

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; revising
9 the process for notarizing a notice of nonpayment;
10 requiring service of documents to be made in a
11 specified manner; amending s. 337.18, F.S.; providing
12 that certain waivers apply to certain contracts;
13 requiring service of documents to be made in a
14 specified manner; amending s. 713.01, F.S.; revising
15 definitions; amending s. 713.09, F.S.; authorizing a
16 lienor to record one claim of lien for multiple direct
17 contracts; amending s. 713.10, F.S.; revising the
18 extent of certain liens; amending s. 713.13, F.S.;
19 revising information to be included in a notice of
20 commencement; revising the process for notarizing a
21 notice of commencement; amending s. 713.132, F.S.;
22 revising requirements for a notice of termination;
23 amending s. 713.18, F.S.; requiring service of
24 documents relating to construction bonds to be made in
25 a specified manner; making technical changes; amending

26 ss. 713.20 and 713.235, F.S.; prohibiting a person
 27 from requiring a lienor to furnish a certain waiver or
 28 release in exchange for or to induce certain payments;
 29 providing that specified provisions in certain waivers
 30 or releases are unenforceable; providing an exception;
 31 amending s. 713.23, F.S.; requiring that a copy of a
 32 notice of nonpayment be served on the surety; revising
 33 the process for notarizing a notice of nonpayment
 34 under a payment bond; amending s. 713.29, F.S.;

35 authorizing attorney fees in actions to enforce a lien
 36 that has been transferred to security; providing an
 37 effective date.

38

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

40

41 Section 1. Paragraphs (a), (d), and (f) of subsection (2)
 42 of section 255.05, Florida Statutes, are amended, and subsection
 43 (12) is added to that section, to read:

44 255.05 Bond of contractor constructing public buildings;
 45 form; action by claimants.—

46 (2) (a) 1. If a claimant is no longer furnishing labor,
 47 services, or materials on a project, a contractor or the
 48 contractor's agent or attorney may elect to shorten the time
 49 within which an action to enforce any claim against a payment
 50 bond must be commenced by recording in the clerk's office a

51 | notice in substantially the following form:

52 | NOTICE OF CONTEST OF CLAIM

53 | AGAINST PAYMENT BOND

54 | To: ...(Name and address of claimant)...

55 | You are notified that the undersigned contests your notice
 56 | of nonpayment, dated,, and served on the
 57 | undersigned on,, and that the time within
 58 | which you may file suit to enforce your claim is limited to 60
 59 | days after the date of service of this notice.

60 | DATED on,

61 | Signed: ...(Contractor or Attorney)...

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

70 | 2. A claimant, except a laborer, who is not in privity
 71 | with the contractor shall, before commencing or not later than
 72 | 45 days after commencing to furnish labor, services, or
 73 | materials for the prosecution of the work, serve the contractor
 74 | with a written notice that he or she intends to look to the bond
 75 | for protection. A claimant who is not in privity with the

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

101 part of the prevailing party's costs, as allowed in equitable
102 actions. The time periods for service of a notice of nonpayment
103 or for bringing an action against a contractor or a surety are
104 ~~shall be~~ measured from the last day of furnishing labor,
105 services, or materials by the claimant and may not be measured
106 by other standards, such as the issuance of a certificate of
107 occupancy or the issuance of a certificate of substantial
108 completion. The negligent inclusion or omission of any
109 information in the notice of nonpayment that has not prejudiced
110 the contractor or surety does not constitute a default that
111 operates to defeat an otherwise valid bond claim. A claimant who
112 serves a fraudulent notice of nonpayment forfeits his or her
113 rights under the bond. A notice of nonpayment is fraudulent if
114 the claimant has willfully exaggerated the amount unpaid,
115 willfully included a claim for work not performed or materials
116 not furnished for the subject improvement, or prepared the
117 notice with such willful and gross negligence as to amount to a
118 willful exaggeration. However, a minor mistake or error in a
119 notice of nonpayment, or a good faith dispute as to the amount
120 unpaid, does not constitute a willful exaggeration that operates
121 to defeat an otherwise valid claim against the bond. The service
122 of a fraudulent notice of nonpayment is a complete defense to
123 the claimant's claim against the bond. The notice of nonpayment
124 under this subparagraph must include the following information,
125 current as of the date of the notice, and must be in

151 subscribed before me by means of physical presence or sworn
 152 to (or affirmed) by online notarization this....day of
 153, ...(year)..., by ...(name of signatory)....

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

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

157 Personally Known OR Produced Identification

158 Type of Identification Produced.....

159 (d) A person may not require a claimant to furnish a
 160 waiver that is different from the forms in paragraphs (b) and
 161 (c) in exchange for, or to induce payment of, a progress payment
 162 or final payment, unless the claimant has entered into a direct
 163 contract that requires the claimant to furnish a waiver that is
 164 different from the forms in paragraphs (b) and (c).

165 (f) Any provisions in a waiver that are ~~is~~ not related to
 166 the waiver of right to claim against a payment bond as provided
 167 in this subsection are unenforceable, unless the claimant has
 168 otherwise agreed to those provisions in the claimant's direct
 169 contract ~~substantially similar to the forms in this subsection~~
 170 ~~is enforceable in accordance with its terms.~~

171 (12) Unless otherwise provided in this section, service of
 172 any document must be made in accordance with s. 713.18.

173 Section 2. Paragraph (c) of subsection (1) of section
 174 337.18, Florida Statutes, is amended, and subsection (6) is
 175 added to that section, to read:

176 337.18 Surety bonds for construction or maintenance
177 contracts; requirement with respect to contract award; bond
178 requirements; defaults; damage assessments.-

179 (1)

180 (c) A claimant, except a laborer, who is not in privity
181 with the contractor shall, before commencing or not later than
182 90 days after commencing to furnish labor, materials, or
183 supplies for the prosecution of the work, furnish the contractor
184 with a notice that he or she intends to look to the bond for
185 protection. A claimant who is not in privity with the contractor
186 and who has not received payment for his or her labor,
187 materials, or supplies shall deliver to the contractor and to
188 the surety written notice of the performance of the labor or
189 delivery of the materials or supplies and of the nonpayment. The
190 notice of nonpayment may be served at any time during the
191 progress of the work or thereafter but not before 45 days after
192 the first furnishing of labor, services, or materials, and not
193 later than 90 days after the final furnishing of the labor,
194 services, or materials by the claimant or, with respect to
195 rental equipment, not later than 90 days after the date that the
196 rental equipment was last on the job site available for use. An
197 action by a claimant, except a laborer, who is not in privity
198 with the contractor for the labor, materials, or supplies may
199 not be instituted against the contractor or the surety unless
200 both notices have been given. Notices required or permitted

201 under this section may be served in any manner provided in s.
202 713.18, and provisions for the waiver of right to claim against
203 a payment bond contained in s. 713.235 apply to all contracts
204 under this section.

205 (6) Unless otherwise provided in this section, service of
206 any document must be made in accordance with s. 713.18.

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

209 713.01 Definitions.—As used in this part, the term:

210 (8) "Contractor" means a person other than a materialman
211 or laborer who enters into a contract with the owner of real
212 property for improving it, or who takes over from a contractor
213 as so defined the entire remaining work under such contract. The
214 term "contractor" includes an architect, landscape architect, or
215 engineer who improves real property pursuant to a design-build
216 contract authorized by s. 489.103(16). The term "contractor"
217 also includes a licensed general contractor or building
218 contractor, as those terms are defined in s. 489.105(3)(a) and
219 (b), who provides construction management services, which
220 include responsibility for scheduling and coordination in both
221 preconstruction and construction phases and for the successful,
222 timely, and economical completion of the construction project,
223 or who provides program management services, which include
224 responsibility for schedule control, cost control, and
225 coordination in providing or procuring planning, design, and

226 construction.

227 (26) "Real property" means the land that is improved and
 228 the improvements thereon, including fixtures, except any such
 229 property owned by the state or any county, municipality, school
 230 board, or governmental agency, commission, or political
 231 subdivision. The term includes a private leasehold interest that
 232 is improved, and the improvements thereon, on land that is owned
 233 by the state or any county, municipality, school board, or
 234 governmental agency, commission, or political subdivision.

235 Section 4. Section 713.09, Florida Statutes, is amended to
 236 read:

237 713.09 Single claim of lien.—A lienor may ~~is required to~~
 238 record only one claim of lien covering his or her entire demand
 239 against the real property when the amount demanded is for labor
 240 or services or material furnished for more than one improvement
 241 under the same direct contract or multiple direct contracts. The
 242 single claim of lien is sufficient even though the improvement
 243 is for one or more improvements located on separate lots,
 244 parcels, or tracts of land. If materials to be used on one or
 245 more improvements on separate lots, parcels, or tracts of land
 246 ~~under one direct contract~~ are delivered by a lienor to a place
 247 designated by the person with whom the materialman contracted,
 248 other than the site of the improvement, the delivery to the
 249 place designated is prima facie evidence of delivery to the site
 250 of the improvement and incorporation in the improvement. The

251 single claim of lien may be limited to a part of multiple lots,
 252 parcels, or tracts of land and their improvements or may cover
 253 all of the lots, parcels, or tracts of land and improvements. If
 254 a ~~In each~~ claim of lien under this section is for multiple
 255 direct contracts, the owner under the direct contracts ~~contract~~
 256 must be the same person for all lots, parcels, or tracts of land
 257 against which a single claim of lien is recorded.

258 Section 5. Paragraph (b) of subsection (2) of section
 259 713.10, Florida Statutes, is amended, and subsection (4) is
 260 added to that section, to read:

261 713.10 Extent of liens.—

262 (2)

263 (b) The interest of the lessor is not subject to liens for
 264 improvements made by the lessee when:

265 1. The lease, or a short form or a memorandum of the lease
 266 that contains the specific language in the lease prohibiting
 267 such liability, is recorded in the official records of the
 268 county where the premises are located before the recording of a
 269 notice of commencement for improvements to the premises and the
 270 terms of the lease expressly prohibit such liability; or

271 2. The terms of the lease expressly prohibit such
 272 liability, and a notice advising that leases for the rental of
 273 premises on a parcel of land prohibit such liability has been
 274 recorded in the official records of the county in which the
 275 parcel of land is located before the recording of a notice of

276 commencement for improvements to the premises, and the notice
277 includes the following:

278 a. The name of the lessor.

279 b. The legal description of the parcel of land to which
280 the notice applies.

281 c. The specific language contained in the various leases
282 prohibiting such liability.

283 d. A statement that all or a majority of the leases
284 entered into for premises on the parcel of land expressly
285 prohibit such liability.

286 ~~3. The lessee is a mobile home owner who is leasing a
287 mobile home lot in a mobile home park from the lessor.~~

288
289 A notice that is consistent with subparagraph 2. effectively
290 prohibits liens for improvements made by a lessee even if other
291 leases for premises on the parcel do not expressly prohibit
292 liens or if provisions of each lease restricting the application
293 of liens are not identical.

294 (4) The interest of the lessor is not subject to liens for
295 improvements made by the lessee when the lessee is a mobile home
296 owner who is leasing a mobile home lot in a mobile home park
297 from the lessor.

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

300 713.13 Notice of commencement.—

301 (1) (a) Except for an improvement that is exempt under
 302 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
 303 agent before actually commencing to improve any real property,
 304 or recommencing completion of any improvement after default or
 305 abandonment, whether or not a project has a payment bond
 306 complying with s. 713.23, shall record a notice of commencement
 307 in the clerk's office and forthwith post either a certified copy
 308 thereof or a notarized statement that the notice of commencement
 309 has been filed for recording along with a copy thereof. The
 310 notice of commencement shall contain the following information:

311 1. A description sufficient for identification of the real
 312 property to be improved. The description should include the
 313 legal description of the property and also should include the
 314 street address and tax folio number of the property if available
 315 or, if there is no street address available, such additional
 316 information as will describe the physical location of the real
 317 property to be improved.

318 2. A general description of the improvement.

319 3. The name and address of the owner, the owner's interest
 320 in the site of the improvement, and the name and address of the
 321 fee simple titleholder, if other than such owner.

322 4. The name and address of the lessee, if the ~~A lessee who~~
 323 ~~contracts for the improvements~~ as is ~~an owner as defined in s.~~
 324 713.01 ~~under s. 713.01(23) and must be listed as the owner~~
 325 ~~together with a statement that the ownership interest is a~~

326 ~~leasehold interest.~~

327 5.4. The name and address of the contractor.

328 6.5. The name and address of the surety on the payment
329 bond under s. 713.23, if any, and the amount of such bond.

330 7.6. The name and address of any person making a loan for
331 the construction of the improvements.

332 8.7. The name and address within the state of a person
333 other than himself or herself who may be designated by the owner
334 as the person upon whom notices or other documents may be served
335 under this part; and service upon the person so designated
336 constitutes service upon the owner.

337 (d) A notice of commencement must be in substantially the
338 following form:

339 Permit No..... Tax Folio No.....

340 NOTICE OF COMMENCEMENT

341 STATE OF FLORIDA ~~State of.....~~

342 COUNTY OF ~~County of.....~~

343 The undersigned hereby gives notice that improvement will be
344 made to certain real property, and in accordance with Chapter
345 713, Florida Statutes, the following information is provided in
346 this Notice of Commencement.

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

349 2. General description of improvement:.....

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

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

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

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

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

358 ~~a. Name and address:.....~~

359 ~~b. Interest in property:.....~~

360 ~~c. Name and address of fee simple titleholder (if~~
 361 ~~different from Owner listed above):.....~~

362 5.a.4.a. Contractor: ...(name and address)....

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

364 ~~6.5. Surety (if applicable, a copy of the payment bond is~~
 365 ~~attached):~~

366 a. Name and address:.....

367 b. Phone number:.....

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

369 7.a.6.a. Lender: ...(name and address)....

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

371 8.7. Persons within the State of Florida designated by
 372 Owner upon whom notices or other documents may be served as
 373 provided in by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
 374 Statutes:

375 a. Name and address:.....

376 b. Phone numbers of designated persons:.....
 377 ~~9.a.8.a.~~ In addition to himself or herself, Owner
 378 designates of to receive a copy of the
 379 Lienor's Notice as provided in Section 713.13(1)(b), Florida
 380 Statutes.

381 b. Phone number of person or entity designated by
 382 owner:.....

383 ~~10.9.~~ Expiration date of notice of commencement (the
 384 expiration date will be 1 year after ~~from~~ the date of recording
 385 unless a different date is specified).....

386
 387 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
 388 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
 389 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
 390 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
 391 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
 392 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
 393 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
 394 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
 395 COMMENCEMENT.

396
 397 ... (Signature of Owner or Lessee, or Owner's or Lessee's
 398 Authorized Officer/Director/Partner/Manager) ...

399 ... (Signatory's Title/Office) ...
 400

401 The foregoing instrument was acknowledged before me by means of
 402 physical presence or sworn to (or affirmed) by online
 403 notarization this day of, ...(year)..., by ...(name of
 404 person)... as ...(type of authority, . . . e.g. officer,
 405 trustee, attorney in fact)... for ...(name of party on behalf of
 406 whom instrument was executed)....

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

409 Personally Known OR Produced Identification

410 Type of Identification Produced.....

411 Section 7. Paragraphs (b) and (f) of subsection (1) and
 412 subsections (3) and (4) of section 713.132, Florida Statutes,
 413 are amended to read:

414 713.132 Notice of termination.—

415 (1) An owner may terminate the period of effectiveness of
 416 a notice of commencement by executing, swearing to, and
 417 recording a notice of termination that contains:

418 (b) The official records' ~~recording office document book~~
 419 ~~and page~~ reference numbers and recording date affixed by the
 420 recording office on ~~of~~ the recorded notice of commencement;

421 (f) A statement that the owner has, before recording the
 422 notice of termination, served a copy of the notice of
 423 termination ~~on the contractor and~~ on each lienor who has a
 424 direct contract with the owner or who has timely served a notice
 425 to owner, and a statement that the owner will serve a copy of

426 the notice of termination on each lienor who timely serves a
427 notice to owner after the notice of termination has been
428 recorded. The owner is not required to serve a copy of the
429 notice of termination on any lienor who has executed a waiver
430 and release of lien upon final payment in accordance with s.
431 713.20.

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

436 (4) If an owner or a contractor, by fraud or collusion,
437 knowingly makes any fraudulent statement or affidavit in a
438 notice of termination or any accompanying affidavit, the owner
439 and the contractor, or either of them, ~~as the case may be,~~ is
440 liable to any lienor who suffers damages as a result of the
441 filing of the fraudulent notice of termination,[†] and any such
442 lienor has a right of action for damages ~~occasioned thereby.~~

443 (5)~~(4)~~ A notice of termination must be served before
444 recording on each lienor who has a direct contract with the
445 owner and on each lienor who has timely and properly served a
446 notice to owner in accordance with this part before the
447 recording of the notice of termination. A notice of termination
448 must be recorded in the official records of the county in which
449 the project is located. If properly served before recording in
450 accordance with this subsection, the notice of termination

451 terminates the period of effectiveness of the notice of
452 commencement 30 days after the notice of termination is recorded
453 in the official records ~~is effective to terminate the notice of~~
454 ~~commencement at the later of 30 days after recording of the~~
455 ~~notice of termination or a later~~ the date stated in the notice
456 of termination as the date on which the notice of commencement
457 is terminated. However, if a lienor, who began work under the
458 notice of commencement before its termination, lacks a direct
459 contract with the owner, and timely serves his or her notice to
460 owner after the notice of termination has been recorded, the
461 owner must serve a copy of the notice of termination upon such
462 lienor, and the termination of the notice of commencement as to
463 that lienor is effective 30 days after service of the notice of
464 termination ~~if the notice of termination has been served~~
465 ~~pursuant to paragraph (1) (f) on the contractor and on each~~
466 ~~lienor who has a direct contract with the owner or who has~~
467 ~~served a notice to owner.~~

468 Section 8. Section 713.18, Florida Statutes, is amended to
469 read:

470 713.18 Manner of serving documents ~~notices and other~~
471 ~~instruments.~~

472 (1) Unless otherwise specifically provided by law, service
473 of any document ~~notices, claims of lien, affidavits,~~
474 ~~assignments, and other instruments~~ permitted or required under
475 this part, s. 255.05, or s. 337.18, or copies thereof when so

476 permitted or required, ~~unless otherwise specifically provided in~~
477 ~~this part~~, must be made by one of the following methods:

478 (a) By hand ~~actual~~ delivery to the person to be served; if
479 a partnership, to one of the partners; if a corporation, to an
480 officer, director, managing agent, or business agent; or, if a
481 limited liability company, to a member or manager.

482 (b) By common carrier delivery service or by registered,
483 Global Express Guaranteed, or certified mail to the person to be
484 served, with postage or shipping paid by the sender and with
485 evidence of delivery, which may be in an electronic format.

486 ~~(c) By posting on the site of the improvement if service~~
487 ~~as provided by paragraph (a) or paragraph (b) cannot be~~
488 ~~accomplished.~~

489 (2) Notwithstanding subsection (1), service of a notice to
490 owner or a preliminary notice to contractor under this part, s.
491 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date
492 of mailing if the requirements for service under this section
493 have been satisfied and:

494 (a) The notice is mailed by registered, Global Express
495 Guaranteed, or certified mail, with postage prepaid, to the
496 person to be served and addressed as prescribed ~~at any of the~~
497 ~~addresses set forth~~ in subsection (3);

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

500 (c)1. The person who served the notice maintains a

501 registered or certified mail log that shows the registered or
502 certified mail number issued by the United States Postal
503 Service, the name and address of the person served, and the date
504 stamp of the United States Postal Service confirming the date of
505 mailing; or

506 2. The person who served the notice maintains ~~electronic~~
507 tracking records approved or generated by the United States
508 Postal Service containing the postal tracking number, the name
509 and address of the person served, and verification of the date
510 of receipt by the United States Postal Service.

511 (3) (a) Notwithstanding subsection (1), service of a
512 document under an instrument pursuant to this section is
513 effective on the date of mailing or shipping the instrument if
514 the requirements for service under this section have been
515 satisfied and it:

516 1. Is sent using one of the methods provided in paragraph
517 (1) (b) to the last address shown in the notice of commencement
518 or any amendment thereto or, in the absence of a notice of
519 commencement, to the last address shown in the building permit
520 application, or, in the absence of a notice of commencement and
521 building permit application, to the last known address of the
522 person to be served, unless otherwise specifically provided in
523 this part, s. 255.05, or s. 337.18; and

524 2. Is returned as being "refused," "moved, not
525 forwardable," or "unclaimed," or is otherwise not delivered or

526 deliverable through no fault of the person serving the document
527 item.

528 (b) If the address shown in the notice of commencement or
529 any amendment thereto ~~to the notice of commencement~~, or, in the
530 absence of a notice of commencement, in the building permit
531 application, is incomplete for purposes of mailing or delivery,
532 the person serving the document ~~item~~ may complete the address
533 and properly format it according to United States Postal Service
534 addressing standards using information obtained from the
535 property appraiser or another public record without affecting
536 the validity of service under this section.

537 (4) A document ~~notice~~ served by a lienor on one owner or
538 one partner of a partnership owning the real property is deemed
539 served on ~~notice to~~ all owners and partners.

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

542 713.20 Waiver or release of liens.—

543 (6) A person may not require a lienor to furnish a lien
544 waiver or release of lien that is different from the forms in
545 subsection (4) or subsection (5) in exchange for, or to induce
546 payment of, a progress payment or final payment, unless the
547 lienor has entered into a direct contract that requires the
548 lienor to furnish a waiver or release that is different from the
549 forms in subsection (4) or subsection (5).

550 (8) Any provisions in a lien waiver or lien release that

551 are is not related to the waiver or release of lien rights as
552 provided in this section are unenforceable, unless the lienor
553 has otherwise agreed to those provisions in the lienor's direct
554 contract substantially similar to the forms in subsections (4)
555 and (5) is enforceable in accordance with the terms of the lien
556 waiver or lien release.

557 Section 10. Paragraph (d) of subsection (1) of section
558 713.23, Florida Statutes, is amended to read:

559 713.23 Payment bond.—

560 (1)

561 (d) In addition, a lienor who has not received payment for
562 furnishing his or her labor, services, or materials must, as a
563 condition precedent to recovery under the bond, serve a written
564 notice of nonpayment on ~~to~~ the contractor and a copy of the
565 notice on the surety. The notice must be under oath and served
566 during the progress of the work or thereafter, but may not be
567 served later than 90 days after the final furnishing of labor,
568 services, or materials by the lienor, or, with respect to rental
569 equipment, later than 90 days after the date the rental
570 equipment was on the jobsite and available for use. A notice of
571 nonpayment that includes sums for retainage must specify the
572 portion of the amount claimed for retainage. The required notice
573 satisfies this condition precedent with respect to the payment
574 described in the notice of nonpayment, including unpaid finance
575 charges due under the lienor's contract, and with respect to any

576 other payments which become due to the lienor after the date of
577 the notice of nonpayment. The time period for serving a notice
578 of nonpayment is ~~shall be~~ measured from the last day of
579 furnishing labor, services, or materials by the lienor and may
580 not be measured by other standards, such as the issuance of a
581 certificate of occupancy or the issuance of a certificate of
582 substantial completion. The failure of a lienor to receive
583 retainage sums not in excess of 10 percent of the value of
584 labor, services, or materials furnished by the lienor is not
585 considered a nonpayment requiring the service of the notice
586 provided under this paragraph. If the payment bond is not
587 recorded before commencement of construction, the time period
588 for the lienor to serve a notice of nonpayment may at the option
589 of the lienor be calculated from the date specified in this
590 section or the date the lienor is served a copy of the bond.
591 However, the limitation period for commencement of an action on
592 the payment bond as established in paragraph (e) may not be
593 expanded. The negligent inclusion or omission of any information
594 in the notice of nonpayment that has not prejudiced the
595 contractor or surety does not constitute a default that operates
596 to defeat an otherwise valid bond claim. A lienor who serves a
597 fraudulent notice of nonpayment forfeits his or her rights under
598 the bond. A notice of nonpayment is fraudulent if the lienor has
599 willfully exaggerated the amount unpaid, willfully included a
600 claim for work not performed or materials not furnished for the

601 subject improvement, or prepared the notice with such willful
602 and gross negligence as to amount to a willful exaggeration.
603 However, a minor mistake or error in a notice of nonpayment, or
604 a good faith dispute as to the amount unpaid, does not
605 constitute a willful exaggeration that operates to defeat an
606 otherwise valid claim against the bond. The service of a
607 fraudulent notice of nonpayment is a complete defense to the
608 lienor's claim against the bond. The notice under this paragraph
609 must include the following information, current as of the date
610 of the notice, and must be in substantially the following form:

611 NOTICE OF NONPAYMENT

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

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

614 The undersigned lienor notifies you that:

615 1. The lienor has furnished ...(describe labor, services,
616 or materials)... for the improvement of the real property
617 identified as ...(property description).... The corresponding
618 amount unpaid to date is \$...., of which \$.... is unpaid
619 retainage.

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

623 3. The lienor expects to furnish ...(describe labor,
624 services, or materials)... for this improvement in the future
625 (if known), and the corresponding amount expected to become due

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

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

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

629 knowledge and belief.

630 DATED on,

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

632 STATE OF FLORIDA

633 COUNTY OF.....

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

635 subscribed before me by means of physical presence or sworn

636 to (or affirmed) by online notarization this day of

637, ... (year)...., by ... (name of signatory)....

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

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

640 Public)...

641 Personally Known OR Produced Identification

642 Type of Identification Produced.....

643 Section 11. Subsections (3) and (5) of section 713.235,

644 Florida Statutes, are amended to read:

645 713.235 Waivers of right to claim against payment bond;

646 forms.-

647 (3) A person may not require a claimant to furnish a

648 waiver that is different from the forms in subsections (1) and

649 (2) in exchange for, or to induce payment of, a progress payment

650 or final payment, unless the claimant has entered into a direct

651 contract that requires the claimant to furnish a waiver that is
 652 different from the forms in subsections (1) and (2).

653 (5) Any provisions in a waiver that are ~~is~~ not related to
 654 the waiver of the right to claim against the payment bond as
 655 provided in this section are unenforceable, unless the claimant
 656 has otherwise agreed to those provisions in the claimant's
 657 direct contract ~~substantially similar to the forms in this~~
 658 ~~section is enforceable in accordance with its terms.~~

659 Section 12. Section 713.29, Florida Statutes, is amended
 660 to read:

661 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
 662 enforce a lien, including a lien that has been transferred to
 663 security, or to enforce a claim against a bond under this part,
 664 the prevailing party is entitled to recover a reasonable fee for
 665 the services of her or his attorney for trial and appeal or for
 666 arbitration, in an amount to be determined by the court, which
 667 fee must be taxed as part of the prevailing party's costs, as
 668 allowed in equitable actions.

669 Section 13. This act shall take effect July 1, 2020.