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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 requiring that specified waivers be in a certain form;
7 requiring that service of documents be made in a
8 specified manner; amending s. 337.18, F.S.; providing
9 that certain waivers apply to certain contracts;
10 requiring that service of documents be made in a
11 specified manner; amending s. 713.01, F.S.; revising
12 definitions; amending s. 713.09, F.S.; authorizing a
13 lienor to record one claim of lien for multiple direct
14 contracts; amending s. 713.10, F.S.; revising the
15 extent of certain liens; amending s. 713.13, F.S.;
16 revising information to be included in a notice of
17 commencement; revising the process for notarizing a
18 notice of commencement; amending s. 713.132, F.S.;
19 revising requirements for a notice of termination;
20 amending s. 713.18, F.S.; requiring that service of
21 documents relating to construction bonds be made in a
22 specified manner; requiring that specified waivers and
23 releases be in a certain form; making technical
24 changes; amending s. 713.20, F.S.; requiring specified
25 waivers or releases be in a certain form; amending s.
26 713.21, F.S.; authorizing the full or partial release
27 of a lien under specified conditions; amending s.
28 713.23, F.S.; requiring that a copy of a notice of
29 nonpayment be served on the surety; revising the

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30 process for notarizing a notice of nonpayment under a
 31 payment bond; amending s. 713.235, F.S.; requiring
 32 that specified waivers be in a certain form; amending
 33 s. 713.29, F.S.; authorizing attorney fees in actions
 34 to enforce a lien that has been transferred to
 35 security; providing an effective date.

36

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

38

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

42 255.05 Bond of contractor constructing public buildings;
 43 form; action by claimants.—

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

50

51 NOTICE OF CONTEST OF CLAIM
 52 AGAINST PAYMENT BOND

53

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

55

56 You are notified that the undersigned contests your notice
 57 of nonpayment, dated,, and served on the
 58 undersigned on,, and that the time within

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59 which you may file suit to enforce your claim is limited to 60
60 days after the date of service of this notice.

61
62 DATED on,

63
64 Signed: ...(Contractor or Attorney)...

65
66 The claim of a claimant upon whom such notice is served and who
67 fails to institute a suit to enforce his or her claim against
68 the payment bond within 60 days after service of such notice is
69 extinguished automatically. The contractor or the contractor's
70 attorney shall serve a copy of the notice of contest on ~~to~~ the
71 claimant at the address shown in the notice of nonpayment or
72 most recent amendment thereto and shall certify to such service
73 on the face of the notice and record the notice.

74 2. A claimant, except a laborer, who is not in privity with
75 the contractor shall, before commencing or not later than 45
76 days after commencing to furnish labor, services, or materials
77 for the prosecution of the work, serve the contractor with a
78 written notice that he or she intends to look to the bond for
79 protection. A claimant who is not in privity with the contractor
80 and who has not received payment for furnishing his or her
81 labor, services, or materials shall serve a written notice of
82 nonpayment on the contractor and a copy of the notice on the
83 surety. The notice of nonpayment shall be under oath and served
84 during the progress of the work or thereafter but may not be
85 served earlier than 45 days after the first furnishing of labor,
86 services, or materials by the claimant or later than 90 days
87 after the final furnishing of the labor, services, or materials

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88 by the claimant or, with respect to rental equipment, later than
89 90 days after the date that the rental equipment was last on the
90 job site available for use. Any notice of nonpayment served by a
91 claimant who is not in privity with the contractor which
92 includes sums for retainage must specify the portion of the
93 amount claimed for retainage. An action for the labor, services,
94 or materials may not be instituted against the contractor or the
95 surety unless the notice to the contractor and notice of
96 nonpayment have been served, if required by this section.
97 Notices required or permitted under this section must be served
98 in accordance with s. 713.18. A claimant may not waive in
99 advance his or her right to bring an action under the bond
100 against the surety. In any action brought to enforce a claim
101 against a payment bond under this section, the prevailing party
102 is entitled to recover a reasonable fee for the services of his
103 or her attorney for trial and appeal or for arbitration, in an
104 amount to be determined by the court, which fee must be taxed as
105 part of the prevailing party's costs, as allowed in equitable
106 actions. The time periods for service of a notice of nonpayment
107 or for bringing an action against a contractor or a surety are
108 ~~shall be~~ measured from the last day of furnishing labor,
109 services, or materials by the claimant and may not be measured
110 by other standards, such as the issuance of a certificate of
111 occupancy or the issuance of a certificate of substantial
112 completion. The negligent inclusion or omission of any
113 information in the notice of nonpayment that has not prejudiced
114 the contractor or surety does not constitute a default that
115 operates to defeat an otherwise valid bond claim. A claimant who
116 serves a fraudulent notice of nonpayment forfeits his or her

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

131

132 NOTICE OF NONPAYMENT

133

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

135

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

137

138 The undersigned claimant notifies you that:

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

144 2. Claimant has been paid to date the amount of \$.... for
145 previously furnishing ...(describe labor, services, or

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146 materials)... for this improvement.

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

151
152 I declare that I have read the foregoing Notice of Nonpayment
153 and that the facts stated in it are true to the best of my
154 knowledge and belief.

155
156 DATED on,

157
158(signature and address of claimant)...

159
160 STATE OF FLORIDA
161 COUNTY OF

162
163 The foregoing instrument was sworn to (or affirmed) and
164 subscribed before me by means of physical presence or sworn to
165 (or affirmed) by online notarization this day of,
166 ...(year)..., by ...(name of signatory)....

167
168 ...(Signature of Notary Public - State of Florida)...

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

171
172 Personally Known OR Produced Identification

173
174 Type of Identification Produced

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(b) When a person is required to execute a waiver of his or her right to make a claim against the payment bond in exchange for, or to induce payment of, a progress payment, the waiver must ~~may~~ be in substantially the following form:

WAIVER OF RIGHT TO CLAIM
AGAINST THE PAYMENT BOND
(PROGRESS PAYMENT)

The undersigned, in consideration of the sum of \$...., hereby waives its right to claim against the payment bond for labor, services, or materials furnished through ...(insert date)... to ...(insert the name of your customer)... on the job of ...(insert the name of the owner)..., for improvements to the following described project:

(description of project)

This waiver does not cover any retention or any labor, services, or materials furnished after the date specified.

DATED ON,

...(Claimant)...

By:.....

(c) When a person is required to execute a waiver of his or her right to make a claim against the payment bond, in exchange for, or to induce payment of, the final payment, the waiver must

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204 may be in substantially the following form:

205

206 WAIVER OF RIGHT TO CLAIM

207 AGAINST THE PAYMENT BOND

208 (FINAL PAYMENT)

209

210 The undersigned, in consideration of the final payment in
211 the amount of \$...., hereby waives its right to claim against
212 the payment bond for labor, services, or materials furnished to
213 ...(insert the name of your customer)... on the job of
214 ...(insert the name of the owner)..., for improvements to the
215 following described project:

216

217 (description of project)

218

219 DATED ON,

220 ... (Claimant)...

221 By:.....

222

223 (d) A person may not require a claimant to provide furnish
224 a waiver that is different from the forms in paragraphs (b) and
225 (c).

226 ~~(f) A waiver that is not substantially similar to the forms~~
227 ~~in this subsection is enforceable in accordance with its terms.~~

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

230

231 Section 2. Paragraph (c) of subsection (1) of section
232 337.18, Florida Statutes, is amended, and subsection (6) is
added to that section, to read:

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233 337.18 Surety bonds for construction or maintenance
234 contracts; requirement with respect to contract award; bond
235 requirements; defaults; damage assessments.-

236 (1)

237 (c) A claimant, except a laborer, who is not in privity
238 with the contractor shall, before commencing or not later than
239 90 days after commencing to furnish labor, materials, or
240 supplies for the prosecution of the work, furnish the contractor
241 with a notice that he or she intends to look to the bond for
242 protection. A claimant who is not in privity with the contractor
243 and who has not received payment for his or her labor,
244 materials, or supplies shall deliver to the contractor and to
245 the surety written notice of the performance of the labor or
246 delivery of the materials or supplies and of the nonpayment. The
247 notice of nonpayment may be served at any time during the
248 progress of the work or thereafter but not before 45 days after
249 the first furnishing of labor, services, or materials, and not
250 later than 90 days after the final furnishing of the labor,
251 services, or materials by the claimant or, with respect to
252 rental equipment, not later than 90 days after the date that the
253 rental equipment was last on the job site available for use. An
254 action by a claimant, except a laborer, who is not in privity
255 with the contractor for the labor, materials, or supplies may
256 not be instituted against the contractor or the surety unless
257 both notices have been given. Written notices required or
258 permitted under this section must ~~may~~ be served in accordance
259 with any manner provided in s. 713.18, and provisions for the
260 waiver of a claim or a right to claim against a payment bond
261 contained in s. 713.235 apply to all contracts under this

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262 section.

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

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

267 713.01 Definitions.—As used in this part, the term:

268 (4) "Clerk's office" means the office of the clerk of the
269 circuit court of the county, or another office serving as the
270 county recorder as provided by law, in which the real property
271 is located.

272 (8) "Contractor" means a person other than a materialman or
273 laborer who enters into a contract with the owner of real
274 property for improving it, or who takes over from a contractor
275 as so defined the entire remaining work under such contract. The
276 term "contractor" includes an architect, landscape architect, or
277 engineer who improves real property pursuant to a design-build
278 contract authorized by s. 489.103(16). The term also includes a
279 licensed general contractor or building contractor, as those
280 terms are defined in s. 489.105(3)(a) and (b), respectively, who
281 provides construction management services, which include
282 responsibility for scheduling and coordination in both
283 preconstruction and construction phases and for the successful,
284 timely, and economical completion of the construction project,
285 or who provides program management services, which include
286 responsibility for schedule control, cost control, and
287 coordination in providing or procuring planning, design, and
288 construction.

289 Section 4. Section 713.09, Florida Statutes, is amended to
290 read:

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291 713.09 Single claim of lien.—A lienor may ~~is required to~~
292 record only one claim of lien covering his or her entire demand
293 against the real property when the amount demanded is for labor
294 or services or material furnished for more than one improvement
295 under the same direct contract or multiple direct contracts. The
296 single claim of lien is sufficient even though the improvement
297 is for one or more improvements located on separate lots,
298 parcels, or tracts of land. If materials to be used on one or
299 more improvements on separate lots, parcels, or tracts of land
300 ~~under one direct contract~~ are delivered by a lienor to a place
301 designated by the person with whom the materialman contracted,
302 other than the site of the improvement, the delivery to the
303 place designated is prima facie evidence of delivery to the site
304 of the improvement and incorporation in the improvement. The
305 single claim of lien may be limited to a part of multiple lots,
306 parcels, or tracts of land and their improvements or may cover
307 all of the lots, parcels, or tracts of land and improvements. If
308 ~~a In each~~ claim of lien under this section is for multiple
309 direct contracts, the owner under the direct contracts ~~contract~~
310 must be the same person for all lots, parcels, or tracts of land
311 against which a single claim of lien is recorded.

312 Section 5. Paragraph (b) of subsection (2) of section
313 713.10, Florida Statutes, is amended, and subsection (4) is
314 added to that section, to read:

315 713.10 Extent of liens.—

316 (2)

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

319 1. The lease, or a short form or a memorandum of the lease

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320 that contains the specific language in the lease prohibiting
321 such liability, is recorded in the official records of the
322 county where the premises are located before the recording of a
323 notice of commencement for improvements to the premises and the
324 terms of the lease expressly prohibit such liability; or

325 2. The terms of the lease expressly prohibit such
326 liability, and a notice advising that leases for the rental of
327 premises on a parcel of land prohibit such liability has been
328 recorded in the official records of the county in which the
329 parcel of land is located before the recording of a notice of
330 commencement for improvements to the premises, and the notice
331 includes the following:

332 a. The name of the lessor.

333 b. The legal description of the parcel of land to which the
334 notice applies.

335 c. The specific language contained in the various leases
336 prohibiting such liability.

337 d. A statement that all or a majority of the leases entered
338 into for premises on the parcel of land expressly prohibit such
339 liability.

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

342
343 A notice that is consistent with subparagraph 2. effectively
344 prohibits liens for improvements made by a lessee even if other
345 leases for premises on the parcel do not expressly prohibit
346 liens or if provisions of each lease restricting the application
347 of liens are not identical.

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

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349 improvements made by the lessee when the lessee is a mobile home
350 owner who is leasing a mobile home lot in a mobile home park
351 from the lessor.

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

354 713.13 Notice of commencement.—

355 (1) (a) Except for an improvement that is exempt under
356 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
357 agent before actually commencing to improve any real property,
358 or recommencing completion of any improvement after default or
359 abandonment, whether or not a project has a payment bond
360 complying with s. 713.23, shall record a notice of commencement
361 in the clerk's office and forthwith post either a certified copy
362 thereof or a notarized statement that the notice of commencement
363 has been filed for recording along with a copy thereof. The
364 notice of commencement shall contain the following information:

365 1. A description sufficient for identification of the real
366 property to be improved. The description should include the
367 legal description of the property and also should include the
368 street address and tax folio number of the property if available
369 or, if there is no street address available, such additional
370 information as will describe the physical location of the real
371 property to be improved.

372 2. A general description of the improvement.

373 3. The name and address of the owner, the owner's interest
374 in the site of the improvement, and the name and address of the
375 fee simple titleholder, if other than such owner.

376 4. The name and address of the lessee, if the A lessee who
377 contracts for the improvements as is an owner as defined in s.

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378 ~~713.01~~ under s. ~~713.01(23)~~ and must be listed as the owner
 379 together with a statement that the ownership interest is a
 380 leasehold interest.

381 ~~5.4.~~ The name and address of the contractor.

382 ~~6.5.~~ The name and address of the surety on the payment bond
 383 under s. 713.23, if any, and the amount of such bond.

384 ~~7.6.~~ The name and address of any person making a loan for
 385 the construction of the improvements.

386 ~~8.7.~~ The name and address within ~~the~~ state of a person
 387 other than himself or herself who may be designated by the owner
 388 as the person upon whom notices or other documents may be served
 389 under this part; and service upon the person so designated
 390 constitutes service upon the owner.

391 (c) If the contract between the owner and a contractor
 392 named in the notice of commencement expresses a period of time
 393 for completion for the construction of the improvement greater
 394 than 1 year, the notice of commencement must state that it is
 395 effective for a period of 1 year plus any additional period of
 396 time. Any payments made by the owner after the expiration of the
 397 notice of commencement are considered improper payments.

398 (d) A notice of commencement must be in substantially the
 399 following form:

400 Permit No..... Tax Folio No.....

401 NOTICE OF COMMENCEMENT

402 State of....

403 County of....

404
 405
 406 The undersigned hereby gives notice that improvement will be

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407 made to certain real property, and in accordance with Chapter
 408 713, Florida Statutes, the following information is provided in
 409 this Notice of Commencement.

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

412 2. General description of improvement:.....

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

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

416 ~~a. Name and address:.....~~

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

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

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

422 b. Lessee's phone number:.....

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

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

425 ~~6.5.~~ Surety (if applicable, a copy of the payment bond is
 426 attached):

427 a. Name and address:.....

428 b. Phone number:.....

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

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

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

432 ~~8.7.~~ Persons within the State of Florida designated by
 433 Owner upon whom notices or other documents may be served as
 434 provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
 435 Statutes:

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436 a. Name and address:.....

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

438 ~~9.a.8.a.~~ In addition to himself or herself, Owner
439 designates of to receive a copy of the
440 Lienor's Notice as provided in Section 713.13(1)(b), Florida
441 Statutes.

442 b. Phone number of person or entity designated by
443 owner:.....

444 ~~10.9.~~ Expiration date of notice of commencement (the
445 expiration date will be 1 year after ~~from~~ the date of recording
446 unless a different date is specified).....

447
448 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
449 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
450 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
451 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
452 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
453 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
454 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
455 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
456 COMMENCEMENT.

457
458 ...(Signature of Owner or Lessee, or Owner's or Lessee's
459 Authorized Officer/Director/Partner/Manager)...

460
461 ...(Signatory's Title/Office)...

462
463 The foregoing instrument was acknowledged before me by means of
464 physical presence or acknowledged before me by means of

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465 online notarization, this day of, ...(year)...., by
466 ...(name of person)... as ...(type of authority,...e.g. officer,
467 trustee, attorney in fact)... for ...(name of party on behalf of
468 whom instrument was executed)....

469

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

471

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

473

474 Personally Known OR Produced Identification

475

476 Type of Identification Produced.....

477

478 Section 7. Subsections (1), (3), and (4) of section
479 713.132, Florida Statutes, are amended to read:

480 713.132 Notice of termination.—

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

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

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

488 (c) A statement of the date as of which the notice of
489 commencement is terminated, which date may not be earlier than
490 30 days after the notice of termination is recorded;

491 (d) A statement specifying that the notice applies to all
492 the real property subject to the notice of commencement or
493 specifying the portion of such real property to which it

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494 applies;

495 (e) A statement that all lienors have been paid in full;
496 and

497 (f) A statement that the owner has, before recording the
498 notice of termination, served a copy of the notice of
499 termination ~~on the contractor and~~ on each lienor who has a
500 direct contract with the owner or who has timely served a notice
501 to owner, and a statement that the owner will serve a copy of
502 the notice of termination on each lienor who timely serves a
503 notice to owner after the notice of termination has been
504 recorded. The owner is not required to serve a copy of the
505 notice of termination on any lienor who has executed a waiver
506 and release of lien upon final payment in accordance with s.
507 713.20.

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

512 (4) If an owner or a contractor, by fraud or collusion,
513 knowingly makes any fraudulent statement or affidavit in a
514 notice of termination or any accompanying affidavit, the owner
515 and the contractor, or either of them, ~~as the case may be,~~ is
516 liable to any lienor who suffers damages as a result of the
517 filing of the fraudulent notice of termination, ~~and~~ and any such
518 lienor has a right of action for damages ~~occasioned thereby.~~

519 (5) ~~(4)~~ A notice of termination must be served before
520 recording on each lienor who has a direct contract with the
521 owner and on each lienor who has timely and properly served a
522 notice to owner in accordance with this part before the

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523 recording of the notice of termination. A notice of termination
524 must be recorded in the official records of the county in which
525 the improvement is located. If properly served before recording
526 in accordance with this subsection, the notice of termination
527 terminates the period of effectiveness of the notice of
528 commencement 30 days after the notice of termination is recorded
529 in the official records ~~is effective to terminate the notice of~~
530 ~~commencement at the later of 30 days after recording of the~~
531 ~~notice of termination or a later~~ the date stated in the notice
532 of termination as the date on which the notice of commencement
533 is terminated. However, if a lienor who began work under the
534 notice of commencement before its termination lacks a direct
535 contract with the owner and timely serves his or her notice to
536 owner after the notice of termination has been recorded, the
537 owner must serve a copy of the notice of termination upon such
538 lienor, and the termination of the notice of commencement as to
539 that lienor is effective 30 days after service of the notice of
540 termination ~~if the notice of termination has been served~~
541 ~~pursuant to paragraph (1)(f) on the contractor and on each~~
542 ~~lienor who has a direct contract with the owner or who has~~
543 ~~served a notice to owner.~~

544 Section 8. Section 713.18, Florida Statutes, is amended to
545 read:

546 713.18 Manner of serving documents ~~notices and other~~
547 ~~instruments.~~

548 (1) Unless otherwise specifically provided by law, service
549 of any document notices, claims of lien, affidavits,
550 assignments, and other instruments permitted or required under
551 this part, s. 255.05, or s. 337.18, or copies thereof when so

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552 permitted or required, ~~unless otherwise specifically provided in~~
553 ~~this part~~, must be made by one of the following methods:

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

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

562 (c) By posting on the site of the improvement if service as
563 provided by paragraph (a) or paragraph (b) cannot be
564 accomplished.

565 (2) Notwithstanding subsection (1), service of a notice to
566 owner or a preliminary notice to contractor under this part, s.
567 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date
568 of mailing and the requirements for service under this section
569 have been satisfied if:

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

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

576 (c)1. The person who served the notice maintains a
577 registered or certified mail log that shows the registered or
578 certified mail number issued by the United States Postal
579 Service, the name and address of the person served, and the date
580 stamp of the United States Postal Service confirming the date of

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581 mailing; or

582 2. The person who served the notice maintains ~~electronic~~
583 tracking records approved or generated by the United States
584 Postal Service containing the postal tracking number, ~~the name~~
585 ~~and address of the person served,~~ and verification of the date
586 of receipt by the United States Postal Service.

587 (3) (a) Notwithstanding subsection (1), service of a
588 document under an instrument pursuant to this section is
589 effective on the date of mailing or shipping, and the
590 requirements for service under this section have been satisfied,
591 ~~the instrument if it:~~

592 1. The document is sent to the last address shown in the
593 notice of commencement or any amendment thereto or, in the
594 absence of a notice of commencement, to the last address shown
595 in the building permit application, or to the last known address
596 of the person to be served. ~~;~~ ~~and~~

597 2. The document is returned as being "refused," "moved, not
598 forwardable," or "unclaimed," or is otherwise not delivered or
599 deliverable through no fault of the person serving the document
600 ~~item.~~

601 (b) If the address shown in the notice of commencement or
602 any amendment thereto ~~to the notice of commencement, or, in the~~
603 ~~absence of a notice of commencement, in the building permit~~
604 ~~application,~~ is incomplete for purposes of mailing or delivery,
605 the person serving the document ~~item~~ may complete the address
606 and properly format it according to United States Postal Service
607 addressing standards using information obtained from the
608 property appraiser or another public record without affecting
609 the validity of service under this section.

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

613 Section 9. Subsections (4), (5), (6), and (8) of section
614 713.20, Florida Statutes, are amended to read:

615 713.20 Waiver or release of liens.—

616 (4) When a lienor is required to execute a waiver or
617 release of lien in exchange for, or to induce payment of, a
618 progress payment, the waiver or release must ~~may~~ be in
619 substantially the following form:

620
621 WAIVER AND RELEASE OF LIEN
622 UPON PROGRESS PAYMENT
623

624 The undersigned lienor, in consideration of the sum of
625 \$...., hereby waives and releases its lien and right to claim a
626 lien for labor, services, or materials furnished through
627 ...(insert date)... to ...(insert the name of your customer)...
628 on the job of ...(insert the name of the owner)... to the
629 following property:

630
631 ...(description of property)...

632
633 This waiver and release does not cover any retention or labor,
634 services, or materials furnished after the date specified.

635
636 DATED on, ...(year)....

...(Lienor)...

637 By:

638

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639 (5) When a lienor is required to execute a waiver or
640 release of lien in exchange for, or to induce payment of, the
641 final payment, the waiver and release must ~~may~~ be in
642 substantially the following form:

643
644 WAIVER AND RELEASE OF LIEN
645 UPON FINAL PAYMENT
646

647 The undersigned lienor, in consideration of the final
648 payment in the amount of \$....., hereby waives and releases
649 its lien and right to claim a lien for labor, services, or
650 materials furnished to ...(insert the name of your customer)...
651 on the job of ...(insert the name of the owner)... to the
652 following described property:

653
654 ...(description of property)...

655
656 DATED on, ...(year)....

...(Lienor)...

657 By:

658
659 (6) A person may not require a lienor to provide ~~furnish~~ a
660 lien waiver or release of lien that is different from the forms
661 in subsection (4) or subsection (5).

662 ~~(8) A lien waiver or lien release that is not substantially~~
663 ~~similar to the forms in subsections (4) and (5) is enforceable~~
664 ~~in accordance with the terms of the lien waiver or lien release.~~

665 Section 10. Section 713.21, Florida Statutes, is amended to
666 read:

667 713.21 Discharge of lien.—A lien properly perfected under

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668 this chapter may be discharged, or released in whole or in part,
669 by any of the following methods:

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

677 (2) By the satisfaction or release of the lienor, duly
678 acknowledged and recorded in the clerk's office. The
679 satisfaction or release must include the lienor's notarized
680 signature and set forth the official records' reference numbers
681 and recording date affixed by the recording office on the
682 subject lien. Any person who executes a claim of lien has ~~shall~~
683 ~~have~~ authority to execute a satisfaction or release in the
684 absence of actual notice of lack of authority to any person
685 relying on the same.

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

688 (4) By an order of the circuit court of the county where
689 the property is located, as provided in this subsection. Upon
690 filing a complaint therefor by any interested party the clerk
691 shall issue a summons to the lienor to show cause within 20 days
692 why his or her lien should not be enforced by action or vacated
693 and canceled of record. Upon failure of the lienor to show cause
694 why his or her lien should not be enforced or the lienor's
695 failure to commence such action before the return date of the
696 summons the court shall forthwith order cancellation of the

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697 lien.

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

701 Section 11. Paragraph (d) of subsection (1) of section
702 713.23, Florida Statutes, is amended to read:

703 713.23 Payment bond.—

704 (1)

705 (d) In addition, a lienor who has not received payment for
706 furnishing his or her labor, services, or materials must, as a
707 condition precedent to recovery under the bond, serve a written
708 notice of nonpayment on ~~to~~ the contractor and a copy of the
709 notice on the surety. The notice must be under oath and served
710 during the progress of the work or thereafter, but may not be
711 served later than 90 days after the final furnishing of labor,
712 services, or materials by the lienor, or, with respect to rental
713 equipment, later than 90 days after the date the rental
714 equipment was on the job site and available for use. A notice of
715 nonpayment that includes sums for retainage must specify the
716 portion of the amount claimed for retainage. The required notice
717 satisfies this condition precedent with respect to the payment
718 described in the notice of nonpayment, including unpaid finance
719 charges due under the lienor's contract, and with respect to any
720 other payments which become due to the lienor after the date of
721 the notice of nonpayment. The time period for serving a notice
722 of nonpayment is ~~shall be~~ measured from the last day of
723 furnishing labor, services, or materials by the lienor and may
724 not be measured by other standards, such as the issuance of a
725 certificate of occupancy or the issuance of a certificate of

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726 substantial completion. The failure of a lienor to receive
727 retainage sums not in excess of 10 percent of the value of
728 labor, services, or materials furnished by the lienor is not
729 considered a nonpayment requiring the service of the notice
730 provided under this paragraph. If the payment bond is not
731 recorded before commencement of construction, the time period
732 for the lienor to serve a notice of nonpayment may at the option
733 of the lienor be calculated from the date specified in this
734 section or the date the lienor is served a copy of the bond.
735 However, the limitation period for commencement of an action on
736 the payment bond as established in paragraph (e) may not be
737 expanded. The negligent inclusion or omission of any information
738 in the notice of nonpayment that has not prejudiced the
739 contractor or surety does not constitute a default that operates
740 to defeat an otherwise valid bond claim. A lienor who serves a
741 fraudulent notice of nonpayment forfeits his or her rights under
742 the bond. A notice of nonpayment is fraudulent if the lienor has
743 willfully exaggerated the amount unpaid, willfully included a
744 claim for work not performed or materials not furnished for the
745 subject improvement, or prepared the notice with such willful
746 and gross negligence as to amount to a willful exaggeration.
747 However, a minor mistake or error in a notice of nonpayment, or
748 a good faith dispute as to the amount unpaid, does not
749 constitute a willful exaggeration that operates to defeat an
750 otherwise valid claim against the bond. The service of a
751 fraudulent notice of nonpayment is a complete defense to the
752 lienor's claim against the bond. The notice under this paragraph
753 must include the following information, current as of the date
754 of the notice, and must be in substantially the following form:

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NOTICE OF NONPAYMENT

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,

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

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784 STATE OF FLORIDA
785 COUNTY OF.....
786

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

791 ... (Signature of Notary Public - State of Florida) ...
792 ... (Print, Type, or Stamp Commissioned Name of Notary
793 Public) ...
794

795 Personally Known OR Produced Identification

796
797 Type of Identification Produced.....

798 Section 12. Section 713.235, Florida Statutes, is amended
799 to read:

800 713.235 Waivers of right to claim against payment bond;
801 forms.—

802 (1) When a person is required to execute a waiver of his or
803 her right to make a claim against a payment bond provided under
804 ~~pursuant to~~ s. 713.23 or s. 713.245, in exchange for, or to
805 induce payment of, a progress payment, the waiver must ~~may~~ be in
806 substantially the following form:

807
808 WAIVER OF RIGHT TO CLAIM
809 AGAINST THE PAYMENT BOND
810 (PROGRESS PAYMENT)
811

812 The undersigned, in consideration of the sum of \$....

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813 hereby waives its right to claim against the payment bond for
 814 labor, services, or materials furnished through ...(insert
 815 date)..., to ...(insert the name of your customer)... on the job
 816 of ...(insert the name of the owner)..., for improvements to the
 817 following described project:

818
 819 (description of project)

820

821 This waiver does not cover any retention or any labor, services,
 822 or materials furnished after the date specified.

823 DATED on

824 ... (Lienor)...

825 By:.....

826

827 (2) When a person is required to execute a waiver of his or
 828 her right to make a claim against a payment bond provided under
 829 ~~pursuant to~~ s. 713.23 or s. 713.245, in exchange for, or to
 830 induce payment of, the final payment, the waiver must ~~may~~ be in
 831 substantially the following form:

832

833 WAIVER OF RIGHT TO CLAIM

834 AGAINST THE PAYMENT BOND

835 (FINAL PAYMENT)

836

837 The undersigned, in consideration of the final payment in
 838 the amount of \$...., hereby waives its right to claim against
 839 the payment bond for labor, services, or materials furnished to
 840 ...(insert the name of your customer)... on the job of
 841 ...(insert the name of the owner)..., for improvements to the

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842 following described project:

843

844 (description of project)

845 DATED on

846 ... (Lienor) ...

847 By:

848

849 (3) A person may not require a claimant to provide furnish
850 a waiver that is different from the forms in subsections (1) and
851 (2).

852 (4) A person who executes a waiver in exchange for a check
853 may condition the waiver on payment of the check.

854 ~~(5) A waiver that is not substantially similar to the forms~~
855 ~~in this section is enforceable in accordance with its terms.~~

856 Section 13. Section 713.29, Florida Statutes, is amended to
857 read:

858 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
859 enforce a lien, including a lien that has been transferred to
860 security, or to enforce a claim against a bond under this part,
861 the prevailing party is entitled to recover a reasonable fee for
862 the services of her or his attorney for trial and appeal or for
863 arbitration, in an amount to be determined by the court, which
864 fee must be taxed as part of the prevailing party's costs, as
865 allowed in equitable actions.

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