

1 A bill to be entitled

2 An act relating to construction liens and bonds;  
3 amending s. 255.05, F.S.; requiring, rather than  
4 authorizing, a specified waiver to be in a certain  
5 form; authorizing a claimant to condition a waiver on  
6 the receipt of funds; providing that certain waivers  
7 are unenforceable; amending s. 713.015, F.S.; revising  
8 the notice a contractor must provide to an owner of  
9 certain real property if the direct contract between  
10 the owner and contractor is more than a specified  
11 amount; amending s. 713.03, F.S.; providing that a  
12 person may not have a lien on improved real property  
13 if the contractor was paid in full under the direct  
14 contract; amending s. 713.06, F.S.; providing that a  
15 person may not have a lien on improved real property  
16 if the contractor was paid in full under the direct  
17 contract; revising the notice that certain lienors  
18 must provide to an owner of real property before  
19 perfecting a lien and recording a claim of lien;  
20 amending s. 713.20, F.S.; requiring, rather than  
21 authorizing, a specified waiver to be in a certain  
22 form; authorizing a claimant to condition a waiver on  
23 the receipt of funds; providing that certain waivers  
24 are unenforceable; providing an effective date.  
25

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

27  
 28 **Section 1. Paragraphs (b) through (f) of subsection (2) of**  
 29 **section 255.05, Florida Statutes, are amended to read:**

30 255.05 Bond of contractor constructing public buildings;  
 31 form; action by claimants.—

32 (2)

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

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

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

46 (description of project)

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

49 DATED ON ....., .....

50 ...(Claimant)...

51 By:.....

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

56 WAIVER OF RIGHT TO CLAIM  
 57 AGAINST THE PAYMENT BOND  
 58 (FINAL PAYMENT)

59 The undersigned, in consideration of the final payment in  
 60 the amount of \$...., hereby waives its right to claim against  
 61 the payment bond for labor, services, or materials furnished to  
 62 ...(insert the name of your customer)... on the job of  
 63 ...(insert the name of the owner)..., for improvements to the  
 64 following described project:

65 (description of project)

66 DATED ON ....., .....

67 ...(Claimant)...

68 By:.....

69 (d) A person may not require a claimant to furnish a  
 70 waiver that is different from the forms in paragraphs (b) and  
 71 (c).

72 (e) A claimant who executes a waiver in exchange for a  
 73 payment check ~~may~~ condition the waiver on the receipt of funds  
 74 ~~payment of the check.~~

75 (f) A waiver that is not substantially similar to the

76 forms in this subsection is unenforceable ~~enforceable in~~  
 77 ~~accordance with its terms.~~

78 **Section 2. Subsection (1) of section 713.015, Florida**  
 79 **Statutes, is amended to read:**

80 713.015 Mandatory provisions for direct contracts.—

81 (1) Any direct contract greater than \$2,500 between an  
 82 owner and a contractor, related to improvements to real property  
 83 consisting of single or multiple family dwellings up to and  
 84 including four units, must contain the following notice  
 85 provision printed in no less than 12-point, capitalized,  
 86 boldfaced type on the front page of the contract or on a  
 87 separate page, signed by the owner and dated:

88 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-  
 89 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR  
 90 PROVIDE MATERIALS AND SERVICES FOR YOUR PROJECT AND ARE NOT PAID  
 91 IN FULL FOR SUCH WORK, MATERIALS, OR SERVICES MAY HAVE A RIGHT  
 92 TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY USING-  
 93 ~~THIS CLAIM IS KNOWN AS~~ A CONSTRUCTION LIEN. SPECIFICALLY, IF YOU  
 94 FAIL TO PAY IF YOUR CONTRACTOR THEN YOUR CONTRACTOR AND CERTAIN  
 95 OTHER PERSONS WORKING UNDER YOUR CONTRACTOR WHO ARE OWED MONEY  
 96 FOR THE WORK, MATERIALS, OR SERVICES THEY PROVIDED FOR YOUR  
 97 PROJECT MAY PLACE OR A SUBCONTRACTOR FAILS TO PAY  
 98 ~~SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE~~  
 99 ~~PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT,~~  
 100 ~~EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU~~

101 ~~FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A~~  
 102 LIEN ON YOUR PROPERTY TO SECURE PAYMENTS OWED. ~~THIS MEANS IF A~~  
 103 LIEN IS FILED ON YOUR PROPERTY, YOUR PROPERTY COULD BE SOLD  
 104 AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES  
 105 FOR WHICH YOU ~~THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE~~  
 106 FAILED TO PAY. ~~TO PROTECT YOURSELF,~~ YOU SHOULD PROTECT YOURSELF  
 107 BY STIPULATING ~~STIPULATE~~ IN THIS CONTRACT THAT BEFORE ANY  
 108 PAYMENT IS MADE, YOUR CONTRACTOR MUST ~~IS REQUIRED TO~~ PROVIDE YOU  
 109 WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT  
 110 HAS PROVIDED ~~TO~~ YOU WITH A "NOTICE TO OWNER." FLORIDA'S  
 111 CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU  
 112 CONSULT AN ATTORNEY.

113 **Section 3. Subsection (1) of section 713.03, Florida**  
 114 **Statutes, is amended to read:**

115 713.03 Liens for professional services.—

116 (1) Any person who performs services as architect,  
 117 landscape architect, interior designer, engineer, or surveyor  
 118 and mapper, subject to compliance with and the limitations  
 119 imposed by this part, has a lien on the real property improved  
 120 for any money that is owing to him or her for his or her  
 121 services used in connection with improving the real property or  
 122 for his or her services in supervising any portion of the work  
 123 of improving the real property, rendered in accordance with his  
 124 or her contract and with the direct contract. Notwithstanding  
 125 the foregoing, a person may not have a lien on the real property

126 improved if the contactor received payment in full for all  
127 moneys owed to date under the direct contract.

128 **Section 4. Subsection (1) and paragraph (c) of subsection**  
129 **(2) of section 713.06, Florida Statutes, are amended to read:**

130 713.06 Liens of persons not in privity; proper payments.—

131 (1) (a) A materialman or laborer, either of whom is not in  
132 privity with the owner, or a subcontractor or sub-subcontractor  
133 who complies with the provisions of this part and is subject to  
134 the limitations thereof, has a lien on the real property  
135 improved for any money that is owed to him or her for labor,  
136 services, or materials furnished in accordance with his or her  
137 contract and with the direct contract and for any unpaid finance  
138 charges due under the lienor's contract. Notwithstanding the  
139 foregoing, a person may not have a lien on the real property  
140 improved if the contactor received payment in full for all  
141 moneys owed to date under the direct contract.

142 (b) A materialman or laborer, either of whom is not in  
143 privity with the owner, or a subcontractor or sub-subcontractor  
144 who complies with the provisions of this part and is subject to  
145 the limitations thereof, also has a lien on the owner's real  
146 property for labor, services, or materials furnished to improve  
147 public property if the improvement of the public property is  
148 furnished in accordance with his or her contract and with the  
149 direct contract. Notwithstanding the foregoing, a person may not  
150 have a lien on the real property improved if the contactor

151 received payment in full for all moneys owed to date under the  
152 direct contract.

153 (c) The total amount of all liens allowed under this part  
154 for furnishing labor, services, or material covered by any  
155 certain direct contract must not exceed the amount of the  
156 contract price fixed by the direct contract except as provided  
157 in subsection (3).

158 (d) A person may not ~~No person may~~ have a lien under this  
159 section except those lienors specified in it, as their  
160 designations are defined in s. 713.01.

161 (2)

162 (c) The notice may be in substantially the following form  
163 and must include the information and the warning contained in  
164 the following form:

165  
166 WARNING! FLORIDA'S CONSTRUCTION LIEN LAW ALLOWS SOME UNPAID  
167 CONTRACTORS, SUBCONTRACTORS, AND MATERIAL SUPPLIERS TO FILE  
168 LIENS AGAINST YOUR PROPERTY IN CERTAIN CIRCUMSTANCES ~~EVEN IF YOU~~  
169 ~~HAVE MADE PAYMENT IN FULL.~~ UNDER FLORIDA LAW, YOUR FAILURE TO  
170 PAY THE CONTRACTOR IN FULL FOR ALL MONEYS OWED ON THE DIRECT  
171 CONTRACT ~~MAKE SURE THAT WE ARE PAID~~ MAY RESULT IN ONE OR MORE  
172 LIENS ~~A LIEN~~ AGAINST YOUR PROPERTY AND ~~YOUR PAYING TWICE.~~  
173 ~~TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN~~  
174 ~~RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.~~

175

NOTICE TO OWNER

To ... (Owner's name and address) ...

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows:

... (General description of services or materials) ... for the improvement of the real property identified as ... (property description) ... under an order given by.....

Florida law prescribes the serving of this notice and restricts your right to make payments under your contract in accordance with Section 713.06, Florida Statutes.

IMPORTANT INFORMATION FOR  
YOUR PROTECTION

Under Florida's laws, those who work on your property or provide materials and are not paid may have a right to enforce their claim for payment against your property using. ~~This claim is known as~~ a construction lien. If you fail to pay your contractor or neglect to make other legally required payments, fails to pay subcontractors, or material suppliers, and others or neglects to make other legally required payments, the people who are owed money may have the right to place a lien on ~~look to~~







