

# ORLANDO Business Journal

Vol. 15:37; Feb. 5-11, 1999

Focus: Commercial Real Estate & Construction

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## Form sometimes matters more than substance in lien rulings

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Special to Orlando Business Journal

ORLANDO — Florida's Construction Lien Law makes the owner of real property responsible for insuring that all persons who supply labor or materials used to improve their property get paid.

As a condition to perfecting a lien against an owner's property, a subcontractor or materialman who does not have a direct contract with the owner must provide a statutorily prescribed "Notice to Owner."

Section 718:06 of the Florida Statutes contains a form to be used for the preparation of a Notice to Owner.

Many subcontractors and material suppliers depend upon commercial notice services to prepare and send their notices to owner. Over the years, these notice services have developed and adapted their forms to provide the information required by the ever-changing statutes.

A recent case decided by Florida's 5th District Court of Appeal, however, illustrates the pitfalls of utilizing a Notice to Owner form, which does anything other than follow the statutory form verbatim.

In the recent case of *Allstar Building Materials L.T.D. v. Donald F. Kronauer*, Florida Law Weekly D53 (Fla. App. 5 Dist., Dec. 23, 1998), the 5th DCA held that a materialman's Notice to Owner failed to meet the requirements of the Florida Construction Lien Law.

Although the notice contained substantially the same information

required by the statute, the court states, "We believe that the form itself is important and the form utilized by the Legislature better conveys the warnings required in order to justify a lien on the property of one not in privity."

When the Legislature provides a form to be used, the 5th DCA said, there is simply no need to "reinvent the wheel."

The statutory form is titled "Notice to Owner." The form examined by the court in the Allstar case was headed "Notice to Owner/Contractor." The difference, said the court, is that "this dilutes the importance of the notice as something that applies to the owner alone."

The result of the decision, the complete loss of construction lien rights, illustrates the importance of utilizing current forms that comply to the letter with the requirements of Florida's Construction Lien Law.

As the unhappy lienor in the Allstar case found out, sometimes form does matter more than substance.



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