

## LIENS FOR INTERIOR DESIGN SERVICES

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The profession of interior design has been a consequence of the continued development of interior space and complex architecture. Typically, the interior designer is tangential to the overall design team of a construction project. The pursuit of effective use of space is of primary importance and functional design has contributed to the development of the contemporary interior design profession. An interior designer will take on projects that include arranging the basic layout of spaces within a building. Additionally, they will need a fundamental understanding on the effects of color, acoustics, lighting and temperature in the designed space.

Types of interior design include residential design, commercial design, hospitality design, healthcare design, universal design, exhibition design, spatial branding. In Florida, interior designers are regulated, licensed and statutorily defined under Chapter 481, Florida Statutes. Interior design under Chapter 481 is defined as:

(8) “Interior design” means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. “Interior design” includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings. Fla. Stat. §481.203(8).

An interior designer’s work on a construction project constitutes an improvement and they are entitled to record a construction lien for their work under Chapter 713, Florida Statutes. The construction lien on the real property typically would seek money, as secured by the lien, that is owed for the services in connection with design improvement. Any interior designer who performs such services with a specific parcel of real property has the right to lien the real property for the money owed for their professional services, *regardless of whether the real property is actually improved.*

This is one of the exceptions to the incorporation requirement of Florida’s Construction Lien law. If the interior designer has a direct contract with the owner, a lien can be recorded even if the construction never occurs. This protects the interior designer who performs design work for an owner that decides to stop the project. Additionally, interior designers do not need to serve a Notice to Owner or a Contractor’s Final Payment Affidavit as they fall under the professional lienors section of Chapter 713. Once the construction lien is recorded, it encumbers the property; however, unlike subcontractors and suppliers, the professional interior designer lien does not relate back to the Notice of Commencement. Non-relation back very much affects the lien priority of the interior designer’s construction lien.

Aside from the typical construction lien, interior designers also have a special lien statute. §713.79, Florida Statutes, provide special lien rights to interior designers for personal property that is not permanently incorporated into the construction project. The statute reads:

Any person who, as part of his or her services performed as an interior designer, furnishes any articles of furniture, including, but not limited to, desks, tables, lamps, area rugs, wall hangings, photographs, paintings or other works of art, or any items of furnishing, subject to compliance with and the limitations imposed by this part, shall have a lien upon all such articles furnished and upon all such articles manufactured or converted from such furnishing, provided that the same shall be tangible personal property and provided further that such furnishings are rendered in accordance with a written contract and under direct contract with the owner.

The legal ability to file a construction lien on real property and have the lien also encumber the personal property for the items the interior designer furnished, gives the interior designer arguably the most aggressive set of lien rights in the construction industry. However, the interior designer must also take an additional step under Section 481.213, Florida Statutes, to make sure they clearly identify the methods of compensation for their work and that their design drawings comply with the requirements under Rule 61G1-16, Fla. Admin. Code. While there is no case law on these sections, the failure to comply with these statutory requirements may render the interior designer lien invalid.

When attempting to enforce the lien, personal property has a tendency to vanish when lawsuits are filed. The interior designer should take a proactive approach and immediate steps to secure the personal property when it comes times for litigation. This involves a claim for pre-judgment writs of possession and/or attachment, replevin, and even obtaining an *ex parte* temporary injunction freezing the personal property in its location if the interior designer believes that irreparable harm will transpire if the property is removed from the location. The lien foreclosure process, however, starts before the work even commences by having the proper contractual terms, change order language and personal guarantees in place.