

1                   A bill to be entitled  
2           An act relating to construction liens and bonds;  
3           amending s. 255.05, F.S.; requiring that a copy of a  
4           notice of nonpayment be served on the surety; revising  
5           the process for notarizing a notice of nonpayment;  
6           prohibiting a person from requiring a claimant to  
7           furnish a certain waiver in exchange for or to induce  
8           certain payments; providing that specified provisions  
9           in certain waivers are unenforceable; providing an  
10          exception; requiring service of documents to be made  
11          in a specified manner; amending s. 337.18, F.S.;  
12          providing that certain waivers apply to certain  
13          contracts; requiring service of documents to be made  
14          in a specified manner; amending s. 713.01, F.S.;  
15          revising definitions; amending s. 713.09, F.S.;  
16          authorizing a lienor to record one claim of lien for  
17          multiple direct contracts; amending s. 713.10, F.S.;  
18          revising the extent of certain liens; amending s.  
19          713.13, F.S.; revising information to be included in a  
20          notice of commencement; specifying that payments made  
21          by an owner before the recording of a notice of  
22          commencement are considered improper payments;  
23          revising the process for notarizing a notice of  
24          commencement; amending s. 713.132, F.S.; revising  
25          requirements for a notice of termination; amending s.

26 | 713.18, F.S.; requiring service of documents relating  
27 | to construction bonds to be made in a specified  
28 | manner; making technical changes; amending s. 713.20,  
29 | F.S.; prohibiting a person from requiring a lienor to  
30 | furnish a certain waiver or release in exchange for or  
31 | to induce certain payments; providing that specified  
32 | provisions in certain waivers or releases are  
33 | unenforceable; providing an exception; amending s.  
34 | 713.21, F.S.; authorizing the full or partial release  
35 | of a lien under specified conditions; amending s.  
36 | 713.23, F.S.; requiring that a copy of a notice of  
37 | nonpayment be served on the surety; revising the  
38 | process for notarizing a notice of nonpayment under a  
39 | payment bond; amending s. 713.235, F.S.; prohibiting a  
40 | person from requiring a lienor to furnish a certain  
41 | waiver or release in exchange for or to induce certain  
42 | payments; providing that specified provisions in  
43 | certain waivers or releases are unenforceable;  
44 | providing an exception; amending s. 713.29, F.S.;  
45 | authorizing attorney fees in actions to enforce a lien  
46 | that has been transferred to security; providing an  
47 | effective date.

48 |  
49 | Be It Enacted by the Legislature of the State of Florida:  
50 |

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

54 255.05 Bond of contractor constructing public buildings;  
 55 form; action by claimants.—

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

62  
 63 NOTICE OF CONTEST OF CLAIM  
 64 AGAINST PAYMENT BOND  
 65

66 To: ... (Name and address of claimant) ...  
 67

68 You are notified that the undersigned contests your notice  
 69 of nonpayment, dated ....., ....., and served on the  
 70 undersigned on ....., ....., and that the time within  
 71 which you may file suit to enforce your claim is limited to 60  
 72 days after the date of service of this notice.

73  
 74 DATED on ....., .....  
 75

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

77

78 The claim of a claimant upon whom such notice is served and who  
79 fails to institute a suit to enforce his or her claim against  
80 the payment bond within 60 days after service of such notice is  
81 extinguished automatically. The contractor or the contractor's  
82 attorney shall serve a copy of the notice of contest on ~~to~~ the  
83 claimant at the address shown in the notice of nonpayment or  
84 most recent amendment thereto and shall certify to such service  
85 on the face of the notice and record the notice.

86 2. A claimant, except a laborer, who is not in privity  
87 with the contractor shall, before commencing or not later than  
88 45 days after commencing to furnish labor, services, or  
89 materials for the prosecution of the work, serve the contractor  
90 with a written notice that he or she intends to look to the bond  
91 for protection. A claimant who is not in privity with the  
92 contractor and who has not received payment for furnishing his  
93 or her labor, services, or materials shall serve a written  
94 notice of nonpayment on the contractor and a copy of the notice  
95 on the surety. The notice of nonpayment shall be under oath and  
96 served during the progress of the work or thereafter but may not  
97 be served earlier than 45 days after the first furnishing of  
98 labor, services, or materials by the claimant or later than 90  
99 days after the final furnishing of the labor, services, or  
100 materials by the claimant or, with respect to rental equipment,

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101 later than 90 days after the date that the rental equipment was  
102 last on the job site available for use. Any notice of nonpayment  
103 served by a claimant who is not in privity with the contractor  
104 which includes sums for retainage must specify the portion of  
105 the amount claimed for retainage. An action for the labor,  
106 services, or materials may not be instituted against the  
107 contractor or the surety unless the notice to the contractor and  
108 notice of nonpayment have been served, if required by this  
109 section. Notices required or permitted under this section must  
110 be served in accordance with s. 713.18. A claimant may not waive  
111 in advance his or her right to bring an action under the bond  
112 against the surety. In any action brought to enforce a claim  
113 against a payment bond under this section, the prevailing party  
114 is entitled to recover a reasonable fee for the services of his  
115 or her attorney for trial and appeal or for arbitration, in an  
116 amount to be determined by the court, which fee must be taxed as  
117 part of the prevailing party's costs, as allowed in equitable  
118 actions. The time periods for service of a notice of nonpayment  
119 or for bringing an action against a contractor or a surety are  
120 ~~shall be~~ measured from the last day of furnishing labor,  
121 services, or materials by the claimant and may not be measured  
122 by other standards, such as the issuance of a certificate of  
123 occupancy or the issuance of a certificate of substantial  
124 completion. The negligent inclusion or omission of any  
125 information in the notice of nonpayment that has not prejudiced

126 | the contractor or surety does not constitute a default that  
 127 | operates to defeat an otherwise valid bond claim. A claimant who  
 128 | serves a fraudulent notice of nonpayment forfeits his or her  
 129 | rights under the bond. A notice of nonpayment is fraudulent if  
 130 | the claimant has willfully exaggerated the amount unpaid,  
 131 | willfully included a claim for work not performed or materials  
 132 | not furnished for the subject improvement, or prepared the  
 133 | notice with such willful and gross negligence as to amount to a  
 134 | willful exaggeration. However, a minor mistake or error in a  
 135 | notice of nonpayment, or a good faith dispute as to the amount  
 136 | unpaid, does not constitute a willful exaggeration that operates  
 137 | to defeat an otherwise valid claim against the bond. The service  
 138 | of a fraudulent notice of nonpayment is a complete defense to  
 139 | the claimant's claim against the bond. The notice of nonpayment  
 140 | under this subparagraph must include the following information,  
 141 | current as of the date of the notice, and must be in  
 142 | substantially the following form:

143 |  
 144 | NOTICE OF NONPAYMENT  
 145 |

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

147 |  
 148 | ... (name of surety and address) ...

149 |  
 150 | The undersigned claimant notifies you that:

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

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

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

163  
164 I declare that I have read the foregoing Notice of Nonpayment  
165 and that the facts stated in it are true to the best of my  
166 knowledge and belief.

167  
168 DATED on ....., .....

169  
170 ... (signature and address of claimant) ...

171  
172 STATE OF FLORIDA

173 COUNTY OF .....

174  
175 The foregoing instrument was sworn to (or affirmed) and

176 subscribed before me by means of  physical presence or sworn to  
 177 (or affirmed) by  online notarization this .... day of .....,  
 178 ... (year) ..., by ... (name of signatory) ....

179  
 180 ... (Signature of Notary Public - State of Florida) ...

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

183  
 184 Personally Known ..... OR Produced Identification .....

185  
 186 Type of Identification Produced

187  
 188 (d) A person may not require a claimant to furnish a  
 189 waiver that is different from the forms in paragraphs (b) and  
 190 (c) in exchange for, or to induce payment of, a progress payment  
 191 or final payment unless the claimant has entered into a direct  
 192 contract that requires the claimant to furnish a waiver that is  
 193 different from the forms in paragraphs (b) and (c).

194 (f) Any provisions in a waiver which are ~~that is~~ not  
 195 related to the waiver of a claim or a right to claim against a  
 196 payment bond as provided in this subsection are unenforceable,  
 197 unless the claimant has otherwise agreed to those provisions in  
 198 the direct contract ~~substantially similar to the forms in this~~  
 199 ~~subsection is enforceable in accordance with its terms.~~

200 (12) Unless otherwise provided in this section, service of



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

202 Section 2. Paragraph (c) of subsection (1) of section  
203 337.18, Florida Statutes, is amended, and subsection (6) is  
204 added to that section, to read:

205 337.18 Surety bonds for construction or maintenance  
206 contracts; requirement with respect to contract award; bond  
207 requirements; defaults; damage assessments.—

208 (1)

209 (c) A claimant, except a laborer, who is not in privity  
210 with the contractor shall, before commencing or not later than  
211 90 days after commencing to furnish labor, materials, or  
212 supplies for the prosecution of the work, furnish the contractor  
213 with a notice that he or she intends to look to the bond for  
214 protection. A claimant who is not in privity with the contractor  
215 and who has not received payment for his or her labor,  
216 materials, or supplies shall deliver to the contractor and to  
217 the surety written notice of the performance of the labor or  
218 delivery of the materials or supplies and of the nonpayment. The  
219 notice of nonpayment may be served at any time during the  
220 progress of the work or thereafter but not before 45 days after  
221 the first furnishing of labor, services, or materials, and not  
222 later than 90 days after the final furnishing of the labor,  
223 services, or materials by the claimant or, with respect to  
224 rental equipment, not later than 90 days after the date that the  
225 rental equipment was last on the job site available for use. An

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226 | action by a claimant, except a laborer, who is not in privity  
227 | with the contractor for the labor, materials, or supplies may  
228 | not be instituted against the contractor or the surety unless  
229 | both notices have been given. Written notices required or  
230 | permitted under this section must ~~may~~ be served in accordance  
231 | with any manner provided in s. 713.18, and provisions for the  
232 | waiver of a claim or a right to claim against a payment bond  
233 | contained in s. 713.235 apply to all contracts under this  
234 | section.

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

237 | Section 3. Subsections (4), (8), and (26) of section  
238 | 713.01, Florida Statutes, are amended to read:

239 | 713.01 Definitions.—As used in this part, the term:

240 | (4) "Clerk's office" means the office of the clerk of the  
241 | circuit court of the county, or another office serving as the  
242 | county recorder as provided by law, in which the real property  
243 | is located.

244 | (8) "Contractor" means a person other than a materialman  
245 | or laborer who enters into a contract with the owner of real  
246 | property for improving it, or who takes over from a contractor  
247 | as so defined the entire remaining work under such contract. The  
248 | term "contractor" includes an architect, landscape architect, or  
249 | engineer who improves real property pursuant to a design-build  
250 | contract authorized by s. 489.103(16). The term also includes a

251 licensed general contractor or building contractor, as those  
252 terms are defined in s. 489.105(3)(a) and (b), respectively, who  
253 provides construction management services, which include  
254 responsibility for scheduling and coordination in both  
255 preconstruction and construction phases and for the successful,  
256 timely, and economical completion of the construction project,  
257 or who provides program management services, which include  
258 responsibility for schedule control, cost control, and  
259 coordination in providing or procuring planning, design, and  
260 construction.

261 (26) "Real property" means the land that is improved and  
262 the improvements thereon, including fixtures, except any such  
263 property owned by the state or any county, municipality, school  
264 board, or governmental agency, commission, or political  
265 subdivision. The term includes a private leasehold interest that  
266 is improved, and the improvements thereon, on land that is owned  
267 by the state or any county, municipality, school board, or  
268 governmental agency, commission, or political subdivision.

269 Section 4. Section 713.09, Florida Statutes, is amended to  
270 read:

271 713.09 Single claim of lien.—A lienor may ~~is required to~~  
272 record only one claim of lien covering his or her entire demand  
273 against the real property when the amount demanded is for labor  
274 or services or material furnished for more than one improvement  
275 under the same direct contract or multiple direct contracts. The

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276 single claim of lien is sufficient even though the improvement  
277 is for one or more improvements located on separate lots,  
278 parcels, or tracts of land. If materials to be used on one or  
279 more improvements on separate lots, parcels, or tracts of land  
280 ~~under one direct contract~~ are delivered by a lienor to a place  
281 designated by the person with whom the materialman contracted,  
282 other than the site of the improvement, the delivery to the  
283 place designated is prima facie evidence of delivery to the site  
284 of the improvement and incorporation in the improvement. The  
285 single claim of lien may be limited to a part of multiple lots,  
286 parcels, or tracts of land and their improvements or may cover  
287 all of the lots, parcels, or tracts of land and improvements. If  
288 a ~~In each~~ claim of lien under this section is for multiple  
289 direct contracts, the owner under the direct contracts ~~contract~~  
290 must be the same person for all lots, parcels, or tracts of land  
291 against which a single claim of lien is recorded.

292 Section 5. Paragraph (b) of subsection (2) of section  
293 713.10, Florida Statutes, is amended, and subsection (4) is  
294 added to that section, to read:

295 713.10 Extent of liens.—

296 (2)

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

299 1. The lease, or a short form or a memorandum of the lease  
300 that contains the specific language in the lease prohibiting

301 such liability, is recorded in the official records of the  
302 county where the premises are located before the recording of a  
303 notice of commencement for improvements to the premises and the  
304 terms of the lease expressly prohibit such liability; or

305 2. The terms of the lease expressly prohibit such  
306 liability, and a notice advising that leases for the rental of  
307 premises on a parcel of land prohibit such liability has been  
308 recorded in the official records of the county in which the  
309 parcel of land is located before the recording of a notice of  
310 commencement for improvements to the premises, and the notice  
311 includes the following:

312 a. The name of the lessor.

313 b. The legal description of the parcel of land to which  
314 the notice applies.

315 c. The specific language contained in the various leases  
316 prohibiting such liability.

317 d. A statement that all or a majority of the leases  
318 entered into for premises on the parcel of land expressly  
319 prohibit such liability.

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

322

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

326 | liens or if provisions of each lease restricting the application  
 327 | of liens are not identical.

328 |       (4) The interest of the lessor is not subject to liens for  
 329 | improvements made by the lessee when the lessee is a mobile home  
 330 | owner who is leasing a mobile home lot in a mobile home park  
 331 | from the lessor.

332 |       Section 6. Paragraphs (a), (c), and (d) of subsection (1)  
 333 | of section 713.13, Florida Statutes, are amended to read:

334 |       713.13 Notice of commencement.—

335 |       (1) (a) Except for an improvement that is exempt under  
 336 | ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized  
 337 | agent before actually commencing to improve any real property,  
 338 | or recommencing completion of any improvement after default or  
 339 | abandonment, whether or not a project has a payment bond  
 340 | complying with s. 713.23, shall record a notice of commencement  
 341 | in the clerk's office and forthwith post either a certified copy  
 342 | thereof or a notarized statement that the notice of commencement  
 343 | has been filed for recording along with a copy thereof. The  
 344 | notice of commencement shall contain the following information:

345 |       1. A description sufficient for identification of the real  
 346 | property to be improved. The description should include the  
 347 | legal description of the property and also should include the  
 348 | street address and tax folio number of the property if available  
 349 | or, if there is no street address available, such additional  
 350 | information as will describe the physical location of the real

351 property to be improved.

352 2. A general description of the improvement.

353 3. The name and address of the owner, the owner's interest  
354 in the site of the improvement, and the name and address of the  
355 fee simple titleholder, if other than such owner.

356 4. The name and address of the lessee, if the ~~A lessee who~~  
357 contracts for the improvements as is ~~an owner as defined in s.~~  
358 713.01 ~~under s. 713.01(23) and must be listed as the owner~~  
359 ~~together with a statement that the ownership interest is a~~  
360 ~~leasehold interest.~~

361 5.4. The name and address of the contractor.

362 6.5. The name and address of the surety on the payment  
363 bond under s. 713.23, if any, and the amount of such bond.

364 7.6. The name and address of any person making a loan for  
365 the construction of the improvements.

366 8.7. The name and address within the state of a person  
367 other than himself or herself who may be designated by the owner  
368 as the person upon whom notices or other documents may be served  
369 under this part; and service upon the person so designated  
370 constitutes service upon the owner.

371 (c) If the contract between the owner and a contractor  
372 named in the notice of commencement expresses a period of time  
373 for completion for the construction of the improvement greater  
374 than 1 year, the notice of commencement must state that it is  
375 effective for a period of 1 year plus any additional period of

376 | time. Any payments made by the owner either before recording the  
 377 | notice of commencement or after the expiration of the notice of  
 378 | commencement are considered improper payments.

379 | (d) A notice of commencement must be in substantially the  
 380 | following form:

381 |  
 382 | Permit No..... Tax Folio No.....

383 | NOTICE OF COMMENCEMENT

384 | State of....

385 | County of....

386 |

387 | The undersigned hereby gives notice that improvement will be  
 388 | made to certain real property, and in accordance with Chapter  
 389 | 713, Florida Statutes, the following information is provided in  
 390 | this Notice of Commencement.

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

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

394 | 3.a. Owner: ...name and address....

395 | b. Owner's phone number:.... ~~Owner information or Lessee~~  
 396 | ~~information if the Lessee contracted for the improvement:~~

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

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

399 | c. Name and address of fee simple titleholder (if  
 400 | different from Owner listed above):.....



401            4.a. Lessee, if the lessee contracted for the improvement:  
 402            ...(name and address)....  
 403            b. Lessee's phone number:..... ~~a.~~  
 404            5.a. Contractor: ... (name and address)....  
 405            b. Contractor's phone number:.....  
 406            ~~6.5.~~ Surety (if applicable, a copy of the payment bond is  
 407 attached):  
 408            a. Name and address:.....  
 409            b. Phone number:.....  
 410            c. Amount of bond: \$.....  
 411            ~~7.a.6.a.~~ 7.a. Lender: ... (name and address)....  
 412            b. Lender's phone number:.....  
 413            ~~8.7.~~ Persons within the State of Florida designated by  
 414 Owner upon whom notices or other documents may be served as  
 415 provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida  
 416 Statutes:  
 417            a. Name and address:.....  
 418            b. Phone numbers of designated persons:.....  
 419            ~~9.a.8.a.~~ 9.a. In addition to himself or herself, Owner  
 420 designates ..... of ..... to receive a copy of the  
 421 Lienor's Notice as provided in Section 713.13(1)(b), Florida  
 422 Statutes.  
 423            b. Phone number of person or entity designated by  
 424 owner:.....  
 425            ~~10.9.~~ Expiration date of notice of commencement (the

426 | expiration date will be 1 year after ~~from~~ the date of recording  
 427 | unless a different date is specified).....

428 |  
 429 | WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE  
 430 | EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER  
 431 | PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA  
 432 | STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS  
 433 | TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND  
 434 | POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU  
 435 | INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN  
 436 | ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF  
 437 | COMMENCEMENT.

438 |  
 439 | ... (Signature of Owner or Lessee, or Owner's or Lessee's  
 440 | Authorized Officer/Director/Partner/Manager) ...

441 |  
 442 | ... (Signatory's Title/Office) ...

443 |  
 444 | The foregoing instrument was acknowledged before me by means of  
 445 |  physical presence or acknowledged before me by means of   
 446 | online notarization, this .... day of ....., ... (year) ..., by  
 447 | ... (name of person) ... as ... (type of authority, . . . e.g.  
 448 | officer, trustee, attorney in fact) ... for ... (name of party on  
 449 | behalf of whom instrument was executed) ....

450 |

451 ... (Signature of Notary Public - State of Florida) ...  
 452  
 453 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...  
 454  
 455       Personally Known .... OR Produced Identification ....  
 456  
 457       Type of Identification Produced.....  
 458       Section 7. Subsections (1), (3), and (4) of section  
 459 713.132, Florida Statutes, are amended to read:  
 460       713.132 Notice of termination.—  
 461       (1) An owner may terminate the period of effectiveness of  
 462 a notice of commencement by executing, swearing to, and  
 463 recording a notice of termination that contains:  
 464       (a) The same information as the notice of commencement;  
 465       (b) The official records' ~~recording office document book~~  
 466 ~~and page~~ reference numbers and recording date affixed by the  
 467 recording office on ~~of~~ the recorded notice of commencement;  
 468       (c) A statement of the date as of which the notice of  
 469 commencement is terminated, which date may not be earlier than  
 470 30 days after the notice of termination is recorded;  
 471       (d) A statement specifying that the notice applies to all  
 472 the real property subject to the notice of commencement or  
 473 specifying the portion of such real property to which it  
 474 applies;  
 475       (e) A statement that all lienors have been paid in full;

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476 and

477 (f) A statement that the owner has, before recording the  
478 notice of termination, served a copy of the notice of  
479 termination ~~on the contractor and~~ on each lienor who has a  
480 direct contract with the owner or who has timely served a notice  
481 to owner, and a statement that the owner will serve a copy of  
482 the notice of termination on each lienor who timely serves a  
483 notice to owner after the notice of termination has been  
484 recorded. The owner is not required to serve a copy of the  
485 notice of termination on any lienor who has executed a waiver  
486 and release of lien upon final payment in accordance with s.  
487 713.20.

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

492 (4) If an owner or a contractor, by fraud or collusion,  
493 knowingly makes any fraudulent statement or affidavit in a  
494 notice of termination or any accompanying affidavit, the owner  
495 and the contractor, or either of them, ~~as the case may be,~~ is  
496 liable to any lienor who suffers damages as a result of the  
497 filing of the fraudulent notice of termination, ~~and~~ and any such  
498 lienor has a right of action for damages ~~occasioned thereby.~~

499 (5) ~~(4)~~ A notice of termination must be served before  
500 recording on each lienor who has a direct contract with the

501 owner and on each lienor who has timely and properly served a  
502 notice to owner in accordance with this part before the  
503 recording of the notice of termination. A notice of termination  
504 must be recorded in the official records of the county in which  
505 the improvement is located. If properly served before recording  
506 in accordance with this subsection, the notice of termination  
507 terminates the period of effectiveness of the notice of  
508 commencement 30 days after the notice of termination is recorded  
509 ~~in the official records is effective to terminate the notice of~~  
510 ~~commencement at the later of 30 days after recording of the~~  
511 ~~notice of termination or a later the~~ date stated in the notice  
512 of termination as the date on which the notice of commencement  
513 is terminated. However, if a lienor who began work under the  
514 notice of commencement before its termination lacks a direct  
515 contract with the owner and timely serves his or her notice to  
516 owner after the notice of termination has been recorded, the  
517 owner must serve a copy of the notice of termination upon such  
518 lienor, and the termination of the notice of commencement as to  
519 that lienor is effective 30 days after service of the notice of  
520 termination ~~if the notice of termination has been served~~  
521 ~~pursuant to paragraph (1)(f) on the contractor and on each~~  
522 ~~lienor who has a direct contract with the owner or who has~~  
523 ~~served a notice to owner.~~

524 Section 8. Section 713.18, Florida Statutes, is amended to  
525 read:

526 713.18 Manner of serving documents ~~notices and other~~  
527 ~~instruments.~~

528 (1) Unless otherwise specifically provided by law, service  
529 of any document ~~notices, claims of lien, affidavits,~~  
530 ~~assignments, and other instruments~~ permitted or required under  
531 this part, s. 255.05, or s. 337.18, or copies thereof when so  
532 permitted or required, ~~unless otherwise specifically provided in~~  
533 ~~this part,~~ must be made by one of the following methods:

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

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

542 (c) By posting on the site of the improvement if service  
543 as provided by paragraph (a) or paragraph (b) cannot be  
544 accomplished.

545 (2) Notwithstanding subsection (1), service of a notice to  
546 owner or a preliminary notice to contractor under this part, s.  
547 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date  
548 of mailing and the requirements for service under this section  
549 have been satisfied if:

550 (a) The notice is mailed by registered, Global Express

551 Guaranteed, or certified mail, with postage prepaid, to the  
552 person to be served and addressed as prescribed ~~at any of the~~  
553 ~~addresses set forth~~ in subsection (3);

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

556 (c)1. The person who served the notice maintains a  
557 registered or certified mail log that shows the registered or  
558 certified mail number issued by the United States Postal  
559 Service, the name and address of the person served, and the date  
560 stamp of the United States Postal Service confirming the date of  
561 mailing; or

562 2. The person who served the notice maintains ~~electronic~~  
563 tracking records approved or generated by the United States  
564 Postal Service containing the postal tracking number, ~~the name~~  
565 ~~and address of the person served,~~ and verification of the date  
566 of receipt by the United States Postal Service.

567 (3) (a) Notwithstanding subsection (1), service of a  
568 document under an instrument pursuant to this section is  
569 effective on the date of mailing or shipping, and the  
570 requirements for service under this section have been satisfied,  
571 ~~the instrument~~ if the document is:

572 1. Is sent to the last address shown in the notice of  
573 commencement or any amendment thereto that is properly indexed  
574 and contains the information specified in s. 713.13(1)(b), or,  
575 ~~in the absence of a notice of commencement, to the last address~~

576 ~~shown in the building permit application,~~ or to the last known  
577 address of the person to be served unless otherwise specifically  
578 provided in this part, s. 255.05, or s. 337.18; and

579 2. Is returned as being "refused," "moved, not  
580 forwardable," or "unclaimed," or is otherwise not delivered or  
581 deliverable through no fault of the person serving the document  
582 item.

583 (b) If the address shown in the notice of commencement or  
584 any amendment thereto ~~to the notice of commencement, or, in the~~  
585 ~~absence of a notice of commencement, in the building permit~~  
586 ~~application,~~ is incomplete for purposes of mailing or delivery,  
587 the person serving the document ~~item~~ may complete the address  
588 and properly format it according to United States Postal Service  
589 addressing standards using information obtained from the  
590 property appraiser or another public record without affecting  
591 the validity of service under this section.

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

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

597 713.20 Waiver or release of liens.—

598 (6) A person may not require a lienor to furnish a lien  
599 waiver or release of lien that is different from the forms in  
600 subsection (4) or subsection (5) in exchange for, or to induce



601 payment of, a progress payment or final payment unless the  
602 lienor has entered into a direct contract that requires the  
603 lienor to furnish a waiver or release that is different from the  
604 forms in subsection (4) or subsection (5).

605 (8) Any provisions in a lien waiver or lien release which  
606 are ~~that is~~ not related to the waiver or release of a lien or  
607 the right to claim a lien as provided in this section are  
608 unenforceable, unless the lienor has otherwise agreed to those  
609 provisions in the direct contract ~~substantially similar to the~~  
610 ~~forms in subsections (4) and (5) is enforceable in accordance~~  
611 ~~with the terms of the lien waiver or lien release.~~

612 Section 10. Section 713.21, Florida Statutes, is amended  
613 to read:

614 713.21 Discharge of lien.—A lien properly perfected under  
615 this chapter may be discharged, or released in whole or in part,  
616 by any of the following methods:

617 (1) By entering satisfaction of the lien upon the margin  
618 of the record thereof in the clerk's office when not otherwise  
619 prohibited by law. This satisfaction shall be signed by the  
620 lienor, the lienor's agent or attorney and attested by said  
621 clerk. Any person who executes a claim of lien has ~~shall have~~  
622 authority to execute a satisfaction in the absence of actual  
623 notice of lack of authority to any person relying on the same.

624 (2) By the satisfaction or release of the lienor, duly  
625 acknowledged and recorded in the clerk's office. The

626 satisfaction or release must include the lienor's notarized  
627 signature and set forth the official records' reference numbers  
628 and recording date affixed by the recording office on the  
629 subject lien. Any person who executes a claim of lien has ~~shall~~  
630 ~~have~~ authority to execute a satisfaction or release in the  
631 absence of actual notice of lack of authority to any person  
632 relying on the same.

633 (3) By failure to begin an action to enforce the lien  
634 within the time prescribed in this part.

635 (4) By an order of the circuit court of the county where  
636 the property is located, as provided in this subsection. Upon  
637 filing a complaint therefor by any interested party the clerk  
638 shall issue a summons to the lienor to show cause within 20 days  
639 why his or her lien should not be enforced by action or vacated  
640 and canceled of record. Upon failure of the lienor to show cause  
641 why his or her lien should not be enforced or the lienor's  
642 failure to commence such action before the return date of the  
643 summons the court shall forthwith order cancellation of the  
644 lien.

645 (5) By recording in the clerk's office the original or a  
646 certified copy of a judgment or decree of a court of competent  
647 jurisdiction showing a final determination of the action.

648 Section 11. Paragraph (d) of subsection (1) of section  
649 713.23, Florida Statutes, is amended to read:

650 713.23 Payment bond.—

651 (1)

652 (d) In addition, a lienor who has not received payment for  
653 furnishing his or her labor, services, or materials must, as a  
654 condition precedent to recovery under the bond, serve a written  
655 notice of nonpayment on ~~to~~ the contractor and a copy of the  
656 notice on the surety. The notice must be under oath and served  
657 during the progress of the work or thereafter, but may not be  
658 served later than 90 days after the final furnishing of labor,  
659 services, or materials by the lienor, or, with respect to rental  
660 equipment, later than 90 days after the date the rental  
661 equipment was on the job site and available for use. A notice of  
662 nonpayment that includes sums for retainage must specify the  
663 portion of the amount claimed for retainage. The required notice  
664 satisfies this condition precedent with respect to the payment  
665 described in the notice of nonpayment, including unpaid finance  
666 charges due under the lienor's contract, and with respect to any  
667 other payments which become due to the lienor after the date of  
668 the notice of nonpayment. The time period for serving a notice  
669 of nonpayment is ~~shall be~~ measured from the last day of  
670 furnishing labor, services, or materials by the lienor and may  
671 not be measured by other standards, such as the issuance of a  
672 certificate of occupancy or the issuance of a certificate of  
673 substantial completion. The failure of a lienor to receive  
674 retainage sums not in excess of 10 percent of the value of  
675 labor, services, or materials furnished by the lienor is not

676 | considered a nonpayment requiring the service of the notice  
677 | provided under this paragraph. If the payment bond is not  
678 | recorded before commencement of construction, the time period  
679 | for the lienor to serve a notice of nonpayment may at the option  
680 | of the lienor be calculated from the date specified in this  
681 | section or the date the lienor is served a copy of the bond.  
682 | However, the limitation period for commencement of an action on  
683 | the payment bond as established in paragraph (e) may not be  
684 | expanded. The negligent inclusion or omission of any information  
685 | in the notice of nonpayment that has not prejudiced the  
686 | contractor or surety does not constitute a default that operates  
687 | to defeat an otherwise valid bond claim. A lienor who serves a  
688 | fraudulent notice of nonpayment forfeits his or her rights under  
689 | the bond. A notice of nonpayment is fraudulent if the lienor has  
690 | willfully exaggerated the amount unpaid, willfully included a  
691 | claim for work not performed or materials not furnished for the  
692 | subject improvement, or prepared the notice with such willful  
693 | and gross negligence as to amount to a willful exaggeration.  
694 | However, a minor mistake or error in a notice of nonpayment, or  
695 | a good faith dispute as to the amount unpaid, does not  
696 | constitute a willful exaggeration that operates to defeat an  
697 | otherwise valid claim against the bond. The service of a  
698 | fraudulent notice of nonpayment is a complete defense to the  
699 | lienor's claim against the bond. The notice under this paragraph  
700 | must include the following information, current as of the date

701 of the notice, and must be in substantially the following form:

702

703 NOTICE OF NONPAYMENT

704

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

706

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

708

709 The undersigned lienor notifies you that:

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

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

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

722

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

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

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

STATE OF FLORIDA  
COUNTY OF.....

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

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

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

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

Type of Identification Produced

Section 12. Subsections (3) and (5) of section 713.235,  
Florida Statutes, are amended to read:

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

(3) A person may not require a claimant to furnish a  
waiver that is different from the forms in subsections (1) and

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751 (2) in exchange for, or to induce payment of, a progress payment  
752 or final payment unless the claimant has entered into a direct  
753 contract that requires the claimant to furnish a waiver that is  
754 different from the forms in subsections (1) and (2).

755 (5) Any provisions in a waiver which are ~~that is~~ not  
756 related to the waiver of a claim or a right to claim against the  
757 payment bond as provided in this section are unenforceable,  
758 unless the claimant has otherwise agreed to those provisions in  
759 the claimant's direct contract ~~substantially similar to the~~  
760 ~~forms in this section is enforceable in accordance with its~~  
761 ~~terms.~~

762 Section 13. Section 713.29, Florida Statutes, is amended  
763 to read:

764 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to  
765 enforce a lien, including a lien that has been transferred to  
766 security, or to enforce a claim against a bond under this part,  
767 the prevailing party is entitled to recover a reasonable fee for  
768 the services of her or his attorney for trial and appeal or for  
769 arbitration, in an amount to be determined by the court, which  
770 fee must be taxed as part of the prevailing party's costs, as  
771 allowed in equitable actions.

772 Section 14. This act shall take effect July 1, 2021.