

By Senator Perry

8-00207D-21

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1 A bill to be entitled
2 An act relating to liens and bonds; amending s.
3 255.05, F.S.; requiring that a copy of a notice of
4 nonpayment be served on the surety; revising the
5 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

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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

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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
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 with
87 the contractor shall, before commencing or not later than 45

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88 days after commencing to furnish labor, services, or materials
89 for the prosecution of the work, serve the contractor with a
90 written notice that he or she intends to look to the bond for
91 protection. A claimant who is not in privity with the contractor
92 and who has not received payment for furnishing his or her
93 labor, services, or materials shall serve a written notice of
94 nonpayment on the contractor and a copy of the notice on the
95 surety. The notice of nonpayment shall be under oath and served
96 during the progress of the work or thereafter but may not be
97 served earlier than 45 days after the first furnishing of labor,
98 services, or materials by the claimant or later than 90 days
99 after the final furnishing of the labor, services, or materials
100 by the claimant or, with respect to rental equipment, later than
101 90 days after the date that the rental equipment was last on the
102 job site available for use. Any notice of nonpayment served by a
103 claimant who is not in privity with the contractor which
104 includes sums for retainage must specify the portion of the
105 amount claimed for retainage. An action for the labor, services,
106 or materials may not be instituted against the contractor or the
107 surety unless the notice to the contractor and notice of
108 nonpayment have been served, if required by this section.
109 Notices required or permitted under this section must be served
110 in accordance with s. 713.18. A claimant may not waive in
111 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

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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
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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

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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 waiver
 189 that is different from the forms in paragraphs (b) and (c) in
 190 exchange for, or to induce payment of, a progress payment or
 191 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

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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
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

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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 or
245 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

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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
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

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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 the
314 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 entered
318 into for premises on the parcel of land expressly prohibit such
319 liability.

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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

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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 bond
363 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

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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 different
400 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

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attached):

- a. Name and address:.....
- b. Phone number:.....
- c. Amount of bond: \$.....
- ~~7.a.6.a.~~ Lender: ... (name and address)....
- b. Lender's phone number:.....
- ~~8.7.~~ Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida Statutes:
 - a. Name and address:.....
 - b. Phone numbers of designated persons:.....
 - ~~9.a.8.a.~~ In addition to himself or herself, Owner designates of to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.
 - b. Phone number of person or entity designated by owner:.....
 - ~~10.9.~~ Expiration date of notice of commencement (the expiration date will be 1 year after ~~from~~ the date of recording unless a different date is specified).....

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

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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 a
462 notice of commencement by executing, swearing to, and recording
463 a notice of termination that contains:

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

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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;
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

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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,⁷ 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~~

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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 as
543 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

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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 ~~it~~:

572 1. Is sent to the last address shown in the notice of
573 commencement or any amendment thereto or, in the absence of a
574 properly indexed notice of commencement that contains the
575 information specified in s. 713.13(1)(b), ~~notice of~~
576 ~~commencement,~~ ~~to the last address shown in the building permit~~
577 ~~application,~~ or to the last known address of the person to be
578 served unless otherwise specifically provided in this part, s.
579 255.05, or s. 337.18; and

580 2. Is returned as being "refused," "moved, not

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581 forwardable," or "unclaimed," or is otherwise not delivered or
582 deliverable through no fault of the person serving the document
583 ~~item~~.

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

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

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

598 713.20 Waiver or release of liens.—

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

606 (8) Any provisions in a lien waiver or lien release which
607 are that is not related to the waiver or release of a lien or
608 the right to claim a lien as provided in this section are
609 unenforceable, unless the lienor has otherwise agreed to those

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610 ~~provisions in the direct contract substantially similar to the~~
611 ~~forms in subsections (4) and (5) is enforceable in accordance~~
612 ~~with the terms of the lien waiver or lien release.~~

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

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

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

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

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

636 (4) By an order of the circuit court of the county where
637 the property is located, as provided in this subsection. Upon
638 filing a complaint therefor by any interested party the clerk

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639 shall issue a summons to the lienor to show cause within 20 days
640 why his or her lien should not be enforced by action or vacated
641 and canceled of record. Upon failure of the lienor to show cause
642 why his or her lien should not be enforced or the lienor's
643 failure to commence such action before the return date of the
644 summons the court shall forthwith order cancellation of the
645 lien.

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

649 Section 11. Paragraph (d) of subsection (1) of section
650 713.23, Florida Statutes, is amended to read:

651 713.23 Payment bond.—

652 (1)

653 (d) In addition, a lienor who has not received payment for
654 furnishing his or her labor, services, or materials must, as a
655 condition precedent to recovery under the bond, serve a written
656 notice of nonpayment on ~~to~~ the contractor and a copy of the
657 notice on the surety. The notice must be under oath and served
658 during the progress of the work or thereafter, but may not be
659 served later than 90 days after the final furnishing of labor,
660 services, or materials by the lienor, or, with respect to rental
661 equipment, later than 90 days after the date the rental
662 equipment was on the job site and available for use. A notice of
663 nonpayment that includes sums for retainage must specify the
664 portion of the amount claimed for retainage. The required notice
665 satisfies this condition precedent with respect to the payment
666 described in the notice of nonpayment, including unpaid finance
667 charges due under the lienor's contract, and with respect to any

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668 other payments which become due to the lienor after the date of
669 the notice of nonpayment. The time period for serving a notice
670 of nonpayment is ~~shall be~~ measured from the last day of
671 furnishing labor, services, or materials by the lienor and may
672 not be measured by other standards, such as the issuance of a
673 certificate of occupancy or the issuance of a certificate of
674 substantial completion. The failure of a lienor to receive
675 retainage sums not in excess of 10 percent of the value of
676 labor, services, or materials furnished by the lienor is not
677 considered a nonpayment requiring the service of the notice
678 provided under this paragraph. If the payment bond is not
679 recorded before commencement of construction, the time period
680 for the lienor to serve a notice of nonpayment may at the option
681 of the lienor be calculated from the date specified in this
682 section or the date the lienor is served a copy of the bond.
683 However, the limitation period for commencement of an action on
684 the payment bond as established in paragraph (e) may not be
685 expanded. The negligent inclusion or omission of any information
686 in the notice of nonpayment that has not prejudiced the
687 contractor or surety does not constitute a default that operates
688 to defeat an otherwise valid bond claim. A lienor who serves a
689 fraudulent notice of nonpayment forfeits his or her rights under
690 the bond. A notice of nonpayment is fraudulent if the lienor has
691 willfully exaggerated the amount unpaid, willfully included a
692 claim for work not performed or materials not furnished for the
693 subject improvement, or prepared the notice with such willful
694 and gross negligence as to amount to a willful exaggeration.
695 However, a minor mistake or error in a notice of nonpayment, or
696 a good faith dispute as to the amount unpaid, does not

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697 constitute a willful exaggeration that operates to defeat an
 698 otherwise valid claim against the bond. The service of a
 699 fraudulent notice of nonpayment is a complete defense to the
 700 lienor's claim against the bond. The notice under this paragraph
 701 must include the following information, current as of the date
 702 of the notice, and must be in substantially the following form:
 703

704 NOTICE OF NONPAYMENT

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

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

709
 710 The undersigned lienor notifies you that:

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

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

719 3. The lienor expects to furnish ...(describe labor,
 720 services, or materials)... for this improvement in the future
 721 (if known), and the corresponding amount expected to become due
 722 is \$.... (if known).
 723

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

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726 knowledge and belief.

727

728 DATED on,

729

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

731

732 STATE OF FLORIDA

733 COUNTY OF.....

734

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

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

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

742

743 Personally Known OR Produced Identification

744

745 Type of Identification Produced

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

748 713.235 Waivers of right to claim against payment bond;
749 forms.-

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

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

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

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

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

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