

Return to Sender: Undeliverable Florida Statute §713 Notices

By **LANCE C. BALL, Esq.**
Ball Law Firm

In Elvis Presley's song "Return to Sender", he crooned: "I gave a letter to the postman. He put it in his sack. Bright and early next morning, he brought my letter back. She wrote upon it: Return to sender, Address unknown, No such number, No such zone." Under Florida law, similar complications can arise when construction lienor's notices are sent but not received. Undelivered notices can cause frustration and costly legal issues for affected parties. Like Elvis, though, there are steps that can be taken when construction notices are marked "return to sender."

Florida's Construction Lien Law, Florida Statute §713, allows some categories of those who work on or provide materials or services to real property and who are not paid the right to enforce a claim of lien for payment against the subject property. To properly assert lien rights for the furnishing of labor, services, or materials, certain procedures must be strictly followed. Among those procedures are notice provisions within required time frames. Often such notices are sent via USPS certified mail, which is one manner of serving notices per the statute. But what happens if a potential lienor serves a notice by certified mail, and it is returned as undeliverable?

Florida Statute §713.18(3)(a) provides that:

Service of an instrument pursuant to this section is effective on the date of mailing the instrument if it:

1. Is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served; and
2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item.



Lance C. Ball,
Esq.
Ball Law
Firm

Although service of the returned notice is deemed effective on the date of mailing, there may not necessarily be sufficient evidence of delivery as required by Florida Statute §713.18(1)(b).

If a potential lienor's notice sent via certified mail comes back as undeliverable, then there are alternative methods of serving the notice. For example, Florida Statute §713.18(1)(a) allows service of a notice to be made by *actual delivery* to the person to be served. Elvis had a quarrel, a lover's spat, and even his special delivery letter came right back, but, he didn't stop trying to deliver. He took the letter himself and put it right in her hand. Likewise, Florida Statute §713.18(1)(c) goes a step further and allows service of notices to be made by *posting on the site of the improvement* if other statutorily defined service methods cannot be accomplished. In summary, Florida Statute §713.18(1) provides that service of notices must be made by: (a) actual delivery; (b) common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery; or (c) posting on the jobsite.

Thus, during a construction project, if it seems that "love me tender" has turned to "suspicious minds" when building the "heartbreak hotel", "that's alright", "don't be cruel", "it's now or never" for the potential lienor to properly serve notices. In other words, notices must be served by one of the statutory methods and delivered in a timely manner. The failure to do so will likely result in "crying in the chapel" over the loss of lien rights, singing "there goes my everything." Fortunately, there is no need to be "all shook up," a potential lienor can have "peace in the valley." Remember, by strictly complying with the available methods of serving notices under Florida's Construction Lien Law, one can confidently say with "a little less conversation" that this notice is "stuck on you." Who knew Elvis Presley could be so instructive on methods of serving construction notices?