

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
ADOPTED AS AMENDED (Y/N)
ADOPTED W/O OBJECTION (Y/N)
FAILED TO ADOPT (Y/N)
WITHDRAWN (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Toledo offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

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

8 255.05 Bond of contractor constructing public buildings;
9 form; action by claimants.-

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

16 NOTICE OF CONTEST OF CLAIM

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AGAINST PAYMENT BOND

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

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

DATED on,

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

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

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor with a written 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 furnishing his or her labor, services, or materials shall serve a written

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

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

91 NOTICE OF NONPAYMENT

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

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

94 The undersigned claimant notifies you that:

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

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

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

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

110 DATED on,

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

112 STATE OF FLORIDA

113 COUNTY OF

114 The foregoing instrument was sworn to (or affirmed) and
115 subscribed before me this....day of, ...(year)...., by
116 ...(name of signatory)....

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117 ...(Signature of Notary Public - State of Florida)...
118 ...(Print, Type, or Stamp Commissioned Name of Notary
119 Public)...

120 Personally Known OR Produced Identification
121 Type of Identification Produced.....

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

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

134 Section 2. Paragraph (c) of subsection (1) of section
135 337.18, Florida Statutes, is amended to read:

136 337.18 Surety bonds for construction or maintenance
137 contracts; requirement with respect to contract award; bond
138 requirements; defaults; damage assessments.-

139 (1)

140 (c) A claimant, except a laborer, who is not in privity
141 with the contractor shall, before commencing or not later than

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142 90 days after commencing to furnish labor, materials, or
143 supplies for the prosecution of the work, furnish the contractor
144 with a notice that he or she intends to look to the bond for
145 protection. A claimant who is not in privity with the contractor
146 and who has not received payment for his or her labor,
147 materials, or supplies shall deliver to the contractor and to
148 the surety written notice of the performance of the labor or
149 delivery of the materials or supplies and of the nonpayment. The
150 notice of nonpayment may be served at any time during the
151 progress of the work or thereafter but not before 45 days after
152 the first furnishing of labor, services, or materials, and not
153 later than 90 days after the final furnishing of the labor,
154 services, or materials by the claimant or, with respect to
155 rental equipment, not later than 90 days after the date that the
156 rental equipment was last on the job site available for use. An
157 action by a claimant, except a laborer, who is not in privity
158 with the contractor for the labor, materials, or supplies may
159 not be instituted against the contractor or the surety unless
160 both notices have been given. Notices required or permitted
161 under this section may be served in any manner provided in s.
162 713.18, and provisions for the waiver of claims against a
163 payment bond contained in s. 255.05(2) apply to all contracts
164 under this section.

165 Section 3. Subsections (8), (12), and (26) of section
166 713.01, Florida Statutes, are amended to read:

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167 713.01 Definitions.—As used in this part, the term:
168 (8) "Contractor" means a person other than a materialman
169 or laborer who enters into a contract with the owner of real
170 property for improving it, or who takes over from a contractor
171 as so defined the entire remaining work under such contract. The
172 term "contractor" includes an architect, landscape architect, or
173 engineer who improves real property pursuant to a design-build
174 contract authorized by s. 489.103(16). The term "contractor"
175 also includes a licensed general contractor or building
176 contractor, as those terms are defined in s. 489.105(3) (a) and
177 (b), who provides construction management services, which
178 include responsibility for scheduling and coordination in both
179 preconstruction and construction phases and for the successful,
180 timely, and economical completion of the construction project,
181 or who provides program management services, which include
182 responsibility for schedule control, cost control, and
183 coordination in providing or procuring planning, design, and
184 construction.

185 (12) "Final furnishing" means the last date that the
186 lienor furnishes labor, services, or materials. Such date may
187 not be measured by other standards, such as the issuance of a
188 certificate of occupancy or the issuance of a certificate of
189 final completion, and does not include the correction of
190 deficiencies in the lienor's previously performed work or
191 materials supplied. With respect to rental equipment, the term

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192 means the date that the rental equipment was last on the ~~job~~
193 site of the improvement and available for use. With respect to
194 specialty fabricated materials, the term means the date that the
195 last portion of the specialty fabricated materials is delivered
196 to the site of the improvement, or if any portion of the
197 specialty fabricated materials is not delivered to the site of
198 the improvement by no fault of the lienor, the term means 1 year
199 after the date the lienor completes the fabrication, 1 year
200 after the date the lienor receives the last portion of the
201 specialty fabricated materials needed to complete the order, or
202 the date the notice of commencement expires, whichever is later.

203 (26) "Real property" means the land that is improved and
204 the improvements thereon, including fixtures, except any such
205 property owned by the state or any county, municipality, school
206 board, or governmental agency, commission, or political
207 subdivision, provided, however, that a private leasehold
208 interest in such government-owned property which is improved and
209 the leasehold improvements shall be considered real property for
210 purposes of this part.

211 Section 4. Section 713.09, Florida Statutes, is amended to
212 read:

213 713.09 Single claim of lien.—A lienor may ~~is required to~~
214 record only one claim of lien covering his or her entire demand
215 against the real property when the amount demanded is for labor
216 or services or material furnished for more than one improvement

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217 | under the same direct contract or multiple direct contracts. The
218 | single claim of lien is sufficient even though the improvement
219 | is for one or more improvements located on separate lots,
220 | parcels, or tracts of land. If materials to be used on one or
221 | more improvements on separate lots, parcels, or tracts of land
222 | ~~under one direct contract~~ are delivered by a lienor to a place
223 | designated by the person with whom the materialman contracted,
224 | other than the site of the improvement, the delivery to the
225 | place designated is prima facie evidence of delivery to the site
226 | of the improvement and incorporation in the improvement. The
227 | single claim of lien may be limited to a part of multiple lots,
228 | parcels, or tracts of land and their improvements or may cover
229 | all of the lots, parcels, or tracts of land and improvements. If
230 | a ~~In each~~ claim of lien under this section is for multiple
231 | direct contracts, the owner under the direct contracts ~~contract~~
232 | must be the same person for all lots, parcels, or tracts of land
233 | against which a single claim of lien is recorded.

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

236 | 713.13 Notice of commencement.—

237 | (1) (a) Except for an improvement that is exempt under
238 | ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
239 | agent before actually commencing to improve any real property,
240 | or recommencing completion of any improvement after default or
241 | abandonment, whether or not a project has a payment bond

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242 complying with s. 713.23, shall record a notice of commencement
243 in the clerk's office and forthwith post either a certified copy
244 thereof or a notarized statement that the notice of commencement
245 has been filed for recording along with a copy thereof. The
246 notice of commencement shall contain the following information:

247 1. A description sufficient for identification of the real
248 property to be improved. The description should include the
249 legal description of the property and also should include the
250 street address and tax folio number of the property if available
251 or, if there is no street address available, such additional
252 information as will describe the physical location of the real
253 property to be improved.

254 2. A general description of the improvement.

255 3. The name and address of the owner, the owner's interest
256 in the site of the improvement, and the name and address of the
257 fee simple titleholder, if other than such owner.

258 4. The name and address of the lessee, if the A lessee who
259 contracts for the improvements as is an owner as defined in s.
260 713.01 under s. 713.01(23) and must be listed as the owner
261 together with a statement that the ownership interest is a
262 leasehold interest.

263 5.4. The name and address of the contractor.

264 6.5. The name and address of the surety on the payment
265 bond under s. 713.23, if any, and the amount of such bond.

266 7.6. The name and address of any person making a loan for

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267 the construction of the improvements.

268 ~~8.7.~~ The name and address within the state of a person
269 other than himself or herself who may be designated by the owner
270 as the person upon whom notices or other documents may be served
271 under this part; and service upon the person so designated
272 constitutes service upon the owner.

273 (d) A notice of commencement must be in substantially the
274 following form:

275 Permit No..... Tax Folio No.....

276 NOTICE OF COMMENCEMENT

277 State of....

278 County of....

279 The undersigned hereby gives notice that improvement will be
280 made to certain real property, and in accordance with Chapter
281 713, Florida Statutes, the following information is provided in
282 this Notice of Commencement.

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

285 2. General description of improvement:.....

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

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

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

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

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292 b. Lessee's phone number:..... ~~owner information or Lessee~~
293 ~~information if the Lessee contracted for the improvement:~~
294 ~~a. Name and address:.....~~
295 ~~b. Interest in property:.....~~
296 ~~c. Name and address of fee simple titleholder (if~~
297 ~~different from Owner listed above):.....~~
298 5.a.4.a. Contractor: ...(name and address)....
299 b. Contractor's phone number:.....
300 ~~6.5.~~ Surety (if applicable, a copy of the payment bond is
301 attached):
302 a. Name and address:.....
303 b. Phone number:.....
304 c. Amount of bond: \$.....
305 7.a.6.a. Lender: ...(name and address)....
306 b. Lender's phone number:.....
307 ~~8.7.~~ Persons within the State of Florida designated by
308 Owner upon whom notices or other documents may be served as
309 provided in by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
310 Statutes:
311 a. Name and address:.....
312 b. Phone numbers of designated persons:.....
313 9.a.8.a. In addition to himself or herself, Owner
314 designates of to receive a copy of the
315 Lienor's Notice as provided in Section 713.13(1)(b), Florida
316 Statutes.

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317 b. Phone number of person or entity designated by
318 owner:.....

319 ~~10.9.~~ Expiration date of notice of commencement (the
320 expiration date will be 1 year after ~~from~~ the date of recording
321 unless a different date is specified).....

322 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
323 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
324 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
325 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
326 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
327 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
328 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
329 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
330 COMMENCEMENT.

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

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

334 The foregoing instrument was acknowledged before me this
335 day of, ...(year)...., by ...(name of person)... as ...(type
336 of authority, . . . e.g. officer, trustee, attorney in
337 fact)... for ...(name of party on behalf of whom instrument was
338 executed).....

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

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

341 Personally Known OR Produced Identification

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342 Type of Identification Produced.....

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

346 713.132 Notice of termination.—

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

350 (b) The official records ~~recording office document book~~
351 ~~and page~~ reference numbers and recording date affixed by the
352 recording office on ~~of~~ the recorded notice of commencement;

353 (f) A statement that the owner has, before recording the
354 notice of termination, served a copy of the notice of
355 termination ~~on the contractor and~~ on each lienor who has a
356 direct contract with the owner or who has timely served a notice
357 to owner, and a statement that the owner will serve a copy of
358 the notice of termination on each lienor who timely serves a
359 notice to owner after the notice of termination has been
360 recorded. The owner is not required to serve a copy of the
361 notice of termination on any lienor who has executed a waiver
362 and release of lien upon final payment in accordance with s.
363 713.20.

364 (3) An owner may ~~not~~ record a notice of termination at any
365 time after ~~except after completion of construction, or after~~
366 ~~construction ceases before completion and all lienors have been~~

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367 | paid in full or pro rata in accordance with s. 713.06(4).

368 | (4) If an owner or a contractor, by fraud or collusion,
369 | knowingly makes any fraudulent statement or affidavit in a
370 | notice of termination or any accompanying affidavit, the owner
371 | and the contractor, or either of them, ~~as the case may be,~~ is
372 | liable to any lienor who suffers damages as a result of the
373 | filing of the fraudulent notice of termination,~~†~~ and any such
374 | lienor has a right of action for damages ~~occasioned thereby.~~

375 | (5)-(4) A notice of termination must be served before
376 | recording on each lienor who has a direct contract with the
377 | owner and on each lienor who has timely and properly served a
378 | notice to owner in accordance with this part before the
379 | recording of the notice of termination. A notice of termination
380 | must be recorded in the official records of the county in which
381 | the project is located. If properly served before recording in
382 | accordance with this subsection, the notice of termination
383 | terminates the period of effectiveness of the notice of
384 | commencement 30 days after the notice of termination is recorded
385 | in the official records ~~is effective to terminate the notice of~~
386 | ~~commencement at the later of 30 days after recording of the~~
387 | ~~notice of termination or a later the~~ date stated in the notice
388 | of termination as the date on which the notice of commencement
389 | is terminated. However, if a lienor, who began work under the
390 | notice of commencement before its termination, lacks a direct
391 | contract with the owner, and timely serves his or her notice to

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392 owner after the notice of termination has been recorded, the
393 owner must serve a copy of the notice of termination upon such
394 lienor, and the termination of the notice of commencement as to
395 that lienor is effective 30 days after service of the notice of
396 termination ~~if the notice of termination has been served~~
397 ~~pursuant to paragraph (1)(f) on the contractor and on each~~
398 ~~lienor who has a direct contract with the owner or who has~~
399 ~~served a notice to owner.~~

400 Section 7. Subsections (1) through (4) of section 713.18,
401 Florida Statutes, are amended to read:

402 713.18 Manner of serving notices and other instruments.-

403 (1) Service of any document notices, ~~claims of lien,~~
404 ~~affidavits, assignments, and other instruments~~ permitted or
405 required under this part, s. 255.05 or s. 337.18, or copies
406 thereof when so permitted or required, unless otherwise
407 specifically provided in this part, must be made by one of the
408 following methods:

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

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

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417 (c) By posting on the site of the improvement if service
418 as provided by paragraph (a) or paragraph (b) cannot be
419 accomplished.

420 (2) ~~Notwithstanding subsection (1),~~ Service service of a
421 notice to owner or a preliminary notice to contractor under s.
422 255.05, s. 337.18, s. 713.06, or s. 713.23 is effective as of
423 the date of mailing if:

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

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

430 (c)1. The person who served the notice maintains a
431 registered or certified mail log that shows the registered or
432 certified mail number issued by the United States Postal
433 Service, the name and address of the person served, and the date
434 stamp of the United States Postal Service confirming the date of
435 mailing; or

436 2. The person who served the notice maintains ~~electronic~~
437 tracking records approved or generated by the United States
438 Postal Service containing the postal tracking number, the name
439 and address of the person served, and verification of the date
440 of receipt by the United States Postal Service.

441 (3) (a) Service of a document ~~an instrument~~ pursuant to

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442 this section is effective on the date of mailing or shipping ~~the~~
443 ~~instrument~~ if it:

444 1. Is sent to the last address shown in the notice of
445 commencement or any amendment thereto or, in the absence of a
446 notice of commencement, to the last address shown in the
447 building permit application, or to the last known address of the
448 person to be served; and

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

452 (b) If the address shown in the notice of commencement or
453 any amendment to the notice of commencement, or, in the absence
454 of a notice of commencement, in the building permit application,
455 is incomplete for purposes of mailing or delivery, the person
456 serving the document ~~item~~ may complete the address and properly
457 format it according to United States Postal Service addressing
458 standards using information obtained from the property appraiser
459 or another public record without affecting the validity of
460 service under this section.

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

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

466 713.20 Waiver or release of liens.—

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467 (6) A person may not require a lienor to furnish a lien
468 waiver or release of lien that is different from the forms in
469 subsection (4) or subsection (5) in exchange for, or to induce
470 payment of, a progress payment or final payment, unless the
471 lienor has entered into a direct contract that requires the
472 lienor to furnish a waiver or release that is different from the
473 forms in subsection (4) or subsection (5).

474 (8) Any provisions in a lien waiver or lien release that
475 are ~~is~~ not related to the waiver or release of lien rights as
476 provided in this section are unenforceable, unless the lienor
477 has otherwise agreed to those provisions in the lienor's direct
478 contract substantially similar to the forms in subsections (4)
479 and (5) is enforceable in accordance with the terms of the lien
480 waiver or lien release.

481 Section 9. Paragraph (d) of subsection (1) of section
482 713.23, Florida Statutes, is amended to read:

483 713.23 Payment bond.—

484 (1)

485 (d) In addition, a lienor who has not received payment for
486 furnishing his or her labor, services, or materials must, as a
487 condition precedent to recovery under the bond, serve a written
488 notice of nonpayment on ~~to~~ the contractor and a copy of the
489 notice on the surety. The notice must be under oath and served
490 during the progress of the work or thereafter, but may not be
491 served later than 90 days after the final furnishing of labor,

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492 services, or materials by the lienor, or, with respect to rental
493 equipment, later than 90 days after the date the rental
494 equipment was on the job site and available for use. A notice of
495 nonpayment that includes sums for retainage must specify the
496 portion of the amount claimed for retainage. The required notice
497 satisfies this condition precedent with respect to the payment
498 described in the notice of nonpayment, including unpaid finance
499 charges due under the lienor's contract, and with respect to any
500 other payments which become due to the lienor after the date of
501 the notice of nonpayment. The time period for serving a notice
502 of nonpayment is ~~shall be~~ measured from the last day of
503 furnishing labor, services, or materials by the lienor and may
504 not be measured by other standards, such as the issuance of a
505 certificate of occupancy or the issuance of a certificate of
506 substantial completion. The failure of a lienor to receive
507 retainage sums not in excess of 10 percent of the value of
508 labor, services, or materials furnished by the lienor is not
509 considered a nonpayment requiring the service of the notice
510 provided under this paragraph. If the payment bond is not
511 recorded before commencement of construction, the time period
512 for the lienor to serve a notice of nonpayment may at the option
513 of the lienor be calculated from the date specified in this
514 section or the date the lienor is served a copy of the bond.
515 However, the limitation period for commencement of an action on
516 the payment bond as established in paragraph (e) may not be

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517 expanded. The negligent inclusion or omission of any information
518 in the notice of nonpayment that has not prejudiced the
519 contractor or surety does not constitute a default that operates
520 to defeat an otherwise valid bond claim. A lienor who serves a
521 fraudulent notice of nonpayment forfeits his or her rights under
522 the bond. A notice of nonpayment is fraudulent if the lienor has
523 willfully exaggerated the amount unpaid, willfully included a
524 claim for work not performed or materials not furnished for the
525 subject improvement, or prepared the notice with such willful
526 and gross negligence as to amount to a willful exaggeration.
527 However, a minor mistake or error in a notice of nonpayment, or
528 a good faith dispute as to the amount unpaid, does not
529 constitute a willful exaggeration that operates to defeat an
530 otherwise valid claim against the bond. The service of a
531 fraudulent notice of nonpayment is a complete defense to the
532 lienor's claim against the bond. The notice under this paragraph
533 must include the following information, current as of the date
534 of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

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

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

538 The undersigned lienor notifies you that:

539 1. The lienor has furnished ...(describe labor, services,
540 or materials)... for the improvement of the real property
541 identified as ...(property description).... The corresponding

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542 amount unpaid to date is \$...., of which \$.... is unpaid
543 retainage.

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

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

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

554 DATED on,

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

556 STATE OF FLORIDA

557 COUNTY OF.....

558 The foregoing instrument was sworn to (or affirmed) and
559 subscribed before me this day of, ...(year)..., by
560 ...(name of signatory)....

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

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

564 Personally Known OR Produced Identification

565 Type of Identification Produced.....

566 Section 10. Subsections (3) and (5) of section 713.235,

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567 Florida Statutes, are amended to read:

568 713.235 Waivers of right to claim against payment bond;
569 forms.-

570 (3) A person may not require a claimant to furnish a
571 waiver that is different from the forms in subsections (1) and
572 (2) in exchange for, or to induce payment of, a progress payment
573 or final payment, unless the claimant has entered into a direct
574 contract that requires the claimant to furnish a waiver that is
575 different from the forms in subsections (1) and (2).

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

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

584 713.24 Transfer of liens to security.-

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

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

591 (b) Recording ~~Filing~~ in the clerk's office a bond executed

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592 as surety by a surety insurer licensed to do business in this
593 state; or

594 (c) Recording in the clerk's office a bond executed as
595 surety by a surety insurer licensed to do business in this
596 state, which was furnished by a subcontractor under whose
597 subcontract the lienor's claim emanates, and which must be
598 recorded and served with a notice of bond in the same manner as
599 a payment bond furnished under s. 713.23(2). For purposes of
600 this paragraph, the subcontract payment bond must have been
601 furnished at the time the subcontractor's work commenced and
602 before the claim of lien was recorded. The subcontract payment
603 bond may not be used to transfer a lien of the contractor or the
604 subcontractor that is the principal on the subcontract payment
605 bond. Any provision in the subcontract payment bond that
606 restricts the classes of persons who are protected by the
607 subcontract payment bond, restricts the venue of any proceeding
608 relating to the subcontract payment bond, limits or expands the
609 effective duration of the subcontract payment bond, or includes
610 conditions precedent to the enforcement of a claim against the
611 subcontract payment bond beyond those provided in this part is
612 unenforceable. 7

613

614 Such deposit or bond must ~~either to~~ be in an amount at least
615 equal to the amount demanded in such claim of lien, plus
616 interest thereon at the legal rate for 3 years, plus \$1,000 or

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617 | 35 ~~25~~ percent of the amount demanded in the claim of lien,
618 | whichever is greater, to apply on any attorney ~~attorney's~~ fees
619 | and court costs that may be taxed in any proceeding to enforce
620 | said lien. Such deposit or bond shall be conditioned to pay any
621 | judgment or decree which may be rendered for the satisfaction of
622 | the lien for which such claim of lien was recorded. Upon making
623 | such deposit or filing such bond, the clerk shall make and
624 | record a certificate showing the transfer of the lien from the
625 | real property to the security and shall mail a copy thereof by
626 | registered or certified mail to the lienor named in the claim of
627 | lien so transferred, at the address stated therein. Upon filing
628 | the certificate of transfer, the real property shall thereupon
629 | be released from the lien claimed, and such lien shall be
630 | transferred to said security. In the absence of allegations of
631 | privity between the lienor and the owner, and subject to any
632 | order of the court increasing the amount required for the lien
633 | transfer deposit or bond, no other judgment or decree to pay
634 | money may be entered by the court against the owner. The clerk
635 | shall be entitled to a service charge for making and serving the
636 | certificate, in the amount of up to \$20, from which the clerk
637 | shall remit \$5 to the Department of Revenue for deposit into the
638 | General Revenue Fund. If the transaction involves the transfer
639 | of multiple liens, an additional charge of up to \$10 for each
640 | additional lien shall be charged, from which the clerk shall
641 | remit \$2.50 to the Department of Revenue for deposit into the

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642 General Revenue Fund. For recording the certificate and
643 approving the bond, the clerk shall receive her or his usual
644 statutory service charges as prescribed in s. 28.24. Any number
645 of liens may be transferred to one such security.

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

648 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
649 enforce a lien, including a lien that has been transferred to
650 security, or to enforce a claim against a bond under this part,
651 the prevailing party is entitled to recover a reasonable fee for
652 the services of her or his attorney for trial and appeal or for
653 arbitration, in an amount to be determined by the court, which
654 fee must be taxed as part of the prevailing party's costs, as
655 allowed in equitable actions.

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

657

658

659 **T I T L E A M E N D M E N T**

660 Remove everything before the enacting clause and insert:

661 An act relating to liens and bonds; amending s. 255.05,
662 F.S.; requiring that a copy of a notice of nonpayment be
663 served on the surety; prohibiting a person from requiring a
664 claimant to furnish a certain waiver in exchange for or to
665 induce certain payments; providing that specified
666 provisions in certain waivers are unenforceable; providing

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667 an exception; amending s. 337.18, F.S.; providing that
668 certain waivers apply to certain contracts; amending s.
669 713.01, F.S.; revising definitions; amending s. 713.09,
670 F.S.; authorizing a lienor to record one claim of lien for
671 multiple direct contracts; amending s. 713.13, F.S.;
672 revising information to be included in a notice of
673 commencement; amending s. 713.132, F.S.; revising
674 requirements for a notice of termination; amending s.
675 713.18, F.S.; providing additional grounds for service of a
676 document; providing that service of a document may be by
677 hand delivery; providing that service of a document is
678 effective on the date of mailing or shipping; making
679 technical changes; amending ss. 713.20 and 713.235, F.S.;
680 prohibiting a person from requiring a lienor to furnish a
681 certain waiver or release in exchange for or to induce
682 certain payments; providing that specified provisions in
683 certain waivers or releases are unenforceable; providing an
684 exception; amending s. 713.23, F.S.; requiring that a copy
685 of a notice of nonpayment be served on the surety; amending
686 s. 713.24, F.S.; revising the process to transfer a lien to
687 security; revising the amounts of certain deposits or
688 bonds; amending s. 713.29, F.S.; authorizing attorney fees
689 in actions to enforce a lien that has been transferred to
690 security; providing an effective date.

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