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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Perry) recommended the following:

Senate Amendment (with title amendment)

Before line 26

insert:

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

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

(2) (a) 1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the



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

16

17 NOTICE OF CONTEST OF CLAIM

18 AGAINST PAYMENT BOND

19

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

21

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

27

28 DATED on,

29

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

31

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

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



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



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

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98 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

The foregoing instrument was sworn to (or affirmed) and



128 subscribed before me by means of physical presence or sworn
129 to (or affirmed) by online notarization this....day of
130, ...(year)...., by ...(name of signatory)....
131 ...(Signature of Notary Public - State of Florida)...
132 ...(Print, Type, or Stamp Commissioned Name of Notary
133 Public)...

134
135 Personally Known OR Produced Identification

136
137 Type of Identification Produced.....

138
139 (d) A person may not require a claimant to furnish a waiver
140 that is different from the forms in paragraphs (b) and (c) in
141 exchange for, or to induce payment of, a progress payment or
142 final payment, unless the claimant has entered into a direct
143 contract that requires the claimant to furnish a waiver that is
144 different from the forms in paragraphs (b) and (c).

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

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

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

156 337.18 Surety bonds for construction or maintenance



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157 contracts; requirement with respect to contract award; bond
158 requirements; defaults; damage assessments.-

159 (1)

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

185 (6) Unless otherwise provided in this section, service of



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186 any document must be made in accordance with s. 713.18.

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

189 713.01 Definitions.—As used in this part, the term:

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

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



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

217 713.09 Single claim of lien.—A lienor may ~~is required to~~
218 record only one claim of lien covering his or her entire demand
219 against the real property when the amount demanded is for labor
220 or services or material furnished for more than one improvement
221 under the same direct contract or multiple direct contracts. The
222 single claim of lien is sufficient even though the improvement
223 is for one or more improvements located on separate lots,
224 parcels, or tracts of land. If materials to be used on one or
225 more improvements on separate lots, parcels, or tracts of land
226 ~~under one direct contract~~ are delivered by a lienor to a place
227 designated by the person with whom the materialman contracted,
228 other than the site of the improvement, the delivery to the
229 place designated is prima facie evidence of delivery to the site
230 of the improvement and incorporation in the improvement. The
231 single claim of lien may be limited to a part of multiple lots,
232 parcels, or tracts of land and their improvements or may cover
233 all of the lots, parcels, or tracts of land and improvements. If
234 a ~~In each~~ claim of lien under this section is for multiple
235 direct contracts, the owner under the direct contracts ~~contract~~
236 must be the same person for all lots, parcels, or tracts of land
237 against which a single claim of lien is recorded.

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

241 713.10 Extent of liens.—

242 (2)

243 (b) The interest of the lessor is not subject to liens for



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244 improvements made by the lessee when:

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

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

258 a. The name of the lessor.

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

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

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

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

268
269 A notice that is consistent with subparagraph 2. effectively
270 prohibits liens for improvements made by a lessee even if other
271 leases for premises on the parcel do not expressly prohibit
272 liens or if provisions of each lease restricting the application



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273 of liens are not identical.

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

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

280 713.13 Notice of commencement.—

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

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

298 2. A general description of the improvement.

299 3. The name and address of the owner, the owner's interest
300 in the site of the improvement, and the name and address of the
301 fee simple titleholder, if other than such owner.



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

307 5.4. The name and address of the contractor.

308 6.5. The name and address of the surety on the payment bond
309 under s. 713.23, if any, and the amount of such bond.

310 7.6. The name and address of any person making a loan for
311 the construction of the improvements.

312 8.7. The name and address within the state of a person
313 other than himself or herself who may be designated by the owner
314 as the person upon whom notices or other documents may be served
315 under this part; and service upon the person so designated
316 constitutes service upon the owner.

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

319
320 Permit No..... Tax Folio No.....

321 NOTICE OF COMMENCEMENT

322 STATE OF FLORIDA State of....

323 COUNTY OF County of....

324
325 The undersigned hereby gives notice that improvement will be
326 made to certain real property, and in accordance with Chapter
327 713, Florida Statutes, the following information is provided in
328 this Notice of Commencement.

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



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



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360 designates of to receive a copy of the
361 Lienor's Notice as provided in Section 713.13(1)(b), Florida
362 Statutes.

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

365 10.9. Expiration date of notice of commencement (the
366 expiration date will be 1 year after ~~from~~ the date of recording
367 unless a different date is specified).....

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

378
379 ...(Signature of Owner or Lessee, or Owner's or Lessee's
380 Authorized Officer/Director/Partner/Manager)...

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

382
383 The foregoing instrument was acknowledged before me by means of
384 physical presence or sworn to (or affirmed) by online
385 notarization this day of, ...(year)...., by ...(name of
386 person)... as ...(type of authority, . . . e.g. officer,
387 trustee, attorney in fact)... for ...(name of party on behalf of
388 whom instrument was executed)....



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

390

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

392

393 Personally Known OR Produced Identification

394

395 Type of Identification Produced.....

396 Section 7. Subsections (1) , (3), and (4) of section

397 713.132, Florida Statutes, are amended to read:

398 713.132 Notice of termination.—

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

402 (a) The same information as the notice of commencement;

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

406 (c) A statement of the date as of which the notice of
407 commencement is terminated, which date may not be earlier than
408 30 days after the notice of termination is recorded;

409 (d) A statement specifying that the notice applies to all
410 the real property subject to the notice of commencement or
411 specifying the portion of such real property to which it
412 applies;

413 (e) A statement that all lienors have been paid in full;
414 and

415 (f) A statement that the owner has, before recording the
416 notice of termination, served a copy of the notice of
417 termination ~~on the contractor and~~ on each lienor who has a



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

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

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

437 (5) ~~(4)~~ A notice of termination must be served before
438 recording on each lienor who has a direct contract with the
439 owner and on each lienor who has timely and properly served a
440 notice to owner in accordance with this part before the
441 recording of the notice of termination. A notice of termination
442 must be recorded in the official records of the county in which
443 the project is located. If properly served before recording in
444 accordance with this subsection, the notice of termination
445 terminates the period of effectiveness of the notice of
446 commencement 30 days after the notice of termination is recorded



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

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

464 713.18 Manner of serving documents ~~notices and other~~
465 ~~instruments.~~

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

536 713.20 Waiver or release of liens.—

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

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

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

553 713.23 Payment bond.—

554 (1)

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



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



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

605
606 NOTICE OF NONPAYMENT

607
608 To ...(name of contractor and address)...
609 ...(name of surety and address)...

610
611 The undersigned lienor notifies you that:

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

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

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



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621 services, or materials)... for this improvement in the future
622 (if known), and the corresponding amount expected to become due
623 is \$.... (if known).

624
625 I declare that I have read the foregoing Notice of Nonpayment
626 and that the facts stated in it are true to the best of my
627 knowledge and belief.

628
629 DATED on,

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

631 STATE OF FLORIDA

632 COUNTY OF.....

633
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
643 Type of Identification Produced.....

644
645 Section 11. Subsections (3) and (5) of section 713.235,
646 Florida Statutes, are amended to read:

647 713.235 Waivers of right to claim against payment bond;
648 forms.—

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



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650 that is different from the forms in subsections (1) and (2) in
651 exchange for, or to induce payment of, a progress payment or
652 final payment, unless the claimant has entered into a direct
653 contract that requires the claimant to furnish a waiver that is
654 different from the forms in subsections (1) and (2).

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

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

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

671
672 ===== T I T L E A M E N D M E N T =====

673 And the title is amended as follows:

674 Delete lines 2 - 3

675 and insert:

676 An act relating to construction; amending s. 255.05,
677 F.S.; requiring that a copy of a notice of nonpayment
678 be served on the surety; prohibiting a person from



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



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708 under a payment bond; amending s. 713.29, F.S.;

709 authorizing attorney fees in actions to enforce a lien

710 that has been transferred to security; amending s.

711 218.80, F.S.; revising