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Uniform Mechanics' Lien Law: Rights and Duties of the Landowner

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the propelling force leading to federal supervision of insurance and withdrawal of the Congressional permission under which the states now supervise this huge industry. Senator McCarran, in a recent article, stated:

“While it is not likely that Congress will move into the field of insurance regulation so long as the States are successfully regulating the business, we must recognize that silence on the part of the Congress depends primarily, not upon the extent or type of regulation imposed by the various States or by any State, but rather upon the success of such regulation. That, in turn, will depend in large part upon the cooperation of the industry and upon the degree of self-regulation which the industry imposes.”⁵⁸

Such a statement, from a recognized leader of the legislative body possessing the power either to allow or to deny continued state regulation, clearly places responsibility for continuance of state supervision upon both the state regulatory authorities and the companies operating under state laws.

THOMAS W. SHANDS

UNIFORM MECHANICS LIEN LAW: RIGHTS AND DUTIES OF THE LANDOWNER

Florida Statutes 1941, c. 84

I. INTRODUCTION

Chapter 84 of the Florida Statutes 1941, known as the Uniform Mechanics' Lien Law, became effective in Florida in 1935 and is substantially the same law that was proposed by the Committee on Uniform Laws of the American Bar Association. Florida is the only state that has enacted this uniform law, and since its passage by the Florida Legislature it has been withdrawn from the list of recommended uniform

⁵⁸McCarran, *Federal Control of Insurance*, 34 A. B. A. J. 539 (1948).

laws and is now designated by the American Bar Association as a Model Law.¹

This law imposes on the owner² of real property on which improvements³ are being made the duty of disbursing the money due on the direct contract with the contractor⁴ in such a way as to furnish the greatest possible amount of protection to laborers, materialmen and others⁵ who perform services or furnish materials for the improvement. Provisions are included, however, for the protection of the owner; and he can, by properly paying the money due on the direct contract,⁶ avoid having any mechanics' liens enforced against his property.⁷ The enumeration of claimants to whom liens may be allowed under this law is set out in Section 84.02, Florida Statutes 1941, but whether a lien actually will be allowed and, if so, to what extent, is governed by other sections of Chapter 84.

A prospective lienor will find the statutes comparatively easy to interpret with respect to his individual situation, but, unfortunately, the owner against whose property the lien is to be asserted is confronted with a much more difficult task, as he must gain an understanding of the entire lien law before he can safely make any payments.

This article contains an outline of the rights and duties of an owner of real property on which improvements are being made. The purpose is a recapitulation of the Uniform Mechanics' Lien Law from the standpoint of the landowner only. The rights and duties of those other than the owner and detailed analyses of particular terms and provisions are not included except insofar as they relate to the situation of the owner.

¹9 UNIFORM LAWS ANN., Cumulative Annual Pocket Part.

²All references herein to the "owner" refer to the man whose property is being improved. FLA. STAT. 1941, §84.01.

³"Improvements" includes demolition. FLA. STAT. 1941, §84.01.

⁴All references herein to "direct contract" or "contract" refer to the contract between the owner and the contractor. The contract may be written or unwritten, expressed or implied. "Contract price" means the agreed price plus "extras" and minus allowances for defects, etc. FLA. STAT. 1941, §84.01.

⁵Architects, landscape architects, etc., who are excluded (by definition) from the terms "laborer" and "materialmen." FLA. STAT. 1941, §84.01.

⁶Every statement herein containing the word "proper" or any derivative thereof refers to money "properly paid" as those words are used in Florida Statutes 1941, §§84.02 and 84.05.

⁷FLA. STAT. 1941, §§84.02, 84.05.

II. CLASSIFICATION OF LIENORS

With respect to proper payment by the owner, there are four general classes of lienors.

Class 1: All laborers.⁸ These liens attach without any action by the laborer other than the performance of the work and without formal notice to the owner. There is no priority among laborers based on time of performance, and the lien of every laborer is higher in rank than other liens, regardless of whether the labor was performed before or after the rendering of services or the furnishing of materials giving rise to such other lien or liens.⁹

Class 2: Those other than laborers whose liens are covered by a "Notice of Intention to Claim a Lien." This notice must be given to the owner before the prospective lienor starts performance or within thirty days thereafter, provided it is given before the expiration of the day on which services are last rendered or the furnishing of materials completed. A prospective lienor becomes a lienor only to the extent of the sum set forth in his notice.¹⁰

Class 3: Those who would be in Class 2 except for the fact that they gave notice after the period therein described but within three months from the time the services were last performed or the materials were last furnished. This class also includes those whose liens are perfected by service on the owner, within the same period, of a copy of a claim of lien filed in the office of the clerk of the circuit court of the county in which the real property is located. In addition, this class includes those whose liens are set out in the statement under oath which the contractor must give to the owner when final payment to the contractor becomes due.¹¹

⁸FLA. STAT. 1941, §§84.04(4), 84.06, 84.20.

⁹The term "laborer" does not include architects, landscape architects, engineers, etc. FLA. STAT. 1941, §84.01. The services referred to are those performed by those other than "laborers." Architects, etc., could only become Class 2 or 3 lienors.

¹⁰FLA. STAT. 1941, §§84.05, 84.04(1), 84.06.

¹¹FLA. STAT. 1941, §§84.05, 84.04(2), 84.04(3), 84.04(4), 84.06, 84.16, 84.18, 84.19.

Class 4: The contractor.¹² No notice is necessary in order that the contractor may become a lienor,¹³ but this does not work to the disadvantage of other lienors, since the whole purpose and effect of the law is to prevent payment to the contractor until their rights have been protected.¹⁴

Note that, in connection with the claims of those other than the contractor and laborers, the claimant does not become a lienor under the above classification until the owner has received a written notice of the claim. As will subsequently appear, however, this does not necessarily mean that the owner need not consider prospective lienors when he is deciding how he will make proper payment.¹⁵

Statutory provisions allow amendments and supplements to notices to the owner, but for purposes of proper payment such supplements and amendments operate in the nature of separate and distinct liens; that is, the owner is not prejudiced by anything which he properly did before he received them. Moreover, the class to which a lienor belongs with respect to the sum covered by an amendment or supplement is determined by the time when the amendment or supplement is made.¹⁶ The statutes also provide that one who misapplies funds given to him for the payment of claims for labor or services performed or materials furnished shall be guilty of embezzlement,¹⁷ and that anyone who, with intent to defraud, gives the owner a false statement under oath (such as the contractor must give to the owner when final payment is due) is guilty of perjury.¹⁸ The embezzlement provision affords the owner no protection in the sense of relieving his land from liability to a lienor. The owner may, however, rely to a certain extent on the statement under oath given him by the contractor.¹⁹

III. RULES FOR PROPER PAYMENT

Property being improved can be subjected to mechanics' liens only

¹²FLA. STAT. 1941, §§84.06, 84.05.

¹³FLA. STAT. 1941, §84.02.

¹⁴FLA. STAT. 1941, §84.05(14).

¹⁵Also, when the lien is established it dates from the visible commencement of operations. FLA. STAT. 1941, §84.03.

¹⁶FLA. STAT. 1941, §§84.04(1)(d), 84.04(2)(c), 84.05.

¹⁷FLA. STAT. 1941, §84.07.

¹⁸FLA. STAT. 1941, §84.08.

¹⁹See Section IV of this article.

to the extent of the amount fixed by the direct contract minus the sums that have been properly paid by the owner.²⁰ Since the amounts properly paid reduce the total amount for which liens can be allowed, an owner who pays properly can never be required, by the enforcement of a lien, to pay more than the contract price. If, for example, the entire amount has been properly paid, no lien whatever can be enforced. On the other hand, if the entire amount has been disbursed but some of it improperly, a lien can be enforced to the extent of the improper payments, and the owner will be forced to pay twice.

Money is properly paid by the owner if paid in accordance with the following rules:²¹

Rule 1. The owner must pay no money on the direct contract before it is payable under the terms of that contract and before the labor, services or materials for which it is paid are performed or furnished. If the owner pays in violation of this rule he is charged with notice of all liens established subsequently and before the proper time for payment.²²

Rule 2. Subject to the provisions of Rule 1, the owner may at any time pay all or any part of the amount due and payable to any or all lienors of Class 1 (laborers). It is immaterial which of them first performed.²³

Rule 3. Subject to the provisions of Rule 1, the owner may at any time pay all or any part of the amount due and payable to any given lienor of Class 2, provided that the owner retains enough of the contract price to pay all that is due or will become due to those who are or will become Class 1 lienors at any time up to the completion of the improvement, and also enough to pay all that is due or will become due to those Class 2 lienors who have served the owner with notice of intention to claim a lien before the time of making payment under this rule.²⁴ The amount retained to pay Class 2 lienors need only be sufficient to cover the sums named in their notices and amendments or supplements thereto

²⁰FLA. STAT. 1941, §84.02.

²¹These rules were developed from Section 84.05, Florida Statutes, 1941, and its cross references, which include practically all the other sections in Chapter 84.

²²FLA. STAT. 1941, §84.05(10).

²³FLA. STAT. 1941, §84.05(2).

²⁴FLA. STAT. 1941, §84.05(3).

prior to the time payment is made. He need not reserve money to cover claims of Class 2 lienors to the extent that they have waived their liens in writing.²⁵ A laborer is precluded from waiving his lien.²⁶

Rule 4. Subject to the provisions of Rule 1, the owner may at any time pay all or any part of the amount due and payable to any given Class 3 lienor, provided that the owner retains enough of the contract price to pay all that is due or will become due to those who are or will become lienors of Classes 1, 2, and 3 (to the extent that the amounts are or will be covered by notices, if notice is required, and excepting the amounts that are or will be covered by waivers of lien). No money need be retained to pay those Class 3 lienors who become such by reason of having been included in a statement under oath subsequently given by the contractor.²⁷

Rule 5. An exception to Rules 3, 4 and 9 only. Subject to the provisions of Rule 1, the owner may at any time pay to any lienor of Class 2 or Class 3 such sum as will not exceed the amount for which such lienor would ultimately be able to get liens allowed by a court if such payments were not made.²⁸

Under Rules 3 and 4 the owner cannot properly pay any sum whatever unless he retains enough to pay certain other claims in full. This exception merely allows the owner to make calculations, if he can, as to what the ultimate result of an action to enforce a lien would be and to make payment on that basis. Even an owner who has made payments in advance, in violation of Rule 1, may come under the protection of this rule.

Lienors are allowed by a court in the following manner: Lienors within a single class are allowed liens for the full amount of their claims before any liens are allowed within any subsequent class. If the amount applicable to the liens of any single class is insufficient to permit all liens within that class to be allowed in full, each lien is allotted its pro rata share.²⁹ This explains the absence in Rule 3, dealing with payments to Class 2 lienors, of any reference to Class 3 lienors, and it also explains

²⁵FLA. STAT. 1941, §§84.05(3), 84.26.

²⁶FLA. STAT. 1941, §§84.26, 84.05.

²⁷FLA. STAT. 1941, §84.05(4).

²⁸FLA. STAT. 1941, §84.05(5).

²⁹FLA. STAT. 1941, §84.06.

Rule 2, under which laborers may be paid.

While the allowance of liens by a court and payments under Rule 5 are governed by a fixed priority system, a payment to a laborer under Rule 2 may operate to deprive another laborer of the pro rata share to which he would be entitled if no payments were made except by order of court. Similarly, a Class 2 lienor might be paid under Rule 3 immediately after a progress payment was due under the terms of the direct contract so that the provisions of Rule 1 would be complied with, if the payment were for something already done, and this payment might well put a subsequent lienor of Class 2 in a more disadvantageous position than he would have occupied had such payment not been made.³⁰ Once the total amount which the owner must retain under Rules 3 and 4 equals the contract price, however, payments can be made only in accordance with computations under Rule 5.

Rule 6. Before paying any money direct to a lienor other than the contractor, the owner must give the contractor ten days' written warning setting forth the amount intended to be paid. Payment must not exceed the amount set forth in the warning.³¹

Unless the contractor gives the owner a written objection to the contemplated payment within the ten-day period or prior to the payment by the owner, whichever is longer, he is deemed to have consented to it. The owner must furnish the contractor on demand a copy of the lienor's notice on which he proposes to make payment. If the owner does not comply with this rule he is liable only to the contractor, and the contractor has a lien for any loss suffered thereby. The owner must give the ten days' notice or run the risk of the possibility that the money is not in fact due and payable to the purported lienor or that the contractor has a set-off against the lienor. Except for this right of the contractor, money paid by the owner direct to a lienor is treated, as between the parties, as if it were paid to the contractor, by him to the sub-contractor, and so on to the lienor.³²

Rule 7. Subject to the provisions of Rule 1, the owner may at any time pay to the contractor any money then due and payable under the terms of the direct contract, provided that he retains, exclusive of such

³⁰FLA. STAT. 1941, §§84.05(3), 84.05(5).

³¹FLA. STAT. 1941, §84.05(6).

³²FLA. STAT. 1941, §84.05(7).

payment, enough of the contract price to pay all Class 1 lienors up to the completion of the improvement and enough to pay all Class 2 and Class 3 lienors who have constituted themselves as such before the time payment is made to the contractor, regardless of whether the services or furnishing of materials have then been performed or remain in whole or in part to be performed. Payment must be made in good faith for labor, services or materials previously performed or furnished.³³

Proof of payment to the contractor is prima facie proof that the money was paid in accordance with this rule as far as concerns the good faith and the application of the money.³⁴

Rule 8. The owner may at any time pay to the contractor any sum that could then be properly paid under these rules to any given lienor, provided that the contractor furnishes the owner a receipt or (except in the case of laborers) a waiver of lien signed by the given lienor and covering the sum to be paid to the contractor.³⁵

Rule 9. The owner must pay no money on the direct contract after final payment is due by its terms until the contractor has given the statement under oath required of him. Payments under Rules 5, 7 and 8 are excepted from this rule.³⁶

Rule 10. The owner must pay no money on the direct contract for labor, services or materials the performing or furnishing of which is not covered by the direct contract.³⁷

This rule does not preclude "extras" from being considered as part of the direct contract, and the price of such extras is included in the contract price.³⁸

Rule 11. In computing, under these rules, that part of the contract price which the owner has remaining in his hands (i. e., the sum from which proper payment is to be made), he must use as a basis the contract price and subtract only the amount which he has up to that time properly

³³FLA. STAT. 1941, §84.05(8).

³⁴FLA. STAT. 1941, §84.05(8).

³⁵FLA. STAT. 1941, §84.05(8).

³⁶FLA. STAT. 1941, §84.05(11). See Class 3 lienors in Section II of this article.

³⁷FLA. STAT. 1941, §84.05.

³⁸FLA. STAT. 1941, §84.01.

paid, which is not necessarily the same as the amount which he has actually paid (as he may have made some improper payments). On the other hand, in computing the claims of lienors to whom amounts are or will be due, the owner must not include claims which he has discharged, properly or otherwise, as these claims are no longer, and will never be, due and payable under these rules. In the calculation of amounts that are or will be due and payable to lienors and to pay all or part of which the owner must retain money, any claims covered by waivers of lien must not (except in the case of laborers) be included. Also, in this calculation, the owner must include only once any amounts due or to become due for the same labor, services or materials.³⁹

This last provision has reference to the fact that the sub-contractor, the sub-contractor under the first sub-contractor, and so on down to the laborer, materialmen or other lienor, may each claim a lien for the same labor, services or materials. In an action to enforce the liens a court would, in this situation, allow only the lien of the lienor farthest removed from the contractor.⁴⁰

The effect of this rule is to attribute to the owner the maximum amount which he holds or should still hold of the contract price and at the same time to keep at a minimum the basis on which he must retain money.

IV. PROVISIONS FOR THE PROTECTION OF THE OWNER

There are several statutory provisions under which the sum will have been properly paid even though it was not paid in accordance with the above rules.

If the lienor actually receives money which the owner has paid the contractor or some other person, and this money could have been properly paid to the lienor at the time the money was paid out by the owner, the money is regarded as properly paid.⁴¹

If money is paid to the contractor after the final payment is due on the direct contract but before the contractor has given the statement under oath required of him, the money is treated, for purposes of determining whether it was properly paid, as if it had been paid later and immediately after the statement was actually given, with the result that

³⁹FLA. STAT. 1941, §84.05.

⁴⁰FLA. STAT. 1941, §84.06.

⁴¹FLA. STAT. 1941, §84.05(9).

the owner is charged with notice of events occurring between the time the money was paid and the later time at which it should have been paid.⁴² This situation is closely analogous to that of money paid in advance under Rule 1.

As against any given lienor, money will be properly paid if it can be proven that the payment caused him no detriment. The money may nevertheless have been improperly paid as to other lienors, and, if so, they share pro rata in the resulting benefit.⁴³

If the owner pays any money in reliance upon the statement of the contractor under oath and in a bona fide belief in its truth, and if the payment made would have been proper had the statement actually been true, the money will have been properly paid as against those Class 3 lienors who became such solely because they were named in the contractor's statement. The money will not have been properly paid, however, as against laborers, Class 2 lienors, and those Class 3 lienors who took steps on their own account to establish liens (such as giving notice of intention or filing a claim and serving a copy of it). The money is properly paid only as against those who relied on the contractor to include them in his statement.⁴⁴

V. APPLICATION OF THE RULES TO PROGRESS PAYMENTS

In making a progress payment the owner cannot proceed as if an improvement were then complete and the contract price then due and payable. "Contract price" by definition⁴⁵ includes the whole price to be paid for all work performed under the contract directed toward the completion of the entire improvement; and the owner in making a progress payment to a Class 2 lienor, for example, must consider, and perhaps retain, part of the progress payment to pay subsequent lienors such as those of Class 1 and Class 2 who have already served notices but have yet to perform or finish performance under their notices.

⁴²FLA. STAT. 1941, §84.05(11).

⁴³FLA. STAT. 1941, §84.05(13).

⁴⁴FLA. STAT. 1941, §84.05(12).

⁴⁵FLA. STAT. 1941, §84.01.