

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; prohibiting a
5 person from requiring a claimant to furnish a certain
6 waiver in exchange for or to induce certain payments;
7 providing that specified provisions in certain waivers
8 are unenforceable; providing an exception; amending s.
9 337.18, F.S.; providing that certain waivers apply to
10 certain contracts; amending s. 713.01, F.S.; revising
11 definitions; amending s. 713.09, F.S.; authorizing a
12 lienor to record one claim of lien for multiple direct
13 contracts; amending s. 713.13, F.S.; revising
14 information to be included in a notice of
15 commencement; amending s. 713.132, F.S.; revising
16 requirements for a notice of termination; amending s.
17 713.18, F.S.; providing the manner in which documents
18 relating to certain construction bonds must be served;
19 providing that service of a document may be by hand
20 delivery; providing that service of a document is
21 effective on the date of mailing or shipping; making
22 technical changes; amending ss. 713.20 and 713.235,
23 F.S.; prohibiting a person from requiring a lienor to
24 furnish a certain waiver or release in exchange for or
25 to induce certain payments; providing that specified

26 provisions in certain waivers or releases are
 27 unenforceable; providing an exception; amending s.
 28 713.23, F.S.; requiring that a copy of a notice of
 29 nonpayment be served on the surety; amending s.
 30 713.24, F.S.; revising the process to transfer a lien
 31 to security; revising the amounts of certain deposits
 32 or bonds; amending s. 713.29, F.S.; authorizing
 33 attorney fees in actions to enforce a lien that has
 34 been transferred to security; providing an effective
 35 date.

36

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

38

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

41 255.05 Bond of contractor constructing public buildings;
 42 form; action by claimants.—

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

49

NOTICE OF CONTEST OF CLAIM

50

AGAINST PAYMENT BOND

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

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

57 DATED on,

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

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

67 2. A claimant, except a laborer, who is not in privity
 68 with the contractor shall, before commencing or not later than
 69 45 days after commencing to furnish labor, services, or
 70 materials for the prosecution of the work, serve the contractor
 71 with a written notice that he or she intends to look to the bond
 72 for protection. A claimant who is not in privity with the
 73 contractor and who has not received payment for furnishing his
 74 or her labor, services, or materials shall serve a written
 75 notice of nonpayment on the contractor and a copy of the notice

76 | on the surety. The notice of nonpayment shall be under oath and
77 | served during the progress of the work or thereafter but may not
78 | be served earlier than 45 days after the first furnishing of
79 | labor, services, or materials by the claimant or later than 90
80 | days after the final furnishing of the labor, services, or
81 | materials by the claimant or, with respect to rental equipment,
82 | later than 90 days after the date that the rental equipment was
83 | last on the job site available for use. Any notice of nonpayment
84 | served by a claimant who is not in privity with the contractor
85 | which includes sums for retainage must specify the portion of
86 | the amount claimed for retainage. An action for the labor,
87 | services, or materials may not be instituted against the
88 | contractor or the surety unless the notice to the contractor and
89 | notice of nonpayment have been served, if required by this
90 | section. Notices required or permitted under this section must
91 | be served in accordance with s. 713.18. A claimant may not waive
92 | in advance his or her right to bring an action under the bond
93 | against the surety. In any action brought to enforce a claim
94 | against a payment bond under this section, the prevailing party
95 | is entitled to recover a reasonable fee for the services of his
96 | or her attorney for trial and appeal or for arbitration, in an
97 | amount to be determined by the court, which fee must be taxed as
98 | part of the prevailing party's costs, as allowed in equitable
99 | actions. The time periods for service of a notice of nonpayment
100 | or for bringing an action against a contractor or a surety are

101 ~~shall be~~ measured from the last day of furnishing labor,
102 services, or materials by the claimant and may not be measured
103 by other standards, such as the issuance of a certificate of
104 occupancy or the issuance of a certificate of substantial
105 completion. The negligent inclusion or omission of any
106 information in the notice of nonpayment that has not prejudiced
107 the contractor or surety does not constitute a default that
108 operates to defeat an otherwise valid bond claim. A claimant who
109 serves a fraudulent notice of nonpayment forfeits his or her
110 rights under the bond. A notice of nonpayment is fraudulent if
111 the claimant has willfully exaggerated the amount unpaid,
112 willfully included a claim for work not performed or materials
113 not furnished for the subject improvement, or prepared the
114 notice with such willful and gross negligence as to amount to a
115 willful exaggeration. However, a minor mistake or error in a
116 notice of nonpayment, or a good faith dispute as to the amount
117 unpaid, does not constitute a willful exaggeration that operates
118 to defeat an otherwise valid claim against the bond. The service
119 of a fraudulent notice of nonpayment is a complete defense to
120 the claimant's claim against the bond. The notice of nonpayment
121 under this subparagraph must include the following information,
122 current as of the date of the notice, and must be in
123 substantially the following form:

NOTICE OF NONPAYMENT

124
125 To: ...(name of contractor and address)...

151 ... (Print, Type, or Stamp Commissioned Name of Notary
 152 Public) ...
 153 Personally Known OR Produced Identification
 154 Type of Identification Produced.....

155 (d) A person may not require a claimant to furnish a
 156 waiver that is different from the forms in paragraphs (b) and
 157 (c) in exchange for, or to induce payment of, a progress payment
 158 or final payment, unless the claimant has entered into a direct
 159 contract that requires the claimant to furnish a waiver that is
 160 different from the forms in paragraphs (b) and (c).

161 (f) Any provisions in a waiver that are ~~is~~ not related to
 162 the waiver of right to claim against a payment bond as provided
 163 in this subsection are unenforceable, unless the claimant has
 164 otherwise agreed to those provisions in the claimant's direct
 165 contract substantially similar to the forms in this subsection
 166 is enforceable in accordance with its terms.

167 Section 2. Paragraph (c) of subsection (1) of section
 168 337.18, Florida Statutes, is amended to read:

169 337.18 Surety bonds for construction or maintenance
 170 contracts; requirement with respect to contract award; bond
 171 requirements; defaults; damage assessments.-

172 (1)

173 (c) A claimant, except a laborer, who is not in privity
 174 with the contractor shall, before commencing or not later than
 175 90 days after commencing to furnish labor, materials, or

176 supplies for the prosecution of the work, furnish the contractor
177 with a notice that he or she intends to look to the bond for
178 protection. A claimant who is not in privity with the contractor
179 and who has not received payment for his or her labor,
180 materials, or supplies shall deliver to the contractor and to
181 the surety written notice of the performance of the labor or
182 delivery of the materials or supplies and of the nonpayment. The
183 notice of nonpayment may be served at any time during the
184 progress of the work or thereafter but not before 45 days after
185 the first furnishing of labor, services, or materials, and not
186 later than 90 days after the final furnishing of the labor,
187 services, or materials by the claimant or, with respect to
188 rental equipment, not later than 90 days after the date that the
189 rental equipment was last on the job site available for use. An
190 action by a claimant, except a laborer, who is not in privity
191 with the contractor for the labor, materials, or supplies may
192 not be instituted against the contractor or the surety unless
193 both notices have been given. Notices required or permitted
194 under this section may be served in any manner provided in s.
195 713.18, and provisions for the waiver of claims against a
196 payment bond contained in s. 255.05(2) apply to all contracts
197 under this section.

198 Section 3. Subsections (8), (12), and (26) of section
199 713.01, Florida Statutes, are amended to read:

200 713.01 Definitions.—As used in this part, the term:

201 (8) "Contractor" means a person other than a materialman
202 or laborer who enters into a contract with the owner of real
203 property for improving it, or who takes over from a contractor
204 as so defined the entire remaining work under such contract. The
205 term "contractor" includes an architect, landscape architect, or
206 engineer who improves real property pursuant to a design-build
207 contract authorized by s. 489.103(16). The term "contractor"
208 also includes a licensed general contractor or building
209 contractor, as those terms are defined in s. 489.105(3)(a) and
210 (b), who provides construction management services, which
211 include responsibility for scheduling and coordination in both
212 preconstruction and construction phases and for the successful,
213 timely, and economical completion of the construction project,
214 or who provides program management services, which include
215 responsibility for schedule control, cost control, and
216 coordination in providing or procuring planning, design, and
217 construction.

218 (12) "Final furnishing" means the last date that the
219 lienor furnishes labor, services, or materials. Such date may
220 not be measured by other standards, such as the issuance of a
221 certificate of occupancy or the issuance of a certificate of
222 final completion, and does not include the correction of
223 deficiencies in the lienor's previously performed work or
224 materials supplied. With respect to rental equipment, the term
225 means the date that the rental equipment was last on the job

226 | site of the improvement and available for use. With respect to
227 | specially fabricated materials, the term means the date that the
228 | last portion of the specially fabricated materials is delivered
229 | to the site of the improvement, or if any portion of the
230 | specially fabricated materials is not delivered to the site of
231 | the improvement by no fault of the lienor, the term means 1 year
232 | after the date the lienor completes the fabrication, 1 year
233 | after the date the lienor receives the last portion of the
234 | specially fabricated materials needed to complete the order, or
235 | the date the notice of commencement expires, whichever is later.

236 | (26) "Real property" means the land that is improved and
237 | the improvements thereon, including fixtures, except any such
238 | property owned by the state or any county, municipality, school
239 | board, or governmental agency, commission, or political
240 | subdivision, provided, however, that a private leasehold
241 | interest in such government-owned property which is improved and
242 | the leasehold improvements shall be considered real property for
243 | purposes of this part.

244 | Section 4. Section 713.09, Florida Statutes, is amended to
245 | read:

246 | 713.09 Single claim of lien.—A lienor may ~~is required to~~
247 | record only one claim of lien covering his or her entire demand
248 | against the real property when the amount demanded is for labor
249 | or services or material furnished for more than one improvement
250 | under the same direct contract or multiple direct contracts. The

251 single claim of lien is sufficient even though the improvement
252 is for one or more improvements located on separate lots,
253 parcels, or tracts of land. If materials to be used on one or
254 more improvements on separate lots, parcels, or tracts of land
255 ~~under one direct contract~~ are delivered by a lienor to a place
256 designated by the person with whom the materialman contracted,
257 other than the site of the improvement, the delivery to the
258 place designated is prima facie evidence of delivery to the site
259 of the improvement and incorporation in the improvement. The
260 single claim of lien may be limited to a part of multiple lots,
261 parcels, or tracts of land and their improvements or may cover
262 all of the lots, parcels, or tracts of land and improvements. If
263 a ~~In each~~ claim of lien under this section is for multiple
264 direct contracts, the owner under the direct contracts ~~contract~~
265 must be the same person for all lots, parcels, or tracts of land
266 against which a single claim of lien is recorded.

267 Section 5. Paragraphs (a) and (d) of subsection (1) of
268 section 713.13, Florida Statutes, are amended to read:

269 713.13 Notice of commencement.—

270 (1) (a) Except for an improvement that is exempt under
271 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
272 agent before actually commencing to improve any real property,
273 or recommencing completion of any improvement after default or
274 abandonment, whether or not a project has a payment bond
275 complying with s. 713.23, shall record a notice of commencement

276 in the clerk's office and forthwith post either a certified copy
277 thereof or a notarized statement that the notice of commencement
278 has been filed for recording along with a copy thereof. The
279 notice of commencement shall contain the following information:

280 1. A description sufficient for identification of the real
281 property to be improved. The description should include the
282 legal description of the property and also should include the
283 street address and tax folio number of the property if available
284 or, if there is no street address available, such additional
285 information as will describe the physical location of the real
286 property to be improved.

287 2. A general description of the improvement.

288 3. The name and address of the owner, the owner's interest
289 in the site of the improvement, and the name and address of the
290 fee simple titleholder, if other than such owner.

291 4. The name and address of the lessee, if the A lessee who
292 contracts for the improvements as is an owner as defined in s.
293 713.01 under s. 713.01(23) and must be listed as the owner
294 together with a statement that the ownership interest is a
295 leasehold interest.

296 5.4. The name and address of the contractor.

297 6.5. The name and address of the surety on the payment
298 bond under s. 713.23, if any, and the amount of such bond.

299 7.6. The name and address of any person making a loan for
300 the construction of the improvements.

301 ~~8.7.~~ The name and address within the state of a person
 302 other than himself or herself who may be designated by the owner
 303 as the person upon whom notices or other documents may be served
 304 under this part; and service upon the person so designated
 305 constitutes service upon the owner.

306 (d) A notice of commencement must be in substantially the
 307 following form:

308 Permit No..... Tax Folio No.....

309 NOTICE OF COMMENCEMENT

310 State of....

311 County of....

312 The undersigned hereby gives notice that improvement will be
 313 made to certain real property, and in accordance with Chapter
 314 713, Florida Statutes, the following information is provided in
 315 this Notice of Commencement.

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

318 2. General description of improvement:.....

319 3.a. Owner: ...(name and address)....

320 b. Owner's phone number:.....

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

323 4.a. Lessee, if the lessee contracted for the
 324 improvements: ...(name and address)....

325 b. Lessee's phone number:..... ~~owner information or Lessee~~

326 ~~information if the Lessee contracted for the improvement:~~
 327 ~~a. Name and address:.....~~
 328 ~~b. Interest in property:.....~~
 329 ~~c. Name and address of fee simple titleholder (if~~
 330 ~~different from Owner listed above):.....~~
 331 5.a.4.a. Contractor: ... (name and address)....
 332 b. Contractor's phone number:.....
 333 ~~6.5.~~ Surety (if applicable, a copy of the payment bond is
 334 attached):
 335 a. Name and address:.....
 336 b. Phone number:.....
 337 c. Amount of bond: \$.....
 338 7.a.6.a. Lender: ... (name and address)....
 339 b. Lender's phone number:.....
 340 ~~8.7.~~ Persons within the State of Florida designated by
 341 Owner upon whom notices or other documents may be served as
 342 provided in by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
 343 Statutes:
 344 a. Name and address:.....
 345 b. Phone numbers of designated persons:.....
 346 9.a.8.a. In addition to himself or herself, Owner
 347 designates of to receive a copy of the
 348 Lienor's Notice as provided in Section 713.13(1)(b), Florida
 349 Statutes.
 350 b. Phone number of person or entity designated by

351 owner:.....

352 10.9 Expiration date of notice of commencement (the
 353 expiration date will be 1 year after ~~from~~ the date of recording
 354 unless a different date is specified).....

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

364 ...(Signature of Owner or Lessee, or Owner's or Lessee's
 365 Authorized Officer/Director/Partner/Manager)...

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

367 The foregoing instrument was acknowledged before me this
 368 day of, ...(year)...., by ...(name of person)... as ...(type
 369 of authority, . . . e.g. officer, trustee, attorney in
 370 fact)... for ...(name of party on behalf of whom instrument was
 371 executed)....

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

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

374 Personally Known OR Produced Identification

375 Type of Identification Produced.....

376 Section 6. Paragraphs (b) and (f) of subsection (1) and
 377 subsections (3) and (4) of section 713.132, Florida Statutes,
 378 are amended to read:

379 713.132 Notice of termination.—

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

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

386 (f) A statement that the owner has, before recording the
 387 notice of termination, served a copy of the notice of
 388 termination ~~on the contractor and~~ on each lienor who has a
 389 direct contract with the owner or who has timely served a notice
 390 to owner, and a statement that the owner will serve a copy of
 391 the notice of termination on each lienor who timely serves a
 392 notice to owner after the notice of termination has been
 393 recorded. The owner is not required to serve a copy of the
 394 notice of termination on any lienor who has executed a waiver
 395 and release of lien upon final payment in accordance with s.
 396 713.20.

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

401 (4) If an owner or a contractor, by fraud or collusion,
 402 knowingly makes any fraudulent statement or affidavit in a
 403 notice of termination or any accompanying affidavit, the owner
 404 and the contractor, or either of them, ~~as the case may be,~~ is
 405 liable to any lienor who suffers damages as a result of the
 406 filing of the fraudulent notice of termination,~~†~~ and any such
 407 lienor has a right of action for damages ~~occasioned thereby.~~

408 (5)-(4) A notice of termination must be served before
 409 recording on each lienor who has a direct contract with the
 410 owner and on each lienor who has timely and properly served a
 411 notice to owner in accordance with this part before the
 412 recording of the notice of termination. A notice of termination
 413 must be recorded in the official records of the county in which
 414 the project is located. If properly served before recording in
 415 accordance with this subsection, the notice of termination
 416 terminates the period of effectiveness of the notice of
 417 commencement 30 days after the notice of termination is recorded
 418 in the official records ~~is effective to terminate the notice of~~
 419 ~~commencement at the later of 30 days after recording of the~~
 420 ~~notice of termination or a later~~ the date stated in the notice
 421 of termination as the date on which the notice of commencement
 422 is terminated. However, if a lienor, who began work under the
 423 notice of commencement before its termination, lacks a direct
 424 contract with the owner, and timely serves his or her notice to
 425 owner after the notice of termination has been recorded, the

426 owner must serve a copy of the notice of termination upon such
427 lienor, and the termination of the notice of commencement as to
428 that lienor is effective 30 days after service of the notice of
429 termination ~~if the notice of termination has been served~~
430 ~~pursuant to paragraph (1)(f) on the contractor and on each~~
431 ~~lienor who has a direct contract with the owner or who has~~
432 ~~served a notice to owner.~~

433 Section 7. Section 713.18, Florida Statutes, is amended to
434 read:

435 713.18 Manner of serving documents ~~notices and other~~
436 ~~instruments.~~

437 (1) Service of any document ~~notices, claims of lien,~~
438 ~~affidavits, assignments, and other instruments~~ permitted or
439 required under this part, s. 255.05, or s. 337.18, or copies
440 thereof when so permitted or required, unless otherwise
441 specifically provided in this part, must be made by one of the
442 following methods:

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

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

451 (c) By posting on the site of the improvement if service
452 as provided by paragraph (a) or paragraph (b) cannot be
453 accomplished.

454 (2) ~~Notwithstanding subsection (1),~~ Service of a notice to
455 owner or a preliminary notice to contractor under s. 255.05, s.
456 337.18, s. 713.06, or s. 713.23 is effective as of the date of
457 mailing if:

458 (a) The notice is mailed by registered, Global Express
459 Guaranteed, or certified mail, with postage prepaid, to the
460 person to be served at any of the addresses set forth in
461 subsection (3);

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

464 (c)1. The person who served the notice maintains a
465 registered or certified mail log that shows the registered or
466 certified mail number issued by the United States Postal
467 Service, the name and address of the person served, and the date
468 stamp of the United States Postal Service confirming the date of
469 mailing; or

470 2. The person who served the notice maintains ~~electronic~~
471 tracking records approved or generated by the United States
472 Postal Service containing the postal tracking number, the name
473 and address of the person served, and verification of the date
474 of receipt by the United States Postal Service.

475 (3) (a) Service of a document under ~~an instrument pursuant~~

476 ~~to~~ this section is effective on the date of mailing or shipping
477 ~~the instrument~~ if it:

478 1. Is sent to the last address shown in the notice of
479 commencement or any amendment thereto or, in the absence of a
480 notice of commencement, to the last address shown in the
481 building permit application, or to the last known address of the
482 person to be served; and

483 2. Is returned as being "refused," "moved, not
484 forwardable," or "unclaimed," or is otherwise not delivered or
485 deliverable through no fault of the person serving the document
486 ~~item~~.

487 (b) If the address shown in the notice of commencement or
488 any amendment to the notice of commencement, or, in the absence
489 of a notice of commencement, in the building permit application,
490 is incomplete for purposes of mailing or delivery, the person
491 serving the document ~~item~~ may complete the address and properly
492 format it according to United States Postal Service addressing
493 standards using information obtained from the property appraiser
494 or another public record without affecting the validity of
495 service under this section.

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

499 Section 8. Subsections (6) and (8) of section 713.20,
500 Florida Statutes, are amended to read:

501 713.20 Waiver or release of liens.—

502 (6) A person may not require a lienor to furnish a lien
 503 waiver or release of lien that is different from the forms in
 504 subsection (4) or subsection (5) in exchange for, or to induce
 505 payment of, a progress payment or final payment, unless the
 506 lienor has entered into a direct contract that requires the
 507 lienor to furnish a waiver or release that is different from the
 508 forms in subsection (4) or subsection (5).

509 (8) Any provisions in a lien waiver or lien release that
 510 are ~~is~~ not related to the waiver or release of lien rights as
 511 provided in this section are unenforceable, unless the lienor
 512 has otherwise agreed to those provisions in the lienor's direct
 513 contract substantially similar to the forms in subsections (4)
 514 and (5) is enforceable in accordance with the terms of the lien
 515 waiver or lien release.

516 Section 9. Paragraph (d) of subsection (1) of section
 517 713.23, Florida Statutes, is amended to read:

518 713.23 Payment bond.—

519 (1)

520 (d) In addition, a lienor who has not received payment for
 521 furnishing his or her labor, services, or materials must, as a
 522 condition precedent to recovery under the bond, serve a written
 523 notice of nonpayment on ~~to~~ the contractor and a copy of the
 524 notice on the surety. The notice must be under oath and served
 525 during the progress of the work or thereafter, but may not be

526 served later than 90 days after the final furnishing of labor,
527 services, or materials by the lienor, or, with respect to rental
528 equipment, later than 90 days after the date the rental
529 equipment was on the job site and available for use. A notice of
530 nonpayment that includes sums for retainage must specify the
531 portion of the amount claimed for retainage. The required notice
532 satisfies this condition precedent with respect to the payment
533 described in the notice of nonpayment, including unpaid finance
534 charges due under the lienor's contract, and with respect to any
535 other payments which become due to the lienor after the date of
536 the notice of nonpayment. The time period for serving a notice
537 of nonpayment is ~~shall be~~ measured from the last day of
538 furnishing labor, services, or materials by the lienor and may
539 not be measured by other standards, such as the issuance of a
540 certificate of occupancy or the issuance of a certificate of
541 substantial completion. The failure of a lienor to receive
542 retainage sums not in excess of 10 percent of the value of
543 labor, services, or materials furnished by the lienor is not
544 considered a nonpayment requiring the service of the notice
545 provided under this paragraph. If the payment bond is not
546 recorded before commencement of construction, the time period
547 for the lienor to serve a notice of nonpayment may at the option
548 of the lienor be calculated from the date specified in this
549 section or the date the lienor is served a copy of the bond.
550 However, the limitation period for commencement of an action on

551 the payment bond as established in paragraph (e) may not be
 552 expanded. The negligent inclusion or omission of any information
 553 in the notice of nonpayment that has not prejudiced the
 554 contractor or surety does not constitute a default that operates
 555 to defeat an otherwise valid bond claim. A lienor who serves a
 556 fraudulent notice of nonpayment forfeits his or her rights under
 557 the bond. A notice of nonpayment is fraudulent if the lienor has
 558 willfully exaggerated the amount unpaid, willfully included a
 559 claim for work not performed or materials not furnished for the
 560 subject improvement, or prepared the notice with such willful
 561 and gross negligence as to amount to a willful exaggeration.
 562 However, a minor mistake or error in a notice of nonpayment, or
 563 a good faith dispute as to the amount unpaid, does not
 564 constitute a willful exaggeration that operates to defeat an
 565 otherwise valid claim against the bond. The service of a
 566 fraudulent notice of nonpayment is a complete defense to the
 567 lienor's claim against the bond. The notice under this paragraph
 568 must include the following information, current as of the date
 569 of the notice, and must be in substantially the following form:

570 NOTICE OF NONPAYMENT

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

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

573 The undersigned lienor notifies you that:

- 574 1. The lienor has furnished ...(describe labor, services,
 575 or materials)... for the improvement of the real property

576 identified as ...(property description).... The corresponding
577 amount unpaid to date is \$....., of which \$.... is unpaid
578 retainage.

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

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

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

589 DATED on,

590(signature and address of lienor)...

591 STATE OF FLORIDA

592 COUNTY OF.....

593 The foregoing instrument was sworn to (or affirmed) and
594 subscribed before me this day of, ...(year)...., by
595 ...(name of signatory)....

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

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

599 Personally Known OR Produced Identification

600 Type of Identification Produced.....

601 Section 10. Subsections (3) and (5) of section 713.235,
 602 Florida Statutes, are amended to read:

603 713.235 Waivers of right to claim against payment bond;
 604 forms.—

605 (3) A person may not require a claimant to furnish a
 606 waiver that is different from the forms in subsections (1) and
 607 (2) in exchange for, or to induce payment of, a progress payment
 608 or final payment, unless the claimant has entered into a direct
 609 contract that requires the claimant to furnish a waiver that is
 610 different from the forms in subsections (1) and (2).

611 (5) Any provisions in a waiver that are ~~is~~ not related to
 612 the waiver of a claim against the payment bond as provided in
 613 this section are unenforceable, unless the claimant has
 614 otherwise agreed to those provisions in the claimant's direct
 615 contract substantially similar to the forms in this section is
 616 enforceable in accordance with its terms.

617 Section 11. Subsection (1) of section 713.24, Florida
 618 Statutes, is amended to read:

619 713.24 Transfer of liens to security.—

620 (1) Any lien claimed under this part may be transferred,
 621 by any person having an interest in the real property upon which
 622 the lien is imposed or the contract under which the lien is
 623 claimed, from such real property to other security by doing one
 624 of the following either:

625 (a) Depositing in the clerk's office a sum of money; ~~or~~

626 (b) Recording ~~Filing~~ in the clerk's office a bond executed
627 as surety by a surety insurer licensed to do business in this
628 state; or

629 (c) Recording in the clerk's office a bond executed as
630 surety by a surety insurer licensed to do business in this
631 state, which was furnished by a subcontractor under whose
632 subcontract the lienor's claim emanates, and which must be
633 recorded and served with a notice of bond in the same manner as
634 a payment bond furnished under s. 713.23(2). For purposes of
635 this paragraph, the subcontract payment bond must have been
636 furnished at the time the subcontractor's work commenced and
637 before the claim of lien was recorded. The subcontract payment
638 bond may not be used to transfer a lien of the contractor or the
639 subcontractor that is the principal on the subcontract payment
640 bond. Any provision in the subcontract payment bond that
641 restricts the classes of persons who are protected by the
642 subcontract payment bond, restricts the venue of any proceeding
643 relating to the subcontract payment bond, limits or expands the
644 effective duration of the subcontract payment bond, or includes
645 conditions precedent to the enforcement of a claim against the
646 subcontract payment bond beyond those provided in this part is
647 unenforceable. 7

648
649 Such deposit or bond must ~~either~~ be in an amount at least
650 equal to the amount demanded in such claim of lien, plus

651 interest thereon at the legal rate for 3 years, plus \$1,000 or
652 35 ~~25~~ percent of the amount demanded in the claim of lien,
653 whichever is greater, to apply on any attorney ~~attorney's~~ fees
654 and court costs that may be taxed in any proceeding to enforce
655 said lien. Such deposit or bond shall be conditioned to pay any
656 judgment or decree which may be rendered for the satisfaction of
657 the lien for which such claim of lien was recorded. Upon making
658 such deposit or filing such bond, the clerk shall make and
659 record a certificate showing the transfer of the lien from the
660 real property to the security and shall mail a copy thereof by
661 registered or certified mail to the lienor named in the claim of
662 lien so transferred, at the address stated therein. Upon filing
663 the certificate of transfer, the real property shall thereupon
664 be released from the lien claimed, and such lien shall be
665 transferred to said security. In the absence of allegations of
666 privity between the lienor and the owner, and subject to any
667 order of the court increasing the amount required for the lien
668 transfer deposit or bond, no other judgment or decree to pay
669 money may be entered by the court against the owner. The clerk
670 shall be entitled to a service charge for making and serving the
671 certificate, in the amount of up to \$20, from which the clerk
672 shall remit \$5 to the Department of Revenue for deposit into the
673 General Revenue Fund. If the transaction involves the transfer
674 of multiple liens, an additional charge of up to \$10 for each
675 additional lien shall be charged, from which the clerk shall

676 remit \$2.50 to the Department of Revenue for deposit into the
677 General Revenue Fund. For recording the certificate and
678 approving the bond, the clerk shall receive her or his usual
679 statutory service charges as prescribed in s. 28.24. Any number
680 of liens may be transferred to one such security.

681 Section 12. Section 713.29, Florida Statutes, is amended
682 to read:

683 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
684 enforce a lien, including a lien that has been transferred to
685 security, or to enforce a claim against a bond under this part,
686 the prevailing party is entitled to recover a reasonable fee for
687 the services of her or his attorney for trial and appeal or for
688 arbitration, in an amount to be determined by the court, which
689 fee must be taxed as part of the prevailing party's costs, as
690 allowed in equitable actions.

691 Section 13. This act shall take effect July 1, 2020.