

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; prohibiting a
5 person from requiring a claimant to furnish a certain
6 waiver in exchange for or to induce certain payments;
7 providing that specified provisions in certain waivers
8 are unenforceable; providing an exception; amending s.
9 337.18, F.S.; providing that certain waivers apply to
10 certain contracts; amending s. 713.01, F.S.; revising
11 definitions; amending s. 713.07, F.S.; providing that
12 certain liens have priority over certain subordinate
13 conveyances, encumbrances, or demands; amending s.
14 713.09, F.S.; authorizing a lienor to record one claim
15 of lien for multiple direct contracts; amending s.
16 713.13, F.S.; revising information to be included in a
17 notice of commencement; amending s. 713.132, F.S.;
18 revising requirements for a notice of termination;
19 amending s. 713.18, F.S.; providing that service of an
20 instrument is effective on the date of shipping;
21 amending ss. 713.20 and 713.235, F.S.; prohibiting a
22 person from requiring a lienor to furnish a certain
23 waiver or release in exchange for or to induce certain
24 payments; providing that specified provisions in
25 certain waivers or releases are unenforceable;

26 providing an exception; amending s. 713.23, F.S.;

27 requiring that a copy of a notice of nonpayment be

28 served on the surety; amending s. 713.24, F.S.;

29 revising the process to transfer a lien to security;

30 revising the amounts of certain deposits or bonds;

31 amending s. 713.29, F.S.; authorizing attorney fees in

32 actions to enforce a lien that has been transferred to

33 security; providing an effective date.

34

35 Be It Enacted by the Legislature of the State of Florida:

36

37 Section 1. Paragraphs (a), (d), and (f) of subsection (2)

38 of section 255.05, Florida Statutes, are amended to read:

39 255.05 Bond of contractor constructing public buildings;

40 form; action by claimants.—

41 (2) (a) 1. If a claimant is no longer furnishing labor,

42 services, or materials on a project, a contractor or the

43 contractor's agent or attorney may elect to shorten the time

44 within which an action to enforce any claim against a payment

45 bond must be commenced by recording in the clerk's office a

46 notice in substantially the following form:

47 NOTICE OF CONTEST OF CLAIM

48 AGAINST PAYMENT BOND

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

50 You are notified that the undersigned contests your notice

51 of nonpayment, dated,, and served on the
 52 undersigned on,, and that the time within
 53 which you may file suit to enforce your claim is limited to 60
 54 days after the date of service of this notice.

55 DATED on,

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

57 The claim of a claimant upon whom such notice is served and who
 58 fails to institute a suit to enforce his or her claim against
 59 the payment bond within 60 days after service of such notice is
 60 extinguished automatically. The contractor or the contractor's
 61 attorney shall serve a copy of the notice of contest on ~~to~~ the
 62 claimant at the address shown in the notice of nonpayment or
 63 most recent amendment thereto and shall certify to such service
 64 on the face of the notice and record the notice.

65 2. A claimant, except a laborer, who is not in privity
 66 with the contractor shall, before commencing or not later than
 67 45 days after commencing to furnish labor, services, or
 68 materials for the prosecution of the work, serve the contractor
 69 with a written notice that he or she intends to look to the bond
 70 for protection. A claimant who is not in privity with the
 71 contractor and who has not received payment for furnishing his
 72 or her labor, services, or materials shall serve a written
 73 notice of nonpayment on the contractor and a copy of the notice
 74 on the surety. The notice of nonpayment shall be under oath and
 75 served during the progress of the work or thereafter but may not

76 | be served earlier than 45 days after the first furnishing of
77 | labor, services, or materials by the claimant or later than 90
78 | days after the final furnishing of the labor, services, or
79 | materials by the claimant or, with respect to rental equipment,
80 | later than 90 days after the date that the rental equipment was
81 | last on the job site available for use. Any notice of nonpayment
82 | served by a claimant who is not in privity with the contractor
83 | which includes sums for retainage must specify the portion of
84 | the amount claimed for retainage. An action for the labor,
85 | services, or materials may not be instituted against the
86 | contractor or the surety unless the notice to the contractor and
87 | notice of nonpayment have been served, if required by this
88 | section. Notices required or permitted under this section must
89 | be served in accordance with s. 713.18. A claimant may not waive
90 | in advance his or her right to bring an action under the bond
91 | against the surety. In any action brought to enforce a claim
92 | against a payment bond under this section, the prevailing party
93 | is entitled to recover a reasonable fee for the services of his
94 | or her attorney for trial and appeal or for arbitration, in an
95 | amount to be determined by the court, which fee must be taxed as
96 | part of the prevailing party's costs, as allowed in equitable
97 | actions. The time periods for service of a notice of nonpayment
98 | or for bringing an action against a contractor or a surety are
99 | ~~shall be~~ measured from the last day of furnishing labor,
100 | services, or materials by the claimant and may not be measured

101 by other standards, such as the issuance of a certificate of
102 occupancy or the issuance of a certificate of substantial
103 completion. The negligent inclusion or omission of any
104 information in the notice of nonpayment that has not prejudiced
105 the contractor or surety does not constitute a default that
106 operates to defeat an otherwise valid bond claim. A claimant who
107 serves a fraudulent notice of nonpayment forfeits his or her
108 rights under the bond. A notice of nonpayment is fraudulent if
109 the claimant has willfully exaggerated the amount unpaid,
110 willfully included a claim for work not performed or materials
111 not furnished for the subject improvement, or prepared the
112 notice with such willful and gross negligence as to amount to a
113 willful exaggeration. However, a minor mistake or error in a
114 notice of nonpayment, or a good faith dispute as to the amount
115 unpaid, does not constitute a willful exaggeration that operates
116 to defeat an otherwise valid claim against the bond. The service
117 of a fraudulent notice of nonpayment is a complete defense to
118 the claimant's claim against the bond. The notice of nonpayment
119 under this subparagraph must include the following information,
120 current as of the date of the notice, and must be in
121 substantially the following form:

122 NOTICE OF NONPAYMENT

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

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

125 The undersigned claimant notifies you that:

151 Personally Known OR Produced Identification
 152 Type of Identification Produced.....

153 (d) A person may not require a claimant to furnish a
 154 waiver that is different from the forms in paragraphs (b) and
 155 (c) in exchange for, or to induce payment of, a progress payment
 156 or final payment, unless the claimant has entered into a direct
 157 contract that requires the claimant to furnish a waiver that is
 158 different from the forms in paragraphs (b) and (c).

159 (f) Any provisions in a waiver that are ~~is~~ not related to
 160 the waiver of right to claim against a payment bond as provided
 161 in this subsection are unenforceable, unless the claimant has
 162 otherwise agreed to those provisions in the claimant's direct
 163 contract substantially similar to the forms in this subsection
 164 is enforceable in accordance with its terms.

165 Section 2. Paragraph (c) of subsection (1) of section
 166 337.18, Florida Statutes, is amended to read:

167 337.18 Surety bonds for construction or maintenance
 168 contracts; requirement with respect to contract award; bond
 169 requirements; defaults; damage assessments.-

170 (1)

171 (c) A claimant, except a laborer, who is not in privity
 172 with the contractor shall, before commencing or not later than
 173 90 days after commencing to furnish labor, materials, or
 174 supplies for the prosecution of the work, furnish the contractor
 175 with a notice that he or she intends to look to the bond for

176 protection. A claimant who is not in privity with the contractor
177 and who has not received payment for his or her labor,
178 materials, or supplies shall deliver to the contractor and to
179 the surety written notice of the performance of the labor or
180 delivery of the materials or supplies and of the nonpayment. The
181 notice of nonpayment may be served at any time during the
182 progress of the work or thereafter but not before 45 days after
183 the first furnishing of labor, services, or materials, and not
184 later than 90 days after the final furnishing of the labor,
185 services, or materials by the claimant or, with respect to
186 rental equipment, not later than 90 days after the date that the
187 rental equipment was last on the job site available for use. An
188 action by a claimant, except a laborer, who is not in privity
189 with the contractor for the labor, materials, or supplies may
190 not be instituted against the contractor or the surety unless
191 both notices have been given. Notices required or permitted
192 under this section may be served in any manner provided in s.
193 713.18, and provisions for the waiver of claims against a
194 payment bond contained in s. 255.05(2) apply to all contracts
195 under this section.

196 Section 3. Subsections (8), (12), and (26) of section
197 713.01, Florida Statutes, are amended to read:

198 713.01 Definitions.—As used in this part, the term:

199 (8) "Contractor" means a person other than a materialman
200 or laborer who enters into a contract with the owner of real

201 property for improving it, or who takes over from a contractor
202 as so defined the entire remaining work under such contract. The
203 term "contractor" includes an architect, landscape architect, or
204 engineer who improves real property pursuant to a design-build
205 contract authorized by s. 489.103(16). The term "contractor"
206 also includes a licensed general contractor or building
207 contractor, as those terms are defined in s. 489.105(3)(a) and
208 (b), who provides construction management services, which
209 include responsibility for scheduling and coordination in both
210 preconstruction and construction phases and for the successful,
211 timely, and economical completion of the construction project,
212 or who provides program management services, which include
213 responsibility for schedule control, cost control, and
214 coordination in providing or procuring planning, design, and
215 construction.

216 (12) "Final furnishing" means the last date that the
217 lienor furnishes labor, services, or materials. Such date may
218 not be measured by other standards, such as the issuance of a
219 certificate of occupancy or the issuance of a certificate of
220 final completion, and does not include the correction of
221 deficiencies in the lienor's previously performed work or
222 materials supplied. With respect to rental equipment, the term
223 means the date that the rental equipment was last on the ~~job~~
224 site of the improvement and available for use. With respect to
225 specialty fabricated materials, the term means the date that the

226 last portion of the specially fabricated materials is delivered
 227 to the site of the improvement, or if any portion of the
 228 specially fabricated materials is not delivered to the site of
 229 the improvement by no fault of the lienor, the term means 1 year
 230 after the date the lienor completes the fabrication, 1 year
 231 after the date the lienor receives the last portion of the
 232 specially fabricated materials needed to complete the order, or
 233 the date the notice of commencement expires, whichever is later.

234 (26) "Real property" means the land that is improved and
 235 the improvements thereon, including fixtures, except any such
 236 property owned by the state or any county, municipality, school
 237 board, or governmental agency, commission, or political
 238 subdivision, provided, however, that a private leasehold
 239 interest in such government-owned property which is improved and
 240 the leasehold improvements shall be considered real property for
 241 purposes of this part.

242 Section 4. Subsection (3) of section 713.07, Florida
 243 Statutes, is amended to read:

244 713.07 Priority of liens.—

245 (3) All such liens shall have priority over any
 246 conveyance, encumbrance, or demand not recorded against the real
 247 property before ~~prior to~~ the time such lien attached as provided
 248 herein, including those subordinate conveyances, encumbrances,
 249 or demands that would otherwise relate back to any conveyance,
 250 encumbrance, or demand recorded before the time such lien

251 attaches pursuant to the operation of any common law doctrine or
 252 remedy; but any conveyance, encumbrance, or demand recorded
 253 before ~~prior to~~ the time such lien attaches and any proceeds
 254 thereof, regardless of when disbursed, shall have priority over
 255 such liens.

256 Section 5. Section 713.09, Florida Statutes, is amended to
 257 read:

258 713.09 Single claim of lien.—A lienor may ~~is required to~~
 259 record only one claim of lien covering his or her entire demand
 260 against the real property when the amount demanded is for labor
 261 or services or material furnished for more than one improvement
 262 under the same direct contract or multiple direct contracts. The
 263 single claim of lien is sufficient even though the improvement
 264 is for one or more improvements located on separate lots,
 265 parcels, or tracts of land. If materials to be used on one or
 266 more improvements on separate lots, parcels, or tracts of land
 267 ~~under one direct contract~~ are delivered by a lienor to a place
 268 designated by the person with whom the materialman contracted,
 269 other than the site of the improvement, the delivery to the
 270 place designated is prima facie evidence of delivery to the site
 271 of the improvement and incorporation in the improvement. The
 272 single claim of lien may be limited to a part of multiple lots,
 273 parcels, or tracts of land and their improvements or may cover
 274 all of the lots, parcels, or tracts of land and improvements. If
 275 a ~~In each~~ claim of lien under this section is for multiple

276 direct contracts, the owner under the direct contracts ~~contract~~
277 must be the same person for all lots, parcels, or tracts of land
278 against which a single claim of lien is recorded.

279 Section 6. Paragraphs (a) and (d) of subsection (1) of
280 section 713.13, Florida Statutes, are amended to read:

281 713.13 Notice of commencement.—

282 (1) (a) Except for an improvement that is exempt under
283 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
284 agent before actually commencing to improve any real property,
285 or recommencing completion of any improvement after default or
286 abandonment, whether or not a project has a payment bond
287 complying with s. 713.23, shall record a notice of commencement
288 in the clerk's office and forthwith post either a certified copy
289 thereof or a notarized statement that the notice of commencement
290 has been filed for recording along with a copy thereof. The
291 notice of commencement shall contain the following information:

292 1. A description sufficient for identification of the real
293 property to be improved. The description should include the
294 legal description of the property and also should include the
295 street address and tax folio number of the property if available
296 or, if there is no street address available, such additional
297 information as will describe the physical location of the real
298 property to be improved.

299 2. A general description of the improvement.

300 3. The name and address of the owner, the owner's interest

301 in the site of the improvement, and the name and address of the
 302 fee simple titleholder, if other than such owner.

303 4. The name and address of the lessee, if the ~~A~~ lessee ~~who~~
 304 contracts for the improvements as is an owner as defined in s.
 305 713.01 ~~under s. 713.01(23)~~ and ~~must be listed as the owner~~
 306 ~~together with a statement that the ownership interest is a~~
 307 ~~leasehold interest.~~

308 ~~5.4.~~ The name and address of the contractor.

309 ~~6.5.~~ The name and address of the surety on the payment
 310 bond under s. 713.23, if any, and the amount of such bond.

311 ~~7.6.~~ The name and address of any person making a loan for
 312 the construction of the improvements.

313 ~~8.7.~~ The name and address within the state of a person
 314 other than himself or herself who may be designated by the owner
 315 as the person upon whom notices or other documents may be served
 316 under this part; and service upon the person so designated
 317 constitutes service upon the owner.

318 (d) A notice of commencement must be in substantially the
 319 following form:

320 Permit No..... Tax Folio No.....

321 NOTICE OF COMMENCEMENT

322 State of....

323 County of....

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

326 713, Florida Statutes, the following information is provided in
 327 this Notice of Commencement.

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

330 2. General description of improvement:.....

331 3.a. Owner: ...(name and address)....

332 b. Owner's phone number:.....

333 4.a. Lessee, if the lessee contracted for the
 334 improvements: ...(name and address)....

335 b. Lessee's phone number:..... ~~owner information or Lessee~~
 336 ~~information if the Lessee contracted for the improvement:~~

337 a. ~~Name and address:.....~~

338 b. ~~Interest in property:.....~~

339 c. Name and address of fee simple titleholder (if
 340 different from Owner listed above):.....

341 ~~5.a.4.a.~~ Contractor: ...(name and address)....

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

343 ~~6.5.~~ Surety (if applicable, a copy of the payment bond is
 344 attached):

345 a. Name and address:.....

346 b. Phone number:.....

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

348 ~~7.a.6.a.~~ Lender: ...(name and address)....

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

350 ~~8.7.~~ Persons within the State of Florida designated by

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

354 a. Name and address:.....

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

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

360 b. Phone number of person or entity designated by
 361 owner:.....

362 10.9. ~~10.9.~~ Expiration date of notice of commencement (the
 363 expiration date will be 1 year after ~~from~~ the date of recording
 364 unless a different date is specified).....

365 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
 366 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
 367 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
 368 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
 369 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
 370 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
 371 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
 372 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
 373 COMMENCEMENT.

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

376 | ...(Signatory's Title/Office)...

377 | The foregoing instrument was acknowledged before me this

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

379 | of authority, . . . e.g. officer, trustee, attorney in

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

381 | executed)....

382 | ...(Signature of Notary Public - State of Florida)...

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

384 | Personally Known OR Produced Identification

385 | Type of Identification Produced.....

386 | Section 7. Paragraphs (b) and (f) of subsection (1) and

387 | subsections (3) and (4) of section 713.132, Florida Statutes,

388 | are amended to read:

389 | 713.132 Notice of termination.—

390 | (1) An owner may terminate the period of effectiveness of

391 | a notice of commencement by executing, swearing to, and

392 | recording a notice of termination that contains:

393 | (b) The recording office document with the ~~book and page~~

394 | reference numbers and date of the notice of commencement;

395 | (f) A statement that the owner has, before recording the

396 | notice of termination, served a copy of the notice of

397 | termination ~~on the contractor and~~ on each lienor who has a

398 | direct contract with the owner or who has timely served a notice

399 | to owner, and a statement that the owner will serve a copy of

400 | the notice of termination on each lienor who timely serves a

401 notice to owner after the notice of termination has been
402 recorded. The owner is not required to serve a copy of the
403 notice of termination on any lienor who has executed a waiver
404 and release of lien upon final payment in accordance with s.
405 713.20.

406 (3) An owner may ~~not~~ record a notice of termination at any
407 time after ~~except after completion of construction, or after~~
408 ~~construction ceases before completion and all lienors have been~~
409 paid in full or pro rata in accordance with s. 713.06(4).

410 (4) If an owner or a contractor, by fraud or collusion,
411 knowingly makes any fraudulent statement or affidavit in a
412 notice of termination or any accompanying affidavit, the owner
413 and the contractor, or either of them, ~~as the case may be,~~ is
414 liable to any lienor who suffers damages as a result of the
415 filing of the fraudulent notice of termination, ~~and~~ and any such
416 lienor has a right of action for damages ~~occasioned thereby~~.

417 (5) ~~(4)~~ A notice of termination must be served before
418 recording on each lienor who has a direct contract with the
419 owner and on each lienor who has timely and properly served a
420 notice to owner in accordance with this part. A notice of
421 termination must be recorded in the public records of the county
422 in which the project is located. If properly served before
423 recording in accordance with this subsection, the notice of
424 commencement terminates 30 days after the notice of termination
425 is recorded in the public records ~~is effective to terminate the~~

426 ~~notice of commencement at the later of 30 days after recording~~
427 ~~of the notice of termination or a later~~ the date stated in the
428 notice of termination as the date on which the notice of
429 commencement is terminated. However, if a lienor, who began work
430 under the notice of commencement before its termination, lacks a
431 direct contract with the owner, and timely serves his or her
432 notice to owner after the notice of termination has been
433 recorded, the owner must serve a copy of the notice of
434 termination upon such lienor, and the termination of the notice
435 of commencement as to that lienor is effective 30 days after
436 service of the notice of termination ~~if the notice of~~
437 ~~termination has been served pursuant to paragraph (1)(f) on the~~
438 ~~contractor and on each lienor who has a direct contract with the~~
439 ~~owner or who has served a notice to owner.~~

440 Section 8. Paragraph (a) of subsection (3) of section
441 713.18, Florida Statutes, is amended to read:

442 713.18 Manner of serving notices and other instruments.—

443 (3) (a) Service of an instrument pursuant to this section
444 is effective on the date of mailing or shipping the instrument
445 if it:

446 1. Is sent to the last address shown in the notice of
447 commencement or any amendment thereto or, in the absence of a
448 notice of commencement, to the last address shown in the
449 building permit application, or to the last known address of the
450 person to be served; and

451 2. Is returned as being "refused," "moved, not
 452 forwardable," or "unclaimed," or is otherwise not delivered or
 453 deliverable through no fault of the person serving the item.

454 Section 9. Subsections (6) and (8) of section 713.20,
 455 Florida Statutes, are amended to read:

456 713.20 Waiver or release of liens.—

457 (6) A person may not require a lienor to furnish a lien
 458 waiver or release of lien that is different from the forms in
 459 subsection (4) or subsection (5) in exchange for, or to induce
 460 payment of, a progress payment or final payment, unless the
 461 lienor has entered into a direct contract that requires the
 462 lienor to furnish a waiver or release that is different from the
 463 forms in subsection (4) or subsection (5).

464 (8) Any provisions in a lien waiver or lien release that
 465 are ~~is~~ not related to the waiver or release of lien rights as
 466 provided in this section are unenforceable, unless the lienor
 467 has otherwise agreed to those provisions in the lienor's direct
 468 contract substantially similar to the forms in subsections (4)
 469 and (5) is enforceable in accordance with the terms of the lien
 470 waiver or lien release.

471 Section 10. Paragraph (d) of subsection (1) of section
 472 713.23, Florida Statutes, is amended to read:

473 713.23 Payment bond.—

474 (1)

475 (d) In addition, a lienor who has not received payment for

476 | furnishing his or her labor, services, or materials must, as a
477 | condition precedent to recovery under the bond, serve a written
478 | notice of nonpayment on ~~to~~ the contractor and a copy of the
479 | notice on the surety. The notice must be under oath and served
480 | during the progress of the work or thereafter, but may not be
481 | served later than 90 days after the final furnishing of labor,
482 | services, or materials by the lienor, or, with respect to rental
483 | equipment, later than 90 days after the date the rental
484 | equipment was on the job site and available for use. A notice of
485 | nonpayment that includes sums for retainage must specify the
486 | portion of the amount claimed for retainage. The required notice
487 | satisfies this condition precedent with respect to the payment
488 | described in the notice of nonpayment, including unpaid finance
489 | charges due under the lienor's contract, and with respect to any
490 | other payments which become due to the lienor after the date of
491 | the notice of nonpayment. The time period for serving a notice
492 | of nonpayment is ~~shall be~~ measured from the last day of
493 | furnishing labor, services, or materials by the lienor and may
494 | not be measured by other standards, such as the issuance of a
495 | certificate of occupancy or the issuance of a certificate of
496 | substantial completion. The failure of a lienor to receive
497 | retainage sums not in excess of 10 percent of the value of
498 | labor, services, or materials furnished by the lienor is not
499 | considered a nonpayment requiring the service of the notice
500 | provided under this paragraph. If the payment bond is not

501 recorded before commencement of construction, the time period
502 for the lienor to serve a notice of nonpayment may at the option
503 of the lienor be calculated from the date specified in this
504 section or the date the lienor is served a copy of the bond.
505 However, the limitation period for commencement of an action on
506 the payment bond as established in paragraph (e) may not be
507 expanded. The negligent inclusion or omission of any information
508 in the notice of nonpayment that has not prejudiced the
509 contractor or surety does not constitute a default that operates
510 to defeat an otherwise valid bond claim. A lienor who serves a
511 fraudulent notice of nonpayment forfeits his or her rights under
512 the bond. A notice of nonpayment is fraudulent if the lienor has
513 willfully exaggerated the amount unpaid, willfully included a
514 claim for work not performed or materials not furnished for the
515 subject improvement, or prepared the notice with such willful
516 and gross negligence as to amount to a willful exaggeration.
517 However, a minor mistake or error in a notice of nonpayment, or
518 a good faith dispute as to the amount unpaid, does not
519 constitute a willful exaggeration that operates to defeat an
520 otherwise valid claim against the bond. The service of a
521 fraudulent notice of nonpayment is a complete defense to the
522 lienor's claim against the bond. The notice under this paragraph
523 must include the following information, current as of the date
524 of the notice, and must be in substantially the following form:

525 NOTICE OF NONPAYMENT

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

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

528 The undersigned lienor notifies you that:

529 1. The lienor has furnished ...(describe labor, services,

530 or materials)... for the improvement of the real property

531 identified as ...(property description).... The corresponding

532 amount unpaid to date is \$...., of which \$.... is unpaid

533 retainage.

534 2. The lienor has been paid to date the amount of \$....

535 for previously furnishing ...(describe labor, services, or

536 materials)... for this improvement.

537 3. The lienor expects to furnish ...(describe labor,

538 services, or materials)... for this improvement in the future

539 (if known), and the corresponding amount expected to become due

540 is \$.... (if known).

541 I declare that I have read the foregoing Notice of Nonpayment

542 and that the facts stated in it are true to the best of my

543 knowledge and belief.

544 DATED on,

545 ...(signature and address of lienor)...

546 STATE OF FLORIDA

547 COUNTY OF.....

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

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

550 ...(name of signatory)....

551 ...(Signature of Notary Public - State of Florida)...
 552 ...(Print, Type, or Stamp Commissioned Name of Notary
 553 Public)...
 554 Personally Known OR Produced Identification
 555 Type of Identification Produced.....
 556 Section 11. Subsections (3) and (5) of section 713.235,
 557 Florida Statutes, are amended to read:
 558 713.235 Waivers of right to claim against payment bond;
 559 forms.-
 560 (3) A person may not require a claimant to furnish a
 561 waiver that is different from the forms in subsections (1) and
 562 (2) in exchange for, or to induce payment of, a progress payment
 563 or final payment, unless the claimant has entered into a direct
 564 contract that requires the claimant to furnish a waiver that is
 565 different from the forms in subsections (1) and (2).
 566 (5) Any provisions in a waiver that are ~~is~~ not related to
 567 the waiver of a claim against the payment bond as provided in
 568 this section are unenforceable, unless the claimant has
 569 otherwise agreed to those provisions in the claimant's direct
 570 contract ~~substantially similar to the forms in this section is~~
 571 ~~enforceable in accordance with its terms.~~
 572 Section 12. Subsection (1) of section 713.24, Florida
 573 Statutes, is amended to read:
 574 713.24 Transfer of liens to security.-
 575 (1) Any lien claimed under this part may be transferred,

576 by any person having an interest in the real property upon which
577 the lien is imposed or the contract under which the lien is
578 claimed, from such real property to other security by doing one
579 of the following either:

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

581 (b) Recording ~~Filing~~ in the clerk's office a bond executed
582 as surety by a surety insurer licensed to do business in this
583 state; or

584 (c) Recording in the clerk's office a bond executed as
585 surety by a surety insurer licensed to do business in this
586 state, which was furnished by a subcontractor under whose
587 subcontract the lienor's claim emanates, and which must be
588 recorded and served with a notice of bond in the same manner as
589 a payment bond furnished under s. 713.23(2). For purposes of
590 this paragraph, the subcontract payment bond must have been
591 furnished at the time the subcontractor's work commenced and
592 before the claim of lien was recorded. The subcontract payment
593 bond may not be used to transfer a lien of the contractor or the
594 subcontractor that is the principal on the subcontract payment
595 bond. Any provision in the subcontract payment bond that
596 restricts the classes of persons who are protected by the
597 subcontract payment bond, restricts the venue of any proceeding
598 relating to the subcontract payment bond, limits or expands the
599 effective duration of the subcontract payment bond, or includes
600 conditions precedent to the enforcement of a claim against the

601 subcontract payment bond beyond those provided in this part is
602 unenforceable.

603
604 Such deposit or bond must ~~either to~~ be in an amount at least
605 equal to the amount demanded in such claim of lien, plus
606 interest thereon at the legal rate for 3 years, plus \$1,000 or
607 35 ~~25~~ percent of the amount demanded in the claim of lien,
608 whichever is greater, to apply on any attorney ~~attorney's~~ fees
609 and court costs that may be taxed in any proceeding to enforce
610 said lien. Such deposit or bond shall be conditioned to pay any
611 judgment or decree which may be rendered for the satisfaction of
612 the lien for which such claim of lien was recorded. Upon making
613 such deposit or filing such bond, the clerk shall make and
614 record a certificate showing the transfer of the lien from the
615 real property to the security and shall mail a copy thereof by
616 registered or certified mail to the lienor named in the claim of
617 lien so transferred, at the address stated therein. Upon filing
618 the certificate of transfer, the real property shall thereupon
619 be released from the lien claimed, and such lien shall be
620 transferred to said security. In the absence of allegations of
621 privity between the lienor and the owner, and subject to any
622 order of the court increasing the amount required for the lien
623 transfer deposit or bond, no other judgment or decree to pay
624 money may be entered by the court against the owner. The clerk
625 shall be entitled to a service charge for making and serving the

626 certificate, in the amount of up to \$20, from which the clerk
627 shall remit \$5 to the Department of Revenue for deposit into the
628 General Revenue Fund. If the transaction involves the transfer
629 of multiple liens, an additional charge of up to \$10 for each
630 additional lien shall be charged, from which the clerk shall
631 remit \$2.50 to the Department of Revenue for deposit into the
632 General Revenue Fund. For recording the certificate and
633 approving the bond, the clerk shall receive her or his usual
634 statutory service charges as prescribed in s. 28.24. Any number
635 of liens may be transferred to one such security.

636 Section 13. Section 713.29, Florida Statutes, is amended
637 to read:

638 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
639 enforce a lien, including a lien that has been transferred to
640 security, or to enforce a claim against a bond under this part,
641 the prevailing party is entitled to recover a reasonable fee for
642 the services of her or his attorney for trial and appeal or for
643 arbitration, in an amount to be determined by the court, which
644 fee must be taxed as part of the prevailing party's costs, as
645 allowed in equitable actions.

646 Section 14. This act shall take effect July 1, 2020.