

1 A bill to be entitled
2 An act relating to construction bonds; amending s. 255.05,
3 F.S.; requiring a surety to record in the public records a
4 payment bond for a public works construction project;
5 requiring that the bond number be stated on the first page
6 of a bond; prohibiting the issuing authority for a
7 building permit or a private provider providing inspection
8 services from inspecting certain improvements until the
9 filing of a payment bond or statement that the contract is
10 exempt from the requirements for a payment bond; requiring
11 the clerk of court to serve a notice of contest of lien;
12 amending s. 713.13, F.S.; revising the date on which a
13 notice of commencement expires; revising the form of a
14 notice of commencement; requiring the posting of a payment
15 bond on a job site; replacing the warning to owner on the
16 notice of commencement with a notice to subcontractors;
17 amending s. 713.135, F.S.; revising the warning to the
18 owner which is printed on permit cards; deleting a
19 requirement for filing a notice of commencement before
20 certain inspections; revising the warning to the owner
21 which is provided on a building permit form; creating s.
22 713.137, F.S.; prohibiting the issuing authority of a
23 building permit or a private provider providing inspection
24 services from inspecting an improvement until documents
25 relating to the notice of commencement and payment bond
26 have been filed; providing exceptions; amending s. 713.16,
27 F.S.; authorizing a lienor who submits or mails a claim of
28 lien to the clerk for recording to make certain demands

29 | for certain written statements of an owner; amending s.
 30 | 713.18, F.S.; providing additional methods by which
 31 | instruments may be served by mail; amending s. 713.22,
 32 | F.S.; requiring the clerk of court to serve a notice of
 33 | contest of lien; amending s. 713.23, F.S.; requiring the
 34 | clerk of court to serve a notice of contest of nonpayment;
 35 | conforming cross-references; amending s. 713.24, F.S.;
 36 | requiring the clerk of court to serve a copy of the
 37 | certificate showing the transfer of a lien and a copy of
 38 | the bond if the lien is transferred to a bond; providing
 39 | an effective date.

40 |

41 | Be It Enacted by the Legislature of the State of Florida:

42 |

43 | Section 1. Subsection (1) and paragraph (a) of subsection
 44 | (2) of section 255.05, Florida Statutes, are amended to read:
 45 | 255.05 Bond of contractor constructing public buildings;
 46 | form; action by materialmen.--

47 | (1)~~(a)~~ Any person entering into a formal contract with the
 48 | state or any county, municipality ~~city~~, or political subdivision
 49 | thereof, or other public authority or private entity, for the
 50 | construction of a public building, for the prosecution and
 51 | completion of a public work, or for repairs upon a public
 52 | building or public work shall ~~be required~~, before commencing the
 53 | work or before recommencing the work after a default or
 54 | abandonment, ~~to~~ execute and, deliver to the public owner, ~~and~~
 55 | ~~record in the public records of the county where the improvement~~
 56 | ~~is located~~, a payment and performance bond with a surety insurer

57 | authorized to do business in this state as surety.

58 | (a) A public entity may not require a contractor to secure
59 | a surety bond under this section from a specific agent or
60 | bonding company.

61 | (b) The bond must state on its front page: the name,
62 | principal business address, and phone number of the contractor,
63 | the surety, the owner of the property being improved, and, if
64 | different from the owner, the contracting public entity; the
65 | contract number assigned by the contracting public entity; the
66 | bond number assigned by the surety; and a description of the
67 | project sufficient to identify it, such as a legal description
68 | or the street address of the property being improved, and a
69 | general description of the improvement.

70 | (c) Such bond shall be conditioned upon the contractor's
71 | performance of the construction work in the time and manner
72 | prescribed in the contract and promptly making payments to all
73 | persons defined in s. 713.01 who furnish labor, services, or
74 | materials for the prosecution of the work provided for in the
75 | contract.

76 | (d) The surety shall record the payment bond upon issuance
77 | in the public records of the county in which the improvement
78 | will be located.

79 | (e)1. The issuing authority for the building permit, or a
80 | private provider providing inspection services, may not inspect
81 | the property being improved until:

82 | a. The issuing authority has a copy of the contractor's
83 | recorded payment bond on file; or

84 | b. The contracting public entity has filed a notarized

85 statement stating that the contract is exempt from the
86 requirement for a payment bond under this section.

87 2. This paragraph does not apply to inspections for the
88 installation of temporary electrical service or other temporary
89 utility service, land clearing, or other preliminary site work.

90 (f) Any claimant may apply to the governmental entity
91 having charge of the work for copies of the contract and bond
92 and shall thereupon be furnished with a certified copy of the
93 contract and bond. The claimant has ~~shall have~~ a right of action
94 against the contractor and surety for the amount due him or her,
95 including unpaid finance charges due under the claimant's
96 contract. Such action shall not involve the public authority in
97 any expense.

98 (g)1. A payment and performance bond is not required for a
99 contract of \$100,000 or less with the state. ~~When such work is~~
100 ~~done for the state and the contract is for \$100,000 or less, no~~
101 ~~payment and performance bond shall be required.~~

102 2. At the discretion of The official or board awarding a
103 ~~such~~ contract ~~when such work is done for a~~ any county,
104 municipality ~~city~~, political subdivision, or public authority
105 may exempt a contract, ~~any person entering into such a contract~~
106 ~~which is for \$200,000 or less~~ from the requirement for a ~~may be~~
107 ~~exempted from executing the~~ payment and performance bond.

108 3. When such work is done for the state, The Secretary of
109 Management Services may delegate to a state agency ~~agencies~~ the
110 authority to exempt ~~any person entering into such a contract for~~
111 ~~amounting to more than \$100,000 but less than \$200,000 from~~ the
112 requirement for a ~~executing the~~ payment and performance bond. If

113 ~~In the event~~ such exemption is granted, the officer or officials
 114 are ~~shall~~ not ~~be~~ personally liable to persons suffering loss
 115 because of granting such exemption. The Department of Management
 116 Services shall maintain information on the number of requests by
 117 state agencies for delegation of authority to waive the bond
 118 requirements by agency and project number and whether any
 119 request for delegation was denied and the justification for the
 120 denial.

121 (h) Any provision in a payment bond furnished for public
 122 work contracts as provided by this subsection which restricts
 123 the classes of persons as defined in s. 713.01 protected by the
 124 bond or the venue of any proceeding relating to such bond is
 125 unenforceable.

126 (i) ~~(b)~~ The Department of Management Services shall adopt
 127 rules with respect to all contracts for \$200,000 or less, to
 128 provide:

129 1. Procedures for retaining up to 10 percent of each
 130 request for payment submitted by a contractor and procedures for
 131 determining disbursements from the amount retained on a pro rata
 132 basis to laborers, materialmen, and subcontractors, as defined
 133 in s. 713.01.

134 2. Procedures for requiring certification from laborers,
 135 materialmen, and subcontractors, as defined in s. 713.01, prior
 136 to final payment to the contractor that such laborers,
 137 materialmen, and subcontractors have no claims against the
 138 contractor resulting from the completion of the work provided
 139 for in the contract.

140

141 The state is ~~shall~~ not ~~be held~~ liable to any laborer,
 142 materialman, or subcontractor for any amounts greater than the
 143 pro rata share as determined under this section.

144 (j)~~(e)~~1. The amount of the bond shall equal the contract
 145 price, except that for a contract in excess of \$250 million, if
 146 the state, county, municipality, political subdivision, or other
 147 public entity finds that a bond in the amount of the contract
 148 price is not reasonably available, the public owner shall set
 149 the amount of the bond at the largest amount reasonably
 150 available, but not less than \$250 million.

151 2. For construction-management or design-build contracts,
 152 if the public owner does not include in the bond amount the cost
 153 of design or other nonconstruction services, the bond may not be
 154 conditioned on performance of such services or payment to
 155 persons furnishing such services. Notwithstanding paragraph (h)
 156 ~~paragraph (a)~~, such a bond may exclude persons furnishing such
 157 services from the classes of persons protected by the bond.

158 (2) (a)1. If a claimant is no longer furnishing labor,
 159 services, or materials on a project, a contractor or the
 160 contractor's agent or attorney may elect to shorten the
 161 ~~prescribed time in this paragraph~~ within which an action to
 162 enforce any claim against a payment bond must ~~provided pursuant~~
 163 ~~to this section may~~ be commenced by recording in the clerk's
 164 office a notice in substantially the following form:

165
 166 NOTICE OF CONTEST OF CLAIM

167 AGAINST PAYMENT BOND

168 To: ...(Name and address of claimant)...

169 You are notified that the undersigned contests your notice
 170 of nonpayment, dated,, and served on the
 171 undersigned on,, and that the time within
 172 which you may file suit to enforce your claim is limited to 60
 173 days after the date of service of this notice.

174 DATED on,
 175 Signed:...(Contractor or Attorney)...

176
 177 The claim of any claimant upon whom such notice is served and
 178 who fails to institute a suit to enforce his or her claim
 179 against the payment bond within 60 days after service of such
 180 notice shall be extinguished automatically. The clerk shall
 181 serve mail a copy of the notice of contest to the claimant at
 182 the address shown in the notice of nonpayment or most recent
 183 amendment thereto and shall certify to such service on the face
 184 of such notice and record the notice. ~~Service is complete upon~~
 185 ~~mailing.~~

186 2. A claimant, except a laborer, who is not in privity
 187 with the contractor shall, before commencing or not later than
 188 45 days after commencing to furnish labor, services, or
 189 materials for the prosecution of the work, furnish the
 190 contractor with a written notice that he or she intends to look
 191 to the bond for protection. A claimant who is not in privity
 192 with the contractor and who has not received payment for his or
 193 her labor, services, or materials shall deliver to the
 194 contractor and to the surety written notice of the performance
 195 of the labor or delivery of the materials or supplies and of the
 196 nonpayment. The notice of nonpayment may be served at any time

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197 during the progress of the work or thereafter but not before 45
198 days after the first furnishing of labor, services, or
199 materials, and not later than 90 days after the final furnishing
200 of the labor, services, or materials by the claimant or, with
201 respect to rental equipment, not later than 90 days after the
202 date that the rental equipment was last on the job site
203 available for use. Any notice of nonpayment served by a claimant
204 who is not in privity with the contractor which includes sums
205 for retainage must specify the portion of the amount claimed for
206 retainage. An ~~No~~ action for ~~the~~ labor, materials, or supplies
207 may not be instituted against the contractor or the surety
208 unless both notices have been given. Notices required or
209 permitted under this section may be served in accordance with s.
210 713.18. A claimant may not waive in advance his or her right to
211 bring an action under the bond against the surety. In any action
212 brought to enforce a claim against a payment bond under this
213 section, the prevailing party is entitled to recover a
214 reasonable fee for the services of his or her attorney for trial
215 and appeal or for arbitration, in an amount to be determined by
216 the court, which fee must be taxed as part of the prevailing
217 party's costs, as allowed in equitable actions. The time periods
218 for service of a notice of nonpayment or for bringing an action
219 against a contractor or a surety shall be measured from the last
220 day of furnishing labor, services, or materials by the claimant
221 and shall not be measured by other standards, such as the
222 issuance of a certificate of occupancy or the issuance of a
223 certificate of substantial completion.

224 Section 2. Section 713.13, Florida Statutes, is amended to

225 read:
 226 713.13 Notice of commencement.--
 227 (1) (a) Except for an improvement that is exempt pursuant
 228 to s. 713.02(5), an owner or the owner's authorized agent before
 229 actually commencing to improve any real property, or
 230 recommencing completion of any improvement after default or
 231 abandonment, whether or not a project has a payment bond
 232 complying with s. 713.23, shall record a notice of commencement
 233 in the clerk's office and forthwith post either a certified copy
 234 thereof or a notarized statement that the notice of commencement
 235 has been filed for recording along with a copy thereof. The
 236 notice of commencement shall contain the following information:
 237 1. A description sufficient for identification of the real
 238 property to be improved. The description should include the
 239 legal description of the property and also should include the
 240 street address and tax folio number of the property if available
 241 or, if there is no street address available, such additional
 242 information as will describe the physical location of the real
 243 property to be improved.
 244 2. A general description of the improvement.
 245 3. The name and address of the owner, the owner's interest
 246 in the site of the improvement, and the name and address of the
 247 fee simple titleholder, if other than such owner.
 248 4. The name and address of the contractor.
 249 5. The name and address of the surety on the payment bond
 250 under s. 713.23, if any, and the amount of such bond.
 251 6. The name and address of any person making a loan for
 252 the construction of the improvements.

253 7. The name and address within the state of a person other
 254 than himself or herself who may be designated by the owner as
 255 the person upon whom notices or other documents may be served
 256 under this part; and service upon the person so designated
 257 constitutes service upon the owner.

258 (b) The owner, ~~at his or her option,~~ may designate a
 259 person in addition to himself or herself to receive a copy of
 260 the lienor's notice as provided in s. 713.06(2)(b), and if he or
 261 she does so, the name and address of such person must be
 262 included in the notice of commencement.

263 (c) A notice of commencement expires:

264 1. Ninety days after the day of the final furnishing of
 265 all labor, services, and materials required by the direct
 266 contract, including any change orders; or

267 2. On the effective date of a Notice of Termination that
 268 has been served and recorded. ~~If the contract between the owner~~
 269 ~~and a contractor named in the notice of commencement expresses a~~
 270 ~~period of time for completion for the construction of the~~
 271 ~~improvement greater than 1 year, the notice of commencement must~~
 272 ~~state that it is effective for a period of 1 year plus any~~
 273 ~~additional period of time. Any payments made by the owner after~~
 274 ~~the expiration of the notice of commencement are considered~~
 275 ~~improper payments.~~

276 (d) A notice of commencement must be in substantially the
 277 following form:

278
 279 Permit No..... Tax Folio No.....

280 NOTICE OF COMMENCEMENT

281 State of....
 282 County of....
 283 The undersigned hereby gives notice that improvement will be
 284 made to certain real property, and in accordance with Chapter
 285 713, Florida Statutes, the following information is provided in
 286 this Notice of Commencement.

287 1. Description of property: ...(legal description of the
 288 property, and street address if available)....

289 2. General description of improvement:.....

290 3. Owner information:.....

291 a. Name and address:.....

292 b. Interest in property:.....

293 c. Name and address of fee simple titleholder (if other
 294 than Owner):.....

295 4.a. Contractor: ...(name and address)....

296 b. Contractor's phone number:.....

297 5. Surety (a copy of the payment bond is attached, if the
 298 project is bonded)

299 a. Name and address:.....

300 b. Phone number:.....

301 c. Amount of bond: \$.....

302 6.a. Lender: ...(name and address)....

303 b. Lender's phone number:.....

304 7.a. Persons within the State of Florida designated by
 305 Owner upon whom notices or other documents may be served as
 306 provided by Section 713.13(1)(a)7., Florida Statutes: ...(name
 307 and address)....

308 b. Phone numbers of designated persons:.....

309 8.a. In addition to himself or herself, Owner designates
 310 of to receive a copy of the Lienor's
 311 Notice as provided in Section 713.13(1) (b), Florida Statutes.

312 b. Phone number of person or entity designated by
 313 owner:.....

314 9. This notice of commencement expires 90 days after the
 315 day of the final furnishing of all labor, services, and
 316 materials required by the direct contract, including any change
 317 orders, or on the effective date of a Notice of Termination.
 318 ~~Expiration date of notice of commencement (the expiration date~~
 319 ~~is 1 year from the date of recording unless a different date is~~
 320 ~~specified).....~~

322 NOTICE TO SUBCONTRACTORS: PURSUANT TO SECTION 713.13, FLORIDA
 323 STATUTES, THIS NOTICE OF COMMENCEMENT AND THE CONTRACTOR'S
 324 PAYMENT BOND, IF ANY, WERE FILED FOR RECORDING IN THE OFFICE OF
 325 THE....(county name)....COUNTY CLERK OF COURT ON....(date).....

326 ~~WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE~~
 327 ~~EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER~~
 328 ~~PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA~~
 329 ~~STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS~~
 330 ~~TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND~~
 331 ~~POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU~~
 332 ~~INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN~~
 333 ~~ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF~~
 334 ~~COMMENCEMENT.~~

336 Under penalties of perjury, I declare that I have read the

337 foregoing notice of commencement and that the facts stated in it
 338 are true to the best of my knowledge and belief.

339
 340 ... (Signature of Owner or Owner's Authorized
 341 Officer/Director/Partner/Manager) ...

342 ... (Signatory's Title/Office) ...

343 The foregoing instrument was acknowledged before me this
 344 day of, ... (year) ..., by ... (name of person) ... as ... (type
 345 of authority, ... e.g. officer, trustee, attorney in fact) ... for
 346 ... (name of party on behalf of whom instrument was executed)

347 ... (Signature of Notary Public - State of Florida) ...

348 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

349 Personally Known OR Produced Identification

350 Type of Identification Produced.....

351 ~~Verification pursuant to Section 92.525, Florida Statutes.~~

352 ~~Under penalties of perjury, I declare that I have read the~~
 353 ~~foregoing and that the facts stated in it are true to the best~~
 354 ~~of my knowledge and belief.~~

355 ~~... (Signature of Natural Person Signing Above) ...~~

356 (e) A copy of any payment bond must be attached at the
 357 time of recordation of the notice of commencement. The failure
 358 to attach a copy of the bond to the notice of commencement when
 359 the notice is recorded negates the exemption provided in s.
 360 713.02(6). However, if a payment bond under s. 713.23 exists but
 361 was not attached at the time of recordation of the notice of
 362 commencement, the bond may be used to transfer any recorded lien
 363 of a lienor except that of the contractor by the recordation and
 364 service of a notice of bond pursuant to s. 713.23(2). The notice

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365 requirements of s. 713.23 apply to any claim against the bond;
366 however, the time limits for serving any required notices shall
367 begin running from the later of the time specified in s. 713.23
368 or the date the notice of bond is served on the lienor.

369 (f) The giving of a notice of commencement is effective
370 upon the filing of the notice in the clerk's office.

371 (g) The owner must sign the notice of commencement and no
372 one else may be permitted to sign in his or her stead.

373 (2) If the improvement described in the notice of
374 commencement is not actually commenced within 90 days after the
375 recording thereof, such notice is void and of no further effect.

376 (3) The recording of a notice of commencement does not
377 constitute a lien, cloud, or encumbrance on real property, but
378 gives constructive notice that claims of lien under this part
379 may be recorded and may take priority as provided in s. 713.07.
380 The posting of a copy does not constitute a lien, cloud, or
381 encumbrance on real property, nor actual or constructive notice
382 of any of them.

383 (4) This section does not apply to an owner who is
384 constructing improvements described in s. 713.04.

385 (5) (a) A notice of commencement that is recorded within
386 the effective period may be amended to ~~extend the effective~~
387 ~~period~~, change erroneous information in the original notice, or
388 add information that was omitted from the original notice.
389 However, in order to change contractors, a new notice of
390 commencement or notice of recommencement must be executed and
391 recorded.

392 (b) The amended notice must identify the official records

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393 book and page where the original notice of commencement is
394 recorded, and a copy of the amended notice must be served by the
395 owner upon the contractor and each lienor who serves notice
396 before or within 30 days after the date the amended notice is
397 recorded.

398 (6) Unless otherwise provided in the notice of
399 commencement or a new or amended notice of commencement, a
400 notice of commencement is not effectual in law or equity against
401 a conveyance, transfer, or mortgage of or lien on the real
402 property described in the notice, or against creditors or
403 subsequent purchasers for a valuable consideration, after 1 year
404 after the date of recording the notice of commencement.

405 (7) A lender must, prior to the disbursement of any
406 construction funds to the contractor, record the notice of
407 commencement in the clerk's office as required by this section;
408 however, the lender is not required to post a certified copy of
409 the notice at the construction site. The posting of the notice
410 at the construction site remains the owner's obligation. The
411 failure of a lender to record the notice of commencement as
412 required by this subsection renders the lender liable to the
413 owner for all damages sustained by the owner as a result of the
414 failure. Whenever a lender is required to record a notice of
415 commencement, the lender shall designate the lender, in addition
416 to others, to receive copies of notices to owner. This
417 subsection does not give any person other than the owner a claim
418 or right of action against a lender for failure to record a
419 notice of commencement.

420 Section 3. Subsections (1), (2), and (6) of section

421 713.135, Florida Statutes, are amended to read:

422 713.135 Notice of commencement and applicability of
423 lien.--

424 (1) When any person applies for a building permit, the
425 authority issuing such permit shall:

426 (a) Print on the face of each permit card in no less than
427 14-point, capitalized, boldfaced type: "WARNING TO OWNER: IF YOU
428 FAIL TO RECORD A NOTICE OF COMMENCEMENT, YOU MAY PAY YOUR
429 FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR
430 PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
431 COMMENCEMENT AND THE CONTRACTOR'S PAYMENT BOND, IF THE PROJECT
432 IS BONDED, MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE
433 THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT
434 WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF
435 COMMENCEMENT."

436 (b) Provide the applicant and the owner of the real
437 property upon which improvements are to be constructed with a
438 printed statement stating that the right, title, and interest of
439 the person who has contracted for the improvement may be subject
440 to attachment under the Construction Lien Law. The Department of
441 Business and Professional Regulation shall furnish, for
442 distribution, the statement described in this paragraph, and the
443 statement must be a summary of the Construction Lien Law and
444 must include an explanation of the provisions of the
445 Construction Lien Law relating to the recording, and the posting
446 of copies, of notices of commencement and a statement
447 encouraging the owner to record a notice of commencement and
448 post a copy of the notice of commencement in accordance with s.

449 713.13. The statement must also contain an explanation of the
450 owner's rights if a lienor fails to furnish the owner with a
451 notice as provided in s. 713.06(2) and an explanation of the
452 owner's rights as provided in s. 713.22. The authority that
453 issues the building permit must obtain from the Department of
454 Business and Professional Regulation the statement required by
455 this paragraph and must mail, deliver by electronic mail or
456 other electronic format or facsimile, or personally deliver that
457 statement to the owner or, in a case in which the owner is
458 required to personally appear to obtain the permit, provide that
459 statement to any owner making improvements to real property
460 consisting of a single or multiple family dwelling up to and
461 including four units. However, the failure by the authorities to
462 provide the summary does not subject the issuing authority to
463 liability.

464 (c) Require ~~In addition to providing the owner with the~~
465 ~~statement as required by paragraph (b),~~ inform each applicant
466 who is not the person whose right, title, and interest is
467 subject to attachment ~~that,~~ as a condition to the issuance of a
468 building permit, to promise to deliver ~~the applicant must~~
469 ~~promise in good faith that the statement will be delivered to~~
470 the person whose property is subject to attachment.

471 (d) Furnish to the applicant two or more copies of a form
472 of notice of commencement conforming with s. 713.13. ~~If the~~
473 ~~direct contract is greater than \$2,500, the applicant shall file~~
474 ~~with the issuing authority prior to the first inspection either~~
475 ~~a certified copy of the recorded notice of commencement or a~~
476 ~~notarized statement that the notice of commencement has been~~

477 ~~filed for recording, along with a copy thereof. In the absence~~
478 ~~of the filing of a certified copy of the recorded notice of~~
479 ~~commencement, the issuing authority or a private provider~~
480 ~~performing inspection services may not perform or approve~~
481 ~~subsequent inspections until the applicant files by mail,~~
482 ~~facsimile, hand delivery, or any other means such certified copy~~
483 ~~with the issuing authority. The certified copy of the notice of~~
484 ~~commencement must contain the name and address of the owner, the~~
485 ~~name and address of the contractor, and the location or address~~
486 ~~of the property being improved. The issuing authority shall~~
487 (e) Verify that the name and address of the owner, the
488 name of the contractor, and the location or address of the
489 property being improved which is contained in the certified copy
490 of the notice of commencement is consistent with the information
491 in the building permit application. The issuing authority shall
492 provide the recording information on the certified copy of the
493 recorded notice of commencement to any person upon request. This
494 subsection does not require the recording of a notice of
495 commencement prior to the issuance of a building permit.
496 (f) Provide the book and page number of the official
497 public records on which the notice of commencement and payment
498 bond, if any, are recorded to any person upon request. If a
499 local government requires a separate permit or inspection for
500 installation of temporary electrical service or other temporary
501 utility service, land clearing, or other preliminary site work,
502 such permits may be issued and such inspections may be conducted
503 without providing the issuing authority with a certified copy of
504 a recorded notice of commencement or a notarized statement

505 ~~regarding a recorded notice of commencement. This subsection~~
506 ~~does not apply to a direct contract to repair or replace an~~
507 ~~existing heating or air-conditioning system in an amount less~~
508 ~~than \$7,500.~~

509 (g)~~(e)~~ Not require that a notice of commencement be
510 recorded as a condition of the application for, or processing or
511 issuance of, a building permit. ~~However, this paragraph does not~~
512 ~~modify or waive the inspection requirements set forth in this~~
513 ~~subsection.~~

514 (2) An issuing authority under subsection (1) is not
515 liable in any civil action for the failure of the person whose
516 property is subject to attachment to receive or to be delivered
517 a printed statement stating that the right, title, and interest
518 of the person who has contracted for the improvement may be
519 subject to attachment under the Construction Lien Law.

520 (6) (a) In addition to any other information required by
521 the authority issuing the permit, the building permit
522 application must be in substantially the following form:

523
524 Tax Folio No.....
525 BUILDING PERMIT APPLICATION
526
527 Owner's Name.....
528 Owner's Address.....
529 Fee Simple Titleholder's Name (If other than owner).....
530 Fee Simple Titleholder's Address (If other than owner).....
531 City.....
532 State..... Zip.....

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533 Contractor's Name.....
 534 Contractor's Address.....
 535 City.....
 536 State..... Zip.....
 537 Job Name.....
 538 Job Address.....
 539 City..... County.....
 540 Legal Description.....
 541 Bonding Company.....
 542 Bonding Company Address.....
 543 City..... State.....
 544 Architect/Engineer's Name.....
 545 Architect/Engineer's Address.....
 546 Mortgage Lender's Name.....
 547 Mortgage Lender's Address.....

549 Application is hereby made to obtain a permit to do the
 550 work and installations as indicated. I certify that no work or
 551 installation has commenced prior to the issuance of a permit and
 552 that all work will be performed to meet the standards of all
 553 laws regulating construction in this jurisdiction. I understand
 554 that a separate permit must be secured for ELECTRICAL WORK,
 555 PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS,
 556 TANKS, and AIR CONDITIONERS, etc.

557 OWNER'S AFFIDAVIT: I certify that all the foregoing information
 558 is accurate and that all work will be done in compliance with
 559 all applicable laws regulating construction and zoning.

560 WARNING TO OWNER: IF YOU FAIL TO RECORD A NOTICE OF

561 COMMENCEMENT, YOU MAY PAY YOUR FAILURE TO RECORD A
 562 NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE
 563 FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
 564 COMMENCEMENT AND THE CONTRACTOR'S PAYMENT BOND, IF THE
 565 PROJECT IS BONDED, MUST BE RECORDED AND POSTED ON THE
 566 JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO
 567 OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
 568 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR
 569 NOTICE OF COMMENCEMENT.

570
 571 ... (Signature of Owner or Agent) ...

572
 573 ... (including contractor) ...

574 STATE OF FLORIDA
 575 COUNTY OF

576
 577 Sworn to (or affirmed) and subscribed before me this
 578 day of, ... (year) ..., by ... (name of person making
 579 statement)

580
 581 ... (Signature of Notary Public - State of Florida) ...

582 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

583 Personally Known OR Produced Identification

584 Type of Identification Produced.....

585 ... (Signature of Contractor) ...

586
 587

588 STATE OF FLORIDA

589 COUNTY OF

590

591 Sworn to (or affirmed) and subscribed before me this
 592 day of, ...(year)...., by ...(name of person making
 593 statement)....

594 ...(Signature of Notary Public - State of Florida)...
 595 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

596 Personally Known OR Produced Identification

597 Type of Identification Produced.....

598 (Certificate of Competency Holder)

599

600 Contractor's State Certification or Registration No.....

601

602 Contractor's Certificate of Competency No.....

603

604 APPLICATION APPROVED BY

605Permit Officer

606 (b) Consistent with the requirements of paragraph (a), an
 607 authority responsible for issuing building permits under this
 608 section may accept a building permit application in an
 609 electronic format, as prescribed by the authority. Building
 610 permit applications submitted to the authority electronically
 611 must contain the following additional statement in lieu of the
 612 requirement in paragraph (a) that a signed, sworn, and notarized
 613 signature of the owner or agent and the contractor be part of
 614 the owner's affidavit:

615

616 OWNER'S ELECTRONIC SUBMISSION STATEMENT: Under penalty of

617 perjury, I declare that all the information contained in this
618 building permit application is true and correct.

619 (c) An authority responsible for issuing building permit
620 applications which accepts building permit applications in an
621 electronic format shall provide public Internet access to the
622 electronic building permit applications in a searchable format.

623 Section 4. Section 713.137, Florida Statutes, is created
624 to read:

625 713.137 Prerequisites to inspection of improvements;
626 exceptions.--

627 (1) The authority that issues a building permit or a
628 private provider providing inspection services may not inspect
629 the real property being improved unless:

630 (a) The following documents have been filed with the
631 issuing authority:

632 1.a. A certified copy of the recorded notice of
633 commencement; or

634 b. A notarized statement that the notice of commencement
635 has been filed for recording, along with a copy of the notice;
636 and

637 2.a. A copy of the contractor's recorded payment bond; or

638 b. A notarized statement of the contractor or owner
639 stating that a payment bond was not required.

640 (b) The information in the notice of commencement filed
641 with the issuing authority is consistent with the building
642 permit application, complete, and legible.

643 (2) This section does not apply to inspections of the
644 following improvements:

645 (a) The installation of temporary electrical service or
 646 other temporary utility service, land clearing, or other
 647 preliminary site work.

648 (b) Improvements pursuant to a direct contract in an
 649 amount of \$5,000 or less.

650 (c) The repair or replacement of a heating or air-
 651 conditioning system pursuant to a direct contract in an amount
 652 of \$7,500 or less.

653 Section 5. Subsection (5) of section 713.16, Florida
 654 Statutes, is amended to read:

655 713.16 Demand for copy of contract and statements of
 656 account; form.--

657 (5) (a) Any lienor who submits or mails ~~has recorded~~ a
 658 claim of lien to the clerk for recording may make a written
 659 demand on the owner for a written statement under oath showing:

660 1. The amount of the direct contract under which the lien
 661 was recorded;

662 2. The dates and amounts paid or to be paid by or on
 663 behalf of the owner for all improvements described in the direct
 664 contract;

665 3. The reasonable estimated costs of completing the direct
 666 contract under which the lien was claimed pursuant to the scope
 667 of the direct contract; and

668 4. If known, the actual cost of completion.

669 (b) Any owner who does not provide the statement within 30
 670 days after demand, or who provides a false or fraudulent
 671 statement, is not a prevailing party for purposes of an award of
 672 attorney's fees under s. 713.29. The written demand must include

673 the following warning in conspicuous type in substantially the
 674 following form:

675 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT
 676 WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL
 677 RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY
 678 ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING
 679 THIS STATEMENT.

680 Section 6. Section 713.18, Florida Statutes, is amended to
 681 read:

682 713.18 Manner of serving notices and other instruments.--

683 (1) Service of notices, claims of lien, affidavits,
 684 assignments, and other instruments permitted or required under
 685 this part, or copies thereof when so permitted or required,
 686 unless otherwise specifically provided in this part, must be
 687 made by one of the following methods:

688 (a) By actual delivery to the person to be served; if a
 689 partnership, to one of the partners; if a corporation, to an
 690 officer, director, managing agent, or business agent; or, if a
 691 limited liability company, to a member or manager.

692 (b) By sending the same by registered, global express
 693 guaranteed, or certified mail, or by a national or international
 694 mail service reasonably calculated to give notice, with postage
 695 prepaid and, ~~or by overnight or second-day delivery with~~
 696 evidence of delivery, which may be in an electronic format.

697 (c) ~~If the method specified in paragraph (a) or paragraph~~
 698 ~~(b) cannot be accomplished~~, By posting on the site of the
 699 improvement if service as provided by paragraph (a) or paragraph
 700 (b) cannot be accomplished ~~premises~~.

701 (2) Notwithstanding subsection (1), service of ~~if~~ a notice
 702 to owner, a notice to contractor under s. 713.23, or a
 703 preliminary notice under s. 255.05 is ~~mailed by registered or~~
 704 ~~certified mail with postage prepaid to the person to be served~~
 705 ~~at any of the addresses set forth in subsection (3) within 40~~
 706 ~~days after the date the lienor first furnishes labor, services,~~
 707 ~~or materials, service of that notice is~~ effective as of the date
 708 of mailing if:

709 (a) The notice is mailed by registered, global express
 710 guaranteed, or certified mail, with postage prepaid to the
 711 person to be served at any of the addresses set forth in
 712 subsection (3);

713 (b) The notice is mailed within 40 days after the date the
 714 lienor first furnishes labor, services, or materials; and

715 (c)1. The person who served the notice maintains a
 716 registered or certified mail log that shows the registered or
 717 certified mail number issued by the United States Postal
 718 Service, the name and address of the person served, and the date
 719 stamp of the United States Postal Service confirming the date of
 720 mailing; ~~or if~~

721 2. The person who served the notice maintains electronic
 722 tracking records generated through use of the United States
 723 Postal Service Confirm service or a similar service containing
 724 the postal tracking number, the name and address of the person
 725 served, and verification of the date of receipt by the United
 726 States Postal Service.

727 (3) Service of ~~If~~ an instrument ~~served~~ pursuant to this
 728 section is effective on the date of mailing if the instrument:

729 (a) Was sent to the last address shown in the notice of
 730 commencement or any amendment thereto or, in the absence of a
 731 notice of commencement, to the last address shown in the
 732 building permit application, or to the last known address of the
 733 person to be served; and, ~~is not received, but~~

734 (b) Is returned as being "refused," "moved, not
 735 forwardable," or "unclaimed," or is otherwise not delivered or
 736 deliverable through no fault of the person serving the item,
 737 ~~then service is effective on the date the instrument was sent.~~

738 (4) A notice served by a lienor on one owner or one
 739 partner of a partnership owning the real property ~~If the real~~
 740 ~~property is owned by more than one person or a partnership, a~~
 741 ~~lienor may serve any notices or other papers under this part on~~
 742 ~~any one of such owners or partners, and such notice is deemed~~
 743 notice to all owners and partners.

744 Section 7. Section 713.22, Florida Statutes, is amended to
 745 read:

746 713.22 Duration of lien.--

747 (1) A ~~No~~ lien provided by this part may not ~~shall~~ continue
 748 for a longer period than 1 year after the claim of lien has been
 749 recorded or 1 year after the recording of an amended claim of
 750 lien that shows a later date of final furnishing of labor,
 751 services, or materials, unless within that time an action to
 752 enforce the lien is commenced in a court of competent
 753 jurisdiction. A lien that has been continued beyond the 1-year
 754 period ~~The continuation of the lien effected by the commencement~~
 755 of an ~~the~~ action is ~~shall~~ not enforceable ~~be good~~ against
 756 creditors or subsequent purchasers for a valuable consideration

757 and without notice, unless a notice of lis pendens is recorded.

758 (2) An owner or the owner's agent or attorney may elect to
 759 shorten the time prescribed in subsection (1) within which to
 760 commence an action to enforce any claim of lien or claim against
 761 a bond or other security under s. 713.23 or s. 713.24 by
 762 recording in the clerk's office a notice in substantially the
 763 following form:

764
 765 NOTICE OF CONTEST OF LIEN

766 To: ...(Name and address of lienor)...

767 You are notified that the undersigned contests the claim of lien
 768 filed by you on, ...(year)...., and recorded in Book
 769, Page, of the public records of County, Florida,
 770 and that the time within which you may file suit to enforce your
 771 lien is limited to 60 days from the date of service of this
 772 notice. This day of, ...(year)....

773 Signed: ...(Owner or Attorney)...

774
 775 The lien of any lienor upon whom such notice is served and who
 776 fails to institute a suit to enforce his or her lien within 60
 777 days after service of such notice shall be extinguished
 778 automatically. The clerk shall serve ~~mail~~ a copy of the notice
 779 of contest to the lien claimant at the address shown in the
 780 claim of lien or most recent amendment thereto and shall certify
 781 to such service on the face of such notice and record the
 782 notice. ~~Service shall be deemed complete upon mailing.~~

783 Section 8. Paragraph (e) of subsection (1) and subsections
 784 (2) and (4) of section 713.23, Florida Statutes, are amended to

785 read:
 786 713.23 Payment bond.--
 787 (1)
 788 (e) An ~~Ne~~ action for the labor or materials or supplies
 789 may not be instituted or prosecuted against the contractor or
 790 surety unless both notices have been given. An ~~Ne~~ action may not
 791 ~~shall~~ be instituted or prosecuted against the contractor or
 792 against the surety on the bond under this section after 1 year
 793 from the performance of the labor or completion of delivery of
 794 the materials and supplies. The time period for bringing an
 795 action against the contractor or surety on the bond shall be
 796 measured from the last day of furnishing labor, services, or
 797 materials by the lienor. The time period may ~~and shall~~ not be
 798 measured by other standards, such as the issuance of a
 799 certificate of occupancy or the issuance of a certificate of
 800 substantial completion. A contractor or the contractor's agent
 801 or attorney may elect to shorten the ~~prescribed~~ time within
 802 which an action to enforce any claim against a payment bond
 803 ~~provided~~ under this section or s. 713.245 must ~~may~~ be commenced
 804 at any time after a notice of nonpayment, if required, has been
 805 served for the claim by recording in the clerk's office a notice
 806 in substantially the following form:

807
 808 NOTICE OF CONTEST OF CLAIM
 809 AGAINST PAYMENT BOND
 810

811 To: ...(Name and address of lienor)...
 812 You are notified that the undersigned contests your notice

813 of nonpayment, dated,, and served on the undersigned
 814 on,, and that the time within which you may file suit
 815 to enforce your claim is limited to 60 days from the date of
 816 service of this notice.

817
 818 DATED on,

819
 820 Signed: ... (Contractor or Attorney) ...

821
 822
 823 The claim of any lienor upon whom the notice is served and who
 824 fails to institute a suit to enforce his or her claim against
 825 the payment bond within 60 days after service of the notice
 826 shall be extinguished automatically. The clerk shall serve mail
 827 a copy of the notice of contest to the lienor at the address
 828 shown in the notice of nonpayment or most recent amendment
 829 thereto and shall certify to such service on the face of the
 830 notice and record the notice. ~~Service is complete upon mailing.~~

831 (2) The bond shall secure every lien under the direct
 832 contract accruing subsequent to its execution and delivery,
 833 except that of the contractor. Every claim of lien, except that
 834 of the contractor, filed subsequent to execution and delivery of
 835 the bond shall be transferred to it with the same effect as
 836 liens transferred under s. 713.24. Record notice of the transfer
 837 shall be effected by the contractor, or any person having an
 838 interest in the property against which the claim of lien has
 839 been asserted, by recording in the clerk's office a notice in
 840 substantially the following form:

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NOTICE OF BOND

To ... (Name and Address of Lienor)...

You are notified that the claim of lien filed by you on,
, and recorded in Official Records Book at page of
 the public records of County, Florida, is secured by a
 bond, a copy being attached.

Signed: ... (Name of person recording notice)...

The notice shall be verified. The clerk shall mail a copy of the
 notice to the lienor at the address shown in the claim of lien,
 or the most recent amendment to it; shall certify to the service
 on the face of the notice; and shall record the notice. The
 clerk shall receive the same fee as prescribed in s. 713.24 ~~s.~~
~~713.24(1)~~ for certifying to a transfer of lien.

(4) The provisions of s. 713.24(7) ~~s. 713.24(3)~~ shall
 apply to bonds under this section.

Section 9. Section 713.24, Florida Statutes, is amended to
 read:

713.24 Transfer of liens to security.--

(1) A ~~Any~~ lien claimed under this part may be transferred,
 by a ~~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:~~

(a) Depositing in the clerk's office a sum of money; or

869 (b) Filing in the clerk's office a bond executed as surety
 870 by a surety insurer licensed to do business in this state.7

871 (2) The security must either to be in an amount equal: to

872 (a) The amount demanded in the such claim of lien;7 plus

873 (b) Interest on the claim thereon at the legal rate for 3
 874 years, plus \$1,000 or 25 percent of the amount demanded in the
 875 claim of lien, whichever is greater, to apply on any attorney's
 876 fees and court costs that may be taxed in any proceeding to
 877 enforce the said lien.

878 (3) The security ~~Such deposit or bond~~ shall be conditioned
 879 to pay any judgment or decree that ~~which~~ may be rendered for the
 880 satisfaction of the lien ~~for which such claim of lien was~~
 881 ~~recorded.~~

882 (4) A ~~Upon making such deposit or filing such bond,~~ the
 883 clerk who receives other security for a lien:

884 (a) Shall make and record a certificate showing the
 885 transfer of the lien from the real property to the security. The
 886 clerk and shall serve mail a copy of the certificate and a copy
 887 of the bond, if the lien was transferred to a bond, on thereof
 888 ~~by registered or certified mail to~~ the lienor named in the claim
 889 of lien ~~so transferred,~~ at the address stated in the claim
 890 ~~therein. When~~ Upon filing the certificate of transfer is
 891 recorded, the real property is ~~shall thereupon be~~ released from
 892 the lien claimed, and the such lien is ~~shall be~~ transferred to
 893 the other said security.

894 (b) May collect a service charge for making and serving
 895 the certificate, in the amount of up to \$20. The clerk may
 896 collect an additional charge of up to \$10 for each additional

897 lien transferred to the security. The clerk shall receive the
 898 statutory service charges as prescribed in s. 28.24 for
 899 recording the certificate and approving the bond.

900 (5) In the absence of allegations of privity between the
 901 lienor and the owner, and subject to any order of the court
 902 increasing the amount required for the lien transfer deposit or
 903 bond, no other judgment or decree to pay money may be entered by
 904 the court against the owner. ~~The clerk shall be entitled to a~~
 905 ~~service charge for making and serving the certificate, in the~~
 906 ~~amount of up to \$20. If the transaction involves the transfer of~~
 907 ~~multiple liens, an additional charge of up to \$10 for each~~
 908 ~~additional lien shall be charged. For recording the certificate~~
 909 ~~and approving the bond, the clerk shall receive her or his usual~~
 910 ~~statutory service charges as prescribed in s. 28.24. Any number~~
 911 ~~of liens may be transferred to one such security.~~

912 (6)~~(2)~~ Any excess of the security over the aggregate
 913 amount of any judgments or decrees rendered plus costs actually
 914 taxed shall be repaid to the party filing the same or her or his
 915 successor in interest. Any deposit of money shall be considered
 916 as paid into court and is ~~shall be~~ subject to the provisions of
 917 law relative to payments of money into court and the disposition
 918 of same.

919 (7)~~(3)~~ Any party having an interest in such security or
 920 the property from which the lien was transferred may at any
 921 time, and any number of times, file a complaint in chancery in
 922 the circuit court of the county where such security is
 923 deposited, or file a motion in a pending action to enforce a
 924 lien, for an order to require additional security, reduction of

925 security, change or substitution of sureties, payment of
 926 discharge thereof, or any other matter affecting the said
 927 security. If the court finds that the amount of the deposit or
 928 bond in excess of the amount claimed in the claim of lien is
 929 insufficient to pay the lienor's attorney's fees and court costs
 930 incurred in the action to enforce the lien, the court must
 931 increase the amount of the cash deposit or lien transfer bond.
 932 ~~Nothing in~~ This section does not ~~shall be construed to~~ vest
 933 exclusive jurisdiction in the circuit courts over transfer bond
 934 claims for nonpayment of an amount within the monetary
 935 jurisdiction of the county courts.

936 (8)(4) If a proceeding to enforce a transferred lien is
 937 not commenced within the time specified in s. 713.22 or if it
 938 appears that the transferred lien has been satisfied of record,
 939 the clerk shall return the said security upon request of the
 940 person depositing or filing the same, or the insurer. If a
 941 proceeding to enforce a lien is commenced in a court of
 942 competent jurisdiction within the time specified in s. 713.22
 943 and, during such proceeding, the lien is transferred pursuant to
 944 this section or s. 713.13(1)(e), an action commenced within 1
 945 year after the transfer, unless otherwise shortened by operation
 946 of law, in the same county or circuit court to recover against
 947 the security shall be deemed to have been brought as of the date
 948 of filing the action to enforce the lien, and the court has
 949 ~~shall have~~ jurisdiction over the action.

950 Section 10. This act shall take effect October 1, 2009.