

Florida Lien Law Frequently Asked Questions

What is a Notice to Owner?

A Notice to Owner (NTO) is a formal document notifying the owner that you will be working on the owner's project and that if you are not paid for your work that you intend to record a Claim of Lien against the property to assist collect those unpaid sums. The NTO must be in the form provided in §713.06, *Florida Statutes*, and provide following information:

- The name and address of the project owner as reflected in the Notice of Commencement (which should be posted at the job site);
- A description of the work that you will be providing;
- A property description, as reflected in the Notice of Commencement; and
- The name of the person or entity that hired you to work on the project.

The form warns the owner that if the general contractor fails to pay you that you will record a Claim of Lien against the owner's property – even if the owner has already paid the contractor in full, i.e. the owner could end up paying twice for the labor, materials and services that you provided on the project.

What is the purpose of the Notice to Owner?

From the lienor's perspective, the purpose of the NTO is to preserve its right to lien the property in case of non-payment. However, the Florida Legislature's reason for requiring a NTO is to help the owner protect the property from liens. The NTO lets the owner know who is working on the project and, therefore, who could potentially lien the project if they do not get paid. The fear is that the owner pays the general contractor, but the general contractor fails to flow that money down-stream and pay subcontractors and suppliers. If that happens, the subcontractors and suppliers could lien the project, and the owner could end up paying twice for their work. Recognizing this risk and having a list of potential lienors (i.e. those who served a NTO), the owner can protect the property from liens by refusing to pay the general contractor monthly and final payments until the general contractor provides the owner lien releases from all the potential lienors, releasing the project from any right to lien the property for work provided through the date of payment or sometime earlier. (Note that lien release for future work is unenforceable under Florida Lien Laws.) If the owner follows these procedures (and some other procedures at the end of the job) the owner can limit the total lien liability to the price of the prime contract.

What if there is no Notice of Commencement?

As previously stated, you should look first to the Notice of Commencement for all of the information that you need for completing your NTO. However, if there is no Notice of Commencement, the Florida Lien Laws allow you to look to the building permit.

Who must serve a Notice to Owner?

The Florida Lien Laws require all potential lienors who do not have a direct contract with the project owner to serve a NTO. Accordingly, everyone "down-stream" from the general contractor, e.g. subcontractors, sub-subcontractors and suppliers to the general contractor, subcontractors, and sub-subcontractors must serve a NTO to preserve their lien rights. (Note, however, that if you are too far

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“down-stream” that you may not have any lien rights, NTO or not; for example, sub-sub-subcontractors and their suppliers have no lien rights whatsoever.) However, because the general contractor has a direct contract with the project owner, it does not need to serve a Notice to Owner.

On what projects should I serve a Notice to Owner?

Unfortunately, some in the construction industry think that they should only serve a NTO on those jobs on which they suspect a potential problem with payment. That is a bad approach. You never know when you are going to face payment problems; it is unpredictable. You should serve a NTO on all jobs (except public projects - which cannot be liened anyway - or those on which there is an unconditional payment bond attached to the Notice of Commencement). Do not think that you are going to upset your clients by serving a NTO. All of the major suppliers and subcontracting companies make it a policy to serve a NTO on all lienable jobs.

When should I serve a Notice to Owner?

A subcontractor’s deadline to serve its Notice to Owner is within 45 days of first providing work on the project. This deadline is strictly enforced. If the NTO is served on the 46th day, you forfeit your lien rights entirely. The Florida Lien Laws also allow you to serve the Notice to Owner before performing work. Note, however, that if you serve the NTO by registered or certified mail postage prepaid, the NTO will be deemed served on the date of mailing, but only if mailed within 40 days of first providing work. Trades performing work at the tail-end of projects (e.g. landscapers, sign suppliers, etc.) should be warned that the NTO must be served prior to the owner’s final payment; therefore, those entities should make it a policy to serve an NTO immediately upon entering their contract for the project. Another warning goes out to suppliers of specially fabricated goods. Your 45 days starts at the commencement of the special fabrication process – not delivery to the project.

How must the Notice to Owner be served?

Florida’s Lien Laws state that service of the NTO must be made by one of the following methods:

- (a) By actual delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a limited liability company, to a member or manager;
- (b) By sending the same by registered or certified mail, with postage prepaid, or by overnight or second-day delivery with evidence of delivery, which may be in an electronic format; or
- (c) If the method specified in paragraph (a) or paragraph (b) cannot be accomplished, by posting on the premises.

Because you must prove actual service of the NTO, obtaining written evidence of service – like a certified mail receipt – is preferable. Just note that, as previously stated, the certified mail should go out no later than 40 days after first providing work.

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If you have any additional questions regarding Florida's Lien laws or other legal issues, we recommend that you call the law firm of Pohl & Short, P.A. Please tell them that you were referred by Quest Technology Group.

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