



413486

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(2) (a) 1. If a claimant is no longer furnishing labor,
services, or materials on a project, a contractor or the



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11 contractor's agent or attorney may elect to shorten the time
12 within which an action to enforce any claim against a payment
13 bond must be commenced by recording in the clerk's office a
14 notice in substantially the following form:

15

16 NOTICE OF CONTEST OF CLAIM

17 AGAINST PAYMENT BOND

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

19 You are notified that the undersigned contests your notice
20 of nonpayment, dated,, and served on the
21 undersigned on,, and that the time within
22 which you may file suit to enforce your claim is limited to 60
23 days after the date of service of this notice.

24 DATED on,

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

26

27 The claim of a claimant upon whom such notice is served and who
28 fails to institute a suit to enforce his or her claim against
29 the payment bond within 60 days after service of such notice is
30 extinguished automatically. The contractor or the contractor's
31 attorney shall serve a copy of the notice of contest on ~~to~~ the
32 claimant at the address shown in the notice of nonpayment or
33 most recent amendment thereto and shall certify to such service
34 on the face of the notice and record the notice.

35 2. A claimant, except a laborer, who is not in privity with
36 the contractor shall, before commencing or not later than 45
37 days after commencing to furnish labor, services, or materials
38 for the prosecution of the work, serve the contractor with a
39 written notice that he or she intends to look to the bond for



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40 protection. A claimant who is not in privity with the contractor
41 and who has not received payment for furnishing his or her
42 labor, services, or materials shall serve a written notice of
43 nonpayment on the contractor and a copy of the notice on the
44 surety. The notice of nonpayment shall be under oath and served
45 during the progress of the work or thereafter but may not be
46 served earlier than 45 days after the first furnishing of labor,
47 services, or materials by the claimant or later than 90 days
48 after the final furnishing of the labor, services, or materials
49 by the claimant or, with respect to rental equipment, later than
50 90 days after the date that the rental equipment was last on the
51 job site available for use. Any notice of nonpayment served by a
52 claimant who is not in privity with the contractor which
53 includes sums for retainage must specify the portion of the
54 amount claimed for retainage. An action for the labor, services,
55 or materials may not be instituted against the contractor or the
56 surety unless the notice to the contractor and notice of
57 nonpayment have been served, if required by this section.
58 Notices required or permitted under this section must be served
59 in accordance with s. 713.18. A claimant may not waive in
60 advance his or her right to bring an action under the bond
61 against the surety. In any action brought to enforce a claim
62 against a payment bond under this section, the prevailing party
63 is entitled to recover a reasonable fee for the services of his
64 or her attorney for trial and appeal or for arbitration, in an
65 amount to be determined by the court, which fee must be taxed as
66 part of the prevailing party's costs, as allowed in equitable
67 actions. The time periods for service of a notice of nonpayment
68 or for bringing an action against a contractor or a surety are



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69 ~~shall be~~ measured from the last day of furnishing labor,
70 services, or materials by the claimant and may not be measured
71 by other standards, such as the issuance of a certificate of
72 occupancy or the issuance of a certificate of substantial
73 completion. The negligent inclusion or omission of any
74 information in the notice of nonpayment that has not prejudiced
75 the contractor or surety does not constitute a default that
76 operates to defeat an otherwise valid bond claim. A claimant who
77 serves a fraudulent notice of nonpayment forfeits his or her
78 rights under the bond. A notice of nonpayment is fraudulent if
79 the claimant has willfully exaggerated the amount unpaid,
80 willfully included a claim for work not performed or materials
81 not furnished for the subject improvement, or prepared the
82 notice with such willful and gross negligence as to amount to a
83 willful exaggeration. However, a minor mistake or error in a
84 notice of nonpayment, or a good faith dispute as to the amount
85 unpaid, does not constitute a willful exaggeration that operates
86 to defeat an otherwise valid claim against the bond. The service
87 of a fraudulent notice of nonpayment is a complete defense to
88 the claimant's claim against the bond. The notice of nonpayment
89 under this subparagraph must include the following information,
90 current as of the date of the notice, and must be in
91 substantially the following form:

92
93 NOTICE OF NONPAYMENT

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

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

96 The undersigned claimant notifies you that:

- 97 1. Claimant has furnished ...(describe labor, services, or



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98 materials)... for the improvement of the real property
99 identified as ...(property description).... The corresponding
100 amount unpaid to date is \$....., of which \$.... is unpaid
101 retainage.

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

105 3. Claimant expects to furnish ...(describe labor,
106 services, or materials)... for this improvement in the future
107 (if known), and the corresponding amount expected to become due
108 is \$.... (if known).

109 I declare that I have read the foregoing Notice of Nonpayment
110 and that the facts stated in it are true to the best of my
111 knowledge and belief.

112 DATED on,

113(signature and address of claimant)...

114 STATE OF FLORIDA

115 COUNTY OF

116
117 The foregoing instrument was sworn to (or affirmed) and
118 subscribed before me by means of physical presence or online
119 notarization this day of, ...(year)..., by ...(name of
120 signatory)....

121
122 ...(Signature of Notary Public - State of Florida)...

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

125 Personally Known OR Produced Identification

126 Type of Identification Produced



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

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

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

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

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The



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156 notice of nonpayment may be served at any time during the
157 progress of the work or thereafter but not before 45 days after
158 the first furnishing of labor, services, or materials, and not
159 later than 90 days after the final furnishing of the labor,
160 services, or materials by the claimant or, with respect to
161 rental equipment, not later than 90 days after the date that the
162 rental equipment was last on the job site available for use. An
163 action by a claimant, except a laborer, who is not in privity
164 with the contractor for the labor, materials, or supplies may
165 not be instituted against the contractor or the surety unless
166 both notices have been given. Notices required or permitted
167 under this section may be served in any manner provided in s.
168 713.18, and provisions for the waiver of claims against a
169 payment bond contained in s. 255.05(2) apply to all contracts
170 under this section.

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

173 713.01 Definitions.—As used in this part, the term:

174 (8) "Contractor" means a person other than a materialman or
175 laborer who enters into a contract with the owner of real
176 property for improving it, or who takes over from a contractor
177 as so defined the entire remaining work under such contract. The
178 term "contractor" includes an architect, landscape architect, or
179 engineer who improves real property pursuant to a design-build
180 contract authorized by s. 489.103(16). The term "contractor"
181 also includes a licensed general contractor or building
182 contractor, as those terms are defined in s. 489.105(3)(a) and
183 (b), who provides construction management services, which
184 include responsibility for scheduling and coordination in both



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185 preconstruction and construction phases and for the successful,
186 timely, and economical completion of the construction project,
187 or who provides program management services, which include
188 responsibility for schedule control, cost control, and
189 coordination in providing or procuring planning, design, and
190 construction.

191 (26) "Real property" means the land that is improved and
192 the improvements thereon, including fixtures, except any such
193 property owned by the state or any county, municipality, school
194 board, or governmental agency, commission, or political
195 subdivision, provided, however, that a private leasehold
196 interest in such government-owned property which is improved and
197 the leasehold improvements thereon shall be considered real
198 property for purposes of this part.

199 Section 4. Section 713.09, Florida Statutes, is amended to
200 read:

201 713.09 Single claim of lien.—A lienor may ~~is required to~~
202 record only one claim of lien covering his or her entire demand
203 against the real property when the amount demanded is for labor
204 or services or material furnished for more than one improvement
205 under the same direct contract or multiple direct contracts. The
206 single claim of lien is sufficient even though the improvement
207 is for one or more improvements located on separate lots,
208 parcels, or tracts of land. If materials to be used on one or
209 more improvements on separate lots, parcels, or tracts of land
210 ~~under one direct contract~~ are delivered by a lienor to a place
211 designated by the person with whom the materialman contracted,
212 other than the site of the improvement, the delivery to the
213 place designated is prima facie evidence of delivery to the site



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214 of the improvement and incorporation in the improvement. The
215 single claim of lien may be limited to a part of multiple lots,
216 parcels, or tracts of land and their improvements or may cover
217 all of the lots, parcels, or tracts of land and improvements. If
218 a ~~In each~~ claim of lien under this section is for multiple
219 direct contracts, the owner under the direct contracts ~~contract~~
220 must be the same person for all lots, parcels, or tracts of land
221 against which a single claim of lien is recorded.

222 Section 5. Paragraph (b) of subsection (2) of section
223 713.10, Florida Statutes, is amended, and subsection (4) is
224 added to that section, to read:

225 713.10 Extent of liens.—

226 (2)

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

229 1. The lease, or a short form or a memorandum of the lease
230 that contains the specific language in the lease prohibiting
231 such liability, is recorded in the official records of the
232 county where the premises are located before the recording of a
233 notice of commencement for improvements to the premises and the
234 terms of the lease expressly prohibit such liability; or

235 2. The terms of the lease expressly prohibit such
236 liability, and a notice advising that leases for the rental of
237 premises on a parcel of land prohibit such liability has been
238 recorded in the official records of the county in which the
239 parcel of land is located before the recording of a notice of
240 commencement for improvements to the premises, and the notice
241 includes the following:

242 a. The name of the lessor.



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243 b. The legal description of the parcel of land to which the
244 notice applies.

245 c. The specific language contained in the various leases
246 prohibiting such liability.

247 d. A statement that all or a majority of the leases entered
248 into for premises on the parcel of land expressly prohibit such
249 liability.

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

252
253 A notice that is consistent with subparagraph 2. effectively
254 prohibits liens for improvements made by a lessee even if other
255 leases for premises on the parcel do not expressly prohibit
256 liens or if provisions of each lease restricting the application
257 of liens are not identical.

258 (4) The interest of the lessor is not subject to liens for
259 improvements made by the lessee when the lessee is a mobile home
260 owner who is leasing a mobile home lot in a mobile home park
261 from the lessor.

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

264 713.13 Notice of commencement.—

265 (1) (a) Except for an improvement that is exempt under
266 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
267 agent before actually commencing to improve any real property,
268 or recommencing completion of any improvement after default or
269 abandonment, whether or not a project has a payment bond
270 complying with s. 713.23, shall record a notice of commencement
271 in the clerk's office and forthwith post either a certified copy



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272 thereof or a notarized statement that the notice of commencement
273 has been filed for recording along with a copy thereof. The
274 notice of commencement shall contain the following information:

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

282 2. A general description of the improvement.

283 3. The name and address of the owner, the owner's interest
284 in the site of the improvement, and the name and address of the
285 fee simple titleholder, if other than such owner.

286 4. The name and address of the lessee, if the A lessee who
287 contracts for the improvements as is an owner as defined in s.
288 713.01 under s. 713.01(23) and must be listed as the owner
289 together with a statement that the ownership interest is a
290 leasehold interest.

291 5.4. The name and address of the contractor.

292 6.5. The name and address of the surety on the payment bond
293 under s. 713.23, if any, and the amount of such bond.

294 7.6. The name and address of any person making a loan for
295 the construction of the improvements.

296 8.7. The name and address within the state of a person
297 other than himself or herself who may be designated by the owner
298 as the person upon whom notices or other documents may be served
299 under this part; and service upon the person so designated
300 constitutes service upon the owner.



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301 (d) A notice of commencement must be in substantially the
302 following form:

303
304 Permit No..... Tax Folio No.....

305 NOTICE OF COMMENCEMENT

306 State of....

307 County of....

308

309 The undersigned hereby gives notice that improvement will be
310 made to certain real property, and in accordance with Chapter
311 713, Florida Statutes, the following information is provided in
312 this Notice of Commencement.

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

315 2. General description of improvement:.....

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

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

319 ~~a. Name and address:.....~~

320 ~~b. Interest in property:.....~~

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

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

325 b. Lessee's phone number:..... ~~a.~~

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

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

328 6.5. Surety (if applicable, a copy of the payment bond is
329 attached):



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330 a. Name and address:.....
331 b. Phone number:.....
332 c. Amount of bond: \$.....
333 ~~7.a.6.a.~~ Lender: ... (name and address)....
334 b. Lender's phone number:.....
335 ~~8.7.~~ Persons within the State of Florida designated by
336 Owner upon whom notices or other documents may be served as
337 provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
338 Statutes:
339 a. Name and address:.....
340 b. Phone numbers of designated persons:.....
341 ~~9.a.8.a.~~ In addition to himself or herself, Owner
342 designates of to receive a copy of the
343 Lienor's Notice as provided in Section 713.13(1)(b), Florida
344 Statutes.
345 b. Phone number of person or entity designated by
346 owner:.....
347 ~~10.9.~~ Expiration date of notice of commencement (the
348 expiration date will be 1 year after ~~from~~ the date of recording
349 unless a different date is specified).....
350
351 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
352 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
353 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
354 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
355 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
356 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
357 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
358 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF



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359 COMMENCEMENT.

360

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

363

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

365

366 STATE OF FLORIDA

367 COUNTY OF

368

369 The foregoing instrument was acknowledged before me by means of
370 physical presence or online notarization, this day of
371, ... (year) ..., by ... (name of person) ... as ... (type of
372 authority, . . . e.g. officer, trustee, attorney in fact) ... for
373 ... (name of party on behalf of whom instrument was executed)

374

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

376

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

378

379 Personally Known OR Produced Identification

380

381 Type of Identification Produced.....

382

383 Section 7. Subsections (1), (3), and (4) of section
384 713.132, Florida Statutes, are amended to read:

385 713.132 Notice of termination.—

386 (1) An owner may terminate the period of effectiveness of a
387 notice of commencement by executing, swearing to, and recording



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388 a notice of termination that contains:

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

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

393 (c) A statement of the date as of which the notice of
394 commencement is terminated, which date may not be earlier than
395 30 days after the notice of termination is recorded;

396 (d) A statement specifying that the notice applies to all
397 the real property subject to the notice of commencement or
398 specifying the portion of such real property to which it
399 applies;

400 (e) A statement that all lienors have been paid in full;
401 and

402 (f) A statement that the owner has, before recording the
403 notice of termination, served a copy of the notice of
404 termination ~~on the contractor and~~ on each lienor who has a
405 direct contract with the owner or who has timely served a notice
406 to owner, and a statement that the owner will serve a copy of
407 the notice of termination on each lienor who timely serves a
408 notice to owner after the notice of termination has been
409 recorded. The owner is not required to serve a copy of the
410 notice of termination on any lienor who has executed a waiver
411 and release of lien upon final payment in accordance with s.
412 713.20.

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



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417 (4) If an owner or a contractor, by fraud or collusion,
418 knowingly makes any fraudulent statement or affidavit in a
419 notice of termination or any accompanying affidavit, the owner
420 and the contractor, or either of them, ~~as the case may be,~~ is
421 liable to any lienor who suffers damages as a result of the
422 filing of the fraudulent notice of termination,^r and any such
423 lienor has a right of action for damages ~~occasioned thereby.~~

424 (5)~~(4)~~ A notice of termination must be served before
425 recording on each lienor who has a direct contract with the
426 owner and on each lienor who has timely and properly served a
427 notice to owner in accordance with this part before the
428 recording of the notice of termination. A notice of termination
429 must be recorded in the official records of the county in which
430 the project is located. If properly served before recording in
431 accordance with this subsection, the notice of termination
432 terminates the period of effectiveness of the notice of
433 commencement 30 days after the notice of termination is recorded
434 in the official records ~~is effective to terminate the notice of~~
435 ~~commencement at the later of 30 days after recording of the~~
436 ~~notice of termination or a later~~ the date stated in the notice
437 of termination as the date on which the notice of commencement
438 is terminated. However, if a lienor, who began work under the
439 notice of commencement before its termination, lacks a direct
440 contract with the owner, and timely serves his or her notice to
441 owner after the notice of termination has been recorded, the
442 owner must serve a copy of the notice of termination upon such
443 lienor, and the termination of the notice of commencement as to
444 that lienor is effective 30 days after service of the notice of
445 termination ~~if the notice of termination has been served~~



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446 ~~pursuant to paragraph (1) (f) on the contractor and on each~~
447 ~~lienor who has a direct contract with the owner or who has~~
448 ~~served a notice to owner.~~

449 Section 8. Section 713.18, Florida Statutes, is amended to
450 read:

451 713.18 Manner of serving documents ~~notices and other~~
452 ~~instruments.-~~

453 (1) Service of any document ~~notices, claims of lien,~~
454 ~~affidavits, assignments, and other instruments~~ permitted or
455 required under this part, s. 255.05, or s. 337.18, or copies
456 thereof when so permitted or required, unless otherwise
457 specifically provided in this part, must be made by one of the
458 following methods:

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

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

467 ~~(c) By posting on the site of the improvement if service as~~
468 ~~provided by paragraph (a) or paragraph (b) cannot be~~
469 ~~accomplished.-~~

470 (2) ~~Notwithstanding subsection (1),~~ Service of a notice to
471 owner or a preliminary notice to contractor under s. 255.05, s.
472 337.18, s. 713.06, or s. 713.23 is effective as of the date of
473 mailing, and the requirements for service under this section
474 have been satisfied, if:



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

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

481 (c)1. The person who served the notice maintains a
482 registered or certified mail log that shows the registered or
483 certified mail number issued by the United States Postal
484 Service, the name and address of the person served, and the date
485 stamp of the United States Postal Service confirming the date of
486 mailing; or

487 2. The person who served the notice maintains ~~electronic~~
488 tracking records approved or generated by the United States
489 Postal Service containing the postal tracking number, the name
490 and address of the person served, and verification of the date
491 of receipt by the United States Postal Service.

492 (3) (a) Notwithstanding subsection (1), service of a
493 document under an instrument pursuant to this section is
494 effective on the date of mailing or shipping, and the
495 requirements for service under this section have been satisfied,
496 the instrument if the document is:

497 1. Is sent, using one of the methods specified in paragraph
498 (1) (b), to the last address shown in the notice of commencement
499 or any amendment thereto or, in the absence of a notice of
500 commencement, to the last address shown in the building permit
501 application, or to the last known address of the person to be
502 served; and

503 2. Is returned as being "refused," "moved, not



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504 forwardable," or "unclaimed," or is otherwise not delivered or
505 deliverable through no fault of the person serving the document
506 item.

507 (b) If the address shown in the notice of commencement or
508 any amendment to the notice of commencement, or, in the absence
509 of a notice of commencement, in the building permit application,
510 is incomplete for purposes of mailing or delivery, the person
511 serving the document ~~item~~ may complete the address and properly
512 format it according to United States Postal Service addressing
513 standards using information obtained from the property appraiser
514 or another public record without affecting the validity of
515 service under this section.

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

519 Section 9. Subsections (6) and (8) of section 713.20,
520 Florida Statutes, are amended to read:

521 713.20 Waiver or release of liens.—

522 (6) A person may not require a lienor to furnish a lien
523 waiver or release of lien that is different from the forms in
524 subsection (4) or subsection (5) in exchange for, or to induce
525 payment of, a progress payment or final payment, unless the
526 lienor has entered into a direct contract that requires the
527 lienor to furnish a waiver or release that is different from the
528 forms in subsection (4) or subsection (5).

529 (8) Any provisions in a lien waiver or lien release that
530 are is not related to the waiver or release of lien rights as
531 provided in this section are unenforceable, unless the lienor
532 has otherwise agreed to those provisions in the lienor's direct



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533 ~~contract substantially similar to the forms in subsections (4)~~
534 ~~and (5) is enforceable in accordance with the terms of the lien~~
535 ~~waiver or lien release.~~

536 Section 10. Paragraph (d) of subsection (1) of section
537 713.23, Florida Statutes, is amended to read:

538 713.23 Payment bond.—

539 (1)

540 (d) In addition, a lienor who has not received payment for
541 furnishing his or her labor, services, or materials must, as a
542 condition precedent to recovery under the bond, serve a written
543 notice of nonpayment on ~~to~~ the contractor and a copy of the
544 notice on the surety. The notice must be under oath and served
545 during the progress of the work or thereafter, but may not be
546 served later than 90 days after the final furnishing of labor,
547 services, or materials by the lienor, or, with respect to rental
548 equipment, later than 90 days after the date the rental
549 equipment was on the job site and available for use. A notice of
550 nonpayment that includes sums for retainage must specify the
551 portion of the amount claimed for retainage. The required notice
552 satisfies this condition precedent with respect to the payment
553 described in the notice of nonpayment, including unpaid finance
554 charges due under the lienor's contract, and with respect to any
555 other payments which become due to the lienor after the date of
556 the notice of nonpayment. The time period for serving a notice
557 of nonpayment is ~~shall be~~ measured from the last day of
558 furnishing labor, services, or materials by the lienor and may
559 not be measured by other standards, such as the issuance of a
560 certificate of occupancy or the issuance of a certificate of
561 substantial completion. The failure of a lienor to receive



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562 retainage sums not in excess of 10 percent of the value of
563 labor, services, or materials furnished by the lienor is not
564 considered a nonpayment requiring the service of the notice
565 provided under this paragraph. If the payment bond is not
566 recorded before commencement of construction, the time period
567 for the lienor to serve a notice of nonpayment may at the option
568 of the lienor be calculated from the date specified in this
569 section or the date the lienor is served a copy of the bond.
570 However, the limitation period for commencement of an action on
571 the payment bond as established in paragraph (e) may not be
572 expanded. The negligent inclusion or omission of any information
573 in the notice of nonpayment that has not prejudiced the
574 contractor or surety does not constitute a default that operates
575 to defeat an otherwise valid bond claim. A lienor who serves a
576 fraudulent notice of nonpayment forfeits his or her rights under
577 the bond. A notice of nonpayment is fraudulent if the lienor has
578 willfully exaggerated the amount unpaid, willfully included a
579 claim for work not performed or materials not furnished for the
580 subject improvement, or prepared the notice with such willful
581 and gross negligence as to amount to a willful exaggeration.
582 However, a minor mistake or error in a notice of nonpayment, or
583 a good faith dispute as to the amount unpaid, does not
584 constitute a willful exaggeration that operates to defeat an
585 otherwise valid claim against the bond. The service of a
586 fraudulent notice of nonpayment is a complete defense to the
587 lienor's claim against the bond. The notice under this paragraph
588 must include the following information, current as of the date
589 of the notice, and must be in substantially the following form:
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NOTICE OF NONPAYMENT

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

The undersigned lienor notifies you that:

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

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

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

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

DATED on,

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

STATE OF FLORIDA
COUNTY OF.....



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620 The foregoing instrument was sworn to (or affirmed) and
621 subscribed before me by means of physical presence or online
622 notarization, this day of, ...(year)...., by ...(name
623 of signatory)....

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

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

627 Personally Known OR Produced Identification

628 Type of Identification Produced

629 Section 11. Subsections (3) and (5) of section 713.235,
630 Florida Statutes, are amended to read:

631 713.235 Waivers of right to claim against payment bond;
632 forms.-

633 (3) A person may not require a claimant to furnish a waiver
634 that is different from the forms in subsections (1) and (2) in
635 exchange for, or to induce payment of, a progress payment or
636 final payment, unless the claimant has entered into a direct
637 contract that requires the claimant to furnish a waiver that is
638 different from the forms in subsections (1) and (2).

639 (5) Any provisions in a waiver that are ~~is~~ not related to
640 the waiver of a claim against the payment bond as provided in
641 this section are unenforceable, unless the claimant has
642 otherwise agreed to those provisions in the claimant's direct
643 contract ~~substantially similar to the forms in this section is~~
644 enforceable in accordance with its terms.

645 Section 12. Section 713.29, Florida Statutes, is amended to
646 read:

647 713.29 Attorney ~~Attorney's~~ fees.-In any action brought to
648 enforce a lien, including a lien that has been transferred to



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649 security, or to enforce a claim against a bond under this part,
650 the prevailing party is entitled to recover a reasonable fee for
651 the services of her or his attorney for trial and appeal or for
652 arbitration, in an amount to be determined by the court, which
653 fee must be taxed as part of the prevailing party's costs, as
654 allowed in equitable actions.

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

656

657 ===== T I T L E A M E N D M E N T =====

658 And the title is amended as follows:

659 Delete everything before the enacting clause

660 and insert:

661

A bill to be entitled

662 An act relating to liens and bonds; amending s.
663 255.05, F.S.; requiring that a copy of a notice of
664 nonpayment be served on the surety; prohibiting a
665 person from requiring a claimant to furnish a certain
666 waiver in exchange for or to induce certain payments;
667 providing that specified provisions in certain waivers
668 are unenforceable; providing an exception; amending s.
669 337.18, F.S.; providing that certain waivers apply to
670 certain contracts; amending s. 713.01, F.S.; revising
671 definitions; amending s. 713.09, F.S.; authorizing a
672 lienor to record one claim of lien for multiple direct
673 contracts; amending s. 713.10, F.S.; providing that
674 the interest of a lessor is not subject to liens for
675 certain improvements made by certain lessees who are
676 mobile home owners; amending s. 713.13, F.S.; revising
677 information to be included in a notice of



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678 commencement; amending s. 713.132, F.S.; revising
679 requirements for a notice of termination; amending s.
680 713.18, F.S.; specifying the manner in which documents
681 relating to certain construction bonds must be served;
682 providing that service of a document may be by hand
683 delivery; providing that service of a document is
684 effective on the date of mailing or shipping; making
685 technical changes; amending ss. 713.20 and 713.235,
686 F.S.; prohibiting a person from requiring a lienor to
687 furnish a certain waiver or release in exchange for or
688 to induce certain payments; providing that specified
689 provisions in certain waivers or releases are
690 unenforceable; providing an exception; amending s.
691 713.23, F.S.; requiring that a copy of a notice of
692 nonpayment be served on the surety; amending s.
693 713.29, F.S.; authorizing attorney fees in actions to
694 enforce a lien that has been transferred to security;
695 providing an effective date.