

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; revising the process for
21 notarizing a notice of commencement; amending s.
22 713.132, F.S.; revising requirements for a notice of
23 termination; amending s. 713.18, F.S.; requiring
24 service of documents relating to construction bonds to
25 be made in a specified manner; making technical

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

45

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

47

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

51 255.05 Bond of contractor constructing public buildings;
 52 form; action by claimants.—

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

59
 60 NOTICE OF CONTEST OF CLAIM
 61 AGAINST PAYMENT BOND
 62

63 To: ... (Name and address of claimant) ...
 64

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

71 DATED on,

72
 73 Signed: ... (Contractor or Attorney) ...
 74

75 The claim of a claimant upon whom such notice is served and who

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

83 | 2. A claimant, except a laborer, who is not in privity
84 | with the contractor shall, before commencing or not later than
85 | 45 days after commencing to furnish labor, services, or
86 | materials for the prosecution of the work, serve the contractor
87 | with a written notice that he or she intends to look to the bond
88 | for protection. A claimant who is not in privity with the
89 | contractor and who has not received payment for furnishing his
90 | or her labor, services, or materials shall serve a written
91 | notice of nonpayment on the contractor and a copy of the notice
92 | on the surety. The notice of nonpayment shall be under oath and
93 | served during the progress of the work or thereafter but may not
94 | be served earlier than 45 days after the first furnishing of
95 | labor, services, or materials by the claimant or later than 90
96 | days after the final furnishing of the labor, services, or
97 | materials by the claimant or, with respect to rental equipment,
98 | later than 90 days after the date that the rental equipment was
99 | last on the job site available for use. Any notice of nonpayment
100 | served by a claimant who is not in privity with the contractor

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

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

141 | NOTICE OF NONPAYMENT

142 |
 143 | To: ...(name of contractor and address)...
 144 |
 145 | ...(name of surety and address)...

146 |
 147 | The undersigned claimant notifies you that:

- 148 | 1. Claimant has furnished ...(describe labor, services, or
 149 | materials)... for the improvement of the real property
 150 | identified as ...(property description).... The corresponding

151 amount unpaid to date is \$...., of which \$.... is unpaid
152 retainage.

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

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

160
161 I declare that I have read the foregoing Notice of Nonpayment
162 and that the facts stated in it are true to the best of my
163 knowledge and belief.

164
165 DATED on,

166
167 ...(signature and address of claimant)...

168
169 STATE OF FLORIDA
170 COUNTY OF

171
172 The foregoing instrument was sworn to (or affirmed) and
173 subscribed before me by means of physical presence or sworn to
174 (or affirmed) by online notarization this day of,
175 ...(year)..., by ...(name of signatory)....

176
 177 ...(Signature of Notary Public - State of Florida)...
 178 ...(Print, Type, or Stamp Commissioned Name of Notary
 179 Public)...
 180
 181 Personally Known OR Produced Identification
 182
 183 Type of Identification Produced
 184
 185 (d) A person may not require a claimant to furnish a
 186 waiver that is different from the forms in paragraphs (b) and
 187 (c) in exchange for, or to induce payment of, a progress payment
 188 or final payment unless the claimant has entered into a direct
 189 contract that requires the claimant to furnish a waiver that is
 190 different from the forms in paragraphs (b) and (c).
 191 (f) Any provisions in a waiver which are ~~that is~~ not
 192 related to the waiver of a claim or a right to claim against a
 193 payment bond as provided in this subsection are unenforceable,
 194 unless the claimant has otherwise agreed to those provisions in
 195 the direct contract substantially similar to the forms in this
 196 subsection is enforceable in accordance with its terms.
 197 (12) Unless otherwise provided in this section, service of
 198 any document must be made in accordance with s. 713.18.
 199 Section 2. Paragraph (c) of subsection (1) of section
 200 337.18, Florida Statutes, is amended, and subsection (6) is

201 added to that section, to read:

202 337.18 Surety bonds for construction or maintenance
203 contracts; requirement with respect to contract award; bond
204 requirements; defaults; damage assessments.—

205 (1)

206 (c) A claimant, except a laborer, who is not in privity
207 with the contractor shall, before commencing or not later than
208 90 days after commencing to furnish labor, materials, or
209 supplies for the prosecution of the work, furnish the contractor
210 with a notice that he or she intends to look to the bond for
211 protection. A claimant who is not in privity with the contractor
212 and who has not received payment for his or her labor,
213 materials, or supplies shall deliver to the contractor and to
214 the surety written notice of the performance of the labor or
215 delivery of the materials or supplies and of the nonpayment. The
216 notice of nonpayment may be served at any time during the
217 progress of the work or thereafter but not before 45 days after
218 the first furnishing of labor, services, or materials, and not
219 later than 90 days after the final furnishing of the labor,
220 services, or materials by the claimant or, with respect to
221 rental equipment, not later than 90 days after the date that the
222 rental equipment was last on the job site available for use. An
223 action by a claimant, except a laborer, who is not in privity
224 with the contractor for the labor, materials, or supplies may
225 not be instituted against the contractor or the surety unless

226 both notices have been given. Written notices required or
227 permitted under this section must ~~may~~ be served in accordance
228 with any manner provided in s. 713.18, and provisions for the
229 waiver of a claim or a right to claim against a payment bond
230 contained in s. 713.235 apply to all contracts under this
231 section.

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

234 Section 3. Subsections (4), (8), and (26) of section
235 713.01, Florida Statutes, are amended to read:

236 713.01 Definitions.—As used in this part, the term:

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

241 (8) "Contractor" means a person other than a materialman
242 or laborer who enters into a contract with the owner of real
243 property for improving it, or who takes over from a contractor
244 as so defined the entire remaining work under such contract. The
245 term "contractor" includes an architect, landscape architect, or
246 engineer who improves real property pursuant to a design-build
247 contract authorized by s. 489.103(16). The term also includes a
248 licensed general contractor or building contractor, as those
249 terms are defined in s. 489.105(3)(a) and (b), respectively, who
250 provides construction management services, which include

251 responsibility for scheduling and coordination in both
252 preconstruction and construction phases and for the successful,
253 timely, and economical completion of the construction project,
254 or who provides program management services, which include
255 responsibility for schedule control, cost control, and
256 coordination in providing or procuring planning, design, and
257 construction.

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

266 Section 4. Section 713.09, Florida Statutes, is amended to
267 read:

268 713.09 Single claim of lien.—A lienor may ~~is required to~~
269 record only one claim of lien covering his or her entire demand
270 against the real property when the amount demanded is for labor
271 or services or material furnished for more than one improvement
272 under the same direct contract or multiple direct contracts. The
273 single claim of lien is sufficient even though the improvement
274 is for one or more improvements located on separate lots,
275 parcels, or tracts of land. If materials to be used on one or

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

289 Section 5. Paragraph (b) of subsection (2) of section
 290 713.10, Florida Statutes, is amended, and subsection (4) is
 291 added to that section, to read:

292 713.10 Extent of liens.—

293 (2)

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

296 1. The lease, or a short form or a memorandum of the lease
 297 that contains the specific language in the lease prohibiting
 298 such liability, is recorded in the official records of the
 299 county where the premises are located before the recording of a
 300 notice of commencement for improvements to the premises and the

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

- 309 a. The name of the lessor.
- 310 b. The legal description of the parcel of land to which
 311 the notice applies.
- 312 c. The specific language contained in the various leases
 313 prohibiting such liability.
- 314 d. A statement that all or a majority of the leases
 315 entered into for premises on the parcel of land expressly
 316 prohibit such liability.

317 ~~3. The lessee is a mobile home owner who is leasing a~~
 318 ~~mobile home lot in a mobile home park from the lessor.~~
 319

320 A notice that is consistent with subparagraph 2. effectively
 321 prohibits liens for improvements made by a lessee even if other
 322 leases for premises on the parcel do not expressly prohibit
 323 liens or if provisions of each lease restricting the application
 324 of liens are not identical.

325 (4) The interest of the lessor is not subject to liens for

326 improvements made by the lessee when the lessee is a mobile home
 327 owner who is leasing a mobile home lot in a mobile home park
 328 from the lessor.

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

331 713.13 Notice of commencement.—

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

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

349 2. A general description of the improvement.

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

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

353 4. The name and address of the lessee, if the ~~A~~ lessee ~~who~~
354 contracts for the improvements as is an owner as defined in s.
355 713.01 ~~under s. 713.01(23)~~ and ~~must be listed as the owner~~
356 ~~together with a statement that the ownership interest is a~~
357 ~~leasehold interest.~~

358 ~~5.4.~~ The name and address of the contractor.

359 ~~6.5.~~ The name and address of the surety on the payment
360 bond under s. 713.23, if any, and the amount of such bond.

361 ~~7.6.~~ The name and address of any person making a loan for
362 the construction of the improvements.

363 ~~8.7.~~ The name and address within the state of a person
364 other than himself or herself who may be designated by the owner
365 as the person upon whom notices or other documents may be served
366 under this part; and service upon the person so designated
367 constitutes service upon the owner.

368 (c) If the contract between the owner and a contractor
369 named in the notice of commencement expresses a period of time
370 for completion for the construction of the improvement greater
371 than 1 year, the notice of commencement must state that it is
372 effective for a period of 1 year plus any additional period of
373 time. Any payments made by the owner after the expiration of the
374 notice of commencement are considered improper payments.

375 (d) A notice of commencement must be in substantially the

376 following form:

377

378 Permit No.....

Tax Folio No.....

379

NOTICE OF COMMENCEMENT

380 State of....

381 County of....

382

383 The undersigned hereby gives notice that improvement will be
 384 made to certain real property, and in accordance with Chapter
 385 713, Florida Statutes, the following information is provided in
 386 this Notice of Commencement.

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

389 2. General description of improvement:.....

390 3.a. Owner: ...name and address....

391 b. Owner's phone number:.... ~~Owner information or Lessee~~
 392 ~~information if the Lessee contracted for the improvement:~~

393 ~~a.~~ Name and address:.....

394 ~~c.b.~~ Interest in property:.....

395 ~~d.e.~~ Name and address of fee simple titleholder (if
 396 different from Owner listed above):.....

397 4.a. Lessee, if the lessee contracted for the improvement:
 398 ...(name and address)....

399 b. Lessee's phone number:..... ~~a.~~

400 5.a. Contractor: ...(name and address)....

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

402 6.5. Surety (if applicable, a copy of the payment bond is

403 attached):

404 a. Name and address:.....

405 b. Phone number:.....

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

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

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

409 8.7. Persons within the State of Florida designated by

410 Owner upon whom notices or other documents may be served as

411 provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida

412 Statutes:

413 a. Name and address:.....

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

415 9.a.8.a. In addition to himself or herself, Owner

416 designates of to receive a copy of the

417 Lienor's Notice as provided in Section 713.13(1)(b), Florida

418 Statutes.

419 b. Phone number of person or entity designated by

420 owner:.....

421 10.9. Expiration date of notice of commencement (the

422 expiration date will be 1 year after ~~from~~ the date of recording

423 unless a different date is specified).....

424

425 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE

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

434

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

437

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

439

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

446

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

448

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

450

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

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

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

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

495 (5) ~~(4)~~ A notice of termination must be served before
496 recording on each lienor who has a direct contract with the
497 owner and on each lienor who has timely and properly served a
498 notice to owner in accordance with this part before the
499 recording of the notice of termination. A notice of termination
500 must be recorded in the official records of the county in which

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

520 Section 8. Section 713.18, Florida Statutes, is amended to
521 read:

522 713.18 Manner of serving documents ~~notices and other~~
523 ~~instruments.~~

524 (1) Unless otherwise specifically provided by law, service
525 of any document ~~notices, claims of lien, affidavits,~~

526 ~~assignments, and other instruments~~ permitted or required under
527 this part, s. 255.05, or s. 337.18, or copies thereof when so
528 permitted or required, ~~unless otherwise specifically provided in~~
529 ~~this part,~~ must be made by one of the following methods:

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

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

538 (c) By posting on the site of the improvement if service
539 as provided by paragraph (a) or paragraph (b) cannot be
540 accomplished.

541 (2) Notwithstanding subsection (1), service of a notice to
542 owner or a preliminary notice to contractor under this part, s.
543 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date
544 of mailing and the requirements for service under this section
545 have been satisfied if:

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

550 (b) The notice is mailed within 40 days after the date the

551 | lienor first furnishes labor, services, or materials; and

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

558 | 2. The person who served the notice maintains ~~electronic~~
559 | tracking records approved or generated by the United States
560 | Postal Service containing the postal tracking number, ~~the name~~
561 | ~~and address of the person served,~~ and verification of the date
562 | of receipt by the United States Postal Service.

563 | (3) (a) Notwithstanding subsection (1), service of a
564 | document under an instrument pursuant to this section is
565 | effective on the date of mailing or shipping, and the
566 | requirements for service under this section have been satisfied,
567 | ~~the instrument~~ if the document ~~it~~:

568 | 1. Is sent to the last address shown in the notice of
569 | commencement or any amendment thereto or, in the absence of a
570 | properly indexed notice of commencement that contains the
571 | information specified in s. 713.13(1)(b), ~~notice of~~
572 | ~~commencement,~~ to the last address shown in the building permit
573 | ~~application,~~ or to the last known address of the person to be
574 | served unless otherwise specifically provided in this part, s.
575 | 255.05, or s. 337.18; and

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

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

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

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

594 713.20 Waiver or release of liens.—

595 (6) A person may not require a lienor to furnish a lien
596 waiver or release of lien that is different from the forms in
597 subsection (4) or subsection (5) in exchange for, or to induce
598 payment of, a progress payment or final payment unless the
599 lienor has entered into a direct contract that requires the
600 lienor to furnish a waiver or release that is different from the

601 forms in subsection (4) or subsection (5).

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

609 Section 10. Section 713.21, Florida Statutes, is amended
 610 to read:

611 713.21 Discharge of lien.—A lien properly perfected under
 612 this chapter may be discharged, or released in whole or in part,
 613 by any of the following methods:

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

621 (2) By the satisfaction or release of the lienor, duly
 622 acknowledged and recorded in the clerk's office. The
 623 satisfaction or release must include the lienor's notarized
 624 signature and set forth the official records' reference numbers
 625 and recording date affixed by the recording office on the

626 subject lien. Any person who executes a claim of lien has ~~shall~~
627 ~~have~~ authority to execute a satisfaction or release in the
628 absence of actual notice of lack of authority to any person
629 relying on the same.

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

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

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

645 Section 11. Paragraph (d) of subsection (1) of section
646 713.23, Florida Statutes, is amended to read:

647 713.23 Payment bond.—

648 (1)

649 (d) In addition, a lienor who has not received payment for
650 furnishing his or her labor, services, or materials must, as a

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

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

700 NOTICE OF NONPAYMENT

701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725

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

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

The undersigned lienor notifies you that:

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

3. The lienor 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,

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

727 |

728 | STATE OF FLORIDA

729 | COUNTY OF.....

730 |

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

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

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

738 |

739 | Personally Known OR Produced Identification

740 |

741 | Type of Identification Produced

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

744 | 713.235 Waivers of right to claim against payment bond;
 745 | forms.—

746 | (3) A person may not require a claimant to furnish a
 747 | waiver that is different from the forms in subsections (1) and
 748 | (2) in exchange for, or to induce payment of, a progress payment
 749 | or final payment unless the claimant has entered into a direct
 750 | contract that requires the claimant to furnish a waiver that is

751 different from the forms in subsections (1) and (2).

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

759 Section 13. Section 713.29, Florida Statutes, is amended
 760 to read:

761 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
 762 enforce a lien, including a lien that has been transferred to
 763 security, or to enforce a claim against a bond under this part,
 764 the prevailing party is entitled to recover a reasonable fee for
 765 the services of her or his attorney for trial and appeal or for
 766 arbitration, in an amount to be determined by the court, which
 767 fee must be taxed as part of the prevailing party's costs, as
 768 allowed in equitable actions.

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