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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2020	.	
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The Committee on Rules (Perry) recommended the following:

1           **Senate Amendment to Amendment (627108) (with title**  
2 **amendment)**

3  
4           Between lines 4 and 5  
5 insert:

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

9           255.05 Bond of contractor constructing public buildings;  
10 form; action by claimants.—

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



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12 services, or materials on a project, a contractor or the  
13 contractor's agent or attorney may elect to shorten the time  
14 within which an action to enforce any claim against a payment  
15 bond must be commenced by recording in the clerk's office a  
16 notice in substantially the following form:

17  
18 NOTICE OF CONTEST OF CLAIM  
19 AGAINST PAYMENT BOND

20  
21 To: ...(Name and address of claimant)...

22  
23 You are notified that the undersigned contests your notice  
24 of nonpayment, dated ....., ....., and served on the  
25 undersigned on ....., ....., and that the time within  
26 which you may file suit to enforce your claim is limited to 60  
27 days after the date of service of this notice.

28  
29 DATED on ....., .....

30  
31 Signed: ...(Contractor or Attorney)...

32  
33 The claim of a claimant upon whom such notice is served and who  
34 fails to institute a suit to enforce his or her claim against  
35 the payment bond within 60 days after service of such notice is  
36 extinguished automatically. The contractor or the contractor's  
37 attorney shall serve a copy of the notice of contest on ~~to~~ the  
38 claimant at the address shown in the notice of nonpayment or  
39 most recent amendment thereto and shall certify to such service  
40 on the face of the notice and record the notice.



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



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

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

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

The undersigned claimant notifies you that:

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

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

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

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

DATED on ....., .....

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

STATE OF FLORIDA

COUNTY OF .....



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128 The foregoing instrument was sworn to (or affirmed) and  
129 subscribed before me by means of .... physical presence or sworn  
130 to (or affirmed) by .... online notarization this....day of  
131 ....., ...(year)..., by ...(name of signatory)....

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

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

135

136 Personally Known ..... OR Produced Identification .....

137

138 Type of Identification Produced.....

139

140 (d) A person may not require a claimant to furnish a waiver  
141 that is different from the forms in paragraphs (b) and (c) in  
142 exchange for, or to induce payment of, a progress payment or  
143 final payment, unless the claimant has entered into a direct  
144 contract that requires the claimant to furnish a waiver that is  
145 different from the forms in paragraphs (b) and (c).

146 (f) Any provisions in a waiver that are ~~is~~ not related to  
147 the waiver of right to claim against a payment bond as provided  
148 in this subsection are unenforceable, unless the claimant has  
149 otherwise agreed to those provisions in the claimant's direct  
150 contract substantially similar to the forms in this subsection  
151 is enforceable in accordance with its terms.

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

154 Section 2. Paragraph (c) of subsection (1) of section  
155 337.18, Florida Statutes, is amended, and subsection (6) is  
156 added to that section, to read:



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157           337.18 Surety bonds for construction or maintenance  
158 contracts; requirement with respect to contract award; bond  
159 requirements; defaults; damage assessments.—  
160           (1)  
161           (c) A claimant, except a laborer, who is not in privity  
162 with the contractor shall, before commencing or not later than  
163 90 days after commencing to furnish labor, materials, or  
164 supplies for the prosecution of the work, furnish the contractor  
165 with a notice that he or she intends to look to the bond for  
166 protection. A claimant who is not in privity with the contractor  
167 and who has not received payment for his or her labor,  
168 materials, or supplies shall deliver to the contractor and to  
169 the surety written notice of the performance of the labor or  
170 delivery of the materials or supplies and of the nonpayment. The  
171 notice of nonpayment may be served at any time during the  
172 progress of the work or thereafter but not before 45 days after  
173 the first furnishing of labor, services, or materials, and not  
174 later than 90 days after the final furnishing of the labor,  
175 services, or materials by the claimant or, with respect to  
176 rental equipment, not later than 90 days after the date that the  
177 rental equipment was last on the job site available for use. An  
178 action by a claimant, except a laborer, who is not in privity  
179 with the contractor for the labor, materials, or supplies may  
180 not be instituted against the contractor or the surety unless  
181 both notices have been given. Notices required or permitted  
182 under this section may be served in any manner provided in s.  
183 713.18, and provisions for the waiver of right to claim against  
184 a payment bond contained in s. 713.235 apply to all contracts  
185 under this section.



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

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

190           713.01 Definitions.—As used in this part, the term:

191           (8) "Contractor" means a person other than a materialman or  
192 laborer who enters into a contract with the owner of real  
193 property for improving it, or who takes over from a contractor  
194 as so defined the entire remaining work under such contract. The  
195 term "contractor" includes an architect, landscape architect, or  
196 engineer who improves real property pursuant to a design-build  
197 contract authorized by s. 489.103(16). The term "contractor"  
198 also includes a licensed general contractor or building  
199 contractor, as those terms are defined in s. 489.105(3) (a) and  
200 (b), who provides construction management services, which  
201 include responsibility for scheduling and coordination in both  
202 preconstruction and construction phases and for the successful,  
203 timely, and economical completion of the construction project,  
204 or who provides program management services, which include  
205 responsibility for schedule control, cost control, and  
206 coordination in providing or procuring planning, design, and  
207 construction.

208           (26) "Real property" means the land that is improved and  
209 the improvements thereon, including fixtures, except any such  
210 property owned by the state or any county, municipality, school  
211 board, or governmental agency, commission, or political  
212 subdivision. The term includes a private leasehold interest that  
213 is improved, and the improvements thereon, on land that is owned  
214 by the state or any county, municipality, school board, or





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215 governmental agency, commission, or political subdivision.

216 Section 4. Section 713.09, Florida Statutes, is amended to  
217 read:

218 713.09 Single claim of lien.—A lienor may ~~is required to~~  
219 record only one claim of lien covering his or her entire demand  
220 against the real property when the amount demanded is for labor  
221 or services or material furnished for more than one improvement  
222 under the same direct contract or multiple direct contracts. The  
223 single claim of lien is sufficient even though the improvement  
224 is for one or more improvements located on separate lots,  
225 parcels, or tracts of land. If materials to be used on one or  
226 more improvements on separate lots, parcels, or tracts of land  
227 ~~under one direct contract~~ are delivered by a lienor to a place  
228 designated by the person with whom the materialman contracted,  
229 other than the site of the improvement, the delivery to the  
230 place designated is prima facie evidence of delivery to the site  
231 of the improvement and incorporation in the improvement. The  
232 single claim of lien may be limited to a part of multiple lots,  
233 parcels, or tracts of land and their improvements or may cover  
234 all of the lots, parcels, or tracts of land and improvements. If  
235 ~~a In each~~ claim of lien under this section is for multiple  
236 direct contracts, the owner under the direct contracts ~~contract~~  
237 must be the same person for all lots, parcels, or tracts of land  
238 against which a single claim of lien is recorded.

239 Section 5. Paragraph (b) of subsection (2) of section  
240 713.10, Florida Statutes, is amended, and subsection (4) is  
241 added to that section, to read:

242 713.10 Extent of liens.—

243 (2)



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

246 1. The lease, or a short form or a memorandum of the lease  
247 that contains the specific language in the lease prohibiting  
248 such liability, is recorded in the official records of the  
249 county where the premises are located before the recording of a  
250 notice of commencement for improvements to the premises and the  
251 terms of the lease expressly prohibit such liability; or

252 2. The terms of the lease expressly prohibit such  
253 liability, and a notice advising that leases for the rental of  
254 premises on a parcel of land prohibit such liability has been  
255 recorded in the official records of the county in which the  
256 parcel of land is located before the recording of a notice of  
257 commencement for improvements to the premises, and the notice  
258 includes the following:

259 a. The name of the lessor.

260 b. The legal description of the parcel of land to which the  
261 notice applies.

262 c. The specific language contained in the various leases  
263 prohibiting such liability.

264 d. A statement that all or a majority of the leases entered  
265 into for premises on the parcel of land expressly prohibit such  
266 liability.

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

269  
270 A notice that is consistent with subparagraph 2. effectively  
271 prohibits liens for improvements made by a lessee even if other  
272 leases for premises on the parcel do not expressly prohibit



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273 liens or if provisions of each lease restricting the application  
274 of liens are not identical.

275 (4) The interest of the lessor is not subject to liens for  
276 improvements made by the lessee when the lessee is a mobile home  
277 owner who is leasing a mobile home lot in a mobile home park  
278 from the lessor.

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 bond  
310 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  
321 Permit No..... Tax Folio No.....

322 NOTICE OF COMMENCEMENT

323 STATE OF FLORIDA ~~State of....~~

324 COUNTY OF ~~County of....~~

325  
326 The undersigned hereby gives notice that improvement will be  
327 made to certain real property, and in accordance with Chapter  
328 713, Florida Statutes, the following information is provided in  
329 this Notice of Commencement.

330 1. Description of property: ...(legal description of the



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331 property, and street address if available)....  
332       2. General description of improvement:.....  
333       3.a. Owner: ... (name and address)....  
334       b. Owner's phone number:.....  
335       c. Name and address of fee simple titleholder (if different  
336 from Owner listed above):.....  
337       4.a. Lessee, if the lessee contracted for the improvements:  
338 ... (name and address)....  
339       b. Lessee's phone number:..... ~~owner information or Lessee~~  
340 ~~information if the Lessee contracted for the improvement:~~  
341       a. Name and address:.....  
342       b. Interest in property:.....  
343       e. Name and address of fee simple titleholder (if different  
344 from Owner listed above):.....  
345       5.a.4.a. Contractor: ... (name and address)....  
346       b. Contractor's phone number:.....  
347       6.5. Surety (if applicable, a copy of the payment bond is  
348 attached):  
349       a. Name and address:.....  
350       b. Phone number:.....  
351       c. Amount of bond: \$.....  
352       7.a.6.a. Lender: ... (name and address)....  
353       b. Lender's phone number:.....  
354       8.7. Persons within the State of Florida designated by  
355 Owner upon whom notices or other documents may be served as  
356 provided in ~~by~~ Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida  
357 Statutes:  
358       a. Name and address:.....  
359       b. Phone numbers of designated persons:.....



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

364        b. Phone number of person or entity designated by  
365 owner:.....

366        ~~10.9.~~ Expiration date of notice of commencement (the  
367 expiration date will be 1 year after ~~from~~ the date of recording  
368 unless a different date is specified).....

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

379  
380 ... (Signature of Owner or Lessee, or Owner's or Lessee's  
381 Authorized Officer/Director/Partner/Manager) ...  
382 ... (Signatory's Title/Office) ...

383  
384 The foregoing instrument was acknowledged before me by means of  
385 .... physical presence or sworn to (or affirmed) by .... online  
386 notarization this .... day of ....., ...(year)...., by ...(name of  
387 person)... as ...(type of authority, . . . e.g. officer,  
388 trustee, attorney in fact)... for ...(name of party on behalf of



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389 whom instrument was executed)....  
390 ...(Signature of Notary Public - State of Florida)...  
391  
392 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...  
393  
394 Personally Known .... OR Produced Identification ....  
395  
396 Type of Identification Produced.....  
397 Section 7. Subsections (1), (3), and (4) of section  
398 713.132, Florida Statutes, are amended to read:  
399 713.132 Notice of termination.—  
400 (1) An owner may terminate the period of effectiveness of a  
401 notice of commencement by executing, swearing to, and recording  
402 a notice of termination that contains:  
403 (a) The same information as the notice of commencement;  
404 (b) The official records' ~~recording office document book~~  
405 ~~and page~~ reference numbers and recording date affixed by the  
406 recording office on ~~of~~ the recorded notice of commencement;  
407 (c) A statement of the date as of which the notice of  
408 commencement is terminated, which date may not be earlier than  
409 30 days after the notice of termination is recorded;  
410 (d) A statement specifying that the notice applies to all  
411 the real property subject to the notice of commencement or  
412 specifying the portion of such real property to which it  
413 applies;  
414 (e) A statement that all lienors have been paid in full;  
415 and  
416 (f) A statement that the owner has, before recording the  
417 notice of termination, served a copy of the notice of



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418 termination ~~on the contractor and~~ on each lienor who has a  
419 direct contract with the owner or who has timely served a notice  
420 to owner, and a statement that the owner will serve a copy of  
421 the notice of termination on each lienor who timely serves a  
422 notice to owner after the notice of termination has been  
423 recorded. The owner is not required to serve a copy of the  
424 notice of termination on any lienor who has executed a waiver  
425 and release of lien upon final payment in accordance with s.  
426 713.20.

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

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

438 (5) ~~(4)~~ A notice of termination must be served before  
439 recording on each lienor who has a direct contract with the  
440 owner and on each lienor who has timely and properly served a  
441 notice to owner in accordance with this part before the  
442 recording of the notice of termination. A notice of termination  
443 must be recorded in the official records of the county in which  
444 the project is located. If properly served before recording in  
445 accordance with this subsection, the notice of termination  
446 terminates the period of effectiveness of the notice of





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

463 Section 8. Section 713.18, Florida Statutes, is amended to  
464 read:

465 713.18 Manner of serving documents ~~notices and other~~  
466 ~~instruments.~~

467 (1) Unless otherwise specifically provided by law, service  
468 of any document ~~notices, claims of lien, affidavits,~~  
469 ~~assignments, and other instruments~~ permitted or required under  
470 this part, s. 255.05, or s. 337.18, or copies thereof when so  
471 permitted or required, ~~unless otherwise specifically provided in~~  
472 ~~this part,~~ must be made by one of the following methods:

473 (a) By hand ~~actual~~ delivery to the person to be served; if  
474 a partnership, to one of the partners; if a corporation, to an  
475 officer, director, managing agent, or business agent; or, if a



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476 limited liability company, to a member or manager.

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

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

484 (2) Notwithstanding subsection (1), service of a notice to  
485 owner or a preliminary notice to contractor under this part, s.  
486 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date  
487 of mailing and the requirements for service under this section  
488 have been satisfied if:

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

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

495 (c)1. The person who served the notice maintains a  
496 registered or certified mail log that shows the registered or  
497 certified mail number issued by the United States Postal  
498 Service, the name and address of the person served, and the date  
499 stamp of the United States Postal Service confirming the date of  
500 mailing; or

501 2. The person who served the notice maintains ~~electronic~~  
502 tracking records approved or generated by the United States  
503 Postal Service containing the postal tracking number, the name  
504 and address of the person served, and verification of the date



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505 of receipt by the United States Postal Service.

506 (3) (a) Notwithstanding subsection (1), service of a  
507 document under an instrument pursuant to this section is  
508 effective on the date of mailing or shipping and the  
509 requirements for service under this section have been satisfied  
510 the instrument if it:

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

519 2. Is returned as being "refused," "moved, not  
520 forwardable," or "unclaimed," or is otherwise not delivered or  
521 deliverable through no fault of the person serving the document  
522 item.

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

532 (4) A document ~~notice~~ served by a lienor on one owner or  
533 one partner of a partnership owning the real property is deemed



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534 served on notice ~~to~~ all owners and partners.

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

537 713.20 Waiver or release of liens.—

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

545 (8) Any provisions in a lien waiver or lien release that  
546 are ~~is~~ not related to the waiver or release of lien rights as  
547 provided in this section are unenforceable, unless the lienor  
548 has otherwise agreed to those provisions in the lienor's direct  
549 contract substantially similar to the forms in subsections (4)  
550 and (5) is enforceable in accordance with the terms of the lien  
551 waiver or lien release.

552 Section 10. Paragraph (d) of subsection (1) of section  
553 713.23, Florida Statutes, is amended to read:

554 713.23 Payment bond.—

555 (1)

556 (d) In addition, a lienor who has not received payment for  
557 furnishing his or her labor, services, or materials must, as a  
558 condition precedent to recovery under the bond, serve a written  
559 notice of nonpayment on ~~to~~ the contractor and a copy of the  
560 notice on the surety. The notice must be under oath and served  
561 during the progress of the work or thereafter, but may not be  
562 served later than 90 days after the final furnishing of labor,



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563 services, or materials by the lienor, or, with respect to rental  
564 equipment, later than 90 days after the date the rental  
565 equipment was on the job site and available for use. A notice of  
566 nonpayment that includes sums for retainage must specify the  
567 portion of the amount claimed for retainage. The required notice  
568 satisfies this condition precedent with respect to the payment  
569 described in the notice of nonpayment, including unpaid finance  
570 charges due under the lienor's contract, and with respect to any  
571 other payments which become due to the lienor after the date of  
572 the notice of nonpayment. The time period for serving a notice  
573 of nonpayment is ~~shall be~~ measured from the last day of  
574 furnishing labor, services, or materials by the lienor and may  
575 not be measured by other standards, such as the issuance of a  
576 certificate of occupancy or the issuance of a certificate of  
577 substantial completion. The failure of a lienor to receive  
578 retainage sums not in excess of 10 percent of the value of  
579 labor, services, or materials furnished by the lienor is not  
580 considered a nonpayment requiring the service of the notice  
581 provided under this paragraph. If the payment bond is not  
582 recorded before commencement of construction, the time period  
583 for the lienor to serve a notice of nonpayment may at the option  
584 of the lienor be calculated from the date specified in this  
585 section or the date the lienor is served a copy of the bond.  
586 However, the limitation period for commencement of an action on  
587 the payment bond as established in paragraph (e) may not be  
588 expanded. The negligent inclusion or omission of any information  
589 in the notice of nonpayment that has not prejudiced the  
590 contractor or surety does not constitute a default that operates  
591 to defeat an otherwise valid bond claim. A lienor who serves a



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592 fraudulent notice of nonpayment forfeits his or her rights under  
593 the bond. A notice of nonpayment is fraudulent if the lienor has  
594 willfully exaggerated the amount unpaid, willfully included a  
595 claim for work not performed or materials not furnished for the  
596 subject improvement, or prepared the notice with such willful  
597 and gross negligence as to amount to a willful exaggeration.  
598 However, a minor mistake or error in a notice of nonpayment, or  
599 a good faith dispute as to the amount unpaid, does not  
600 constitute a willful exaggeration that operates to defeat an  
601 otherwise valid claim against the bond. The service of a  
602 fraudulent notice of nonpayment is a complete defense to the  
603 lienor's claim against the bond. The notice under this paragraph  
604 must include the following information, current as of the date  
605 of the notice, and must be in substantially the following form:

606  
607 NOTICE OF NONPAYMENT  
608

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

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

611  
612 The undersigned lienor notifies you that:

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

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



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

625

626 I declare that I have read the foregoing Notice of Nonpayment  
627 and that the facts stated in it are true to the best of my  
628 knowledge and belief.

629

630 DATED on ....., .....

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

632 STATE OF FLORIDA

633 COUNTY OF.....

634

635 The foregoing instrument was sworn to (or affirmed) and  
636 subscribed before me by means of .... physical presence or sworn  
637 to (or affirmed) by .... online notarization this .... day of  
638 ....., ...(year)..., by ...(name of signatory)....

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

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

642 Personally Known ..... OR Produced Identification .....

643

644 Type of Identification Produced.....

645

646 Section 11. Subsections (3) and (5) of section 713.235,  
647 Florida Statutes, are amended to read:

648 713.235 Waivers of right to claim against payment bond;  
649 forms.-



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650 (3) A person may not require a claimant to furnish a waiver  
651 that is different from the forms in subsections (1) and (2) in  
652 exchange for, or to induce payment of, a progress payment or  
653 final payment, unless the claimant has entered into a direct  
654 contract that requires the claimant to furnish a waiver that is  
655 different from the forms in subsections (1) and (2).

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

662 Section 12. Section 713.29, Florida Statutes, is amended to  
663 read:

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

672  
673 ===== T I T L E A M E N D M E N T =====

674 And the title is amended as follows:

675 Delete lines 383 - 384

676 and insert:

677 An act relating to construction; amending s. 255.05,  
678 F.S.; requiring that a copy of a notice of nonpayment





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679 be served on the surety; prohibiting a person from  
680 requiring a claimant to furnish a certain waiver in  
681 exchange for or to induce certain payments; providing  
682 that specified provisions in certain waivers are  
683 unenforceable; providing an exception; revising the  
684 process for notarizing a notice of nonpayment;  
685 requiring service of documents to be made in a  
686 specified manner; amending s. 337.18, F.S.; providing  
687 that certain waivers apply to certain contracts;  
688 requiring service of documents to be made in a  
689 specified manner; amending s. 713.01, F.S.; revising  
690 definitions; amending s. 713.09, F.S.; authorizing a  
691 lienor to record one claim of lien for multiple direct  
692 contracts; amending s. 713.10, F.S.; revising the  
693 extent of certain liens; amending s. 713.13, F.S.;  
694 revising information to be included in a notice of  
695 commencement; revising the process for notarizing a  
696 notice of commencement; amending s. 713.132, F.S.;  
697 revising requirements for a notice of termination;  
698 amending s. 713.18, F.S.; requiring service of  
699 documents relating to construction bonds to be made in  
700 a specified manner; making technical changes; amending  
701 ss. 713.20 and 713.235, F.S.; prohibiting a person  
702 from requiring a lienor to furnish a certain waiver or  
703 release in exchange for or to induce certain payments;  
704 providing that specified provisions in certain waivers  
705 or releases are unenforceable; providing an exception;  
706 amending s. 713.23, F.S.; requiring that a copy of a  
707 notice of nonpayment be served on the surety; revising



708 the process for notarizing a notice of nonpayment  
709 under a payment bond; amending s. 713.29, F.S.;  
710 authorizing attorney fees in actions to enforce a lien  
711 that has been transferred to security; amending s.  
712 218.80, F.S.; revising