

1 A bill to be entitled
 2 An act relating to liens and bonds; amending s.
 3 255.05, F.S.; revising when a notice of contest of
 4 claim against a payment bond must be served; requiring
 5 that a copy of a notice of nonpayment be served on the
 6 surety; revising the process for notarizing a notice
 7 of nonpayment; removing the authority for a contractor
 8 to file certain alternative forms of security rather
 9 than a bond; requiring service of documents to be made
 10 in a specified manner; conforming provisions to
 11 changes made by the act; making technical changes;
 12 amending s. 337.18, F.S.; requiring service of
 13 documents to be made in a specified manner; conforming
 14 provisions to changes made by the act; amending s.
 15 713.01, F.S.; revising and providing definitions;
 16 creating s. 713.011, F.S.; providing for the
 17 computation of time when certain time periods fall on
 18 specified days or during a declared state of
 19 emergency; specifying when a clerk's office is
 20 considered open; amending s. 713.10, F.S.; revising
 21 the extent of certain liens; amending s. 713.13, F.S.;
 22 conforming a cross-reference; revising the process for
 23 notarizing a notice of commencement; amending s.
 24 713.132, F.S.; revising requirements for a notice of
 25 termination; revising when an owner may record a

26 notice of termination; specifying when a notice of
27 termination terminates the notice of commencement;
28 amending s. 713.135, F.S.; providing a definition;
29 providing applicability; making technical changes;
30 providing that an issuing authority is not liable for
31 failing to verify that specified information has been
32 filed; amending s. 713.18, F.S.; requiring service of
33 documents relating to construction bonds to be made in
34 a specified manner; making technical changes; amending
35 s. 713.21, F.S.; authorizing the full or partial
36 release of a lien under specified conditions; amending
37 s. 713.22, F.S.; requiring the clerk to serve a copy
38 of a notice of contest of lien on certain persons
39 after it has been recorded; amending s. 713.23, F.S.;
40 requiring that a copy of a notice of nonpayment be
41 served on the surety; revising the process for
42 notarizing a notice of nonpayment under a payment
43 bond; amending s. 713.24, F.S.; revising the amount
44 required in addition to the deposit or bond that
45 applies toward attorney fees and costs; requiring the
46 clerk to make a copy of the deposit or bond used to
47 transfer a lien to other security and mail it to the
48 lienor; repealing s. 713.25, F.S., relating to
49 applicability of ch. 65-456; amending s. 713.29, F.S.;
50 authorizing attorney fees in actions to enforce a lien

51 that has been transferred to security; providing an
52 effective date.

53

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

55

56 Section 1. Paragraph (a) of subsection (2) and subsection
57 (7) of section 255.05, Florida Statutes, are amended, and a new
58 subsection (11) is added to that section, to read:

59 255.05 Bond of contractor constructing public buildings;
60 form; action by claimants.-

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

67

68 NOTICE OF CONTEST OF CLAIM
69 AGAINST PAYMENT BOND

70

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

72

73 You are notified that the undersigned contests your notice
74 of nonpayment, dated,, and served on the
75 undersigned on,, and that the time within

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

78 |
 79 | DATED on,

80 |
 81 | Signed: ...(Contractor or Attorney)...

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

91 | 2. A claimant, except a laborer, who is not in privity
 92 | with the contractor shall, before commencing or not later than
 93 | 45 days after commencing to furnish labor, services, or
 94 | materials for the prosecution of the work, serve the contractor
 95 | with a written notice that he or she intends to look to the bond
 96 | for protection. If the payment bond is not recorded before the
 97 | commencement of work or before the recommencement of work after
 98 | a default or abandonment, if applicable, as required by s.
 99 | 255.05(1), then the claimant may serve the contractor with such
 100 | written notice up to 45 days after the date that the claimant is

101 served with a copy of the bond. A claimant who is not in privity
102 with the contractor and who has not received payment for
103 furnishing his or her labor, services, or materials shall serve
104 a written notice of nonpayment on the contractor and a copy of
105 the notice on the surety. The notice of nonpayment must ~~shall~~ be
106 under oath and served during the progress of the work or
107 thereafter but may not be served earlier than 45 days after the
108 first furnishing of labor, services, or materials by the
109 claimant or later than 90 days after the final furnishing of the
110 labor, services, or materials by the claimant or, with respect
111 to rental equipment, later than 90 days after the date that the
112 rental equipment was last on the ~~job~~ site of the improvement
113 available for use. Any notice of nonpayment served by a claimant
114 who is not in privity with the contractor which includes sums
115 for retainage must specify the portion of the amount claimed for
116 retainage. An action for the labor, services, or materials may
117 not be instituted against the contractor or the surety unless
118 the notice to the contractor and notice of nonpayment have been
119 served, if required by this section. Notices required or
120 permitted under this section must be served in accordance with
121 s. 713.18. A claimant may not waive in advance his or her right
122 to bring an action under the bond against the surety. In any
123 action brought to enforce a claim against a payment bond under
124 this section, the prevailing party is entitled to recover a
125 reasonable fee for the services of his or her attorney for trial

126 and appeal or for arbitration, in an amount to be determined by
127 the court or arbitrator, which fee must be taxed as part of the
128 prevailing party's costs, as allowed in equitable actions. The
129 time periods for service of a notice of nonpayment or for
130 bringing an action against a contractor or a surety are ~~shall be~~
131 measured from the last day of furnishing labor, services, or
132 materials by the claimant and may not be measured by other
133 standards, such as the issuance of a certificate of occupancy or
134 the issuance of a certificate of substantial completion. The
135 negligent inclusion or omission of any information in the notice
136 of nonpayment that has not prejudiced the contractor or surety
137 does not constitute a default that operates to defeat an
138 otherwise valid bond claim. A claimant who serves a fraudulent
139 notice of nonpayment forfeits his or her rights under the bond.
140 A notice of nonpayment is fraudulent if the claimant has
141 willfully exaggerated the amount unpaid, willfully included a
142 claim for work not performed or materials not furnished for the
143 subject improvement, or prepared the notice with such willful
144 and gross negligence as to amount to a willful exaggeration.
145 However, a minor mistake or error in a notice of nonpayment, or
146 a good faith dispute as to the amount unpaid, does not
147 constitute a willful exaggeration that operates to defeat an
148 otherwise valid claim against the bond. The service of a
149 fraudulent notice of nonpayment is a complete defense to the
150 claimant's claim against the bond. The notice of nonpayment

151 | under this subparagraph must include the following information,
 152 | current as of the date of the notice, and must be in
 153 | substantially the following form:

154 |
 155 | NOTICE OF NONPAYMENT

156 |
 157 | To: ...(name of contractor and address)...

158 |
 159 | ...(name of surety and address)...

160 |
 161 | The undersigned claimant notifies you that:

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

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

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

174 |
 175 | I declare that I have read the foregoing Notice of Nonpayment

176 | and that the facts stated in it are true to the best of my
177 | knowledge and belief.

178 |

179 | DATED on,

180 |

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

182 |

183 | STATE OF FLORIDA

184 | COUNTY OF

185 |

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

190 |

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

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

194 |

195 | Personally Known OR Produced Identification

196 |

197 | Type of Identification Produced

198 | (7) In lieu of the bond required by this section, a
199 | contractor may file with the state, county, city, or other
200 | political authority an alternative form of security in the form

201 of cash, a money order, a certified check, or a cashier's check,
 202 ~~an irrevocable letter of credit, or a security of a type listed~~
 203 ~~in part II of chapter 625.~~ Any such alternative form of security
 204 shall be for the same purpose and be subject to the same
 205 conditions as those applicable to the bond required by this
 206 section. The determination of the value of an alternative form
 207 of security shall be made by the appropriate state, county,
 208 city, or other political subdivision.

209 (11) Unless otherwise provided in this section, service of
 210 any document must be made in accordance with s. 713.18.

211 Section 2. Paragraph (c) of subsection (1) of section
 212 337.18, Florida Statutes, is amended, and subsection (6) is
 213 added to that section, to read:

214 337.18 Surety bonds for construction or maintenance
 215 contracts; requirement with respect to contract award; bond
 216 requirements; defaults; damage assessments.—

217 (1)

218 (c) A claimant, except a laborer, who is not in privity
 219 with the contractor shall, before commencing or not later than
 220 90 days after commencing to furnish labor, materials, or
 221 supplies for the prosecution of the work, furnish the contractor
 222 with a notice that he or she intends to look to the bond for
 223 protection. A claimant who is not in privity with the contractor
 224 and who has not received payment for his or her labor,
 225 materials, or supplies shall deliver to the contractor and to

226 | the surety written notice of the performance of the labor or
 227 | delivery of the materials or supplies and of the nonpayment. The
 228 | notice of nonpayment may be served at any time during the
 229 | progress of the work or thereafter but not before 45 days after
 230 | the first furnishing of labor, services, or materials, and not
 231 | later than 90 days after the final furnishing of the labor,
 232 | services, or materials by the claimant or, with respect to
 233 | rental equipment, not later than 90 days after the date that the
 234 | rental equipment was last on the ~~job~~ site of the improvement
 235 | available for use. An action by a claimant, except a laborer,
 236 | who is not in privity with the contractor for the labor,
 237 | materials, or supplies may not be instituted against the
 238 | contractor or the surety unless both notices have been given.
 239 | Written notices required or permitted under this section must
 240 | ~~may~~ be served in accordance with ~~any manner provided in~~ s.
 241 | 713.18.

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

244 | Section 3. Subsections (13) through (27) and subsections
 245 | (28) and (29) of section 713.01, Florida Statutes, are
 246 | renumbered as subsections (14) through (28) and subsections (30)
 247 | and (31), respectively, subsections (4), (8), and (12) of that
 248 | section are amended, and new subsections (13) and (29) are added
 249 | to that section, to read:

250 | 713.01 Definitions.—As used in this part, the term:

251 (4) "Clerk's office" means the office of the clerk of the
252 circuit court of the county, or another office serving as the
253 county recorder as provided by law, in which the real property
254 is located.

255 (8) "Contractor" means a person other than a materialman
256 or laborer who enters into a contract with the owner of real
257 property for improving it, or who takes over from a contractor
258 as so defined the entire remaining work under such contract. The
259 term "contractor" includes an architect, landscape architect, or
260 engineer who improves real property pursuant to a design-build
261 contract authorized by s. 489.103(16). The term also includes a
262 licensed general contractor or building contractor, as those
263 terms are defined in s. 489.105(3)(a) and (b), respectively, who
264 provides construction management services, which include
265 scheduling and coordinating both preconstruction and
266 construction phases for the construction project or who provides
267 program management services, which include schedule control,
268 cost control, and coordination in providing or procuring
269 planning, design, and construction.

270 (12) "Final furnishing" means the last date that the
271 lienor furnishes labor, services, or materials. Such date may
272 not be measured by other standards, such as the issuance of a
273 certificate of occupancy or the issuance of a certificate of
274 final completion, and does not include the correction of
275 deficiencies in the lienor's previously performed work or

276 materials supplied. With respect to rental equipment, the term
 277 means the date that the rental equipment was last on the ~~job~~
 278 site of the improvement and available for use. With respect to
 279 specially fabricated materials, the term means the date that the
 280 last portion of the specially fabricated materials is delivered
 281 to the site of the improvement, or if any portion of the
 282 specially fabricated materials is not delivered to the site of
 283 the improvement by no fault of the lienor, the term means 90
 284 days after the date the lienor completes the fabrication or 90
 285 days before the expiration of the notice of commencement,
 286 whichever is earlier.

287 (13) "Finance charge" means a contractually specified
 288 additional amount to be paid by the obligor on any balance that
 289 remains unpaid by the due date set forth in the credit agreement
 290 or other contract.

291 (29) "Specially fabricated materials" means materials
 292 designed and fabricated for use in a particular improvement that
 293 are not generally suited for or readily adaptable for use in a
 294 similar improvement.

295 Section 4. Section 713.011, Florida Statutes, is created
 296 to read:

297 713.011 Computation of time.—

298 (1) In computing any time period for recording a document
 299 or filing an action under this part, if the last day of the time
 300 period is a Saturday, Sunday, legal holiday, or any day observed

301 as a holiday by the clerk's office, the time period is extended
 302 to the end of the next business day. In computing any other time
 303 period under this part, if the last day of the time period is a
 304 Saturday, Sunday, or legal holiday, the time period is extended
 305 to the end of the next business day.

306 (2) If a clerk's office is directed to close by a federal,
 307 state, or local governmental order in response to a state of
 308 emergency declared under chapter 252, the time periods for
 309 recording a document or filing an action with that clerk's
 310 office under this part are tolled until the first business day
 311 after the clerk's office reopens. For purposes of this
 312 subsection, a clerk's office is considered open if it is
 313 recording or filing documents submitted electronically.

314 Section 5. Paragraph (b) of subsection (2) of section
 315 713.10, Florida Statutes, is amended, and subsection (4) is
 316 added to that section, to read:

317 713.10 Extent of liens.—

318 (2)

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

321 1. The lease, or a short form or a memorandum of the lease
 322 that contains the specific language in the lease prohibiting
 323 such liability, is recorded in the official records of the
 324 county where the premises are located before the recording of a
 325 notice of commencement for improvements to the premises and the

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

- 334 a. The name of the lessor.
- 335 b. The legal description of the parcel of land to which
 336 the notice applies.
- 337 c. The specific language contained in the various leases
 338 prohibiting such liability.
- 339 d. A statement that all or a majority of the leases
 340 entered into for premises on the parcel of land expressly
 341 prohibit such liability.

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

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

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

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

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

356 713.13 Notice of commencement.—

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

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

375 2. A general description of the improvement.

376 | 3. The name and address of the owner, the owner's interest
 377 | in the site of the improvement, and the name and address of the
 378 | fee simple titleholder, if other than such owner. A lessee who
 379 | contracts for the improvements is an owner as defined under s.
 380 | 713.01 ~~s. 713.01(23)~~ and must be listed as the owner together
 381 | with a statement that the ownership interest is a leasehold
 382 | interest.

383 | 4. The name and address of the contractor.

384 | 5. The name and address of the surety on the payment bond
 385 | under s. 713.23, if any, and the amount of such bond.

386 | 6. The name and address of any person making a loan for
 387 | the construction of the improvements.

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

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

395 |
 396 | Permit No..... Tax Folio No.....

397 | NOTICE OF COMMENCEMENT

398 | State of....

399 | County of....

400 |

401 The undersigned hereby gives notice that improvement will be
 402 made to certain real property, and in accordance with Chapter
 403 713, Florida Statutes, the following information is provided in
 404 this Notice of Commencement.

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

407 2. General description of improvement:.....

408 3. Owner information or Lessee information if the Lessee
 409 contracted for the improvement:

410 a. Name and address:.....

411 b. Interest in property:.....

412 c. Name and address of fee simple titleholder (if
 413 different from Owner listed above):.....

414 4.a. Contractor: ...(name and address)....

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

416 5. Surety (if applicable, a copy of the payment bond is
 417 attached):

418 a. Name and address:.....

419 b. Phone number:.....

420 c. Amount of bond:\$.

421 6.a. Lender: ...(name and address)....

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

423 7. Persons within the State of Florida designated by Owner
 424 upon whom notices or other documents may be served as provided
 425 by Section 713.13(1)(a)7., Florida Statutes:

426 a. Name and address:.....

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

428 8.a. In addition to himself or herself, Owner designates

429 of to receive a copy of the Lienor's

430 Notice as provided in Section 713.13(1)(b), Florida Statutes.

431 b. Phone number of person or entity designated by

432 owner:.....

433 9. Expiration date of notice of commencement (the

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

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

436

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

438 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER

439 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA

440 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS

441 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND

442 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU

443 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN

444 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF

445 COMMENCEMENT.

446

447 ...(Signature of Owner or Lessee, or Owner's or Lessee's

448 Authorized Officer/Director/Partner/Manager)...

449

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

451
 452 The foregoing instrument was acknowledged before me by means of
 453 physical presence or acknowledged before me by means of
 454 online notarization, this day of, ... (year)...., by
 455 ... (name of person)... as ... (type of authority, . . . e.g.
 456 officer, trustee, attorney in fact)... for ... (name of party on
 457 behalf of whom instrument was executed)....

458
 459 ... (Signature of Notary Public - State of Florida) ...
 460
 461 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 462

463 Personally Known OR Produced Identification

464
 465 Type of Identification Produced.....

466 Section 7. Subsections (1), (3), and (4) of section
 467 713.132, Florida Statutes, are amended to read:

468 713.132 Notice of termination.-

469 (1) An owner may terminate the period of effectiveness of
 470 a notice of commencement by executing, swearing to, and
 471 recording a notice of termination that contains all of the
 472 following:

473 (a) The same information as the notice of commencement .

474 (b) The official records' ~~recording office document book~~
 475 ~~and page~~ reference numbers and recording date affixed by the

476 recording office on ~~of~~ the recorded notice of commencement.†

477 (c) A statement of the date as of which the notice of
478 commencement is terminated, which date may not be earlier than
479 30 days after the notice of termination is recorded.†

480 (d) A statement specifying that the notice applies to all
481 the real property subject to the notice of commencement or
482 specifying the portion of such real property to which it
483 applies.†

484 (e) A statement that all lienors have been paid in full.†
485 and

486 (f) A statement that the owner has, before recording the
487 notice of termination, served a copy of the notice of
488 termination ~~on the contractor and~~ on each lienor who has a
489 direct contract with the owner or who has timely served a notice
490 to owner, and a statement that the owner will serve a copy of
491 the notice of termination on each lienor who timely serves a
492 notice to owner after the notice of termination has been
493 recorded. The owner is not required to serve a copy of the
494 notice of termination on any lienor who has executed a waiver
495 and release of lien upon final payment in accordance with s.
496 713.20.

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

501 (4) If an owner or a contractor, by fraud or collusion,
 502 knowingly makes any fraudulent statement or affidavit in a
 503 notice of termination or any accompanying affidavit, the owner
 504 and the contractor, or either of them, ~~as the case may be,~~ is
 505 liable to any lienor who suffers damages as a result of the
 506 filing of the fraudulent notice of termination,~~†~~ and any such
 507 lienor has a right of action for damages ~~occasioned thereby.~~

508 (5)-(4) A notice of termination must be served before
 509 recording on each lienor who has a direct contract with the
 510 owner and on each lienor who has timely and properly served a
 511 notice to owner in accordance with this part before the
 512 recording of the notice of termination. A notice of termination
 513 must be recorded in the official records of the county in which
 514 the improvement is located. If properly served before recording
 515 in accordance with this subsection, the notice of termination
 516 terminates the period of effectiveness of the notice of
 517 commencement 30 days after the notice of termination is recorded
 518 in the official records ~~is effective to terminate the notice of~~
 519 ~~commencement at the later of 30 days after recording of the~~
 520 ~~notice of termination or a later~~ the date stated in the notice
 521 of termination as the date on which the notice of commencement
 522 is terminated. However, if a lienor who began work under the
 523 notice of commencement before its termination lacks a direct
 524 contract with the owner and timely serves his or her notice to
 525 owner after the notice of termination has been recorded, the

526 owner must serve a copy of the notice of termination upon such
527 lienor, and the termination of the notice of commencement as to
528 that lienor is effective 30 days after service of the notice of
529 termination, ~~if the notice of termination has been served~~
530 ~~pursuant to paragraph (1) (f) on the contractor and on each~~
531 ~~lienor who has a direct contract with the owner or who has~~
532 ~~served a notice to owner.~~

533 Section 8. Subsections (1) and (3) of section 713.135,
534 Florida Statutes, are amended to read:

535 713.135 Notice of commencement and applicability of lien.—

536 (1) When a ~~any~~ person applies for a building permit, the
537 authority issuing such permit shall:

538 (a) Print on the face of each permit card in no less than
539 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR
540 FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR
541 PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
542 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE
543 THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT
544 WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF
545 COMMENCEMENT."

546 (b) Provide the applicant and the owner of the real
547 property upon which improvements are to be constructed with a
548 printed statement stating that the right, title, and interest of
549 the person who has contracted for the improvement may be subject
550 to attachment under the Construction Lien Law. The Department of

551 Business and Professional Regulation shall furnish, for
552 distribution, the statement described in this paragraph, and the
553 statement must be a summary of the Construction Lien Law and
554 must include an explanation of the provisions of the
555 Construction Lien Law relating to the recording, and the posting
556 of copies, of notices of commencement and a statement
557 encouraging the owner to record a notice of commencement and
558 post a copy of the notice of commencement in accordance with s.
559 713.13. The statement must also contain an explanation of the
560 owner's rights if a lienor fails to furnish the owner with a
561 notice as provided in s. 713.06(2) and an explanation of the
562 owner's rights as provided in s. 713.22. The authority that
563 issues the building permit must obtain from the Department of
564 Business and Professional Regulation the statement required by
565 this paragraph and must mail, deliver by electronic mail or
566 other electronic format or facsimile, or personally deliver that
567 statement to the owner or, in a case in which the owner is
568 required to personally appear to obtain the permit, provide that
569 statement to any owner making improvements to real property
570 consisting of a single or multiple family dwelling up to and
571 including four units. However, the failure by the authorities to
572 provide the summary does not subject the issuing authority to
573 liability.

574 (c) In addition to providing the owner with the statement
575 as required by paragraph (b), inform each applicant who is not

576 the person whose right, title, and interest is subject to
577 attachment that, as a condition to the issuance of a building
578 permit, the applicant must promise in good faith that the
579 statement will be delivered to the person whose property is
580 subject to attachment.

581 (d) Furnish to the applicant two or more copies of a form
582 of notice of commencement conforming with s. 713.13.

583 (e) Require ~~If the direct contract is greater than \$2,500,~~
584 the applicant to ~~shall~~ file with the issuing authority before
585 ~~prior to~~ the first inspection ~~either a certified copy of the~~
586 ~~recorded~~ notice of commencement if the direct contract is
587 greater than \$2,500. For purposes of this paragraph, the term
588 "copy of the notice of commencement" means a certified copy of
589 the recorded notice of commencement, or a notarized statement
590 that the notice of commencement has been filed for recording,
591 along with a copy thereof, or the clerk's office official
592 records identifying information that includes the instrument
593 number for the notice of commencement or the number and page of
594 book where the notice of commencement is recorded, as identified
595 by the clerk.

596 1. In the absence of the filing of a ~~certified~~ copy of the
597 ~~recorded~~ notice of commencement, the issuing authority or a
598 private provider performing inspection services may not perform
599 or approve subsequent inspections until the applicant files by
600 mail, facsimile, hand delivery, or any other means such

601 ~~certified~~ copy with the issuing authority.

602 2. The ~~certified~~ copy of the notice of commencement must
603 contain the name and address of the owner, the name and address
604 of the contractor, and the location or address of the property
605 being improved. The issuing authority shall verify that the name
606 and address of the owner, the name of the contractor, and the
607 location or address of the property being improved which is
608 contained in the ~~certified~~ copy of the notice of commencement is
609 consistent with the information in the building permit
610 application.

611 3. The issuing authority shall provide the recording
612 information on the ~~certified~~ copy of the ~~recorded~~ notice of
613 commencement to any person upon request.

614 4. This subsection does not require the recording of a
615 notice of commencement before ~~prior to~~ the issuance of a
616 building permit. If a local government requires a separate
617 permit or inspection for installation of temporary electrical
618 service or other temporary utility service, land clearing, or
619 other preliminary site work, such permits may be issued and such
620 inspections may be conducted without providing the issuing
621 authority with a ~~certified~~ copy of the ~~a recorded~~ notice of
622 commencement ~~or a notarized statement regarding a recorded~~
623 ~~notice of commencement. This subsection does not apply to a~~
624 ~~direct contract to repair or replace an existing heating or air-~~
625 ~~conditioning system in an amount less than \$7,500.~~

626 (f)~~(e)~~ Not require that a notice of commencement be
 627 recorded as a condition of the application for, or processing or
 628 issuance of, a building permit. However, this paragraph does not
 629 modify or waive the inspection requirements set forth in this
 630 subsection.

631
 632 This subsection does not apply to a direct contract to repair or
 633 replace an existing heating or air-conditioning system in an
 634 amount less than \$7,500.

635 (3) An issuing authority under subsection (1) is not
 636 liable in any civil action for the failure to verify that a
 637 certified copy of the recorded notice of commencement, a
 638 notarized statement that the notice of commencement has been
 639 filed for recording along with a copy thereof, or the clerk's
 640 office official records identifying information that includes
 641 the instrument number for the notice of commencement or the
 642 number and page of book where the notice of commencement is
 643 recorded, as identified by the clerk, has been filed in
 644 accordance with this section.

645 Section 9. Section 713.18, Florida Statutes, is amended to
 646 read:

647 713.18 Manner of serving documents ~~notices and other~~
 648 ~~instruments.~~

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

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

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

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

663 (c) By posting on the site of the improvement if service
664 as provided by paragraph (a) or paragraph (b) cannot be
665 accomplished.

666 (2) Notwithstanding subsection (1), service of a notice to
667 owner or a preliminary notice to contractor under this part, s.
668 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date
669 of mailing and the requirements for service under this section
670 have been satisfied if all of the following requirements have
671 been met:

672 (a) The notice is mailed by registered, Global Express
673 Guaranteed, or certified mail, with postage prepaid, to the
674 person to be served and addressed as prescribed ~~at any of the~~
675 ~~addresses set forth~~ in subsection (3) ~~.~~

676 (b) The notice is mailed within 40 days after the date the
 677 lienor first furnishes labor, services, or materials. ~~;~~ and

678 (c)1. The person who served the notice maintains a
 679 registered or certified mail log that shows the registered or
 680 certified mail number issued by the United States Postal
 681 Service, the name and address of the person served, and the date
 682 stamp of the United States Postal Service confirming the date of
 683 mailing; or

684 2. The person who served the notice maintains ~~electronic~~
 685 tracking records approved or generated by the United States
 686 Postal Service containing the postal tracking number, ~~the name~~
 687 ~~and address of the person served,~~ and verification of the date
 688 of receipt by the United States Postal Service.

689 (3) (a) Notwithstanding subsection (1), service of a
 690 document under an instrument pursuant to this section is
 691 effective on the date of mailing or shipping, and the
 692 requirements for service under this section have been satisfied,
 693 ~~the instrument~~ if the document ~~is~~:

694 1. Is sent to the last address shown in the notice of
 695 commencement or any amendment thereto or, in the absence of a
 696 notice of commencement, to the last address shown in the
 697 building permit application, or to the last known address of the
 698 person to be served. ~~;~~ and

699 2. Is returned as being "refused," "moved, not
 700 forwardable," or "unclaimed," or is otherwise not delivered or

701 deliverable through no fault of the person serving the document
 702 ~~item~~.

703 (b) If the address shown in the notice of commencement or
 704 any amendment thereto ~~to the notice of commencement~~, or, in the
 705 absence of a notice of commencement, in the building permit
 706 application, is incomplete for purposes of mailing or delivery,
 707 the person serving the document ~~item~~ may complete the address
 708 and properly format it according to United States Postal Service
 709 addressing standards using information obtained from the
 710 property appraiser or another public record without affecting
 711 the validity of service under this section.

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

715 Section 10. Section 713.21, Florida Statutes, is amended
 716 to read:

717 713.21 Discharge of lien.—A lien properly perfected under
 718 this chapter may be discharged, or released in whole or in part,
 719 by any of the following methods:

720 (1) By entering satisfaction of the lien upon the margin
 721 of the record thereof in the clerk's office when not otherwise
 722 prohibited by law. This satisfaction shall be signed by the
 723 lienor, the lienor's agent or attorney and attested by said
 724 clerk. Any person who executes a claim of lien has ~~shall have~~
 725 authority to execute a satisfaction in the absence of actual

726 notice of lack of authority to any person relying on the same.

727 (2) By the satisfaction or release of the lienor, duly
728 acknowledged and recorded in the clerk's office. The
729 satisfaction or release must include the lienor's notarized
730 signature and set forth the official records' reference numbers
731 and recording date affixed by the recording office on the
732 subject lien. Any person who executes a claim of lien has ~~shall~~
733 ~~have~~ authority to execute a satisfaction or release in the
734 absence of actual notice of lack of authority to any person
735 relying on the same.

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

738 (4) By an order of the circuit court of the county where
739 the property is located, as provided in this subsection. Upon
740 filing a complaint therefor by any interested party the clerk
741 shall issue a summons to the lienor to show cause within 20 days
742 why his or her lien should not be enforced by action or vacated
743 and canceled of record. Upon failure of the lienor to show cause
744 why his or her lien should not be enforced or the lienor's
745 failure to commence such action before the return date of the
746 summons the court shall forthwith order cancellation of the
747 lien.

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

751 Section 11. Subsection (2) of section 713.22, Florida
 752 Statutes, is amended to read:

753 713.22 Duration of lien.—

754 (2) An owner or the owner's attorney may elect to shorten
 755 the time prescribed in subsection (1) within which to commence
 756 an action to enforce any claim of lien or claim against a bond
 757 or other security under s. 713.23 or s. 713.24 by recording in
 758 the clerk's office a notice in substantially the following form:

759 NOTICE OF CONTEST OF LIEN

760 To: ... (Name and address of lienor) ...

761 You are notified that the undersigned contests the claim of lien
 762 filed by you on, ... (year) ..., and recorded in Book
 763, Page, of the public records of County, Florida,
 764 and that the time within which you may file suit to enforce your
 765 lien is limited to 60 days from the date of service of this
 766 notice. This day of, ... (year)

767 Signed: ... (Owner or Attorney) ...

768 The lien of any lienor upon whom such notice is served and who
 769 fails to institute a suit to enforce his or her lien within 60
 770 days after service of such notice shall be extinguished
 771 automatically. The clerk shall serve, in accordance with s.
 772 713.18, a copy of the notice of contest to the lien claimant at
 773 the address shown in the claim of lien or most recent amendment
 774 thereto and shall certify to such service and the date of
 775 service on the face of the notice and record the notice. After

776 the clerk records the notice with the certificate of service,
777 the clerk must serve a copy of such notice to the lienor and to
778 the owner or the owner's attorney in accordance with s. 713.18.

779 Section 12. Paragraphs (d) and (e) of subsection (1) of
780 section 713.23, Florida Statutes, are amended to read:

781 713.23 Payment bond.—

782 (1)

783 (d) In addition, a lienor who has not received payment for
784 furnishing his or her labor, services, or materials must, as a
785 condition precedent to recovery under the bond, serve a written
786 notice of nonpayment on ~~to~~ the contractor and a copy of the
787 notice on the surety. The notice must be under oath and served
788 during the progress of the work or thereafter, but may not be
789 served later than 90 days after the final furnishing of labor,
790 services, or materials by the lienor, or, with respect to rental
791 equipment, later than 90 days after the date the rental
792 equipment was on the ~~job~~ site of the improvement and available
793 for use. A notice of nonpayment that includes sums for retainage
794 must specify the portion of the amount claimed for retainage.
795 The required notice satisfies this condition precedent with
796 respect to the payment described in the notice of nonpayment,
797 including unpaid finance charges due under the lienor's
798 contract, and with respect to any other payments which become
799 due to the lienor after the date of the notice of nonpayment.
800 The time period for serving a notice of nonpayment is ~~shall be~~

801 measured from the last day of furnishing labor, services, or
802 materials by the lienor and may not be measured by other
803 standards, such as the issuance of a certificate of occupancy or
804 the issuance of a certificate of substantial completion. The
805 failure of a lienor to receive retainage sums not in excess of
806 10 percent of the value of labor, services, or materials
807 furnished by the lienor is not considered a nonpayment requiring
808 the service of the notice provided under this paragraph. If the
809 payment bond is not recorded before commencement of
810 construction, the time period for the lienor to serve a notice
811 of nonpayment may, at the option of the lienor, be calculated
812 from the date specified in this section or the date the lienor
813 is served a copy of the bond. However, the limitation period for
814 commencement of an action on the payment bond as established in
815 paragraph (e) may not be expanded. The negligent inclusion or
816 omission of any information in the notice of nonpayment that has
817 not prejudiced the contractor or surety does not constitute a
818 default that operates to defeat an otherwise valid bond claim. A
819 lienor who serves a fraudulent notice of nonpayment forfeits his
820 or her rights under the bond. A notice of nonpayment is
821 fraudulent if the lienor has willfully exaggerated the amount
822 unpaid, willfully included a claim for work not performed or
823 materials not furnished for the subject improvement, or prepared
824 the notice with such willful and gross negligence as to amount
825 to a willful exaggeration. However, a minor mistake or error in

826 a notice of nonpayment, or a good faith dispute as to the amount
 827 unpaid, does not constitute a willful exaggeration that operates
 828 to defeat an otherwise valid claim against the bond. The service
 829 of a fraudulent notice of nonpayment is a complete defense to
 830 the lienor's claim against the bond. The notice under this
 831 paragraph must include the following information, current as of
 832 the date of the notice, and must be in substantially the
 833 following form:

834
 835 NOTICE OF NONPAYMENT

836
 837 To ...(name of contractor and address)...

838
 839 ...(name of surety and address)...

840
 841 The undersigned lienor notifies you that:

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

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

850 3. The lienor expects to furnish ...(describe labor,

851 services, or materials)... for this improvement in the future
852 (if known), and the corresponding amount expected to become due
853 is \$.... (if known).

854
855 I declare that I have read the foregoing Notice of Nonpayment
856 and that the facts stated in it are true to the best of my
857 knowledge and belief.

858
859 DATED on,

860
861 ... (signature and address of lienor)...

862
863 STATE OF FLORIDA
864 COUNTY OF.....

865
866 The foregoing instrument was sworn to (or affirmed) and
867 subscribed before me by means of physical presence or sworn to
868 (or affirmed) by online notarization, this day of,
869 ...(year)...., by ...(name of signatory)....

870 ...(Signature of Notary Public - State of Florida)..
871 ...(Print, Type, or Stamp Commissioned Name of Notary
872 Public)...

873
874 Personally Known OR Produced Identification

875

876 | Type of Identification Produced

877 | (e) An action for the labor, or ~~or~~ materials, or supplies may
 878 | not be instituted or prosecuted against the contractor or surety
 879 | unless both notices have been given, if required by this
 880 | section. An action may not be instituted or prosecuted against
 881 | the contractor or against the surety on the bond under this
 882 | section after 1 year from the performance of the labor or
 883 | completion of delivery of the materials and supplies. The time
 884 | period for bringing an action against the contractor or surety
 885 | on the bond is ~~shall be~~ measured from the last day of furnishing
 886 | labor, services, or materials by the lienor. The time period may
 887 | not be measured by other standards, such as the issuance of a
 888 | certificate of occupancy or the issuance of a certificate of
 889 | substantial completion. A contractor or the contractor's
 890 | attorney may elect to shorten the time within which an action to
 891 | enforce any claim against a payment bond provided under this
 892 | section or s. 713.245 must be commenced at any time after a
 893 | notice of nonpayment, if required, has been served for the claim
 894 | by recording in the clerk's office a notice in substantially the
 895 | following form:

896 | NOTICE OF CONTEST OF CLAIM
 897 | AGAINST PAYMENT BOND

898 | To: ... (Name and address of lienor) ...

899 | You are notified that the undersigned contests your notice
 900 | of nonpayment, dated,, and served on the undersigned

901 on , , and that the time within which you may file suit
 902 to enforce your claim is limited to 60 days after ~~from~~ the date
 903 of service of this notice.

904 DATED on ,

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

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

914 Section 13. Subsections (1) and (3) of section 713.24,
 915 Florida Statutes, are amended to read:

916 713.24 Transfer of liens to security.—

917 (1) Any lien claimed under this part may be transferred,
 918 by any person having an interest in the real property upon which
 919 the lien is imposed or the contract under which the lien is
 920 claimed, from such real property to other security by either:

921 (a) Depositing in the clerk's office a sum of money, or

922 (b) Filing in the clerk's office a bond executed as surety
 923 by a surety insurer licensed to do business in this state,

924
 925 either to be in an amount equal to the amount demanded in such

926 claim of lien, plus interest thereon at the legal rate for 3
927 years, plus \$5,000 ~~\$1,000~~ or 25 percent of the amount demanded
928 in the claim of lien, whichever is greater, to apply on any
929 ~~attorney~~ attorney's fees and court costs that may be taxed in
930 any proceeding to enforce said lien. Such deposit or bond shall
931 be conditioned to pay any judgment or decree which may be
932 rendered for the satisfaction of the lien for which such claim
933 of lien was recorded. Upon making such deposit or filing such
934 bond, the clerk shall make and record a certificate which must
935 include a copy of the deposit or bond used to transfer, showing
936 the transfer of the lien from the real property to the security
937 and shall mail a copy thereof together with a copy of the
938 deposit or bond used to transfer by registered or certified mail
939 to the lienor named in the claim of lien so transferred, at the
940 address stated therein. Upon filing the certificate of transfer,
941 the real property shall thereupon be released from the lien
942 claimed, and such lien shall be transferred to said security. In
943 the absence of allegations of privity between the lienor and the
944 owner, and subject to any order of the court increasing the
945 amount required for the lien transfer deposit or bond, no other
946 judgment or decree to pay money may be entered by the court
947 against the owner. The clerk is ~~shall be~~ entitled to a service
948 charge for making and serving the certificate, in the amount of
949 up to \$20, from which the clerk shall remit \$5 to the Department
950 of Revenue for deposit into the General Revenue Fund. If the

951 transaction involves the transfer of multiple liens, an
 952 additional charge of up to \$10 for each additional lien shall be
 953 charged, from which the clerk shall remit \$2.50 to the
 954 Department of Revenue for deposit into the General Revenue Fund.
 955 For recording the certificate and approving the bond, the clerk
 956 shall receive her or his usual statutory service charges as
 957 prescribed in s. 28.24. Any number of liens may be transferred
 958 to one such security.

959 (3) Any party having an interest in such security or the
 960 property from which the lien was transferred may at any time,
 961 and any number of times, file a complaint in chancery in the
 962 circuit court of the county where such security is deposited, or
 963 file a motion in a pending action to enforce a lien, for an
 964 order to require additional security, reduction of security,
 965 change or substitution of sureties, payment of discharge
 966 thereof, or any other matter affecting said security. If the
 967 court finds that the amount of the deposit or bond in excess of
 968 the amount claimed in the claim of lien is insufficient to pay
 969 the lienor's attorney ~~attorney's~~ fees and court costs incurred
 970 in the action to enforce the lien, the court must increase the
 971 amount of the cash deposit or lien transfer bond. Nothing in
 972 this section shall be construed to vest exclusive jurisdiction
 973 in the circuit courts over transfer bond claims for nonpayment
 974 of an amount within the monetary jurisdiction of the county
 975 courts.

976 Section 14. Section 713.25, Florida Statutes, is repealed.

977 Section 15. Section 713.29, Florida Statutes, is amended
978 to read:

979 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
980 enforce a lien, including a lien that has been transferred to
981 security, or to enforce a claim against a bond under this part,
982 the prevailing party is entitled to recover a reasonable fee for
983 the services of her or his attorney for trial and appeal or for
984 arbitration, in an amount to be determined by the court, which
985 fee must be taxed as part of the prevailing party's costs, as
986 allowed in equitable actions.

987 Section 16. This act shall take effect July 1, 2022.