- Confirm the mortgage's recording information and priority.
- Record the NOC.
- Make the first construction disbursement only after the foregoing steps are taken.

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The lender should obtain a title search and appropriate title insurance policy and endorsements addressing construction loan advances. Most lenders will update the title before each material draw, particularly when the project shows signs of delay, contractor disputes, cost overruns, or borrower distress.

Record the NOC Before Funding the Contractor

Although the owner generally signs and records the NOC, the statute imposes a separate duty on a construction lender. Before disbursing construction funds to the contractor, the lender must either record the NOC or verify that the NOC has been recorded, and must verify that it is designated as an additional recipient of Notices to Owner (NTOs). The owner then posts the NOC at the job site. A subcontractor working on the project, in order to preserve its lien rights, is required to send an NTO to the owner, with a copy to the lender if the lender is designated as such on the NOC. This gives both the owner and lender notice that the subcontractor is working on the project and may have lien rights.

Failure to perform this duty can make the lender liable to the owner for all damages the owner sustains because of the failure. The statute does not create the same cause of action in favor of contractors or other lienors, but the potential owner claim can still be substantial. Fla. Stat. § 713.13(7).

The lender should verify that the NOC:

- Contains the correct legal description and project information;
- Identifies the lender and its address;
- Designates the lender to receive NTOs;
- Names the correct contractor;
- Includes the required expiration date;
- Is signed by the owner or another statutorily authorized signatory; and
- Has been recorded before the first disbursement to the contractor.

If work does not actually begin within 90 days after recording, the NOC becomes void. An NOC ordinarily expires one year after recording unless it states a different effective period. A change in the contractor requires a new NOC or, if the work was delayed, a Notice of Recommencement rather than a simple amendment. Payments made after expiration of the NOC may be treated as improper payments.

Treat Every NTO as a Draw-Control Document

Subcontractors and suppliers who lack a direct contract with the owner generally must serve an NTO to preserve their lien rights. The NTO must be served no later than 45 days after the lienor begins furnishing labor, services, or materials, and before the owner makes final payment to the general contractor. Fla. Stat. § 713.06(2).

When the lender is designated in the NOC, it should maintain a project-specific log of every NTO received. The log should identify:

- The lienor;
- The lienor's customer;

- The date and method of receipt;
- The amount claimed, if stated;
- The work or materials involved;
- Releases obtained through each draw; and
- Any unresolved payment issue.

This is more than administrative housekeeping. When a lender receives an NTO and later pays the contractor on the owner's behalf, the lender must make "proper payments" with respect to the noticed lienor. Failure to do so can make the lender liable to the owner for resulting damages. The statute distinguishes these payments from funds disbursed directly to the owner, but direct-to-owner disbursements carry separate notice requirements and practical risks.

Require Statutory Lien Releases With Each Draw

A draw package should include properly completed partial releases of lien from the contractor and every lienor who has served an NTO. The releases should correspond to the amount and "through date" of the draw.

Florida law prohibits advance waivers of lien rights and provides statutory forms for progress-payment and final-payment releases. A lender should avoid requiring a form that improperly waives future work, unresolved change orders, retainage, or amounts not actually paid. Fla. Stat. § 713.20.

Each draw review should reconcile:

- The contractor's payment application;
- The inspector's percentage-of-completion report;
- The construction budget;
- Prior draws;
- Change orders;
- Retainage;
- NTOs;
- Conditional and unconditional releases; and
- The remaining cost to complete the work.

A release should not be accepted merely because it has been signed. Names, dates, dollar amounts, property descriptions, and the lienor's place in the contracting chain should be checked for consistency.

Exercise Additional Care With Residential Disbursements

Before making a construction-loan disbursement secured by residential real property directly to an individual owner, or jointly to the owner and another party, the lender must deliver the specific statutory warning required by Fla. Stat. § 713.347(1). The warning must be in bold type larger than any other type on the page.

The lender should use the statutory language exactly and retain evidence showing when and how it was delivered. This requirement has limited exceptions, including certain licensed contractor-owners and persons engaged in developing parcels in the ordinary course of business. Fla. Stat. § 713.3471(1).

Direct disbursement to the borrower may reduce the lender's "proper payment" duties under Fla. Stat. § 713.06, but it does not eliminate construction risk. The lender should still require draw documentation, inspection reports, releases, and evidence that prior funds were applied to the project.

Give Timely Notice Before Terminating Advances

A lender generally has the contractual right to stop funding when the borrower defaults or a condition to further advances is not satisfied. Florida law, however, imposes a separate notice requirement when this occurs.

If the lender makes a final determination, before all available loan funds have been distributed, that it will cease further advances, it must serve written notice within five business days on:

- The contractor; and
- Every other lienor who has given an NTO to the lender.

If the lender fails to give timely notice, it may be liable to the contractor for the value of direct labor and materials furnished during the period of delayed notice, plus 15 percent for overhead, profit, and other costs. Liability is generally capped at the undisbursed loan balance existing when notice should have been given, unless the failure was intended to defraud the contractor. These notice rights cannot be waived. Fla. Stat. § 713.3471(2).

Accordingly, a lender should establish a written escalation procedure so that any decision to suspend or terminate funding is immediately reviewed for statutory notice obligations.

Do Not Reallocate Construction Funds Without Reviewing the Statute

Special rules apply when loan proceeds designated for construction costs are redirected to another purpose. For covered projects, the contractor and noticed lienors must receive written notice of the decision and the amount being reallocated.

These provisions generally do not apply to residential projects of four units or fewer or to construction loans below \$1 million, subject to anti-evasion rules. Notice is generally triggered when the affected disbursements exceed 5 percent of the original designated construction proceeds or \$100,000, whichever is less.

If the loan documents permit the lender to make off-budget disbursements without the borrower's prior consent, the lender itself is responsible for giving the required notice. A violation may produce direct liability to the contractor. Fla. Stat. § 713.3471(3).

Examples requiring legal review include using construction proceeds to pay interest, closing costs, unrelated debt, non-project expenses, or cost overruns on another phase.

Do Not Make Final Payment Without Final Documentation

Before final payment, the lender should require the contractor's final payment affidavit. The affidavit must identify unpaid lienors who timely served NTOs and state the amounts due or to become due.

The final draw should also require final releases of lien from the contractor and all noticed lienors, confirmation that retainage has been addressed, completion approval, updated title evidence, and proof that any recorded claims of lien have been released, satisfied, bonded off, or otherwise resolved. Section 713.06 requires retention of the final payment until the contractor supplies the final affidavit. Fla. Stat. § 713.06(3)(d).

A claim of lien may generally be recorded up to 90 days after the lienor's final furnishing of labor, services, or materials. Consequently, project completion alone does not mean the lien risk has ended. Fla. Stat. § 713.08(5).

Respond Promptly to Recorded Liens and Payment Disputes

A recorded lien can interfere with future advances, permanent financing, sales, and title insurance coverage. Available responses may include obtaining a satisfaction or release, withholding funds, making a joint payment, transferring the lien to a bond or cash deposit, or using a statutory notice of contest to shorten the lienor's enforcement period.

Florida law permits an interested party to transfer a construction lien from the property to substitute security. Fla. Stat. § 713.24. A lien ordinarily remains enforceable for one year after recording, but a properly served notice of contest can reduce the period for filing an enforcement action to 60 days. Fla. Stat. § 713.22.

These remedies should be implemented with Florida construction counsel and the title insurer because errors in service, timing, or security amounts can defeat the intended result.

A Practical Lender Checklist

A Florida construction lender should, at minimum:

- Record its mortgage before the NOC;
- Record a valid NOC before funding the contractor;
- Be designated to receive NTOs;
- Maintain a current notice-to-owner and lien-release log;
- Require inspections, sworn draw statements, and matching partial releases;
- Deliver the statutory residential-disbursement warning when applicable;
- Track the NOC commencement and expiration dates;
- Give notice within five business days after deciding to cease advances;
- Review any proposed reallocation of construction proceeds;
- Obtain the contractor's final payment affidavit and final releases;
- Update title before significant and final disbursements; and
- Address liens, payment disputes, budget shortfalls, and contractor changes promptly.

Conclusion

Florida law does not make a construction lender a guarantor that every contractor and supplier will be paid. It does, however, impose specific duties based on how the lender records project documents, receives notices, makes payments, reallocates proceeds, and terminates advances.

The most effective protection is a disciplined draw-control system tied directly to Fla. Stat. § 713. Careful sequencing at closing, centralized notice tracking, proper lien releases, timely statutory notices, and early involvement of Florida construction counsel can substantially reduce both direct lender liability and threats to the lender's collateral.

This article provides general information based on Florida law as reviewed on August 26, 2026. It is not legal advice and should not be relied upon for a particular loan or dispute without consulting qualified Florida counsel.

Gary M. Kaleita is a shareholder at Lowndes and has been certified by the Florida Bar as a specialist in real estate law since 1993. He is a member of the firm's Practice Groups involving Commercial Leasing, Banking and Finance, Condominium and Multi-Family Developments, Homebuilding and Residential Development, and Distressed Real Estate. Gary can be reached at 407.418.6334 or gary.kaleita@lowndes-law.com.