

By the Committee on Judiciary; and Senator Albritton

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1 A bill to be entitled
2 An act relating to liens and bonds; amending s.
3 255.05, F.S.; requiring that a copy of a notice of
4 nonpayment be served on the surety; prohibiting a
5 person from requiring a claimant to furnish a certain
6 waiver in exchange for or to induce certain payments;
7 providing that specified provisions in certain waivers
8 are unenforceable; providing an exception; amending s.
9 337.18, F.S.; providing that certain waivers apply to
10 certain contracts; amending s. 713.01, F.S.; revising
11 definitions; amending s. 713.09, F.S.; authorizing a
12 lienor to record one claim of lien for multiple direct
13 contracts; amending s. 713.10, F.S.; providing that
14 the interest of a lessor is not subject to liens for
15 certain improvements made by certain lessees who are
16 mobile home owners; amending s. 713.13, F.S.; revising
17 information to be included in a notice of
18 commencement; amending s. 713.132, F.S.; revising
19 requirements for a notice of termination; amending s.
20 713.18, F.S.; specifying the manner in which documents
21 relating to certain construction bonds must be served;
22 providing that service of a document may be by hand
23 delivery; providing that service of a document is
24 effective on the date of mailing or shipping; making
25 technical changes; amending ss. 713.20 and 713.235,
26 F.S.; prohibiting a person from requiring a lienor to
27 furnish a certain waiver or release in exchange for or
28 to induce certain payments; providing that specified
29 provisions in certain waivers or releases are

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30 unenforceable; providing an exception; amending s.
 31 713.23, F.S.; requiring that a copy of a notice of
 32 nonpayment be served on the surety; amending s.
 33 713.29, F.S.; authorizing attorney fees in actions to
 34 enforce a lien that has been transferred to security;
 35 providing an effective date.

36

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

38

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

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

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

49

50 NOTICE OF CONTEST OF CLAIM
 51 AGAINST PAYMENT BOND

52

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

54

55 You are notified that the undersigned contests your notice
 56 of nonpayment, dated,, and served on the
 57 undersigned on,, and that the time within
 58 which you may file suit to enforce your claim is limited to 60

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59 days after the date of service of this notice.

60

61 DATED on,

62

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

64

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

73 2. A claimant, except a laborer, who is not in privity with
 74 the contractor shall, before commencing or not later than 45
 75 days after commencing to furnish labor, services, or materials
 76 for the prosecution of the work, serve the contractor with a
 77 written notice that he or she intends to look to the bond for
 78 protection. A claimant who is not in privity with the contractor
 79 and who has not received payment for furnishing his or her
 80 labor, services, or materials shall serve a written notice of
 81 nonpayment on the contractor and a copy of the notice on the
 82 surety. The notice of nonpayment shall be under oath and served
 83 during the progress of the work or thereafter but may not be
 84 served earlier than 45 days after the first furnishing of labor,
 85 services, or materials by the claimant or later than 90 days
 86 after the final furnishing of the labor, services, or materials
 87 by the claimant or, with respect to rental equipment, later than

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88 90 days after the date that the rental equipment was last on the
89 job site available for use. Any notice of nonpayment served by a
90 claimant who is not in privity with the contractor which
91 includes sums for retainage must specify the portion of the
92 amount claimed for retainage. An action for the labor, services,
93 or materials may not be instituted against the contractor or the
94 surety unless the notice to the contractor and notice of
95 nonpayment have been served, if required by this section.
96 Notices required or permitted under this section must be served
97 in accordance with s. 713.18. A claimant may not waive in
98 advance his or her right to bring an action under the bond
99 against the surety. In any action brought to enforce a claim
100 against a payment bond under this section, the prevailing party
101 is entitled to recover a reasonable fee for the services of his
102 or her attorney for trial and appeal or for arbitration, in an
103 amount to be determined by the court, which fee must be taxed as
104 part of the prevailing party's costs, as allowed in equitable
105 actions. The time periods for service of a notice of nonpayment
106 or for bringing an action against a contractor or a surety are
107 ~~shall be~~ measured from the last day of furnishing labor,
108 services, or materials by the claimant and may not be measured
109 by other standards, such as the issuance of a certificate of
110 occupancy or the issuance of a certificate of substantial
111 completion. The negligent inclusion or omission of any
112 information in the notice of nonpayment that has not prejudiced
113 the contractor or surety does not constitute a default that
114 operates to defeat an otherwise valid bond claim. A claimant who
115 serves a fraudulent notice of nonpayment forfeits his or her
116 rights under the bond. A notice of nonpayment is fraudulent if

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117 the claimant has willfully exaggerated the amount unpaid,
118 willfully included a claim for work not performed or materials
119 not furnished for the subject improvement, or prepared the
120 notice with such willful and gross negligence as to amount to a
121 willful exaggeration. However, a minor mistake or error in a
122 notice of nonpayment, or a good faith dispute as to the amount
123 unpaid, does not constitute a willful exaggeration that operates
124 to defeat an otherwise valid claim against the bond. The service
125 of a fraudulent notice of nonpayment is a complete defense to
126 the claimant's claim against the bond. The notice of nonpayment
127 under this subparagraph must include the following information,
128 current as of the date of the notice, and must be in
129 substantially the following form:

130
131 NOTICE OF NONPAYMENT

132
133 To: ...(name of contractor and address)...

134
135 ...(name of surety and address)...

136
137 The undersigned claimant notifies you that:

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

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

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

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

187 Section 2. Paragraph (c) of subsection (1) of section
188 337.18, Florida Statutes, is amended to read:

189 337.18 Surety bonds for construction or maintenance
190 contracts; requirement with respect to contract award; bond
191 requirements; defaults; damage assessments.-

192 (1)

193 (c) A claimant, except a laborer, who is not in privity
194 with the contractor shall, before commencing or not later than
195 90 days after commencing to furnish labor, materials, or
196 supplies for the prosecution of the work, furnish the contractor
197 with a notice that he or she intends to look to the bond for
198 protection. A claimant who is not in privity with the contractor
199 and who has not received payment for his or her labor,
200 materials, or supplies shall deliver to the contractor and to
201 the surety written notice of the performance of the labor or
202 delivery of the materials or supplies and of the nonpayment. The
203 notice of nonpayment may be served at any time during the

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204 progress of the work or thereafter but not before 45 days after
205 the first furnishing of labor, services, or materials, and not
206 later than 90 days after the final furnishing of the labor,
207 services, or materials by the claimant or, with respect to
208 rental equipment, not later than 90 days after the date that the
209 rental equipment was last on the job site available for use. An
210 action by a claimant, except a laborer, who is not in privity
211 with the contractor for the labor, materials, or supplies may
212 not be instituted against the contractor or the surety unless
213 both notices have been given. Notices required or permitted
214 under this section may be served in any manner provided in s.
215 713.18, and provisions for the waiver of claims against a
216 payment bond contained in s. 255.05(2) apply to all contracts
217 under this section.

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

220 713.01 Definitions.—As used in this part, the term:

221 (8) "Contractor" means a person other than a materialman or
222 laborer who enters into a contract with the owner of real
223 property for improving it, or who takes over from a contractor
224 as so defined the entire remaining work under such contract. The
225 term "contractor" includes an architect, landscape architect, or
226 engineer who improves real property pursuant to a design-build
227 contract authorized by s. 489.103(16). The term "contractor"
228 also includes a licensed general contractor or building
229 contractor, as those terms are defined in s. 489.105(3) (a) and
230 (b), who provides construction management services, which
231 include responsibility for scheduling and coordination in both
232 preconstruction and construction phases and for the successful,

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233 timely, and economical completion of the construction project,
234 or who provides program management services, which include
235 responsibility for schedule control, cost control, and
236 coordination in providing or procuring planning, design, and
237 construction.

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

246 Section 4. Section 713.09, Florida Statutes, is amended to
247 read:

248 713.09 Single claim of lien.—A lienor may ~~is required to~~
249 record only one claim of lien covering his or her entire demand
250 against the real property when the amount demanded is for labor
251 or services or material furnished for more than one improvement
252 under the same direct contract or multiple direct contracts. The
253 single claim of lien is sufficient even though the improvement
254 is for one or more improvements located on separate lots,
255 parcels, or tracts of land. If materials to be used on one or
256 more improvements on separate lots, parcels, or tracts of land
257 ~~under one direct contract~~ are delivered by a lienor to a place
258 designated by the person with whom the materialman contracted,
259 other than the site of the improvement, the delivery to the
260 place designated is prima facie evidence of delivery to the site
261 of the improvement and incorporation in the improvement. The

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262 single claim of lien may be limited to a part of multiple lots,
263 parcels, or tracts of land and their improvements or may cover
264 all of the lots, parcels, or tracts of land and improvements. If
265 a ~~In each~~ claim of lien under this section is for multiple
266 direct contracts, the owner under the direct contracts ~~contract~~
267 must be the same person for all lots, parcels, or tracts of land
268 against which a single claim of lien is recorded.

269 Section 5. Paragraph (b) of subsection (2) of section
270 713.10, Florida Statutes, is amended, and subsection (4) is
271 added to that section, to read:

272 713.10 Extent of liens.—

273 (2)

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

276 1. The lease, or a short form or a memorandum of the lease
277 that contains the specific language in the lease prohibiting
278 such liability, is recorded in the official records of the
279 county where the premises are located before the recording of a
280 notice of commencement for improvements to the premises and the
281 terms of the lease expressly prohibit such liability; or

282 2. The terms of the lease expressly prohibit such
283 liability, and a notice advising that leases for the rental of
284 premises on a parcel of land prohibit such liability has been
285 recorded in the official records of the county in which the
286 parcel of land is located before the recording of a notice of
287 commencement for improvements to the premises, and the notice
288 includes the following:

289 a. The name of the lessor.

290 b. The legal description of the parcel of land to which the

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291 notice applies.

292 c. The specific language contained in the various leases
293 prohibiting such liability.

294 d. A statement that all or a majority of the leases entered
295 into for premises on the parcel of land expressly prohibit such
296 liability.

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

299

300 A notice that is consistent with subparagraph 2. effectively
301 prohibits liens for improvements made by a lessee even if other
302 leases for premises on the parcel do not expressly prohibit
303 liens or if provisions of each lease restricting the application
304 of liens are not identical.

305 (4) The interest of the lessor is not subject to liens for
306 improvements made by the lessee when the lessee is a mobile home
307 owner who is leasing a mobile home lot in a mobile home park
308 from the lessor.

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

311 713.13 Notice of commencement.—

312 (1) (a) Except for an improvement that is exempt under
313 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
314 agent before actually commencing to improve any real property,
315 or recommencing completion of any improvement after default or
316 abandonment, whether or not a project has a payment bond
317 complying with s. 713.23, shall record a notice of commencement
318 in the clerk's office and forthwith post either a certified copy
319 thereof or a notarized statement that the notice of commencement

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320 has been filed for recording along with a copy thereof. The
321 notice of commencement shall contain the following information:

322 1. A description sufficient for identification of the real
323 property to be improved. The description should include the
324 legal description of the property and also should include the
325 street address and tax folio number of the property if available
326 or, if there is no street address available, such additional
327 information as will describe the physical location of the real
328 property to be improved.

329 2. A general description of the improvement.

330 3. The name and address of the owner, the owner's interest
331 in the site of the improvement, and the name and address of the
332 fee simple titleholder, if other than such owner.

333 4. The name and address of the lessee, if the A lessee who
334 contracts for the improvements as is an owner as defined in s.
335 713.01 under s. 713.01(23) and must be listed as the owner
336 together with a statement that the ownership interest is a
337 leasehold interest.

338 5.4. The name and address of the contractor.

339 6.5. The name and address of the surety on the payment bond
340 under s. 713.23, if any, and the amount of such bond.

341 7.6. The name and address of any person making a loan for
342 the construction of the improvements.

343 8.7. The name and address within the state of a person
344 other than himself or herself who may be designated by the owner
345 as the person upon whom notices or other documents may be served
346 under this part; and service upon the person so designated
347 constitutes service upon the owner.

348 (d) A notice of commencement must be in substantially the

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349 following form:

350
351 Permit No..... Tax Folio No.....

352 NOTICE OF COMMENCEMENT

353 State of....

354 County of....

355

356 The undersigned hereby gives notice that improvement will be
357 made to certain real property, and in accordance with Chapter
358 713, Florida Statutes, the following information is provided in
359 this Notice of Commencement.

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

362 2. General description of improvement:.....

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

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

366 ~~a. Name and address:.....~~

367 ~~b. Interest in property:.....~~

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

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

372 b. Lessee's phone number:..... ~~a-~~

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

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

375 6.5- Surety (if applicable, a copy of the payment bond is
376 attached):

377 a. Name and address:.....

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378 b. Phone number:.....

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

380 ~~7.a.6.a.~~ Lender: ... (name and address)....

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

382 ~~8.7.~~ Persons within the State of Florida designated by

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

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

385 Statutes:

386 a. Name and address:.....

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

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

389 designates of to receive a copy of the

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

391 Statutes.

392 b. Phone number of person or entity designated by

393 owner:.....

394 ~~10.9.~~ Expiration date of notice of commencement (the

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

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

397

398 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE

399 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER

400 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA

401 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS

402 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND

403 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU

404 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN

405 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF

406 COMMENCEMENT.

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

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

STATE OF FLORIDA

COUNTY OF

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

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

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

Personally Known OR Produced Identification

Type of Identification Produced.....

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

713.132 Notice of termination.—

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

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

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

439 (c) A statement of the date as of which the notice of
440 commencement is terminated, which date may not be earlier than
441 30 days after the notice of termination is recorded;

442 (d) A statement specifying that the notice applies to all
443 the real property subject to the notice of commencement or
444 specifying the portion of such real property to which it
445 applies;

446 (e) A statement that all lienors have been paid in full;
447 and

448 (f) A statement that the owner has, before recording the
449 notice of termination, served a copy of the notice of
450 termination ~~on the contractor and~~ on each lienor who has a
451 direct contract with the owner or who has timely served a notice
452 to owner, and a statement that the owner will serve a copy of
453 the notice of termination on each lienor who timely serves a
454 notice to owner after the notice of termination has been
455 recorded. The owner is not required to serve a copy of the
456 notice of termination on any lienor who has executed a waiver
457 and release of lien upon final payment in accordance with s.
458 713.20.

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

463 (4) If an owner or a contractor, by fraud or collusion,
464 knowingly makes any fraudulent statement or affidavit in a

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465 notice of termination or any accompanying affidavit, the owner
466 and the contractor, or either of them, ~~as the case may be,~~ is
467 liable to any lienor who suffers damages as a result of the
468 filing of the fraudulent notice of termination,⁷ and any such
469 lienor has a right of action for damages ~~occasioned thereby.~~

470 (5)-(4) A notice of termination must be served before
471 recording on each lienor who has a direct contract with the
472 owner and on each lienor who has timely and properly served a
473 notice to owner in accordance with this part before the
474 recording of the notice of termination. A notice of termination
475 must be recorded in the official records of the county in which
476 the project is located. If properly served before recording in
477 accordance with this subsection, the notice of termination
478 terminates the period of effectiveness of the notice of
479 commencement 30 days after the notice of termination is recorded
480 in the official records ~~is effective to terminate the notice of~~
481 ~~commencement at the later of 30 days after recording of the~~
482 ~~notice of termination or a later the date stated in the notice~~
483 ~~of termination as the date on which the notice of commencement~~
484 ~~is terminated. However, if a lienor, who began work under the~~
485 ~~notice of commencement before its termination, lacks a direct~~
486 ~~contract with the owner, and timely serves his or her notice to~~
487 ~~owner after the notice of termination has been recorded, the~~
488 ~~owner must serve a copy of the notice of termination upon such~~
489 ~~lienor, and the termination of the notice of commencement as to~~
490 ~~that lienor is effective 30 days after service of the notice of~~
491 ~~termination if the notice of termination has been served~~
492 ~~pursuant to paragraph (1)(f) on the contractor and on each~~
493 ~~lienor who has a direct contract with the owner or who has~~

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494 ~~served a notice to owner.~~

495 Section 8. Section 713.18, Florida Statutes, is amended to
496 read:

497 713.18 Manner of serving documents ~~notices and other~~
498 ~~instruments.~~

499 (1) Service of any document ~~notices, claims of lien,~~
500 ~~affidavits, assignments, and other instruments~~ permitted or
501 required under this part, s. 255.05, or s. 337.18, or copies
502 thereof when so permitted or required, unless otherwise
503 specifically provided in this part, must be made by one of the
504 following methods:

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

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

513 ~~(c) By posting on the site of the improvement if service as~~
514 ~~provided by paragraph (a) or paragraph (b) cannot be~~
515 ~~accomplished.~~

516 (2) ~~Notwithstanding subsection (1),~~ Service of a notice to
517 owner or a preliminary notice to contractor under s. 255.05, s.
518 337.18, s. 713.06, or s. 713.23 is effective as of the date of
519 mailing, and the requirements for service under this section
520 have been satisfied, if:

521 (a) The notice is mailed by registered, Global Express
522 Guaranteed, or certified mail, with postage prepaid, to the

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523 person to be served at any of the addresses set forth in
524 subsection (3);

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

527 (c)1. The person who served the notice maintains a
528 registered or certified mail log that shows the registered or
529 certified mail number issued by the United States Postal
530 Service, the name and address of the person served, and the date
531 stamp of the United States Postal Service confirming the date of
532 mailing; or

533 2. The person who served the notice maintains ~~electronic~~
534 tracking records approved or generated by the United States
535 Postal Service containing the postal tracking number, the name
536 and address of the person served, and verification of the date
537 of receipt by the United States Postal Service.

538 (3) (a) Notwithstanding subsection (1), service of a
539 document under ~~an instrument pursuant to~~ this section is
540 effective on the date of mailing or shipping, and the
541 requirements for service under this section have been satisfied,
542 ~~the instrument~~ if the document ~~it~~:

543 1. Is sent, using one of the methods specified in paragraph
544 (1) (b), to the last address shown in the notice of commencement
545 or any amendment thereto or, in the absence of a notice of
546 commencement, to the last address shown in the building permit
547 application, or to the last known address of the person to be
548 served; and

549 2. Is returned as being "refused," "moved, not
550 forwardable," or "unclaimed," or is otherwise not delivered or
551 deliverable through no fault of the person serving the document

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552 ~~item.~~

553 (b) If the address shown in the notice of commencement or
554 any amendment to the notice of commencement, or, in the absence
555 of a notice of commencement, in the building permit application,
556 is incomplete for purposes of mailing or delivery, the person
557 serving the document ~~item~~ may complete the address and properly
558 format it according to United States Postal Service addressing
559 standards using information obtained from the property appraiser
560 or another public record without affecting the validity of
561 service under this section.

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

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

567 713.20 Waiver or release of liens.—

568 (6) A person may not require a lienor to furnish a lien
569 waiver or release of lien that is different from the forms in
570 subsection (4) or subsection (5) in exchange for, or to induce
571 payment of, a progress payment or final payment, unless the
572 lienor has entered into a direct contract that requires the
573 lienor to furnish a waiver or release that is different from the
574 forms in subsection (4) or subsection (5).

575 (8) Any provisions in a lien waiver or lien release that
576 are is not related to the waiver or release of lien rights as
577 provided in this section are unenforceable, unless the lienor
578 has otherwise agreed to those provisions in the lienor's direct
579 contract ~~substantially similar to the forms in subsections (4)~~
580 ~~and (5) is enforceable in accordance with the terms of the lien~~

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581 ~~waiver or lien release.~~

582 Section 10. Paragraph (d) of subsection (1) of section
583 713.23, Florida Statutes, is amended to read:

584 713.23 Payment bond.—

585 (1)

586 (d) In addition, a lienor who has not received payment for
587 furnishing his or her labor, services, or materials must, as a
588 condition precedent to recovery under the bond, serve a written
589 notice of nonpayment on ~~to~~ the contractor and a copy of the
590 notice on the surety. The notice must be under oath and served
591 during the progress of the work or thereafter, but may not be
592 served later than 90 days after the final furnishing of labor,
593 services, or materials by the lienor, or, with respect to rental
594 equipment, later than 90 days after the date the rental
595 equipment was on the job site and available for use. A notice of
596 nonpayment that includes sums for retainage must specify the
597 portion of the amount claimed for retainage. The required notice
598 satisfies this condition precedent with respect to the payment
599 described in the notice of nonpayment, including unpaid finance
600 charges due under the lienor's contract, and with respect to any
601 other payments which become due to the lienor after the date of
602 the notice of nonpayment. The time period for serving a notice
603 of nonpayment is ~~shall be~~ measured from the last day of
604 furnishing labor, services, or materials by the lienor and may
605 not be measured by other standards, such as the issuance of a
606 certificate of occupancy or the issuance of a certificate of
607 substantial completion. The failure of a lienor to receive
608 retainage sums not in excess of 10 percent of the value of
609 labor, services, or materials furnished by the lienor is not

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610 considered a nonpayment requiring the service of the notice
611 provided under this paragraph. If the payment bond is not
612 recorded before commencement of construction, the time period
613 for the lienor to serve a notice of nonpayment may at the option
614 of the lienor be calculated from the date specified in this
615 section or the date the lienor is served a copy of the bond.
616 However, the limitation period for commencement of an action on
617 the payment bond as established in paragraph (e) may not be
618 expanded. The negligent inclusion or omission of any information
619 in the notice of nonpayment that has not prejudiced the
620 contractor or surety does not constitute a default that operates
621 to defeat an otherwise valid bond claim. A lienor who serves a
622 fraudulent notice of nonpayment forfeits his or her rights under
623 the bond. A notice of nonpayment is fraudulent if the lienor has
624 willfully exaggerated the amount unpaid, willfully included a
625 claim for work not performed or materials not furnished for the
626 subject improvement, or prepared the notice with such willful
627 and gross negligence as to amount to a willful exaggeration.
628 However, a minor mistake or error in a notice of nonpayment, or
629 a good faith dispute as to the amount unpaid, does not
630 constitute a willful exaggeration that operates to defeat an
631 otherwise valid claim against the bond. The service of a
632 fraudulent notice of nonpayment is a complete defense to the
633 lienor's claim against the bond. The notice under this paragraph
634 must include the following information, current as of the date
635 of the notice, and must be in substantially the following form:

636
637 NOTICE OF NONPAYMENT
638

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

640

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

642

643 The undersigned lienor notifies you that:

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

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

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

656

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

660

661 DATED on,

662

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

664

665 STATE OF FLORIDA

666 COUNTY OF.....

667

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668 The foregoing instrument was sworn to (or affirmed) and
 669 subscribed before me by means of physical presence or online
 670 notarization, this day of, ...(year)..., by ...(name
 671 of signatory)....

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

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

675
 676 Personally Known OR Produced Identification

677
 678 Type of Identification Produced
 679 Section 11. Subsections (3) and (5) of section 713.235,
 680 Florida Statutes, are amended to read:

681 713.235 Waivers of right to claim against payment bond;
 682 forms.-

683 (3) A person may not require a claimant to furnish a waiver
 684 that is different from the forms in subsections (1) and (2) in
 685 exchange for, or to induce payment of, a progress payment or
 686 final payment, unless the claimant has entered into a direct
 687 contract that requires the claimant to furnish a waiver that is
 688 different from the forms in subsections (1) and (2).

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

695 Section 12. Section 713.29, Florida Statutes, is amended to
 696 read:

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697 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
698 enforce a lien, including a lien that has been transferred to
699 security, or to enforce a claim against a bond under this part,
700 the prevailing party is entitled to recover a reasonable fee for
701 the services of her or his attorney for trial and appeal or for
702 arbitration, in an amount to be determined by the court, which
703 fee must be taxed as part of the prevailing party's costs, as
704 allowed in equitable actions.

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