

A bill to be entitled

An act relating to the Construction Lien Law; amending s. 713.24(1), F.S.; providing an additional form of security for the purpose of transferring a lien claimed under Chapter 713, Part I, F.S., which security may be in the form of an irrevocable letter of credit from an F.D.I.C. insured lender licensed to do business in this state; which security shall be conditioned to pay up to the full penal sum of the irrevocable letter of credit for any judgment or decree that may be rendered for the satisfaction of the lien for which such claim of lien was recorded, which security must state a term of either the duration of the subject litigation or for at least one year, and which security may be posted by any person having an interest in the real property upon which a lien is claimed under Chapter 713, Part I, F.S.; providing for applicability to existing liens as of the effective date; and providing an effective date.

Be it Enacted by the Legislature of the State of Florida:

Section 1. Section 713.24, Florida Statutes, is amended to read:

713.24 Transfer of liens to security.—

(1) Any lien claimed under this part may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by ~~either~~ any of the following:

- (a) Depositing in the clerk's office a sum of money, ~~or~~
- (b) Filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state, or
- (c) Filing in the clerk's office an irrevocable letter of credit executed by an F.D.I.C. insured lender licensed to do business in this state,

either to be in an amount equal to the amount demanded in such claim of lien, plus interest thereon at the legal rate for 3 years, plus \$1,000 or 25 percent of the amount demanded in the claim of lien, whichever is greater, to apply on any attorney's fees and court costs that may be taxed in any proceeding to enforce said lien. Such deposit, ~~or bond, or irrevocable letter of credit~~ shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded. Upon making such deposit or filing such bond or such irrevocable letter of credit, the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and shall mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon filing the certificate of transfer, the real property shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. In the absence of allegations of privity between the lienor and the owner, and subject to any order of the court increasing the amount required for the lien transfer deposit, ~~or bond, or irrevocable letter of credit~~ no other judgment or decree to pay money may be entered by the court against the owner. The clerk shall be entitled to a service charge for making and serving the certificate, in the amount of up to \$20. If the transaction involves the transfer of multiple liens, an additional charge of up to \$10 for each additional lien shall be

charged. For recording the certificate and approving the bond or irrevocable letter of credit, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

(2) Any excess of the security over the aggregate amount of any judgments or decrees rendered plus costs actually taxed shall be repaid to the party person filing the same or her or his successor in interest. Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court and the disposition of same.

(3) Any party person having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited, or file a motion in a pending action to enforce a lien, for an order to require additional security, reduction of security, change or substitution of sureties or lenders, payment of discharge thereof, or any other matter affecting said security. If the court finds that the amount of the deposit, or bond, or irrevocable letter of credit in excess of the amount claimed in the claim of lien is insufficient to pay the lienor's attorney's fees and court costs incurred in the action to enforce the lien, the court must increase the amount of the cash deposit, or lien transfer bond, or irrevocable letter of credit. Nothing in this section shall be construed to vest exclusive jurisdiction in the circuit courts over transfer bond or irrevocable letter of credit claims for nonpayment of an amount within the monetary jurisdiction of the county courts.

(4)(a) Any irrevocable letter of credit filed pursuant to subparagraph (1)(c) must state on the face of the document its term, which term must be for either:

1. The duration of the proceeding to enforce any transferred lien to an irrevocable letter of credit, including the time of all appeals, or
2. If the person filing the irrevocable letter of credit under this section is unable to obtain an irrevocable letter of credit for the duration of the term set out in subparagraph (4)(a)1., for whatever reason, then the term of the irrevocable letter of credit shall be made renewable on no less than an annual basis.

(b) If the transferring person files an irrevocable letter of credit with an annual renewal term pursuant to subparagraph (4)(a)2., then:

1. No later than 45 days before the date upon which the irrevocable letter of credit's term is to expire, the person that filed the irrevocable letter of credit shall deliver to all lienors whose liens were transferred to the irrevocable letter of credit a notice truthfully stating whether or not the irrevocable letter of credit has been renewed for another year.

2. If the notice of renewal does not state that the irrevocable letter of credit has been renewed for another year, or if the notice of renewal is not delivered in accordance with subparagraph (4)(b)1., then any of the lienors whose liens were transferred to the irrevocable letter of credit may file an emergency motion with the court of competent jurisdiction, and which court shall then order the lender to deposit the full face value of the irrevocable letter of credit to the clerk's office in accordance with the fees and procedures for depositing cash set forth in paragraph (1). Upon making such a deposit with the clerk's office, the clerk shall make and record a certificate showing the transfer of the lien from the irrevocable letter of credit to the cash security and shall mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. The person that filed the irrevocable letter of credit shall bear all costs associated with transferring the lien from the irrevocable letter of credit to the deposited sum of money.

(5) If a proceeding to enforce a transferred lien is not commenced within the time specified in s. 713.22 or if it appears that the transferred lien has been satisfied of record, the clerk shall return said security upon request of the person depositing or filing the same, or the insurer. If a proceeding to enforce a lien is commenced in a court of competent jurisdiction within the time specified in s. 713.22 and, during such proceeding, the lien is transferred pursuant to this section or s. 713.13(1)(e), an action commenced within 1 year after the transfer, unless otherwise shortened by operation of law, in the same county or circuit court to recover against the security shall be deemed to have been brought as of the date of filing the action to enforce the lien, and the court shall have jurisdiction over the action.

Section 2. This act shall be applicable to any lien claimed under Chapter 713, Part I, F.S., that is in existence before, on, or after the effective date stated in Section 3. below.

Section 3. This act shall take effect on July 1, 2016.