

By the Committee on Judiciary; and Senator Perry

590-02128-21

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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; 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

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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:

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NOTICE OF CONTEST OF CLAIM  
AGAINST PAYMENT BOND

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

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

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

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

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

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor with a written notice that he or she intends to look to the bond for

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

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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:

140  
141 NOTICE OF NONPAYMENT142  
143 To: ...(name of contractor and address)...144  
145 ...(name of surety and address)...

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The undersigned claimant notifies you that:

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

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

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

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

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

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

STATE OF FLORIDA  
COUNTY OF .....

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

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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) ...

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

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183 Type of Identification Produced

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185 (d) A person may not require a claimant to furnish a waiver  
186 that is different from the forms in paragraphs (b) and (c) in  
187 exchange for, or to induce payment of, a progress payment or  
188 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

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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



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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 or  
242 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

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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

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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 the  
311 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 entered  
315 into for premises on the parcel of land expressly prohibit such  
316 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.~~

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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.

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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 bond  
360 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:

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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: \$.....

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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

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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 a

458 notice of commencement by executing, swearing to, and recording

459 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



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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 any such

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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~~

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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 as  
539 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

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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

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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 to

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610 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 of  
615 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

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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

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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



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697 must include the following information, current as of the date  
698 of the notice, and must be in substantially the following form:

699

700 NOTICE OF NONPAYMENT

701

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

703

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

705

706 The undersigned lienor notifies you that:

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

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

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

719

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

723

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

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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 waiver  
747 that is different from the forms in subsections (1) and (2) in  
748 exchange for, or to induce payment of, a progress payment or  
749 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,

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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 to  
760 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.