

INITIAL NOTICE REQUIRED FOR PAYMENT BOND CLAIMS

Construction Law Section

Chairs: John Lamoureux, Carlton Fields, P.A., and Tim Woodward, Forizs & Dogali, P.L.



Most construction lawyers know to immediately look for a timely Notice To Owner (NTO) when dealing with a sub-subcontractor lien. However, many are less comfortable addressing the notice requirements of a sub-subcontractor's payment bond claim. Often, the claimant will have served its own form of notice, and 45 days will have long since passed,¹ before the claim lands on the lawyer's desk.

A common scenario is a sub-subcontractor who approaches a lawyer to ask the lawyer to prosecute a "lien" claim. If the sub-subcontractor is sophisticated, it may inform the lawyer of a payment bond. If it is a public job of any size,² the practitioner should know to look. Regardless of how the lawyer learns of the bond, the sub-subcontractor will assure the lawyer it has given proper notice. The sub-subcontractor

Florida law generally holds that an NTO served on the bonded contractor substantially complies with the notice requirements of Section 255.05(2)(a)(2), and is therefore effective, even if it does not contain a specific statement of intent to look to the payment bond for protection.

will then proudly present an NTO served exactly as provided under the Construction Lien Law.³

If the job is a private project, the practitioner probably has little to fear. While the proper procedure under Chapter 713 is for a claimant to serve written notice that it will look to the contractor's bond for payment,⁴ the claimant can simply lien the

Continued on page 17

INITIAL NOTICE REQUIRED FOR PAYMENT BOND CLAIMS

Construction Law Section

Continued from page 16

job and force the owner to "bond off" the lien.⁵ I have yet to see a surety bold enough to contest a payment bond claim based on a technical notice deficiency where the bond was recorded to "bond off" a lien.

If the job is a public project, Section 255.05, Florida Statutes (2009), governs. Since July 1, 2007, Florida law requires a public payment bond claimant not in privity with the contractor (for example, a sub-subcontractor) to serve the contractor with "written notice" that claimant "intends to look to the bond for protection" within 45 days of first work.⁶ Assuming the bond was properly recorded,⁷ a standard Chapter 713

NTO would at first appear to not meet the notice requirements of Section 255.05(2)(a)(2). The practitioner may be concerned a technicality could render the bond claim void. However, Florida law generally holds that an NTO served on the bonded contractor is substantially compliant with the notice requirements of Section 255.05(2)(a)(2), and is therefore effective, even if it does not contain a specific statement of intent.⁸

¹ §§ 255.05(2)(a)(2); 713.06(2)(a), Fla. Stat. (2009).

² More than \$100,000 total for most jobs and more than \$200,000 total for all jobs. § 255.05(1)(a).

³ § 713.06(2)(a).

⁴ § 713.23(1)(c), Fla. Stat. (2009).

⁵ § 713.23(2).

⁶ § 255.05(2)(a)(2).

⁷ If the bond was not recorded and the claimant had no actual notice of it, the surety would be estopped from enforcing the notice requirement of Section 255.05(2)(a)(2), against the claimant. *See American Home Assurance Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 369-70 (Fla. 2005).

⁸ *See Sch. Bd. of Palm Beach County for Use and Ben. of Major Elec. Supplies of Stuart, Inc. v. Vincent J. Fasano, Inc.*, 417 So. 2d 1063, 1066 (Fla. 4th DCA 1982); *see also K.T. Transport, Inc. v. MCI Constructors, Inc.*, 571 So. 2d 41, 42 (Fla. 2d DCA 1990).



Author: Morgan W. Streetman, Esq., Streetman Law

facebook

twitter™

HCBA is on Facebook and Twitter.

Receive updates on events, at your convenience.

Join our Group & Become a Fan

Hillsborough County Bar Association

Become a Fan of the HCBA on Facebook at:
www.facebook.com/pages/Tampa-FL/Hillsborough-County-Bar-Association/30489075387



CONTINUING MEDIATOR EDUCATION (CME)

FRIDAY- AUGUST 20, 2010

Mark your calendars now and plan to attend a dynamic day of CME training.

All 9 required *live* hours for re-certification included.

- 8:00-9:00 "Cultural Issues in Mediation"
- 9:00-1:00 "The Ethical Mediation Process"
- 1:00-5:00 "Domestic Violence & Substance Abuse: The Link"

*Chester H. Ferguson Law Center
1610 N. Tampa Street
Tampa, Florida 33602*



Breakfast and lunch provided. \$195.00 CLE applied for. Email or call today to register as seating is limited.

Presented by:
**The Settlement Center
Walkley & Walkley, P.A.
903 Swann Avenue
Tampa, Florida 33606**

Phone: (813) 254-5600
E-mail: Janelle@Walkleylawfirm.com