

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

26 information has been filed; amending s. 713.18, F.S.;
27 requiring service of documents relating to
28 construction bonds to be made in a specified manner;
29 making technical changes; amending s. 713.20, F.S.;
30 requiring certain waivers or releases to be in
31 specified forms unless the lienor's contract requires
32 the use of other forms; providing that specified
33 provisions in certain waivers or releases are
34 unenforceable; providing an exception; amending s.
35 713.21, F.S.; authorizing the full or partial release
36 of a lien under specified conditions; amending s.
37 713.23, F.S.; requiring that a copy of a notice of
38 nonpayment be served on the surety; revising the
39 process for notarizing a notice of nonpayment under a
40 payment bond; amending s. 713.235, F.S.; requiring
41 certain waivers to be in specified forms unless the
42 claimant's contract requires the use of other forms;
43 providing that specified provisions in certain waivers
44 are unenforceable; providing an exception; amending s.
45 713.29, F.S.; authorizing attorney fees in actions to
46 enforce a lien that has been transferred to security;
47 providing an effective date.

48
49 Be It Enacted by the Legislature of the State of Florida:
50

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

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

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

62
 63 NOTICE OF CONTEST OF CLAIM
 64 AGAINST PAYMENT BOND

65
 66 To: ... (Name and address of claimant) ...
 67

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

73
 74 DATED on,
 75

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

77

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

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

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

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

143 |
144 | NOTICE OF NONPAYMENT
145 |

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

147 |
148 | ...(name of surety and address)...

149 |
150 | The undersigned claimant notifies you that:

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

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

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

163
164 I declare that I have read the foregoing Notice of Nonpayment
165 and that the facts stated in it are true to the best of my
166 knowledge and belief.

167
168 DATED on,

169
170 ...(signature and address of claimant)...

171
172 STATE OF FLORIDA

173 COUNTY OF

174
175 The foregoing instrument was sworn to (or affirmed) and

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

179
 180 ... (Signature of Notary Public - State of Florida) ...
 181 ... (Print, Type, or Stamp Commissioned Name of Notary
 182 Public) ...

183
 184 Personally Known OR Produced Identification

185
 186 Type of Identification Produced

187
 188 (d) A person may not require a claimant to furnish a
 189 waiver that is different from the forms in paragraphs (b) and
 190 (c), unless the claimant has entered into a contract that
 191 requires the claimant to furnish a waiver that is different from
 192 the forms in paragraphs (b) and (c).

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

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

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

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

207 (1)

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

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

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

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

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

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

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

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

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

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

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

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

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

294 713.10 Extent of liens.—

295 (2)

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

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

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

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

311 a. The name of the lessor.

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

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

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

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

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

326 of liens are not identical.

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

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

333 713.13 Notice of commencement.—

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

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

351 2. A general description of the improvement.

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

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

360 ~~5.4.~~ The name and address of the contractor.

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

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

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

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

376 | notice of commencement are considered improper payments.

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

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

381 | NOTICE OF COMMENCEMENT

382 | State of....

383 | County of....

384 |

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

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

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

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

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

395 | a. ~~Name and address:.....~~

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

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

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

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

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

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

404 ~~6.5.~~ Surety (if applicable, a copy of the payment bond is

405 attached):

406 a. Name and address:.....

407 b. Phone number:.....

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

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

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

411 ~~8.7.~~ Persons within the State of Florida designated by

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

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

414 Statutes:

415 a. Name and address:.....

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

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

418 designates of to receive a copy of the

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

420 Statutes.

421 b. Phone number of person or entity designated by

422 owner:.....

423 ~~10.9.~~ Expiration date of notice of commencement (the

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

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

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

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

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

The foregoing instrument was acknowledged before me by means of physical presence or acknowledged before me by means of 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)...

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

452

453 Personally Known OR Produced Identification

454

455 Type of Identification Produced.....

456 Section 7. Subsections (1), (3), and (4) of section
 457 713.132, Florida Statutes, are amended to read:

458 713.132 Notice of termination.—

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

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

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

466 (c) A statement of the date as of which the notice of
 467 commencement is terminated, which date may not be earlier than
 468 30 days after the notice of termination is recorded;

469 (d) A statement specifying that the notice applies to all
 470 the real property subject to the notice of commencement or
 471 specifying the portion of such real property to which it
 472 applies;

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

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

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

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

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

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

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

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

524 713.135 Notice of commencement and applicability of lien.—

525 (1) When any person applies for a building permit, the

526 authority issuing such permit shall:

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

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

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

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

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

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

576 \$2,500. For purposes of this paragraph, the term "copy of the
577 notice of commencement" means a certified copy of the recorded
578 notice of commencement, ~~or~~ a notarized statement that the notice
579 of commencement has been filed for recording, along with a copy
580 thereof, or the clerk's office official records identifying
581 information that includes the instrument number for the notice
582 of commencement or the number and page of book where the notice
583 of commencement is recorded, as identified by the clerk.

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

590 2. The ~~certified~~ copy of the notice of commencement must
591 contain the name and address of the owner, the name and address
592 of the contractor, and the location or address of the property
593 being improved. The issuing authority shall verify that the name
594 and address of the owner, the name of the contractor, and the
595 location or address of the property being improved which is
596 contained in the ~~certified~~ copy of the notice of commencement is
597 consistent with the information in the building permit
598 application.

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

601 commencement to any person upon request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

701 served on notice to all owners and partners.

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

704 713.20 Waiver or release of liens.—

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

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

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

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

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

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

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

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

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

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

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

756 713.23 Payment bond.—

757 (1)

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

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

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

808
 809 NOTICE OF NONPAYMENT

810
 811 To ...(name of contractor and address)...

812
 813 ...(name of surety and address)...

814
 815 The undersigned lienor notifies you that:

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

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

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

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

828
829 I declare that I have read the foregoing Notice of Nonpayment
830 and that the facts stated in it are true to the best of my
831 knowledge and belief.

832
833 DATED on,

834
835 ... (signature and address of lienor)...

836
837 STATE OF FLORIDA
838 COUNTY OF.....

839
840 The foregoing instrument was sworn to (or affirmed) and
841 subscribed before me by means of physical presence or sworn to
842 (or affirmed) by online notarization, this day of,
843 ... (year) ..., by ... (name of signatory)

844 ... (Signature of Notary Public - State of Florida) ...
845 ... (Print, Type, or Stamp Commissioned Name of Notary
846 Public) ...

847
848 Personally Known OR Produced Identification

849
850 Type of Identification Produced

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

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

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

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

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

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

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