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HAS THE 90-DAY DEADLINE TO RECORD A FLORIDA CONSTRUCTION LIEN STARTED TICKING?

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Over the years, there has been considerable litigation over whether or not a construction lien in Florida has been timely filed. As construction projects increase in number, many expect there to be an escalation in construction lien filings. Construction participants, such as contractors, subcontractors, material suppliers, engineers and surveyors, have a short window of opportunity to perfect their construction lien rights. Florida's Construction Lien Law requires a lienor to record a construction lien within 90 days from the last date that it furnishes labor, services or materials. This deadline is referred to in the lien law as the "final furnishing."

Identifying when the 90-day deadline begins to tick seems simple, but it is often confusing. Issues regarding the 90-day deadline to record a construction lien may arise, for example, if a lien claimant returns to a job site or property to do additional work or furnish additional materials, or if additional work or materials is furnished in the nature of repair or warranty work.

The Construction Lien Law and Florida case law address many of these issues. Section 713.01(12), Florida Statutes, provides that "final furnishing is not to be measured by such standards as the issuance of a certificate of occupancy or certificate of final completion", and does not include "correction of deficiencies in the lienor's previously performed work or material supplied."

Florida courts have further clarified the 90-day deadline by stating that the legal test to be applied in determining the date of last work is: (1) whether the work was done in good faith, (2) within a reasonable time, (3) pursuant to the terms of the contract, and (4) necessary for a finished job. Thus, courts have held that the 90-day period is not extended by the furnishing of additional, insubstantial work, or where the work is not needed to complete the contract or to make the project suitable for its intended purpose. Nor does remedial work in the nature of correction or repair, such as warranty or punch list work, extend the time for recording a lien.

It is important that lienors seeking to enforce construction liens and those wishing to contest such liens pay careful attention to the mandatory 90-day period under the Construction Lien Law. A lien that has not been timely recorded is not perfected, and cannot be enforced.

For more information on this topic, please contact Jeff Wertman on the firm's Dispute Resolution Team.

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