

May 15, 2020

Florida Housing Finance Corporation  
c/o Trey Price and Marisa Button  
227 North Bronough Street, Suite 5000  
Tallahassee, FL 3230

**Re: Comments on Proposed Rulemaking Chapters 67-21 and 67-48, F.A.C.**

We respectfully suggest that the rule chapters clarify that when a General Contractor provides a payment and performance bond, then periodic construction draws are not withheld or delayed due to lien filings by a subcontractor or supplier. This is because the Florida lien laws provide that subcontractor and supplier liens are secured by the payment bond, not the project.

The benefit of this rule change is that it prevents delays in the receipt of periodic construction draws, and prevents delays in the payment of parties which are entitled to be paid. This, in turn, facilitates timely completion of construction. Subcontractors remain protected by the bond, but subcontractors will not be able to delay timely completion of a project.

Section 713.23(2), Florida Statutes, provides that a payment bond secures every lien under a General Contract accruing subsequent to the bond (other than liens filed by the General Contractor). In the event a lien has been filed against a property by a party other than the General Contractor, the General Contractor or any person with an interest in the project shall record a Notice of Bond in the form set forth in Section 713.23(2), and upon recordation of the Notice of Bond, any such lien is transferred from the project to the bond.

When these procedures are complied with, a subcontractor or supplier can no longer claim a lien against the project, and thus title to the project is not affected by, or subject to, any such lien.

Accordingly, we suggest that the rule provide the following:

“When a General Contractor provides a payment and performance bond in compliance with this rule chapter, periodic construction draws will not be withheld or delayed due to filing of liens by a party other than the General Contractor, if such lien is transferred from the Project to the bond in accordance with the requirements of Section 713.23(2), Florida Statutes.”

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Very truly yours,

*Jameson Pepple Cantu PLLC*  
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