

By Senator Albritton

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1 A bill to be entitled
2 An act relating to construction contracting; amending
3 s. 255.05, F.S.; revising the manner by which certain
4 claimants provide a notice of nonpayment to a surety;
5 providing that certain provisions in a waiver or
6 release of a claim against a payment bond are
7 unenforceable; amending s. 713.01, F.S.; revising the
8 definition of the term "final furnishing"; amending s.
9 713.07, F.S.; specifying the priority of certain liens
10 in relation to subordinate conveyances, encumbrances,
11 and demands; amending s. 713.13, F.S.; revising
12 information required to be included in a notice of
13 commencement; amending s. 713.18, F.S.; modifying
14 conditions under which service of certain instruments
15 is deemed effective; amending s. 713.20, F.S.;
16 providing that certain provisions in a lien waiver or
17 release are unenforceable; amending s. 713.23, F.S.;
18 revising the manner by which certain lienors provide a
19 notice of nonpayment to a surety; amending s. 713.235,
20 F.S.; providing that certain provisions in a waiver or
21 release of a right to make a claim against a payment
22 bond are unenforceable; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraphs (a) and (f) of subsection (2) of
27 section 255.05, Florida Statutes, are amended to read:

28 255.05 Bond of contractor constructing public buildings;
29 form; action by claimants.-

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

36
 37 NOTICE OF CONTEST OF CLAIM
 38 AGAINST PAYMENT BOND
 39

40 To: ... (Name and address of claimant) ...
 41

42 You are notified that the undersigned contests your notice
 43 of nonpayment, dated,, and served on the
 44 undersigned on,, and that the time within
 45 which you may file suit to enforce your claim is limited to 60
 46 days after the date of service of this notice.

47
 48 DATED on,

49
 50 Signed: ... (Contractor or Attorney) ...
 51

52 The claim of a claimant upon whom such notice is served and who
 53 fails to institute a suit to enforce his or her claim against
 54 the payment bond within 60 days after service of such notice is
 55 extinguished automatically. The contractor or the contractor's
 56 attorney shall serve a copy of the notice of contest to the
 57 claimant at the address shown in the notice of nonpayment or
 58 most recent amendment thereto and shall certify to such service

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59 on the face of the notice and record the notice.

60 2. A claimant, except a laborer, who is not in privity with
61 the contractor shall, before commencing or not later than 45
62 days after commencing to furnish labor, services, or materials
63 for the prosecution of the work, serve the contractor with a
64 written notice that he or she intends to look to the bond for
65 protection. A claimant who is not in privity with the contractor
66 and who has not received payment for furnishing his or her
67 labor, services, or materials shall serve a written notice of
68 nonpayment on the contractor, and a copy of the notice on the
69 surety. The notice of nonpayment shall be under oath and served
70 during the progress of the work or thereafter but may not be
71 served earlier than 45 days after the first furnishing of labor,
72 services, or materials by the claimant or later than 90 days
73 after the final furnishing of the labor, services, or materials
74 by the claimant or, with respect to rental equipment, later than
75 90 days after the date that the rental equipment was last on the
76 job site available for use. Any notice of nonpayment served by a
77 claimant who is not in privity with the contractor which
78 includes sums for retainage must specify the portion of the
79 amount claimed for retainage. An action for the labor, services,
80 or materials may not be instituted against the contractor or the
81 surety unless the notice to the contractor and notice of
82 nonpayment have been served, if required by this section.
83 Notices required or permitted under this section must be served
84 in accordance with s. 713.18. A claimant may not waive in
85 advance his or her right to bring an action under the bond
86 against the surety. In any action brought to enforce a claim
87 against a payment bond under this section, the prevailing party

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88 is entitled to recover a reasonable fee for the services of his
89 or her attorney for trial and appeal or for arbitration, in an
90 amount to be determined by the court, which fee must be taxed as
91 part of the prevailing party's costs, as allowed in equitable
92 actions. The time periods for service of a notice of nonpayment
93 or for bringing an action against a contractor or a surety shall
94 be measured from the last day of furnishing labor, services, or
95 materials by the claimant and may not be measured by other
96 standards, such as the issuance of a certificate of occupancy or
97 the issuance of a certificate of substantial completion. The
98 negligent inclusion or omission of any information in the notice
99 of nonpayment that has not prejudiced the contractor or surety
100 does not constitute a default that operates to defeat an
101 otherwise valid bond claim. A claimant who serves a fraudulent
102 notice of nonpayment forfeits his or her rights under the bond.
103 A notice of nonpayment is fraudulent if the claimant has
104 willfully exaggerated the amount unpaid, willfully included a
105 claim for work not performed or materials not furnished for the
106 subject improvement, or prepared the notice with such willful
107 and gross negligence as to amount to a willful exaggeration.
108 However, a minor mistake or error in a notice of nonpayment, or
109 a good faith dispute as to the amount unpaid, does not
110 constitute a willful exaggeration that operates to defeat an
111 otherwise valid claim against the bond. The service of a
112 fraudulent notice of nonpayment is a complete defense to the
113 claimant's claim against the bond. The notice of nonpayment
114 under this subparagraph must include the following information,
115 current as of the date of the notice, and must be in
116 substantially the following form:

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NOTICE OF NONPAYMENT

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

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

The undersigned claimant notifies you that:

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

3. Claimant 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 claimant)...

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146 STATE OF FLORIDA
147 COUNTY OF

149 The foregoing instrument was sworn to (or affirmed) and
150 subscribed before me this....day of, ...(year)..., by
151 ...(name of signatory)....

152 ...(Signature of Notary Public - State of Florida)...
153 ...(Print, Type, or Stamp Commissioned Name of Notary
154 Public)...

156 Personally Known OR Produced Identification

158 Type of Identification Produced.....

160 (f) A provision in a waiver or a release executed on or
161 after July 1, 2020, which ~~that~~ is not related to the waiver or
162 release of a claim against the payment bond as contemplated in
163 this subsection is unenforceable ~~substantially similar to the~~
164 ~~forms in this subsection is enforceable in accordance with its~~
165 ~~terms.~~

166 Section 2. Subsection (12) of section 713.01, Florida
167 Statutes, is amended to read:

168 713.01 Definitions.—As used in this part, the term:

169 (12) "Final furnishing" means the last date that the lienor
170 furnishes labor, services, or materials. Such date may not be
171 measured by other standards, such as the issuance of a
172 certificate of occupancy or the issuance of a certificate of
173 final completion, and does not include correction of
174 deficiencies in the lienor's previously performed work or

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175 materials supplied.

176 (a) With respect to rental equipment, the term means the
177 date that the rental equipment was last on the job site and
178 available for use.

179 (b) With respect to specially fabricated materials, the
180 term means the date that the last portion of the specially
181 fabricated materials is delivered to the site of the
182 improvement. However, if any portion of the specially fabricated
183 materials is not delivered to the site of the improvement
184 through no fault of the lienor, the term means either 1 year
185 from completion of fabrication by the lienor, 1 year from the
186 date that the lienor receives the remainder of the specially
187 fabricated materials to complete its order, or the expiration of
188 the notice of commencement, whichever occurs later.

189 Section 3. Subsection (3) of section 713.07, Florida
190 Statutes, is amended to read:

191 713.07 Priority of liens.—

192 (3) All such liens shall have priority over any conveyance,
193 encumbrance, or demand not recorded against the real property
194 before ~~prior to~~ the time such lien attached as provided herein,
195 including subordinate conveyances, encumbrances, or demands that
196 would otherwise relate back to any conveyance, encumbrance, or
197 demand recorded before the time such lien attached pursuant to
198 the operation of any common law doctrine or remedy. However, but
199 any conveyance, encumbrance, or demand recorded before ~~prior to~~
200 the time such lien attaches and any proceeds thereof, regardless
201 of when disbursed, has ~~shall have~~ priority over such liens.

202 Section 4. Subsection (1) of section 713.13, Florida
203 Statutes, is amended to read:

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204 713.13 Notice of commencement.—

205 (1)(a) Except for an improvement that is exempt pursuant to
206 s. 713.02(5), an owner or the owner's authorized agent before
207 actually commencing to improve any real property, or
208 recommencing completion of any improvement after default or
209 abandonment, whether or not a project has a payment bond
210 complying with s. 713.23, shall record a notice of commencement
211 in the clerk's office and forthwith post either a certified copy
212 thereof or a notarized statement that the notice of commencement
213 has been filed for recording along with a copy thereof. The
214 notice of commencement must ~~shall~~ contain the following
215 information:

216 1. A description sufficient for identification of the real
217 property to be improved. The description should include the
218 legal description of the property and also should include the
219 street address and tax folio number of the property if available
220 or, if there is no street address available, such additional
221 information as will describe the physical location of the real
222 property to be improved.

223 2. A general description of the improvement.

224 3. The name and address of the owner of record, ~~the owner's~~
225 ~~interest in the site of the improvement, and the name and~~
226 ~~address of the fee simple titleholder, if other than such owner.~~

227 4. The name and address of the tenant, or lessee, if the
228 tenant ~~A lessee who~~ contracts for the improvements as is an
229 owner as defined under s. 713.01(23) ~~and must be listed as the~~
230 ~~owner together with a statement that the ownership interest is a~~
231 ~~leasehold interest.~~

232 5.4. The name and address of the contractor.

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262 The undersigned hereby gives notice that improvement will be
 263 made to certain real property, and in accordance with Chapter
 264 713, Florida Statutes, the following information is provided in
 265 this Notice of Commencement.

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

268 2. General description of improvement:.....

269 3. Owner of record information ~~or Lessee information if the~~
 270 ~~Lessee contracted for the improvement:~~

271 a. Name and address:.....

272 b. Phone number:..... ~~Interest in property:.....~~.

273 ~~e. Name and address of fee simple titleholder (if different~~
 274 ~~from Owner listed above):.....~~

275 4. Tenant (lessee) if tenant contracted for the
 276 improvement:

277 a. Name and address:.....

278 b. Phone number:.....

279 5. Contractor:

280 a. Name and address:..... ~~...(name and address)....~~.

281 b. ~~Contractor's~~ Phone number:.....

282 ~~6.5.~~ Surety (if applicable, a copy of the payment bond is
 283 attached):

284 a. Name and address:.....

285 b. Phone number:.....

286 c. Amount of bond: \$.....

287 ~~7.6.a.~~ Lender: ~~...(name and address)...~~

288 a. Name and address:.....

289 b. ~~Lender's~~ Phone number:.....

290 ~~8.7.~~ Persons within the State of Florida designated by

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291 Owner upon whom notices or other documents may be served as
292 provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
293 Statutes:

294 a. Name and address:.....

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

296 9.a.8.a. ~~9.a.8.a.~~ In addition to himself or herself, Owner
297 designates of to receive a copy of the
298 Lienor's Notice as provided in Section 713.13(1)(b), Florida
299 Statutes.

300 b. Phone number of person or entity designated by
301 owner:.....

302 10.9. ~~10.9.~~ Expiration date of notice of commencement (the
303 expiration date will be 1 year from the date of recording unless
304 a different date is specified).....

305

306 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
307 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
308 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
309 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
310 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
311 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
312 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
313 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
314 COMMENCEMENT.

315

316 ... (Signature of Owner or Tenant (Lessee) ~~Lessee~~, or Owner's or
317 Tenant's (Lessee's) ~~Lessee's~~ Authorized
318 Officer/Director/Partner/Manager)...

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

321

322 The foregoing instrument was acknowledged before me this
323 day of, ... (year) ..., by ... (name of person) ... as ... (type
324 of authority, . . . e.g. officer, trustee, attorney in fact) ...
325 for ... (name of party on behalf of whom instrument was
326 executed)

327

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

329

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

331

332 Personally Known OR Produced Identification

333

334 Type of Identification Produced.....

335

336 (e) A copy of any payment bond must be attached at the time
337 of recordation of the notice of commencement. The failure to
338 attach a copy of the bond to the notice of commencement when the
339 notice is recorded negates the exemption provided in s.
340 713.02(6). However, if a payment bond under s. 713.23 exists but
341 was not attached at the time of recordation of the notice of
342 commencement, the bond may be used to transfer any recorded lien
343 of a lienor except that of the contractor by the recordation and
344 service of a notice of bond pursuant to s. 713.23(2). The notice
345 requirements of s. 713.23 apply to any claim against the bond;
346 however, the time limits for serving any required notices shall,
347 at the option of the lienor, be calculated from the dates
348 specified in s. 713.23 or the date the notice of bond is served

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349 on the lienor.

350 (f) The giving of a notice of commencement is effective
351 upon the filing of the notice in the clerk's office.

352 (g) The owner must sign the notice of commencement and no
353 one else may be permitted to sign in his or her stead.

354 Section 5. Paragraph (a) of subsection (3) of section
355 713.18, Florida Statutes, is amended to read:

356 713.18 Manner of serving notices and other instruments.—

357 (3) (a) Service of an instrument pursuant to this section is
358 effective on the date of mailing or shipment of the instrument
359 if it:

360 1. Is sent to the last address shown in the notice of
361 commencement or any amendment thereto or, in the absence of a
362 notice of commencement, to the last address shown in the
363 building permit application, or to the last known address of the
364 person to be served; and

365 2. Is returned as being "refused," "moved, not
366 forwardable," or "unclaimed," or is otherwise not delivered or
367 deliverable through no fault of the person serving the item.

368 Section 6. Subsection (8) of section 713.20, Florida
369 Statutes, is amended to read:

370 713.20 Waiver or release of liens.—

371 (8) A provision in a lien waiver or lien release executed
372 on or after July 1, 2020, which ~~that~~ is not related to the
373 waiver or release of lien rights as contemplated by this section
374 is unenforceable ~~substantially similar to the forms in~~
375 ~~subsections (4) and (5) is enforceable in accordance with the~~
376 ~~terms of the lien waiver or lien release.~~

377 Section 7. Paragraph (d) of subsection (1) of section

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378 713.23, Florida Statutes, is amended to read:

379 713.23 Payment bond.—

380 (1)

381 (d) In addition, a lienor who has not received payment for
382 furnishing his or her labor, services, or materials must, as a
383 condition precedent to recovery under the bond, serve a written
384 notice of nonpayment to the contractor, and a copy of the notice
385 to the surety. The notice must be under oath and served during
386 the progress of the work or thereafter, but may not be served
387 later than 90 days after the final furnishing of labor,
388 services, or materials by the lienor, or, with respect to rental
389 equipment, later than 90 days after the date the rental
390 equipment was on the job site and available for use. A notice of
391 nonpayment that includes sums for retainage must specify the
392 portion of the amount claimed for retainage. The required notice
393 satisfies this condition precedent with respect to the payment
394 described in the notice of nonpayment, including unpaid finance
395 charges due under the lienor's contract, and with respect to any
396 other payments which become due to the lienor after the date of
397 the notice of nonpayment. The time period for serving a notice
398 of nonpayment shall be measured from the last day of furnishing
399 labor, services, or materials by the lienor and may not be
400 measured by other standards, such as the issuance of a
401 certificate of occupancy or the issuance of a certificate of
402 substantial completion. The failure of a lienor to receive
403 retainage sums not in excess of 10 percent of the value of
404 labor, services, or materials furnished by the lienor is not
405 considered a nonpayment requiring the service of the notice
406 provided under this paragraph. If the payment bond is not

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407 recorded before commencement of construction, the time period
408 for the lienor to serve a notice of nonpayment may at the option
409 of the lienor be calculated from the date specified in this
410 section or the date the lienor is served a copy of the bond.
411 However, the limitation period for commencement of an action on
412 the payment bond as established in paragraph (e) may not be
413 expanded. The negligent inclusion or omission of any information
414 in the notice of nonpayment that has not prejudiced the
415 contractor or surety does not constitute a default that operates
416 to defeat an otherwise valid bond claim. A lienor who serves a
417 fraudulent notice of nonpayment forfeits his or her rights under
418 the bond. A notice of nonpayment is fraudulent if the lienor has
419 willfully exaggerated the amount unpaid, willfully included a
420 claim for work not performed or materials not furnished for the
421 subject improvement, or prepared the notice with such willful
422 and gross negligence as to amount to a willful exaggeration.
423 However, a minor mistake or error in a notice of nonpayment, or
424 a good faith dispute as to the amount unpaid, does not
425 constitute a willful exaggeration that operates to defeat an
426 otherwise valid claim against the bond. The service of a
427 fraudulent notice of nonpayment is a complete defense to the
428 lienor's claim against the bond. The notice under this paragraph
429 must include the following information, current as of the date
430 of the notice, and must be in substantially the following form:

431
432 NOTICE OF NONPAYMENT
433434 To ... (name of contractor and address) ...
435

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

437

438 The undersigned lienor notifies you that:

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

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

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

451

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

455

456 DATED on,

457

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

459

460 STATE OF FLORIDA

461 COUNTY OF.....

462

463 The foregoing instrument was sworn to (or affirmed) and
464 subscribed before me this day of, ...(year)...., by

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465 ... (name of signatory)....

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

467 ... (Print, Type, or Stamp Commissioned Name of Notary

468 Public)...

469

470 Personally Known OR Produced Identification

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472 Type of Identification Produced.....

473 Section 8. Subsection (5) of section 713.235, Florida

474 Statutes, is amended to read:

475 713.235 Waivers of right to claim against payment bond;

476 forms.—

477 (5) A provision in a waiver or a release executed on or

478 after July 1, 2020, which ~~that~~ is not related to the waiver or

479 release of a claim against the payment bond as contemplated by

480 this section is unenforceable ~~substantially similar to the forms~~

481 ~~in this section is enforceable in accordance with its terms.~~

482 Section 9. This act shall take effect July 1, 2020.