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# Florida Construction Law Update

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## Legislature says construction lien notices must be part of written construction contract.

*The new mandatory provision puts an end to a popular exemption for oral agreements. The law makes it nearly impossible to safely do any business in Florida on a handshake.*

**By Gary L. Butler, Esq.**

For the third time since 2003, the Legislature has amended the construction lien statute. The latest change makes it impossible to enforce lien rights without specific new notices contained in a written document. The change in law means that the Florida construction industry cannot do business on a handshake any longer.

Construction liens are among the most effective tools in the toolbox to ensure that owners pay their bills. Previously, lien rights could still be enforced in certain cases, even without a written contract. Oral agreements were exempted from certain requirements.

These requirements were spelled out in the first change to the law, which dates back to 2003. With that change, the legislature passed a law that required all contracts with owners to include specific language in 18-point, bold-faced, capitalized type. The required language notified the owner that those who worked on or supplied materials for the construction of the project may be entitled to lien the owner's property if they were unpaid. If your contract with the owner did not have the exact language of this "notice," you could not enforce a lien against the owner's property.

**See Lien Law, continued on page 2.**



**Advertisement**

## Surviving a tough marketplace

**By J. Christopher Robbins, Esq.**

Economists predict that it will be 2009 before the over-supply of housing once again meets up with demand. More lean times are therefore ahead. Let's discuss how to survive this environment and ultimately emerge ahead of your competition.

The first lesson is handling bad debt. With a decline in business, margins grow thinner. You have to cover the same operating costs with less revenue. Thus, if a percentage of earned revenue fails to materialize, it can quickly result in peril. Bad debt can be a business-killer.

**See Survival Lesson, continued on page 2.**

## Lien law, continued from page 1.

The law was changed again in 2005. This change reduced the required type size to 14 point, but required the language to appear on front page of the contract.

What the statute left unanswered, however, was whether contractors could have an oral contract with an owner and still enforce the lien. Earlier this year the Florida legislature further amended the statute to answer that question, as well as fill in some other gaps.

The answer now is somewhat of a paradox: Yes, you can have an oral contract with an owner and enforce a lien against the owner's property if the owner fails to pay, but *only if* you have the owner sign a written notice that references the oral contract and that includes the required language. Thus, essentially, you need a written arrangement for an oral agreement. Leave it to the legislature!

Aside from this restriction, this year's amendment does include some additional changes that can help the contractor. First, the statute was changed so that it applies only to contracts of more than \$2,500.00. Second, the required print size was reduced further to 12-point type, but it still must be capitalized and bold-faced. Third, the statute no longer requires the language to be on the front page. If you do not include the language on the front page of the contract, however, it must be on a separate page that is signed by the owner. Finally, this year's amendment made some minor changes to the exact words needed in the notice.

Also of benefit to the industry is the fact that the new requirements do not apply to contracts on commercial properties or residential properties with five or more units. It likewise does not apply if the owner offers parcels for sale or lease in the ordinary course of business or if the owner is a licensed contractor. It also does not apply to those who do not have a contract with the owner, such as subcontractors, suppliers and laborers.

The bottom-line impact of this change in law is that if you have a direct contract of more than \$2,500.00 with an owner of a single or multi-family dwelling unit up to four units, you will not be able to enforce a lien against the property if you are unpaid unless you have the owner sign a document that includes the language required by the statute. Your actual contract with the owner does not have to be in writing, but you have to have the owner sign the new notice. As you need to obtain the owner's signature anyway, you might as well have a written contract describing the terms of your agreement with the owner in order to protect yourself.

If you have direct dealings with owners of single family residences or multi-family residences of four or fewer units, we strongly recommend you speak with your attorney to make sure the contract forms you use comply with current Florida law. If you are not currently using written contracts for your dealings with owners, you should speak to your attorney immediately about how a written contract can protect you and ask him or her to help you develop the right form that meets your specific needs. If you are not currently one of my clients, you can also call me anytime at (727) 822-8696.

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## Survival lessons, from page 1.

Consequently, you should take greater pains to protect yourself from bad debt. I recommend the following checklist:

First, if you are working for owners, make sure you are using the latest lien forms. The construction lien statute is the best line of defense. Attorney Gary Butler's companion article in this issue provides good direction, as the law recently changed.

Second, use credit applications for new

customers. Use them for existing customers, too, at the first sign of trouble.

If you are not requiring owners and companies to sign and return these forms, you are taking a needless risk. These forms contain the "magic language" you need to make collections easier in the event of a default. If customers refuse to sign or consider the forms, you need to ask yourself "why?" With the exception of publicly-traded companies, most reasonable people are willing to sign at the beginning of a relationship.

Let's talk about screening of new customers. My advice is simple: Do credit checks. Some people are hemorrhaging money. Some are unscrupulous. The easiest way to dodge these bullets is to find out the bad eggs are before you go to work for them. Therefore, perform a credit check on every new customer.

The law requires you to obtain written permission to do credit checks. We have the forms here. In addition, our law firm does credit checks for our clients using Dun & Bradstreet, Equifax, and TransUnion data. This is an included service if you have us on retainer.

Finally, in a distressed market, be wary of highly leveraged projects and properties. There are an increasing number of these in town. Banks usually have the number one position on a property. Your construction lien may be worthless if a bank's loan exceeds the property's value. When dealing with highly-leveraged property, get a personal guarantee and security agreement without exception. If you do not have these forms, you can call us.

We are seeing a spike in collection cases. You need to be vigilant in this market. If you need help, forms, contracts, or assistance with your business please feel free to call us at (727) 822-8696. If you are not a current client, we offer very reasonably-priced retainer packages for construction industry companies.

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## Meet Gary L. Butler, Esq., director of the Robbins Equitas Construction Law Division

Gary L. Butler, Esq. has been a practicing construction law in Florida for over 20 years. He represents developers, general contractors, subcontractors, material suppliers, and owners. Gary's areas of practice include construction lien law, construction contracts, DBPR defenses, construction collections law, construction defects law, and construction industry mergers and acquisitions.

Before being admitted to the Florida bar in 1986, Gary attended The University of Florida's Levin College of Law where he graduated with honors. He holds an MBA, also from the University of Florida. Gary is a member of the Florida Bar's Business Law Section. He is also on the Bankruptcy and Uniform Commercial Code Committees of the Florida Bar. You can e-mail Gary at [gbutler@floridalawyer.com](mailto:gbutler@floridalawyer.com) or call him at (727) 822-8696.