

1 A bill to be entitled
 2 An act relating to liens and bonds; amending s.
 3 255.05, F.S.; requiring that a copy of a notice of
 4 nonpayment be served on the surety; providing that
 5 certain waivers and releases are unenforceable;
 6 amending s. 713.01, F.S.; revising the definition of
 7 the term "final furnishing"; amending s. 713.07, F.S.;
 8 providing that certain liens have priority over
 9 certain subordinate conveyances, encumbrances, or
 10 demands; amending s. 713.13, F.S.; revising
 11 information to be included in a notice of
 12 commencement; amending s. 713.18, F.S.; providing that
 13 service of an instrument is effective on the date of
 14 shipping; amending ss. 713.20 and 713.235, F.S.;
 15 providing that certain waivers and releases are
 16 unenforceable; amending s. 713.23, F.S.; requiring
 17 that a copy of a notice of nonpayment be served on the
 18 surety; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Paragraphs (a) and (f) of subsection (2) of
 23 section 255.05, Florida Statutes, are amended to read:
 24 255.05 Bond of contractor constructing public buildings;
 25 form; action by claimants.—

26 (2) (a)1. If a claimant is no longer furnishing labor,
 27 services, or materials on a project, a contractor or the
 28 contractor's agent or attorney may elect to shorten the time
 29 within which an action to enforce any claim against a payment
 30 bond must be commenced by recording in the clerk's office a
 31 notice in substantially the following form:

32 NOTICE OF CONTEST OF CLAIM
 33 AGAINST PAYMENT BOND

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

35 You are notified that the undersigned contests your notice
 36 of nonpayment, dated,, and served on the
 37 undersigned on,, and that the time within
 38 which you may file suit to enforce your claim is limited to 60
 39 days after the date of service of this notice.

40 DATED on,

41 Signed: ...(Contractor or Attorney)...

42 The claim of a claimant upon whom such notice is served and who
 43 fails to institute a suit to enforce his or her claim against
 44 the payment bond within 60 days after service of such notice is
 45 extinguished automatically. The contractor or the contractor's
 46 attorney shall serve a copy of the notice of contest on ~~to~~ the
 47 claimant at the address shown in the notice of nonpayment or
 48 most recent amendment thereto and shall certify to such service
 49 on the face of the notice and record the notice.

50 2. A claimant, except a laborer, who is not in privity

51 | with the contractor shall, before commencing or not later than
52 | 45 days after commencing to furnish labor, services, or
53 | materials for the prosecution of the work, serve the contractor
54 | with a written notice that he or she intends to look to the bond
55 | for protection. A claimant who is not in privity with the
56 | contractor and who has not received payment for furnishing his
57 | or her labor, services, or materials shall serve a written
58 | notice of nonpayment on the contractor and a copy on the surety.
59 | The notice of nonpayment shall be under oath and served during
60 | the progress of the work or thereafter but may not be served
61 | earlier than 45 days after the first furnishing of labor,
62 | services, or materials by the claimant or later than 90 days
63 | after the final furnishing of the labor, services, or materials
64 | by the claimant or, with respect to rental equipment, later than
65 | 90 days after the date that the rental equipment was last on the
66 | job site available for use. Any notice of nonpayment served by a
67 | claimant who is not in privity with the contractor which
68 | includes sums for retainage must specify the portion of the
69 | amount claimed for retainage. An action for the labor, services,
70 | or materials may not be instituted against the contractor or the
71 | surety unless the notice to the contractor and notice of
72 | nonpayment have been served, if required by this section.
73 | Notices required or permitted under this section must be served
74 | in accordance with s. 713.18. A claimant may not waive in
75 | advance his or her right to bring an action under the bond

76 | against the surety. In any action brought to enforce a claim
77 | against a payment bond under this section, the prevailing party
78 | is entitled to recover a reasonable fee for the services of his
79 | or her attorney for trial and appeal or for arbitration, in an
80 | amount to be determined by the court, which fee must be taxed as
81 | part of the prevailing party's costs, as allowed in equitable
82 | actions. The time periods for service of a notice of nonpayment
83 | or for bringing an action against a contractor or a surety is
84 | ~~shall be~~ measured from the last day of furnishing labor,
85 | services, or materials by the claimant and may not be measured
86 | by other standards, such as the issuance of a certificate of
87 | occupancy or the issuance of a certificate of substantial
88 | completion. The negligent inclusion or omission of any
89 | information in the notice of nonpayment that has not prejudiced
90 | the contractor or surety does not constitute a default that
91 | operates to defeat an otherwise valid bond claim. A claimant who
92 | serves a fraudulent notice of nonpayment forfeits his or her
93 | rights under the bond. A notice of nonpayment is fraudulent if
94 | the claimant has willfully exaggerated the amount unpaid,
95 | willfully included a claim for work not performed or materials
96 | not furnished for the subject improvement, or prepared the
97 | notice with such willful and gross negligence as to amount to a
98 | willful exaggeration. However, a minor mistake or error in a
99 | notice of nonpayment, or a good faith dispute as to the amount
100 | unpaid, does not constitute a willful exaggeration that operates

101 to defeat an otherwise valid claim against the bond. The service
 102 of a fraudulent notice of nonpayment is a complete defense to
 103 the claimant's claim against the bond. The notice of nonpayment
 104 under this subparagraph must include the following information,
 105 current as of the date of the notice, and must be in
 106 substantially the following form:

107 NOTICE OF NONPAYMENT

108 To: ...(name of contractor and address)...

109 ...(name of surety and address)...

110 The undersigned claimant notifies you that:

111 1. Claimant has furnished ...(describe labor, services, or
 112 materials)... for the improvement of the real property
 113 identified as ...(property description).... The corresponding
 114 amount unpaid to date is \$...., of which \$.... is unpaid
 115 retainage.

116 2. Claimant has been paid to date the amount of \$.... for
 117 previously furnishing ...(describe labor, services, or
 118 materials)... for this improvement.

119 3. Claimant expects to furnish ...(describe labor,
 120 services, or materials)... for this improvement in the future
 121 (if known), and the corresponding amount expected to become due
 122 is \$.... (if known).

123 I declare that I have read the foregoing Notice of Nonpayment
 124 and that the facts stated in it are true to the best of my
 125 knowledge and belief.

126 DATED on,

127 ... (signature and address of claimant)...

128 STATE OF FLORIDA

129 COUNTY OF

130 The foregoing instrument was sworn to (or affirmed) and

131 subscribed before me this....day of, ... (year)...., by

132 ... (name of signatory)....

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

134 ... (Print, Type, or Stamp Commissioned Name of Notary

135 Public)...

136 Personally Known OR Produced Identification

137 Type of Identification Produced.....

138 (f) A provision in a waiver or release that is not related

139 to the waiver or release of a claim against the payment bond as

140 provided in this subsection is unenforceable ~~substantially~~

141 ~~similar to the forms in this subsection is enforceable in~~

142 ~~accordance with its terms.~~

143 Section 2. Subsection (12) of section 713.01, Florida

144 Statutes, is amended to read:

145 713.01 Definitions.—As used in this part, the term:

146 (12) "Final furnishing" means the last date that the

147 lienor furnishes labor, services, or materials. Such date may

148 not be measured by other standards, such as the issuance of a

149 certificate of occupancy or the issuance of a certificate of

150 final completion, and does not include the correction of

151 deficiencies in the lienor's previously performed work or
152 materials supplied. With respect to rental equipment, the term
153 means the date that the rental equipment was last on the ~~job~~
154 site of the improvement and available for use. With respect to
155 specially fabricated materials, the term means the date that the
156 last portion of the specially fabricated materials is delivered
157 to the site of the improvement, or if any portion of the
158 specially fabricated materials is not delivered to the site of
159 the improvement by no fault of the lienor, the term means 1 year
160 after the date the lienor completes the fabrication, 1 year
161 after the date the lienor receives the last portion of the
162 specially fabricated materials needed to complete the order, or
163 the date the notice of commencement expires, whichever is later.

164 Section 3. Subsection (3) of section 713.07, Florida
165 Statutes, is amended to read:

166 713.07 Priority of liens.—

167 (3) All such liens shall have priority over any
168 conveyance, encumbrance, or demand not recorded against the real
169 property before ~~prior to~~ the time such lien attached as provided
170 herein, including those subordinate conveyances, encumbrances,
171 or demands that would otherwise relate back to any conveyance,
172 encumbrance, or demand recorded before the time such lien
173 attaches pursuant to the operation of any common law doctrine or
174 remedy; but any conveyance, encumbrance, or demand recorded
175 before ~~prior to~~ the time such lien attaches and any proceeds

176 | thereof, regardless of when disbursed, shall have priority over
 177 | such liens.

178 | Section 4. Paragraphs (a) and (d) of subsection (1) of
 179 | section 713.13, Florida Statutes, are amended to read:

180 | 713.13 Notice of commencement.—

181 | (1) (a) Except for an improvement that is exempt under
 182 | ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
 183 | agent before actually commencing to improve any real property,
 184 | or recommencing completion of any improvement after default or
 185 | abandonment, whether or not a project has a payment bond
 186 | complying with s. 713.23, shall record a notice of commencement
 187 | in the clerk's office and forthwith post either a certified copy
 188 | thereof or a notarized statement that the notice of commencement
 189 | has been filed for recording along with a copy thereof. The
 190 | notice of commencement shall contain the following information:

191 | 1. A description sufficient for identification of the real
 192 | property to be improved. The description should include the
 193 | legal description of the property and also should include the
 194 | street address and tax folio number of the property if available
 195 | or, if there is no street address available, such additional
 196 | information as will describe the physical location of the real
 197 | property to be improved.

198 | 2. A general description of the improvement.

199 | 3. The name and address of the owner of record, ~~the~~
 200 | ~~owner's interest in the site of the improvement, and the name~~

201 ~~and address of the fee simple titleholder, if other than such~~
 202 ~~owner.~~

203 4. The name and address of the lessee, if the ~~A lessee who~~
 204 ~~contracts for the improvements~~ as is ~~an owner as defined in s.~~
 205 713.01 ~~under s. 713.01(23) and must be listed as the owner~~
 206 ~~together with a statement that the ownership interest is a~~
 207 ~~leasehold interest.~~

208 ~~5.4.~~ The name and address of the contractor.

209 ~~6.5.~~ The name and address of the surety on the payment
 210 bond under s. 713.23, if any, and the amount of such bond.

211 ~~7.6.~~ The name and address of any person making a loan for
 212 the construction of the improvements.

213 ~~8.7.~~ The name and address within the state of a person
 214 other than himself or herself who may be designated by the owner
 215 as the person upon whom notices or other documents may be served
 216 under this part; and service upon the person so designated
 217 constitutes service upon the owner.

218 (d) A notice of commencement must be in substantially the
 219 following form:

220 Permit No..... Tax Folio No.....

221 NOTICE OF COMMENCEMENT

222 State of....

223 County of....

224 The undersigned hereby gives notice that improvement will be
 225 made to certain real property, and in accordance with Chapter

226 | 713, Florida Statutes, the following information is provided in
 227 | this Notice of Commencement.

228 | 1. Description of property: ...(legal description of the
 229 | property, and street address if available)....

230 | 2. General description of improvement:.....

231 | 3.a. Owner of record: ...(name and address)....

232 | b. Owner's phone number:.....

233 | 4.a. Lessee, if the lessee contracted for the
 234 | improvements: ...(name and address)....

235 | b. Lessee's phone number..... ~~owner information or Lessee~~
 236 | ~~information if the Lessee contracted for the improvement:~~

237 | a. ~~Name and address:.....~~

238 | b. ~~Interest in property:.....~~

239 | e. ~~Name and address of fee simple titleholder (if~~
 240 | ~~different from Owner listed above):.....~~

241 | 5.a.4.a. Contractor: ...(name and address)....

242 | b. Contractor's phone number:.....

243 | 6.5. Surety (if applicable, a copy of the payment bond is
 244 | attached):

245 | a. Name and address:.....

246 | b. Phone number:.....

247 | c. Amount of bond: \$.....

248 | 7.a.6.a. Lender: ...(name and address)....

249 | b. Lender's phone number:.....

250 | 8.7. Persons within the State of Florida designated by

251 Owner upon whom notices or other documents may be served as
 252 provided in ~~by~~ Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
 253 Statutes:

254 a. Name and address:.....

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

256 ~~9.a.8.a.~~ In addition to himself or herself, Owner
 257 designates of to receive a copy of the
 258 Lienor's Notice as provided in Section 713.13(1)(b), Florida
 259 Statutes.

260 b. Phone number of person or entity designated by
 261 owner:.....

262 ~~10.9.~~ Expiration date of notice of commencement (the
 263 expiration date will be 1 year after ~~from~~ the date of recording
 264 unless a different date is specified).....

265 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
 266 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
 267 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
 268 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
 269 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
 270 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
 271 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
 272 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
 273 COMMENCEMENT.

274 ... (Signature of Owner or Lessee, or Owner's or Lessee's
 275 Authorized Officer/Director/Partner/Manager) ...

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

277 The foregoing instrument was acknowledged before me this

278 day of, ... (year) ..., by ... (name of person) ... as ... (type

279 of authority, . . . e.g. officer, trustee, attorney in

280 fact) ... for ... (name of party on behalf of whom instrument was

281 executed)

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

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

284 Personally Known OR Produced Identification

285 Type of Identification Produced.....

286 Section 5. Paragraph (a) of subsection (3) of section

287 713.18, Florida Statutes, is amended to read:

288 713.18 Manner of serving notices and other instruments.-

289 (3) (a) Service of an instrument pursuant to this section

290 is effective on the date of mailing or shipping the instrument

291 if it:

292 1. Is sent to the last address shown in the notice of

293 commencement or any amendment thereto or, in the absence of a

294 notice of commencement, to the last address shown in the

295 building permit application, or to the last known address of the

296 person to be served; and

297 2. Is returned as being "refused," "moved, not

298 forwardable," or "unclaimed," or is otherwise not delivered or

299 deliverable through no fault of the person serving the item.

300 Section 6. Subsection (8) of section 713.20, Florida

301 Statutes, is amended to read:

302 713.20 Waiver or release of liens.—

303 (8) A provision in a lien waiver or lien release that is
 304 not related to the waiver or release of lien rights as provided
 305 in this section is unenforceable ~~substantially similar to the~~
 306 ~~forms in subsections (4) and (5) is enforceable in accordance~~
 307 ~~with the terms of the lien waiver or lien release.~~

308 Section 7. Paragraph (d) of subsection (1) of section
 309 713.23, Florida Statutes, is amended to read:

310 713.23 Payment bond.—

311 (1)

312 (d) In addition, a lienor who has not received payment for
 313 furnishing his or her labor, services, or materials must, as a
 314 condition precedent to recovery under the bond, serve a written
 315 notice of nonpayment on ~~to~~ the contractor and a copy on the
 316 surety. The notice must be under oath and served during the
 317 progress of the work or thereafter, but may not be served later
 318 than 90 days after the final furnishing of labor, services, or
 319 materials by the lienor, or, with respect to rental equipment,
 320 later than 90 days after the date the rental equipment was on
 321 the job site and available for use. A notice of nonpayment that
 322 includes sums for retainage must specify the portion of the
 323 amount claimed for retainage. The required notice satisfies this
 324 condition precedent with respect to the payment described in the
 325 notice of nonpayment, including unpaid finance charges due under

326 | the lienor's contract, and with respect to any other payments
327 | which become due to the lienor after the date of the notice of
328 | nonpayment. The time period for serving a notice of nonpayment
329 | is ~~shall be~~ measured from the last day of furnishing labor,
330 | services, or materials by the lienor and may not be measured by
331 | other standards, such as the issuance of a certificate of
332 | occupancy or the issuance of a certificate of substantial
333 | completion. The failure of a lienor to receive retainage sums
334 | not in excess of 10 percent of the value of labor, services, or
335 | materials furnished by the lienor is not considered a nonpayment
336 | requiring the service of the notice provided under this
337 | paragraph. If the payment bond is not recorded before
338 | commencement of construction, the time period for the lienor to
339 | serve a notice of nonpayment may at the option of the lienor be
340 | calculated from the date specified in this section or the date
341 | the lienor is served a copy of the bond. However, the limitation
342 | period for commencement of an action on the payment bond as
343 | established in paragraph (e) may not be expanded. The negligent
344 | inclusion or omission of any information in the notice of
345 | nonpayment that has not prejudiced the contractor or surety does
346 | not constitute a default that operates to defeat an otherwise
347 | valid bond claim. A lienor who serves a fraudulent notice of
348 | nonpayment forfeits his or her rights under the bond. A notice
349 | of nonpayment is fraudulent if the lienor has willfully
350 | exaggerated the amount unpaid, willfully included a claim for

351 work not performed or materials not furnished for the subject
 352 improvement, or prepared the notice with such willful and gross
 353 negligence as to amount to a willful exaggeration. However, a
 354 minor mistake or error in a notice of nonpayment, or a good
 355 faith dispute as to the amount unpaid, does not constitute a
 356 willful exaggeration that operates to defeat an otherwise valid
 357 claim against the bond. The service of a fraudulent notice of
 358 nonpayment is a complete defense to the lienor's claim against
 359 the bond. The notice under this paragraph must include the
 360 following information, current as of the date of the notice, and
 361 must be in substantially the following form:

362 NOTICE OF NONPAYMENT

363 To ... (name of contractor and address)...

364 ... (name of surety and address)...

365 The undersigned lienor notifies you that:

366 1. The lienor has furnished ... (describe labor, services,
 367 or materials) ... for the improvement of the real property
 368 identified as ... (property description) ... The corresponding
 369 amount unpaid to date is \$...., of which \$.... is unpaid
 370 retainage.

371 2. The lienor has been paid to date the amount of \$....
 372 for previously furnishing ... (describe labor, services, or
 373 materials) ... for this improvement.

374 3. The lienor expects to furnish ... (describe labor,
 375 services, or materials) ... for this improvement in the future

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401 | ~~its terms.~~

402 | Section 9. This act shall take effect July 1, 2020.