

1                   A bill to be entitled  
2                   An act relating to construction liens and bonds;  
3                   amending s. 255.05, F.S.; requiring that a copy of a  
4                   notice of nonpayment be served on the surety; revising  
5                   the process for notarizing a notice of nonpayment;  
6                   requiring certain waivers to be in specified forms  
7                   unless the claimant's contract requires the use of  
8                   other forms; providing that specified provisions in  
9                   certain waivers are unenforceable; providing an  
10                  exception; requiring service of documents to be made  
11                  in a specified manner; amending s. 337.18, F.S.;  
12                  providing that certain waivers apply to certain  
13                  contracts; requiring service of documents to be made  
14                  in a specified manner; amending s. 713.01, F.S.;  
15                  revising definitions; amending s. 713.09, F.S.;  
16                  authorizing a lienor to record one claim of lien for  
17                  multiple direct contracts; amending s. 713.10, F.S.;  
18                  revising the extent of certain liens; amending s.  
19                  713.13, F.S.; revising information to be included in a  
20                  notice of commencement; revising the process for  
21                  notarizing a notice of commencement; amending s.  
22                  713.132, F.S.; revising requirements for a notice of  
23                  termination; amending s. 713.135, F.S.; providing a  
24                  definition; providing that an issuing authority is not  
25                  liable for failing to verify that specified

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information has been filed; amending s. 713.18, F.S.; requiring service of documents relating to construction bonds to be made in a specified manner; making technical changes; amending s. 713.20, F.S.; requiring certain waivers or releases to be in specified forms unless the lienor's contract requires the use of other forms; providing that specified provisions in certain waivers or releases are unenforceable; providing an exception; amending s. 713.21, F.S.; authorizing the full or partial release of a lien under specified conditions; amending s. 713.23, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; revising the process for notarizing a notice of nonpayment under a payment bond; amending s. 713.235, F.S.; requiring certain waivers to be in specified forms unless the claimant's contract requires the use of other forms; providing that specified provisions in certain waivers are unenforceable; providing an exception; amending s. 713.29, F.S.; authorizing attorney fees in actions to enforce a lien that has been transferred to security; providing an effective date.

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

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51       Section 1. Paragraphs (a), (d), and (f) of subsection (2)  
52 of section 255.05, Florida Statutes, are amended, and subsection  
53 (12) is added to that section, to read:

54           255.05 Bond of contractor constructing public buildings;  
55 form; action by claimants.—

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

NOTICE OF CONTEST OF CLAIM  
AGAINST PAYMENT BOND

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

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

74 | DATED on ..... , .....

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

77

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

86       2. A claimant, except a laborer, who is not in privity  
87 with the contractor shall, before commencing or not later than  
88 45 days after commencing to furnish labor, services, or  
89 materials for the prosecution of the work, serve the contractor  
90 with a written notice that he or she intends to look to the bond  
91 for protection. A claimant who is not in privity with the  
92 contractor and who has not received payment for furnishing his  
93 or her labor, services, or materials shall serve a written  
94 notice of nonpayment on the contractor and a copy of the notice  
95 on the surety. The notice of nonpayment shall be under oath and  
96 served during the progress of the work or thereafter but may not  
97 be served earlier than 45 days after the first furnishing of  
98 labor, services, or materials by the claimant or later than 90  
99 days after the final furnishing of the labor, services, or  
100 materials by the claimant or, with respect to rental equipment,

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

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the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

**NOTICE OF NONPAYMENT**

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

148 | ... (name of surety and address) ...

149  
150 The undersigned claimant notifies you that:

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

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

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

163

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

167

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

169

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

171

172 STATE OF FLORIDA

173 COUNTY OF . . . . .

174

175 The foregoing instrument was sworn to (or affirmed) and

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176 subscribed before me by means of  physical presence or sworn to  
177 (or affirmed) by  online notarization this .... day of ....,  
178 ....(year) ...., by ...(name of signatory) ....

179

180 ....(Signature of Notary Public - State of Florida) ...  
181 ....(Print, Type, or Stamp Commissioned Name of Notary  
182 Public) ...

183

184 Personally Known ..... OR Produced Identification .....

185

186 Type of Identification Produced

187

188 (d) A person may not require a claimant to furnish a  
189 waiver that is different from the forms in paragraphs (b) and  
190 (c), unless the claimant has entered into a contract that  
191 requires the claimant to furnish a waiver that is different from  
192 the forms in paragraphs (b) and (c).

193 (f) Any provisions in a waiver which are ~~that is~~ not  
194 related to the waiver of a claim or a right to claim against a  
195 payment bond as provided in this subsection are unenforceable  
196 unless the claimant has otherwise agreed to those provisions in  
197 the contract substantially similar to the forms in this  
198 subsection is enforceable in accordance with its terms.

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

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201       Section 2. Paragraph (c) of subsection (1) of section  
202 337.18, Florida Statutes, is amended, and subsection (6) is  
203 added to that section, to read:

204       337.18 Surety bonds for construction or maintenance  
205 contracts; requirement with respect to contract award; bond  
206 requirements; defaults; damage assessments.—

207       (1)

208       (c) A claimant, except a laborer, who is not in privity  
209 with the contractor shall, before commencing or not later than  
210 90 days after commencing to furnish labor, materials, or  
211 supplies for the prosecution of the work, furnish the contractor  
212 with a notice that he or she intends to look to the bond for  
213 protection. A claimant who is not in privity with the contractor  
214 and who has not received payment for his or her labor,  
215 materials, or supplies shall deliver to the contractor and to  
216 the surety written notice of the performance of the labor or  
217 delivery of the materials or supplies and of the nonpayment. The  
218 notice of nonpayment may be served at any time during the  
219 progress of the work or thereafter but not before 45 days after  
220 the first furnishing of labor, services, or materials, and not  
221 later than 90 days after the final furnishing of the labor,  
222 services, or materials by the claimant or, with respect to  
223 rental equipment, not later than 90 days after the date that the  
224 rental equipment was last on the job site available for use. An  
225 action by a claimant, except a laborer, who is not in privity

226 with the contractor for the labor, materials, or supplies may  
227 not be instituted against the contractor or the surety unless  
228 both notices have been given. Written notices required or  
229 permitted under this section must may be served in accordance  
230 with any manner provided in s. 713.18, and provisions for the  
231 waiver of a claim or a right to claim against a payment bond  
232 contained in s. 713.235 apply to all contracts under this  
233 section.

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

236 Section 3. Subsections (4), (8), and (26) of section  
237 713.01, Florida Statutes, are amended to read:

238 713.01 Definitions.—As used in this part, the term:

239 (4) "Clerk's office" means the office of the clerk of the  
240 circuit court of the county, or another office serving as the  
241 county recorder as provided by law, in which the real property  
242 is located.

243 (8) "Contractor" means a person other than a materialman  
244 or laborer who enters into a contract with the owner of real  
245 property for improving it, or who takes over from a contractor  
246 as so defined the entire remaining work under such contract. The  
247 term "contractor" includes an architect, landscape architect, or  
248 engineer who improves real property pursuant to a design-build  
249 contract authorized by s. 489.103(16). The term also includes a  
250 licensed general contractor or building contractor, as those

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251     terms are defined in s. 489.105(3) (a) and (b), respectively, who  
252     provides construction management services, which include  
253     responsibility for scheduling and coordination in both  
254     preconstruction and construction phases and for the successful,  
255     timely, and economical completion of the construction project,  
256     or who provides program management services, which include  
257     responsibility for schedule control, cost control, and  
258     coordination in providing or procuring planning, design, and  
259     construction.

260         (26) "Real property" means the land that is improved and  
261     the improvements thereon, including fixtures, except any such  
262     property owned by the state or any county, municipality, school  
263     board, or governmental agency, commission, or political  
264     subdivision. The term includes a private leasehold interest that  
265     is improved, and the improvements thereon, on land that is owned  
266     by the state or any county, municipality, school board, or  
267     governmental agency, commission, or political subdivision.

268         Section 4. Section 713.09, Florida Statutes, is amended to  
269     read:

270         713.09 Single claim of lien.—A lienor may ~~is required to~~  
271     record only one claim of lien covering his or her entire demand  
272     against the real property when the amount demanded is for labor  
273     or services or material furnished for more than one improvement  
274     under the same direct contract or multiple direct contracts. The  
275     single claim of lien is sufficient even though the improvement

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276 is for one or more improvements located on separate lots,  
277 parcels, or tracts of land. If materials to be used on one or  
278 more improvements on separate lots, parcels, or tracts of land  
~~under one direct contract~~ are delivered by a lienor to a place  
279 designated by the person with whom the materialman contracted,  
280 other than the site of the improvement, the delivery to the  
281 place designated is prima facie evidence of delivery to the site  
282 of the improvement and incorporation in the improvement. The  
283 single claim of lien may be limited to a part of multiple lots,  
284 parcels, or tracts of land and their improvements or may cover  
285 all of the lots, parcels, or tracts of land and improvements. If  
286 a ~~In each~~ claim of lien under this section is for multiple  
287 direct contracts, the owner under the direct contracts ~~contract~~  
288 must be the same person for all lots, parcels, or tracts of land  
289 against which a single claim of lien is recorded.

290       Section 5. Paragraph (b) of subsection (2) of section  
291 713.10, Florida Statutes, is amended, and subsection (4) is  
292 added to that section, to read:

293       713.10 Extent of liens.—

294           (2)

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

297           1. The lease, or a short form or a memorandum of the lease  
298 that contains the specific language in the lease prohibiting  
300 such liability, is recorded in the official records of the

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301 county where the premises are located before the recording of a  
302 notice of commencement for improvements to the premises and the  
303 terms of the lease expressly prohibit such liability; or

304       2. The terms of the lease expressly prohibit such  
305 liability, and a notice advising that leases for the rental of  
306 premises on a parcel of land prohibit such liability has been  
307 recorded in the official records of the county in which the  
308 parcel of land is located before the recording of a notice of  
309 commencement for improvements to the premises, and the notice  
310 includes the following:

311           a. The name of the lessor.

312           b. The legal description of the parcel of land to which  
313 the notice applies.

314           c. The specific language contained in the various leases  
315 prohibiting such liability.

316           d. A statement that all or a majority of the leases  
317 entered into for premises on the parcel of land expressly  
318 prohibit such liability.

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

321  
322 A notice that is consistent with subparagraph 2. effectively  
323 prohibits liens for improvements made by a lessee even if other  
324 leases for premises on the parcel do not expressly prohibit  
325 liens or if provisions of each lease restricting the application

326 of liens are not identical.

327 (4) The interest of the lessor is not subject to liens for  
328 improvements made by the lessee when the lessee is a mobile home  
329 owner who is leasing a mobile home lot in a mobile home park  
330 from the lessor.

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

333 713.13 Notice of commencement.—

334 (1) (a) Except for an improvement that is exempt under  
335 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized  
336 agent before actually commencing to improve any real property,  
337 or recommencing completion of any improvement after default or  
338 abandonment, whether or not a project has a payment bond  
339 complying with s. 713.23, shall record a notice of commencement  
340 in the clerk's office and forthwith post either a certified copy  
341 thereof or a notarized statement that the notice of commencement  
342 has been filed for recording along with a copy thereof. The  
343 notice of commencement shall contain the following information:

344 1. A description sufficient for identification of the real  
345 property to be improved. The description should include the  
346 legal description of the property and also should include the  
347 street address and tax folio number of the property if available  
348 or, if there is no street address available, such additional  
349 information as will describe the physical location of the real  
350 property to be improved.

351        2. A general description of the improvement.

352        3. The name and address of the owner, the owner's interest  
353      in the site of the improvement, and the name and address of the  
354      fee simple titleholder, if other than such owner.

355        4. The name and address of the lessee, if the A lessee who  
356      contracts for the improvements as is an owner as defined in s.  
357      713.01 under s. 713.01(23) and must be listed as the owner  
358      together with a statement that the ownership interest is a  
359      leasehold interest.

360        5.4. The name and address of the contractor.

361        6.5. The name and address of the surety on the payment  
362      bond under s. 713.23, if any, and the amount of such bond.

363        7.6. The name and address of any person making a loan for  
364      the construction of the improvements.

365        8.7. The name and address within the state of a person  
366      other than himself or herself who may be designated by the owner  
367      as the person upon whom notices or other documents may be served  
368      under this part; and service upon the person so designated  
369      constitutes service upon the owner.

370        (c) If the contract between the owner and a contractor  
371      named in the notice of commencement expresses a period of time  
372      for completion for the construction of the improvement greater  
373      than 1 year, the notice of commencement must state that it is  
374      effective for a period of 1 year plus any additional period of  
375      time. Any payments made by the owner after the expiration of the

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376 notice of commencement are considered improper payments.

377 (d) A notice of commencement must be in substantially the  
378 following form:

380 Permit No..... Tax Folio No.....

381 NOTICE OF COMMENCEMENT

382 State of....

383 County of....

384  
385 The undersigned hereby gives notice that improvement will be  
386 made to certain real property, and in accordance with Chapter  
387 713, Florida Statutes, the following information is provided in  
388 this Notice of Commencement.

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

391 2. General description of improvement:.....

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

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

395 a. Name and address:.....

396 c.b. Interest in property:.....

397 d.e. Name and address of fee simple titleholder (if  
398 different from Owner listed above):.....

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

401       b. Lessee's phone number:..... a.

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

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

404       6. Surety (if applicable, a copy of the payment bond is

405 attached):

406       a. Name and address:.....

407       b. Phone number:.....

408       c. Amount of bond: \$.....

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

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

411       8. Persons within the State of Florida designated by

412 Owner upon whom notices or other documents may be served as

413 provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida

414 Statutes:

415       a. Name and address:.....

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

417       9.a.8.a. In addition to himself or herself, Owner

418 designates ..... of ..... to receive a copy of the

419 Lienor's Notice as provided in Section 713.13(1)(b), Florida

420 Statutes.

421       b. Phone number of person or entity designated by

422 owner:.....

423       10.9. Expiration date of notice of commencement (the

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

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

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426  
427 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE  
428 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER  
429 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA  
430 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS  
431 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND  
432 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU  
433 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN  
434 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF  
435 COMMENCEMENT.

436  
437 ... (Signature of Owner or Lessee, or Owner's or Lessee's  
438 Authorized Officer/Director/Partner/Manager) ...

439  
440 ... (Signatory's Title/Office) ...

441  
442 The foregoing instrument was acknowledged before me by means of  
443  physical presence or acknowledged before me by means of   
444 online notarization, this .... day of ...., ... (year) ..., by  
445 ... (name of person) ... as ... (type of authority, . . . e.g.  
446 officer, trustee, attorney in fact) ... for ... (name of party on  
447 behalf of whom instrument was executed) ....

448  
449 ... (Signature of Notary Public - State of Florida) ...  
450

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

452

453        Personally Known .... OR Produced Identification ....

454

455        Type of Identification Produced.....

456        Section 7. Subsections (1), (3), and (4) of section

457 713.132, Florida Statutes, are amended to read:

458        713.132 Notice of termination.—

459        (1) An owner may terminate the period of effectiveness of

460 a notice of commencement by executing, swearing to, and

461 recording a notice of termination that contains:

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

463        (b) The official records' ~~recording office document book~~

464 ~~and page reference numbers and recording date affixed by the~~

465 ~~recording office on ef the recorded notice of commencement;~~

466        (c) A statement of the date as of which the notice of

467 commencement is terminated, which date may not be earlier than

468 30 days after the notice of termination is recorded;

469        (d) A statement specifying that the notice applies to all

470 the real property subject to the notice of commencement or

471 specifying the portion of such real property to which it

472 applies;

473        (e) A statement that all lienors have been paid in full;

474 and

475        (f) A statement that the owner has, before recording the

476 notice of termination, served a copy of the notice of  
477 termination ~~on the contractor and~~ on each lienor who has a  
478 direct contract with the owner or who has timely served a notice  
479 to owner, and a statement that the owner will serve a copy of  
480 the notice of termination on each lienor who timely serves a  
481 notice to owner after the notice of termination has been  
482 recorded. The owner is not required to serve a copy of the  
483 notice of termination on any lienor who has executed a waiver  
484 and release of lien upon final payment in accordance with s.  
485 713.20.

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

490 (4) If an owner or a contractor, by fraud or collusion,  
491 knowingly makes any fraudulent statement or affidavit in a  
492 notice of termination or any accompanying affidavit, the owner  
493 and the contractor, or either of them, ~~as the case may be,~~ is  
494 liable to any lienor who suffers damages as a result of the  
495 filing of the fraudulent notice of termination, ~~and~~ and any such  
496 lienor has a right of action for damages ~~occasioned thereby.~~

497 (5) ~~(4)~~ A notice of termination must be served before  
498 recording on each lienor who has a direct contract with the  
499 owner and on each lienor who has timely and properly served a  
500 notice to owner in accordance with this part before the

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501 recording of the notice of termination. A notice of termination  
502 must be recorded in the official records of the county in which  
503 the improvement is located. If properly served before recording  
504 in accordance with this subsection, the notice of termination  
505 terminates the period of effectiveness of the notice of  
506 commencement 30 days after the notice of termination is recorded  
507 in the official records ~~is effective to terminate the notice of~~  
508 commencement at the later of 30 days after recording of the  
509 notice of termination or a later the date stated in the notice  
510 of termination as the date on which the notice of commencement  
511 is terminated. However, if a lienor who began work under the  
512 notice of commencement before its termination lacks a direct  
513 contract with the owner and timely serves his or her notice to  
514 owner after the notice of termination has been recorded, the  
515 owner must serve a copy of the notice of termination upon such  
516 lienor, and the termination of the notice of commencement as to  
517 that lienor is effective 30 days after service of the notice of  
518 termination if the notice of termination has been served  
519 pursuant to paragraph (1)(f) on the contractor and on each  
520 lienor who has a direct contract with the owner or who has  
521 served a notice to owner.

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

524 713.135 Notice of commencement and applicability of lien.—  
525 (1) When any person applies for a building permit, the

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526 authority issuing such permit shall:

527       (a) Print on the face of each permit card in no less than  
528 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR  
529 FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR  
530 PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF  
531 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE  
532 THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT  
533 WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF  
534 COMMENCEMENT."

535       (b) Provide the applicant and the owner of the real  
536 property upon which improvements are to be constructed with a  
537 printed statement stating that the right, title, and interest of  
538 the person who has contracted for the improvement may be subject  
539 to attachment under the Construction Lien Law. The Department of  
540 Business and Professional Regulation shall furnish, for  
541 distribution, the statement described in this paragraph, and the  
542 statement must be a summary of the Construction Lien Law and  
543 must include an explanation of the provisions of the  
544 Construction Lien Law relating to the recording, and the posting  
545 of copies, of notices of commencement and a statement  
546 encouraging the owner to record a notice of commencement and  
547 post a copy of the notice of commencement in accordance with s.  
548 713.13. The statement must also contain an explanation of the  
549 owner's rights if a lienor fails to furnish the owner with a  
550 notice as provided in s. 713.06(2) and an explanation of the

551 owner's rights as provided in s. 713.22. The authority that  
552 issues the building permit must obtain from the Department of  
553 Business and Professional Regulation the statement required by  
554 this paragraph and must mail, deliver by electronic mail or  
555 other electronic format or facsimile, or personally deliver that  
556 statement to the owner or, in a case in which the owner is  
557 required to personally appear to obtain the permit, provide that  
558 statement to any owner making improvements to real property  
559 consisting of a single or multiple family dwelling up to and  
560 including four units. However, the failure by the authorities to  
561 provide the summary does not subject the issuing authority to  
562 liability.

563 (c) In addition to providing the owner with the statement  
564 as required by paragraph (b), inform each applicant who is not  
565 the person whose right, title, and interest is subject to  
566 attachment that, as a condition to the issuance of a building  
567 permit, the applicant must promise in good faith that the  
568 statement will be delivered to the person whose property is  
569 subject to attachment.

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

572 (e) Require if the direct contract is greater than \$2,500,  
573 the applicant to shall file with the issuing authority prior to  
574 the first inspection either a certified copy of the recorded  
575 notice of commencement if the direct contract is greater than

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\$2,500. For purposes of this paragraph, the term "copy of the notice of commencement" means a certified copy of the recorded notice of commencement, or a notarized statement that the notice of commencement has been filed for recording, along with a copy thereof, or the clerk's office official records identifying information that includes the instrument number for the notice of commencement or the number and page of book where the notice of commencement is recorded, as identified by the clerk.

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

2. The certified copy of the notice of commencement must contain the name and address of the owner, the name and address of the contractor, and the location or address of the property being improved. The issuing authority shall verify that the name and address of the owner, the name of the contractor, and the location or address of the property being improved which is contained in the certified copy of the notice of commencement is consistent with the information in the building permit application.

3. The issuing authority shall provide the recording information on the certified copy of the recorded notice of

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601 commencement to any person upon request.

602       4. This subsection does not require the recording of a  
603 notice of commencement prior to the issuance of a building  
604 permit. If a local government requires a separate permit or  
605 inspection for installation of temporary electrical service or  
606 other temporary utility service, land clearing, or other  
607 preliminary site work, such permits may be issued and such  
608 inspections may be conducted without providing the issuing  
609 authority with a ~~certified~~ copy of the a recorded notice of  
610 commencement ~~or a notarized statement regarding a recorded~~  
611 ~~notice of commencement~~.

612       (f) This subsection does not apply to a direct contract to  
613 repair or replace an existing heating or air-conditioning system  
614 in an amount less than \$7,500.

615       (g)-(e) Not require that a notice of commencement be  
616 recorded as a condition of the application for, or processing or  
617 issuance of, a building permit. However, this paragraph does not  
618 modify or waive the inspection requirements set forth in this  
619 subsection.

620       (3) An issuing authority under subsection (1) is not  
621 liable in any civil action for the failure to verify that a  
622 certified copy of the recorded notice of commencement, a  
623 notarized statement that the notice of commencement has been  
624 filed for recording along with a copy thereof, or the clerk's  
625 office official records identifying information that includes

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626     the instrument number for the notice of commencement or the  
627     number and page of book where the notice of commencement is  
628     recorded, as identified by the clerk, has been filed in  
629     accordance with this section.

630       Section 9. Section 713.18, Florida Statutes, is amended to  
631     read:

632       713.18 Manner of serving documents notices and other  
633     instruments.—

634       (1) Unless otherwise specifically provided by law, service  
635     of any document notices, claims of lien, affidavits,  
636     assignments, and other instruments permitted or required under  
637     this part, s. 255.05, or s. 337.18, or copies thereof when so  
638     permitted or required, unless otherwise specifically provided in  
639     this part, must be made by one of the following methods:

640       (a) By hand actual delivery to the person to be served; if  
641     a partnership, to one of the partners; if a corporation, to an  
642     officer, director, managing agent, or business agent; or, if a  
643     limited liability company, to a member or manager.

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

648       (c) By posting on the site of the improvement if service  
649     as provided by paragraph (a) or paragraph (b) cannot be  
650     accomplished.

651       (2) Notwithstanding subsection (1), service of a notice to  
652 owner or a preliminary notice to contractor under this part, s.  
653 255.05, or s. 337.18, ~~or~~ s. 713.23 is effective as of the date  
654 of mailing and the requirements for service under this section  
655 have been satisfied if:

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

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

662       (c) 1. The person who served the notice maintains a  
663 registered or certified mail log that shows the registered or  
664 certified mail number issued by the United States Postal  
665 Service, the name and address of the person served, and the date  
666 stamp of the United States Postal Service confirming the date of  
667 mailing; or

668       2. The person who served the notice maintains ~~electronic~~  
669 tracking records approved or generated by the United States  
670 Postal Service containing the postal tracking number, ~~the name~~  
671 ~~and address of the person served,~~ and verification of the date  
672 of receipt by the United States Postal Service.

673       (3) (a) Notwithstanding subsection (1), service of a  
674 document under an instrument pursuant to this section is  
675 effective on the date of mailing or shipping, and the

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676     requirements for service under this section have been satisfied,  
677     the instrument if the document is:

678         1. Is sent to the last address shown in the notice of  
679 commencement or any amendment thereto or, in the absence of a  
680 properly indexed notice of commencement that contains the  
681 information specified in s. 713.13(1)(b), notice of  
682 commencement, to the last address shown in the building permit  
683 application, or to the last known address of the person to be  
684 served unless otherwise specifically provided in this part, s.  
685 255.05, or s. 337.18; and

686         2. Is returned as being "refused," "moved, not  
687 forwardable," or "unclaimed," or is otherwise not delivered or  
688 deliverable through no fault of the person serving the document  
689 item.

690             (b) If the address shown in the notice of commencement or  
691 any amendment thereto to the notice of commencement, or, in the  
692 absence of a notice of commencement, in the building permit  
693 application, is incomplete for purposes of mailing or delivery,  
694 the person serving the document item may complete the address  
695 and properly format it according to United States Postal Service  
696 addressing standards using information obtained from the  
697 property appraiser or another public record without affecting  
698 the validity of service under this section.

699             (4) A document notice served by a lienor on one owner or  
700 one partner of a partnership owning the real property is deemed

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701     served on notice to all owners and partners.

702         Section 10. Subsections (6) and (8) of section 713.20,  
703 Florida Statutes, are amended to read:

704         713.20 Waiver or release of liens.—

705             (6) A person may not require a lienor to furnish a lien  
706 waiver or release of lien that is different from the forms in  
707 subsections (4) and (5) ~~subsection (4) or subsection (5), unless~~  
708 the lienor has entered into a contract that requires the lienor  
709 to furnish a waiver or release that is different from the forms  
710 in subsections (4) and (5).

711             (8) Any provisions in a lien waiver or lien release which  
712 are that is not related to the waiver or release of a lien or  
713 the right to claim a lien as provided in this section are  
714 unenforceable, unless the lienor has otherwise agreed to those  
715 provisions in the contract substantially similar to the forms in  
716 subsections (4) and (5) is enforceable in accordance with the  
717 terms of the lien waiver or lien release.

718         Section 11. Section 713.21, Florida Statutes, is amended  
719 to read:

720         713.21 Discharge of lien.—A lien properly perfected under  
721 this chapter may be discharged, or released in whole or in part,  
722 by any of the following methods:

723             (1) By entering satisfaction of the lien upon the margin  
724 of the record thereof in the clerk's office when not otherwise  
725 prohibited by law. This satisfaction shall be signed by the

726 lienor, the lienor's agent or attorney and attested by said  
727 clerk. Any person who executes a claim of lien has ~~shall~~ have  
728 authority to execute a satisfaction in the absence of actual  
729 notice of lack of authority to any person relying on the same.

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

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

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

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

754       Section 12. Paragraph (d) of subsection (1) of section  
755 713.23, Florida Statutes, is amended to read:

756       713.23 Payment bond.—

757       (1)

758       (d) In addition, a lienor who has not received payment for  
759 furnishing his or her labor, services, or materials must, as a  
760 condition precedent to recovery under the bond, serve a written  
761 notice of nonpayment on to the contractor and a copy of the  
762 notice on the surety. The notice must be under oath and served  
763 during the progress of the work or thereafter, but may not be  
764 served later than 90 days after the final furnishing of labor,  
765 services, or materials by the lienor, or, with respect to rental  
766 equipment, later than 90 days after the date the rental  
767 equipment was on the job site and available for use. A notice of  
768 nonpayment that includes sums for retainage must specify the  
769 portion of the amount claimed for retainage. The required notice  
770 satisfies this condition precedent with respect to the payment  
771 described in the notice of nonpayment, including unpaid finance  
772 charges due under the lienor's contract, and with respect to any  
773 other payments which become due to the lienor after the date of  
774 the notice of nonpayment. The time period for serving a notice  
775 of nonpayment is shall be measured from the last day of

776 furnishing labor, services, or materials by the lienor and may  
777 not be measured by other standards, such as the issuance of a  
778 certificate of occupancy or the issuance of a certificate of  
779 substantial completion. The failure of a lienor to receive  
780 retainage sums not in excess of 10 percent of the value of  
781 labor, services, or materials furnished by the lienor is not  
782 considered a nonpayment requiring the service of the notice  
783 provided under this paragraph. If the payment bond is not  
784 recorded before commencement of construction, the time period  
785 for the lienor to serve a notice of nonpayment may at the option  
786 of the lienor be calculated from the date specified in this  
787 section or the date the lienor is served a copy of the bond.  
788 However, the limitation period for commencement of an action on  
789 the payment bond as established in paragraph (e) may not be  
790 expanded. The negligent inclusion or omission of any information  
791 in the notice of nonpayment that has not prejudiced the  
792 contractor or surety does not constitute a default that operates  
793 to defeat an otherwise valid bond claim. A lienor who serves a  
794 fraudulent notice of nonpayment forfeits his or her rights under  
795 the bond. A notice of nonpayment is fraudulent if the lienor has  
796 willfully exaggerated the amount unpaid, willfully included a  
797 claim for work not performed or materials not furnished for the  
798 subject improvement, or prepared the notice with such willful  
799 and gross negligence as to amount to a willful exaggeration.  
800 However, a minor mistake or error in a notice of nonpayment, or

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

**NOTICE OF NONPAYMENT**

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

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

The undersigned lienor notifies you that:

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

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

3. The lienor expects to furnish ... (describe labor, services, or materials) ... for this improvement in the future

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826 (if known), and the corresponding amount expected to become due  
827 is \$.... (if known).

828

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

832

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

834

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

836

837 STATE OF FLORIDA

838 COUNTY OF.....

839

840 The foregoing instrument was sworn to (or affirmed) and  
841 subscribed before me by means of  physical presence or sworn to  
842 (or affirmed) by  online notarization, this .... day of ....,  
843 ... (year) ..., by ... (name of signatory) ....

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

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

847

848 Personally Known ..... OR Produced Identification .....

849

850 Type of Identification Produced

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851       Section 13. Subsections (3) and (5) of section 713.235,  
852 Florida Statutes, are amended to read:

853       713.235 Waivers of right to claim against payment bond;  
854 forms.—

855       (3) A person may not require a claimant to furnish a  
856 waiver that is different from the forms in subsections (1) and  
857 (2), unless the claimant has entered into a contract that  
858 requires the claimant to furnish a waiver that is different from  
859 the forms in subsections (1) and (2).

860       (5) Any provisions in a waiver which are that is not  
861 related to the waiver of a claim or a right to claim against the  
862 payment bond as provided in this section are unenforceable,  
863 unless the claimant has otherwise agreed to those provisions in  
864 the claimant's contract substantially similar to the forms in  
865 this section is enforceable in accordance with its terms.

866       Section 14. Section 713.29, Florida Statutes, is amended  
867 to read:

868       713.29 Attorney Attorney's fees.—In any action brought to  
869 enforce a lien, including a lien that has been transferred to  
870 security, or to enforce a claim against a bond under this part,  
871 the prevailing party is entitled to recover a reasonable fee for  
872 the services of her or his attorney for trial and appeal or for  
873 arbitration, in an amount to be determined by the court, which  
874 fee must be taxed as part of the prevailing party's costs, as  
875 allowed in equitable actions.

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Section 15. This act shall take effect July 1, 2021.