

By the Committee on Banking and Insurance; and Senator Bradley

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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.; revising when a notice of contest of
4 claim against a payment bond and a notice of
5 nonpayment must be served; requiring that a copy of a
6 notice of nonpayment be served on the surety; revising
7 the process for notarizing a notice of nonpayment;
8 removing the authority for a contractor to file an
9 alternative form of security rather than a bond;
10 requiring service of documents to be made in a
11 specified manner; conforming provisions to changes
12 made by the act; making technical changes; amending s.
13 337.18, F.S.; revising when a notice of nonpayment may
14 be served; requiring service of documents to be made
15 in a specified manner; conforming provisions to
16 changes made by the act; amending s. 713.01, F.S.;
17 revising and defining terms; creating s. 713.011,
18 F.S.; providing for the computation of time for
19 recording a document or filing an action when certain
20 time periods fall on specified days or during a
21 declared state of emergency; providing that certain
22 orders constitute a state of emergency; specifying
23 when a clerk's office is considered closed; amending
24 s. 713.10, F.S.; revising the extent of certain liens;
25 amending s. 713.13, F.S.; conforming a cross-
26 reference; revising the process for notarizing a
27 notice of commencement; amending s. 713.132, F.S.;
28 revising requirements for a notice of termination;
29 revising when an owner may record a notice of

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30 termination; specifying when a notice of termination
31 terminates the notice of commencement; amending s.
32 713.135, F.S.; defining the term "copy of the notice
33 of commencement"; providing applicability; making
34 technical changes; providing that an issuing authority
35 is not liable for failing to verify that specified
36 information has been filed; amending s. 713.18, F.S.;
37 requiring service of documents relating to
38 construction bonds to be made in a specified manner;
39 making technical changes; amending s. 713.21, F.S.;
40 authorizing the full or partial release of a lien
41 under specified conditions; amending s. 713.22, F.S.;
42 revising the information required in a notice of
43 contest of lien; amending s. 713.23, F.S.; requiring
44 that a copy of a notice of nonpayment be served on the
45 surety; revising the process for notarizing a notice
46 of nonpayment under a payment bond; amending s.
47 713.24, F.S.; revising the amount required in addition
48 to the deposit or bond that applies toward attorney
49 fees and costs; requiring the clerk to make a copy of
50 the deposit or bond used to transfer a lien to other
51 security and mail it to the lienor; repealing s.
52 713.25, F.S., relating to applicability of ch. 65-456,
53 Laws of Florida; amending s. 713.29, F.S.; authorizing
54 attorney fees in actions to enforce a lien that has
55 been transferred to security; amending s. 95.11, F.S.;
56 conforming a cross-reference; providing an effective
57 date.

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

60
61 Section 1. Paragraph (a) of subsection (2) and subsections
62 (6) and (7) of section 255.05, Florida Statutes, are amended,
63 and a new subsection (11) is added to that section, to read:

64 255.05 Bond of contractor constructing public buildings;
65 form; action by claimants.—

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

72
73 NOTICE OF CONTEST OF CLAIM
74 AGAINST PAYMENT BOND

75
76 To: ...(Name and address of claimant)...

77
78 You are notified that the undersigned contests your notice
79 of nonpayment, dated,, and served on the
80 undersigned on,, and that the time within
81 which you may file suit to enforce your claim is limited to 60
82 days after the date of service of this notice.

83
84 DATED on,

85
86 Signed: ...(Contractor or Attorney)...

87

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

96 2. A claimant, except a laborer, who is not in privity with
97 the contractor shall, before commencing or not later than 45
98 days after commencing to furnish labor, services, or materials
99 for the prosecution of the work, serve the contractor with a
100 written notice that he or she intends to look to the bond for
101 protection. If the payment bond is not recorded before the
102 commencement of work or before the recommencement of work after
103 a default or abandonment, if applicable, as required by s.
104 255.05(1), the claimant may serve the contractor with such
105 written notice up to 45 days after the date that the claimant is
106 served with a copy of the bond. A claimant who is not in privity
107 with the contractor and who has not received payment for
108 furnishing his or her labor, services, or materials shall serve
109 a written notice of nonpayment on the contractor and a copy of
110 the notice on the surety. The notice of nonpayment must ~~shall~~ be
111 under oath and served during the progress of the work or
112 thereafter but may not be served earlier than 30 ~~45~~ days after
113 the first furnishing of labor, services, or materials by the
114 claimant or later than 90 days after the final furnishing of the
115 labor, services, or materials by the claimant or, with respect
116 to rental equipment, later than 90 days after the date that the

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117 rental equipment was last on the ~~job~~ site of the improvement
118 available for use. Any notice of nonpayment served by a claimant
119 who is not in privity with the contractor which includes sums
120 for retainage must specify the portion of the amount claimed for
121 retainage. An action for the labor, services, or materials may
122 not be instituted against the contractor or the surety unless
123 the notice to the contractor and notice of nonpayment have been
124 served, if required by this section. Notices required or
125 permitted under this section must be served in accordance with
126 s. 713.18. A claimant may not waive in advance his or her right
127 to bring an action under the bond against the surety. In any
128 action brought to enforce a claim against a payment bond under
129 this section, the prevailing party is entitled to recover a
130 reasonable fee for the services of his or her attorney for trial
131 and appeal or for arbitration, in an amount to be determined by
132 the court or arbitrator, which fee must be taxed as part of the
133 prevailing party's costs, as allowed in equitable actions. The
134 time periods for service of a notice of nonpayment or for
135 bringing an action against a contractor or a surety are ~~shall be~~
136 measured from the last day of furnishing labor, services, or
137 materials by the claimant and may not be measured by other
138 standards, such as the issuance of a certificate of occupancy or
139 the issuance of a certificate of substantial completion. The
140 negligent inclusion or omission of any information in the notice
141 of nonpayment that has not prejudiced the contractor or surety
142 does not constitute a default that operates to defeat an
143 otherwise valid bond claim. A claimant who serves a fraudulent
144 notice of nonpayment forfeits his or her rights under the bond.
145 A notice of nonpayment is fraudulent if the claimant has

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146 willfully exaggerated the amount unpaid, willfully included a
147 claim for work not performed or materials not furnished for the
148 subject improvement, or prepared the notice with such willful
149 and gross negligence as to amount to a willful exaggeration.
150 However, a minor mistake or error in a notice of nonpayment, or
151 a good faith dispute as to the amount unpaid, does not
152 constitute a willful exaggeration that operates to defeat an
153 otherwise valid claim against the bond. The service of a
154 fraudulent notice of nonpayment is a complete defense to the
155 claimant's claim against the bond. The notice of nonpayment
156 under this subparagraph must include the following information,
157 current as of the date of the notice, and must be in
158 substantially the following form:

159
160 NOTICE OF NONPAYMENT

161
162 To: ...(name of contractor and address)...

163
164 ...(name of surety and address)...

165
166 The undersigned claimant notifies you that:

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

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

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

179
 180 I declare that I have read the foregoing Notice of Nonpayment
 181 and that the facts stated in it are true to the best of my
 182 knowledge and belief.

183
 184 DATED on,

185
 186(signature and address of claimant)...

187
 188 STATE OF FLORIDA
 189 COUNTY OF

190
 191 The foregoing instrument was sworn to (or affirmed) and
 192 subscribed before me by means of physical presence or sworn to
 193 (or affirmed) by online notarization this day of,
 194 ...(year)..., by ...(name of signatory)....

195
 196(Signature of Notary Public - State of Florida)...

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

199
 200 Personally Known OR Produced Identification

201
 202 Type of Identification Produced.....
 203

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204 (6) All payment bond forms used by a public owner and all
205 payment bonds executed pursuant to this section by a surety
206 shall make reference to this section by number, shall contain
207 reference to the notice and time limitation provisions in
208 subsections (2) and (9) ~~(10)~~, and shall comply with the
209 requirements of paragraph (1) (a).

210 ~~(7) In lieu of the bond required by this section, a~~
211 ~~contractor may file with the state, county, city, or other~~
212 ~~political authority an alternative form of security in the form~~
213 ~~of cash, a money order, a certified check, a cashier's check, an~~
214 ~~irrevocable letter of credit, or a security of a type listed in~~
215 ~~part II of chapter 625. Any such alternative form of security~~
216 ~~shall be for the same purpose and be subject to the same~~
217 ~~conditions as those applicable to the bond required by this~~
218 ~~section. The determination of the value of an alternative form~~
219 ~~of security shall be made by the appropriate state, county,~~
220 ~~city, or other political subdivision.~~

221 (11) Unless otherwise provided in this section, service of
222 any document must be made in accordance with s. 713.18.

223 Section 2. Paragraph (c) of subsection (1) of section
224 337.18, Florida Statutes, is amended, and subsection (6) is
225 added to that section, to read:

226 337.18 Surety bonds for construction or maintenance
227 contracts; requirement with respect to contract award; bond
228 requirements; defaults; damage assessments.—

229 (1)

230 (c) A claimant, except a laborer, who is not in privity
231 with the contractor shall, before commencing or not later than
232 90 days after commencing to furnish labor, materials, or

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233 supplies for the prosecution of the work, furnish the contractor
234 with a notice that he or she intends to look to the bond for
235 protection. A claimant who is not in privity with the contractor
236 and who has not received payment for his or her labor,
237 materials, or supplies shall deliver to the contractor and to
238 the surety written notice of the performance of the labor or
239 delivery of the materials or supplies and of the nonpayment. The
240 notice of nonpayment may be served at any time during the
241 progress of the work or thereafter but not before 30 ~~45~~ days
242 after the first furnishing of labor, services, or materials, and
243 not later than 90 days after the final furnishing of the labor,
244 services, or materials by the claimant or, with respect to
245 rental equipment, not later than 90 days after the date that the
246 rental equipment was last on the ~~job~~ site of the improvement
247 available for use. An action by a claimant, except a laborer,
248 who is not in privity with the contractor for the labor,
249 materials, or supplies may not be instituted against the
250 contractor or the surety unless both notices have been given.
251 Written notices required or permitted under this section must
252 may be served in accordance with ~~any manner provided in s.~~
253 713.18.

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

256 Section 3. Present subsections (13) through (27) and
257 subsections (28) and (29) of section 713.01, Florida Statutes,
258 are redesignated as subsections (14) through (28) and
259 subsections (30) and (31), respectively, new subsections (13)
260 and (29) are added to that section, and subsections (4), (8),
261 and (12) of that section are amended, to read:

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262 713.01 Definitions.—As used in this part, the term:

263 (4) "Clerk's office" means the office of the clerk of the
264 circuit court of the county, or another office serving as the
265 county recorder as provided by law, in which the real property
266 is located.

267 (8) "Contractor" means a person other than a materialman or
268 laborer who enters into a contract with the owner of real
269 property for improving it, or who takes over from a contractor
270 as so defined the entire remaining work under such contract. The
271 term "contractor" includes an architect, landscape architect, or
272 engineer who improves real property pursuant to a design-build
273 contract authorized by s. 489.103(16). The term also includes a
274 licensed general contractor or building contractor, as those
275 terms are defined in s. 489.105(3)(a) and (b), respectively, who
276 provides construction management services, which include
277 scheduling and coordinating both preconstruction and
278 construction phases for the successful, timely, and economical
279 completion of the construction project or who provides program
280 management services, which include schedule control, cost
281 control, and coordination in providing or procuring planning,
282 design, and construction.

283 (12) "Final furnishing" means the last date that the lienor
284 furnishes labor, services, or materials. Such date may not be
285 measured by other standards, such as the issuance of a
286 certificate of occupancy or the issuance of a certificate of
287 final completion, and does not include the correction of
288 deficiencies in the lienor's previously performed work or
289 materials supplied. With respect to rental equipment, the term
290 means the date that the rental equipment was last on the ~~job~~

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291 site of the improvement and available for use. With respect to
292 specialty fabricated materials, the term means the date that the
293 last portion of the specialty fabricated materials is delivered
294 to the site of the improvement, or if any portion of the
295 specialty fabricated materials is not delivered to the site of
296 the improvement by no fault of the lienor, the term means 90
297 days after the date the lienor completes the fabrication or 90
298 days before the expiration of the notice of commencement,
299 whichever is earlier.

300 (13) "Finance charge" means a contractually specified
301 additional amount to be paid by the obligor on any balance that
302 remains unpaid by the due date set forth in the credit agreement
303 or other contract.

304 (29) "Specially fabricated materials" means materials
305 designed and fabricated for use in a particular improvement that
306 are not generally suited for or readily adaptable for use in a
307 similar improvement.

308 Section 4. Section 713.011, Florida Statutes, is created to
309 read:

310 713.011 Computation of time.—

311 (1) In computing any time period for recording a document
312 or filing an action under this part, if the last day of the time
313 period is a Saturday, Sunday, legal holiday, or any day observed
314 as a holiday by the clerk's office, the time period is extended
315 to the end of the next business day.

316 (2) During a state of emergency declared under chapter 252
317 during which the clerk's office is closed, the time periods for
318 recording a document or filing an action under this part are
319 tolled. Upon the expiration of the declared state of emergency,

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320 the number of days that were remaining for any such time period
321 on the first day of the declared state of emergency commences on
322 the first business day after the expiration of the declared
323 state of emergency.

324 (3) For purposes of this section, a federal, state, or
325 local governmental order closing or directing the closure of the
326 clerk's office for any reason constitutes a state of emergency
327 and a clerk's office is considered closed if it is not accepting
328 documents for recording or filing by any means.

329 Section 5. Paragraph (b) of subsection (2) of section
330 713.10, Florida Statutes, is amended, and subsection (4) is
331 added to that section, to read:

332 713.10 Extent of liens.—

333 (2)

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

336 1. The lease, or a short form or a memorandum of the lease
337 that contains the specific language in the lease prohibiting
338 such liability, is recorded in the official records of the
339 county where the premises are located before the recording of a
340 notice of commencement for improvements to the premises and the
341 terms of the lease expressly prohibit such liability; or

342 2. The terms of the lease expressly prohibit such
343 liability, and a notice advising that leases for the rental of
344 premises on a parcel of land prohibit such liability has been
345 recorded in the official records of the county in which the
346 parcel of land is located before the recording of a notice of
347 commencement for improvements to the premises, and the notice
348 includes the following:

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- 349 a. The name of the lessor.
- 350 b. The legal description of the parcel of land to which the
351 notice applies.
- 352 c. The specific language contained in the various leases
353 prohibiting such liability.
- 354 d. A statement that all or a majority of the leases entered
355 into for premises on the parcel of land expressly prohibit such
356 liability.

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

359

360 A notice that is consistent with subparagraph 2. effectively
361 prohibits liens for improvements made by a lessee even if other
362 leases for premises on the parcel do not expressly prohibit
363 liens or if provisions of each lease restricting the application
364 of liens are not identical.

365 (4) The interest of the lessor is not subject to liens for
366 improvements made by the lessee when the lessee is a mobile home
367 owner who is leasing a mobile home lot in a mobile home park
368 from the lessor.

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

371 713.13 Notice of commencement.—

372 (1) (a) Except for an improvement that is exempt under
373 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
374 agent before actually commencing to improve any real property,
375 or recommencing completion of any improvement after default or
376 abandonment, whether or not a project has a payment bond
377 complying with s. 713.23, shall record a notice of commencement

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378 in the clerk's office and ~~forthwith~~ post either a certified copy
379 thereof or a notarized statement that the notice of commencement
380 has been filed for recording along with a copy thereof. The
381 notice of commencement shall contain all of the following
382 information:

383 1. A description sufficient for identification of the real
384 property to be improved. The description should include the
385 legal description of the property and also should include the
386 street address and tax folio number of the property if available
387 or, if there is no street address available, such additional
388 information as will describe the physical location of the real
389 property to be improved.

390 2. A general description of the improvement.

391 3. The name and address of the owner, the owner's interest
392 in the site of the improvement, and the name and address of the
393 fee simple titleholder, if other than such owner. A lessee who
394 contracts for the improvements is an owner as defined under s.
395 713.01 ~~s. 713.01(23)~~ and must be listed as the owner together
396 with a statement that the ownership interest is a leasehold
397 interest.

398 4. The name and address of the contractor.

399 5. The name and address of the surety on the payment bond
400 under s. 713.23, if any, and the amount of such bond.

401 6. The name and address of any person making a loan for the
402 construction of the improvements.

403 7. The name and address within the state of a person other
404 than himself or herself who may be designated by the owner as
405 the person upon whom notices or other documents may be served
406 under this part; and service upon the person so designated

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407 constitutes service upon the owner.

408 (d) A notice of commencement must be in substantially the
 409 following form:

410
 411 Permit No..... Tax Folio No.....

412 NOTICE OF COMMENCEMENT

413 State of....
 414 County of....

415
 416 The undersigned hereby gives notice that improvement will be
 417 made to certain real property, and in accordance with Chapter
 418 713, Florida Statutes, the following information is provided in
 419 this Notice of Commencement.

- 420 1. Description of property: ...(legal description of the
 421 property, and street address if available)....
- 422 2. General description of improvement:.....
- 423 3. Owner information or Lessee information if the Lessee
 424 contracted for the improvement:
 - 425 a. Name and address:.....
 - 426 b. Interest in property:.....
 - 427 c. Name and address of fee simple titleholder (if different
 428 from Owner listed above):.....
 - 429 4.a. Contractor: ...(name and address)....
 - 430 b. Contractor's phone number:.....
 - 431 5. Surety (if applicable, a copy of the payment bond is
 432 attached):
 - 433 a. Name and address:.....
 - 434 b. Phone number:.....
 - 435 c. Amount of bond: \$.....

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- 436 6.a. Lender: ...(name and address)....
- 437 b. Lender's phone number:.....
- 438 7. Persons within the State of Florida designated by Owner
- 439 upon whom notices or other documents may be served as provided
- 440 by Section 713.13(1)(a)7., Florida Statutes:
- 441 a. Name and address:.....
- 442 b. Phone numbers of designated persons:.....
- 443 8.a. In addition to himself or herself, Owner designates
- 444 of to receive a copy of the Lienor's
- 445 Notice as provided in Section 713.13(1)(b), Florida Statutes.
- 446 b. Phone number of person or entity designated by
- 447 owner:.....
- 448 9. Expiration date of notice of commencement (the
- 449 expiration date will be 1 year after ~~from~~ the date of recording
- 450 unless a different date is specified).....

451

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

453 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER

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

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

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

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

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

459 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF

460 COMMENCEMENT.

461

462 ...(Signature of Owner or Lessee, or Owner's or Lessee's

463 Authorized Officer/Director/Partner/Manager)...

464

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

466

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

473

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

475

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

477

478 Personally Known OR Produced Identification

479

480 Type of Identification Produced.....

481

481 Section 7. Subsections (1), (3), and (4) of section
 482 713.132, Florida Statutes, are amended to read:

483

713.132 Notice of termination.—

484

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

487

(a) The same information as the notice of commencement.†

488

488 (b) The official records' ~~recording office document book~~
 489 ~~and page~~ reference numbers and recording date affixed by the
 490 recording office on ~~of~~ the recorded notice of commencement.†

491

491 (c) A statement of the date as of which the notice of
 492 commencement is terminated, which date may not be earlier than
 493 30 days after the notice of termination is recorded.†

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494 (d) A statement specifying that the notice applies to all
495 the real property subject to the notice of commencement or
496 specifying the portion of such real property to which it
497 applies.~~†~~

498 (e) A statement that all lienors have been paid in full.~~†~~
499 and

500 (f) A statement that the owner has, before recording the
501 notice of termination, served a copy of the notice of
502 termination ~~on the contractor and~~ on each lienor who has a
503 direct contract with the owner or who has timely served a notice
504 to owner, and a statement that the owner will serve a copy of
505 the notice of termination on each lienor who timely serves a
506 notice to owner after the notice of termination has been
507 recorded. The owner is not required to serve a copy of the
508 notice of termination on any lienor who has executed a waiver
509 and release of lien upon final payment in accordance with s.
510 713.20.

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

515 (4) If an owner or a contractor, by fraud or collusion,
516 knowingly makes any fraudulent statement or affidavit in a
517 notice of termination or any accompanying affidavit, the owner
518 and the contractor, or either of them, ~~as the case may be,~~ is
519 liable to any lienor who suffers damages as a result of the
520 filing of the fraudulent notice of termination,~~†~~ and any such
521 lienor has a right of action for damages ~~occasioned thereby~~.

522 (5) ~~(4)~~ A notice of termination must be served before

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523 recording on each lienor who has a direct contract with the
524 owner and on each lienor who has timely and properly served a
525 notice to owner in accordance with this part before the
526 recording of the notice of termination. A notice of termination
527 must be recorded in the official records of the county in which
528 the improvement is located. If properly served before recording
529 in accordance with this subsection, the notice of termination
530 terminates the period of effectiveness of the notice of
531 commencement 30 days after the notice of termination is recorded
532 in the official records ~~is effective to terminate the notice of~~
533 ~~commencement at the later of 30 days after recording of the~~
534 ~~notice of termination or a later~~ the date stated in the notice
535 of termination as the date on which the notice of commencement
536 is terminated. However, if a lienor who began work under the
537 notice of commencement before its termination lacks a direct
538 contract with the owner and timely serves his or her notice to
539 owner after the notice of termination has been recorded, the
540 owner must serve a copy of the notice of termination upon such
541 lienor, and the termination of the notice of commencement as to
542 that lienor is effective 30 days after service of the notice of
543 termination, ~~if the notice of termination has been served~~
544 ~~pursuant to paragraph (1)(f) on the contractor and on each~~
545 ~~lienor who has a direct contract with the owner or who has~~
546 ~~served a notice to owner.~~

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

549 713.135 Notice of commencement and applicability of lien.—

550 (1) When a ~~any~~ person applies for a building permit, the
551 authority issuing such permit shall:

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552 (a) Print on the face of each permit card in no less than
553 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR
554 FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR
555 PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
556 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE
557 THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT
558 WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF
559 COMMENCEMENT."

560 (b) Provide the applicant and the owner of the real
561 property upon which improvements are to be constructed with a
562 printed statement stating that the right, title, and interest of
563 the person who has contracted for the improvement may be subject
564 to attachment under the Construction Lien Law. The Department of
565 Business and Professional Regulation shall furnish, for
566 distribution, the statement described in this paragraph, and the
567 statement must be a summary of the Construction Lien Law and
568 must include an explanation of the provisions of the
569 Construction Lien Law relating to the recording, and the posting
570 of copies, of notices of commencement and a statement
571 encouraging the owner to record a notice of commencement and
572 post a copy of the notice of commencement in accordance with s.
573 713.13. The statement must also contain an explanation of the
574 owner's rights if a lienor fails to furnish the owner with a
575 notice as provided in s. 713.06(2) and an explanation of the
576 owner's rights as provided in s. 713.22. The authority that
577 issues the building permit must obtain from the Department of
578 Business and Professional Regulation the statement required by
579 this paragraph and must mail, deliver by electronic mail or
580 other electronic format or facsimile, or personally deliver that

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581 statement to the owner or, in a case in which the owner is
582 required to personally appear to obtain the permit, provide that
583 statement to any owner making improvements to real property
584 consisting of a single or multiple family dwelling up to and
585 including four units. However, the failure by the authorities to
586 provide the summary does not subject the issuing authority to
587 liability.

588 (c) In addition to providing the owner with the statement
589 as required by paragraph (b), inform each applicant who is not
590 the person whose right, title, and interest is subject to
591 attachment that, as a condition to the issuance of a building
592 permit, the applicant must promise in good faith that the
593 statement will be delivered to the person whose property is
594 subject to attachment.

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

597 (e) Require ~~If the direct contract is greater than \$2,500,~~
598 the applicant to shall file with the issuing authority before
599 ~~prior to~~ the first inspection ~~either a certified copy of the~~
600 ~~recorded~~ notice of commencement if the direct contract is
601 greater than \$2,500. For purposes of this paragraph, the term
602 "copy of the notice of commencement" means a certified copy of
603 the recorded notice of commencement, or a notarized statement
604 that the notice of commencement has been filed for recording,
605 along with a copy thereof, or the clerk's office official
606 records identifying information that includes the instrument
607 number for the notice of commencement or the number and page of
608 book where the notice of commencement is recorded, as identified
609 by the clerk.

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610 1. In the absence of the filing of a ~~certified~~ copy of the
611 ~~recorded~~ notice of commencement, the issuing authority or a
612 private provider performing inspection services may not perform
613 or approve subsequent inspections until the applicant files by
614 mail, facsimile, hand delivery, or any other means such
615 ~~certified~~ copy with the issuing authority.

616 2. The ~~certified~~ copy of the notice of commencement must
617 contain the name and address of the owner, the name and address
618 of the contractor, and the location or address of the property
619 being improved. The issuing authority shall verify that the name
620 and address of the owner, the name of the contractor, and the
621 location or address of the property being improved which is
622 contained in the ~~certified~~ copy of the notice of commencement is
623 consistent with the information in the building permit
624 application.

625 3. The issuing authority shall provide the recording
626 information on the ~~certified~~ copy of the ~~recorded~~ notice of
627 commencement to any person upon request.

628 4. This subsection does not require the recording of a
629 notice of commencement before ~~prior to~~ the issuance of a
630 building permit. If a local government requires a separate
631 permit or inspection for installation of temporary electrical
632 service or other temporary utility service, land clearing, or
633 other preliminary site work, such permits may be issued and such
634 inspections may be conducted without providing the issuing
635 authority with a ~~certified~~ copy of the ~~a recorded~~ notice of
636 commencement ~~or a notarized statement regarding a recorded~~
637 ~~notice of commencement. This subsection does not apply to a~~
638 ~~direct contract to repair or replace an existing heating or air-~~

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639 conditioning system in an amount less than \$7,500.

640 (f)~~(e)~~ Not require that a notice of commencement be
641 recorded as a condition of the application for, or processing or
642 issuance of, a building permit. However, this paragraph does not
643 modify or waive the inspection requirements set forth in this
644 subsection.

645
646 This subsection does not apply to a direct contract to repair or
647 replace an existing heating or air-conditioning system in an
648 amount less than \$7,500.

649 (3) An issuing authority under subsection (1) is not liable
650 in any civil action for the failure to verify that a certified
651 copy of the recorded notice of commencement, a notarized
652 statement that the notice of commencement has been filed for
653 recording along with a copy thereof, or the clerk's office
654 official records identifying information that includes the
655 instrument number for the notice of commencement or the number
656 and page of book where the notice of commencement is recorded,
657 as identified by the clerk, has been filed in accordance with
658 this section.

659 Section 9. Section 713.18, Florida Statutes, is amended to
660 read:

661 713.18 Manner of serving documents ~~notices and other~~
662 ~~instruments.~~

663 (1) Unless otherwise specifically provided by law, service
664 of any document notices, claims of lien, affidavits,
665 assignments, and other instruments permitted or required under
666 this part, s. 255.05, or s. 337.18, or copies thereof when so
667 permitted or required, unless otherwise specifically provided in

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668 ~~this part,~~ must be made by one of the following methods:

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

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

677 (c) By posting on the site of the improvement if service as
678 provided by paragraph (a) or paragraph (b) cannot be
679 accomplished.

680 (2) Notwithstanding subsection (1), service of a notice to
681 owner or a preliminary notice to contractor under this part, s.
682 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date
683 of mailing and the requirements for service under this section
684 have been satisfied if all of the following requirements have
685 been met:

686 (a) The notice is mailed by registered, Global Express
687 Guaranteed, or certified mail, with postage prepaid, to the
688 person to be served and addressed as prescribed ~~at any of the~~
689 ~~addresses set forth~~ in subsection (3). ~~†~~

690 (b) The notice is mailed within 40 days after the date the
691 lienor first furnishes labor, services, or materials. ~~†~~ ~~and~~

692 (c)1. The person who served the notice maintains a
693 registered or certified mail log that shows the registered or
694 certified mail number issued by the United States Postal
695 Service, the name and address of the person served, and the date
696 stamp of the United States Postal Service confirming the date of

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697 mailing; or

698 2. The person who served the notice maintains ~~electronic~~
699 tracking records approved or generated by the United States
700 Postal Service containing the postal tracking number, ~~the name~~
701 ~~and address of the person served,~~ and verification of the date
702 of receipt by the United States Postal Service.

703 (3) (a) Notwithstanding subsection (1), service of a
704 document under an instrument pursuant to this section is
705 effective on the date of mailing or shipping, and the
706 requirements for service under this section have been satisfied,
707 ~~the instrument~~ if the document ~~it~~:

708 1. Is sent to the last address shown in the notice of
709 commencement or any amendment thereto or, in the absence of a
710 notice of commencement, to the last address shown in the
711 building permit application, or to the last known address of the
712 person to be served. ~~;~~ ~~and~~

713 2. Is returned as being "refused," "moved, not
714 forwardable," or "unclaimed," or is otherwise not delivered or
715 deliverable through no fault of the person serving the document
716 ~~item~~.

717 (b) If the address shown in the notice of commencement or
718 any amendment thereto ~~to the notice of commencement,~~ or, in the
719 absence of a notice of commencement, in the building permit
720 application, is incomplete for purposes of mailing or delivery,
721 the person serving the document ~~item~~ may complete the address
722 and properly format it according to United States Postal Service
723 addressing standards using information obtained from the
724 property appraiser or another public record without affecting
725 the validity of service under this section.

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

729 Section 10. Section 713.21, Florida Statutes, is amended to
730 read:

731 713.21 Discharge of lien.—A lien properly perfected under
732 this chapter may be discharged, or released in whole or in part,
733 by any of the following methods:

734 (1) By entering satisfaction of the lien upon the margin of
735 the record thereof in the clerk's office when not otherwise
736 prohibited by law. This satisfaction shall be signed by the
737 lienor, the lienor's agent or attorney and attested by said
738 clerk. Any person who executes a claim of lien has ~~shall have~~
739 authority to execute a satisfaction in the absence of actual
740 notice of lack of authority to any person relying on the same.

741 (2) By the satisfaction or release of the lienor, duly
742 acknowledged and recorded in the clerk's office. The
743 satisfaction or release must include the lienor's notarized
744 signature and set forth the official records' reference numbers
745 and recording date affixed by the recording office on the
746 subject lien. Any person who executes a claim of lien has ~~shall~~
747 ~~have~~ authority to execute a satisfaction or release in the
748 absence of actual notice of lack of authority to any person
749 relying on the same.

750 (3) By failure to begin an action to enforce the lien
751 within the time prescribed in this part.

752 (4) By an order of the circuit court of the county where
753 the property is located, as provided in this subsection. Upon
754 filing a complaint therefor by any interested party the clerk

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755 shall issue a summons to the lienor to show cause within 20 days
756 why his or her lien should not be enforced by action or vacated
757 and canceled of record. Upon failure of the lienor to show cause
758 why his or her lien should not be enforced or the lienor's
759 failure to commence such action before the return date of the
760 summons the court shall forthwith order cancellation of the
761 lien.

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

765 Section 11. Subsection (2) of section 713.22, Florida
766 Statutes, is amended to read:

767 713.22 Duration of lien.—

768 (2) An owner or the owner's attorney may elect to shorten
769 the time prescribed in subsection (1) within which to commence
770 an action to enforce any claim of lien or claim against a bond
771 or other security under s. 713.23 or s. 713.24 by recording in
772 the clerk's office a notice in substantially the following form:

773

774 NOTICE OF CONTEST OF LIEN

775 To: ...(Name and address of lienor)...

776

777 You are notified that the undersigned contests the claim of lien
778 filed by you on, ...(year)...., and recorded in Book
779, Page, of the public records of County, Florida,
780 and that the time within which you may file suit to enforce your
781 lien is limited to 60 days from the date of service of this
782 notice. This day of, ...(year)....

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Signed: ... (Owner or Attorney) ...

784
785
786 The lien of any lienor upon whom such recorded notice is served
787 and who fails to institute a suit to enforce his or her lien
788 within 60 days after service of such recorded notice shall be
789 extinguished automatically. The clerk shall serve, in accordance
790 with s. 713.18, a copy of the recorded notice of contest to the
791 lien claimant at the address shown in the claim of lien or most
792 recent amendment thereto and shall certify to such service and
793 the date of service on the face of the notice and record the
794 notice.

795 Section 12. Paragraphs (d) and (e) of subsection (1) of
796 section 713.23, Florida Statutes, are amended to read:

797 713.23 Payment bond.—

798 (1)

799 (d) In addition, a lienor who has not received payment for
800 furnishing his or her labor, services, or materials must, as a
801 condition precedent to recovery under the bond, serve a written
802 notice of nonpayment on ~~to~~ the contractor and a copy of the
803 notice on the surety. The notice must be under oath and served
804 during the progress of the work or thereafter, but may not be
805 served later than 90 days after the final furnishing of labor,
806 services, or materials by the lienor, or, with respect to rental
807 equipment, later than 90 days after the date the rental
808 equipment was on the ~~job~~ site of the improvement and available
809 for use. A notice of nonpayment that includes sums for retainage
810 must specify the portion of the amount claimed for retainage.
811 The required notice satisfies this condition precedent with
812 respect to the payment described in the notice of nonpayment,

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813 including unpaid finance charges due under the lienor's
814 contract, and with respect to any other payments which become
815 due to the lienor after the date of the notice of nonpayment.
816 The time period for serving a notice of nonpayment is ~~shall be~~
817 measured from the last day of furnishing labor, services, or
818 materials by the lienor and may not be measured by other
819 standards, such as the issuance of a certificate of occupancy or
820 the issuance of a certificate of substantial completion. The
821 failure of a lienor to receive retainage sums not in excess of
822 10 percent of the value of labor, services, or materials
823 furnished by the lienor is not considered a nonpayment requiring
824 the service of the notice provided under this paragraph. If the
825 payment bond is not recorded before commencement of
826 construction, the time period for the lienor to serve a notice
827 of nonpayment may, at the option of the lienor, be calculated
828 from the date specified in this section or the date the lienor
829 is served a copy of the bond. However, the limitation period for
830 commencement of an action on the payment bond as established in
831 paragraph (e) may not be expanded. The negligent inclusion or
832 omission of any information in the notice of nonpayment that has
833 not prejudiced the contractor or surety does not constitute a
834 default that operates to defeat an otherwise valid bond claim. A
835 lienor who serves a fraudulent notice of nonpayment forfeits his
836 or her rights under the bond. A notice of nonpayment is
837 fraudulent if the lienor has willfully exaggerated the amount
838 unpaid, willfully included a claim for work not performed or
839 materials not furnished for the subject improvement, or prepared
840 the notice with such willful and gross negligence as to amount
841 to a willful exaggeration. However, a minor mistake or error in

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842 a notice of nonpayment, or a good faith dispute as to the amount
843 unpaid, does not constitute a willful exaggeration that operates
844 to defeat an otherwise valid claim against the bond. The service
845 of a fraudulent notice of nonpayment is a complete defense to
846 the lienor's claim against the bond. The notice under this
847 paragraph must include the following information, current as of
848 the date of the notice, and must be in substantially the
849 following form:

850

851 NOTICE OF NONPAYMENT

852

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

854

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

856

857 The undersigned lienor notifies you that:

858

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

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

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

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

DATED on,

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

STATE OF FLORIDA
COUNTY OF.....

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

...(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.....

(e) An action for the labor, ~~or~~ materials, or supplies may not be instituted or prosecuted against the contractor or surety unless both notices have been given, if required by this section. An action may not be instituted or prosecuted against the contractor or against the surety on the bond under this section after 1 year from the performance of the labor or

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900 completion of delivery of the materials and supplies. The time
901 period for bringing an action against the contractor or surety
902 on the bond is ~~shall be~~ measured from the last day of furnishing
903 labor, services, or materials by the lienor. The time period may
904 not be measured by other standards, such as the issuance of a
905 certificate of occupancy or the issuance of a certificate of
906 substantial completion. A contractor or the contractor's
907 attorney may elect to shorten the time within which an action to
908 enforce any claim against a payment bond provided under this
909 section or s. 713.245 must be commenced at any time after a
910 notice of nonpayment, if required, has been served for the claim
911 by recording in the clerk's office a notice in substantially the
912 following form:

913

914 NOTICE OF CONTEST OF CLAIM

915 AGAINST PAYMENT BOND

916

917 To: ...(Name and address of lienor)...

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

923

924 DATED on,

925

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

927

928 The claim of any lienor upon whom the notice is served and who

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929 fails to institute a suit to enforce his or her claim against
930 the payment bond within 60 days after service of the notice
931 shall be extinguished automatically. The contractor or the
932 contractor's attorney shall serve a copy of the notice of
933 contest to the lienor at the address shown in the notice of
934 nonpayment or most recent amendment thereto and shall certify to
935 such service on the face of the notice and record the notice.

936 Section 13. Subsections (1) and (3) of section 713.24,
937 Florida Statutes, are amended to read:

938 713.24 Transfer of liens to security.-

939 (1) Any lien claimed under this part may be transferred, by
940 any person having an interest in the real property upon which
941 the lien is imposed or the contract under which the lien is
942 claimed, from such real property to other security by either:

943 (a) Depositing in the clerk's office a sum of money, or

944 (b) Filing in the clerk's office a bond executed as surety
945 by a surety insurer licensed to do business in this state,

946
947 either to be in an amount equal to the amount demanded in such
948 claim of lien, plus interest thereon at the legal rate for 3
949 years, plus \$5,000 ~~\$1,000~~ or 25 percent of the amount demanded
950 in the claim of lien, whichever is greater, to apply on any
951 attorney ~~attorney's~~ fees and court costs that may be taxed in
952 any proceeding to enforce said lien. Such deposit or bond shall
953 be conditioned to pay any judgment or decree which may be
954 rendered for the satisfaction of the lien for which such claim
955 of lien was recorded. Upon making such deposit or filing such
956 bond, the clerk shall make and record a certificate, which must
957 include a copy of the deposit or bond used to transfer, showing

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958 the transfer of the lien from the real property to the security
959 and shall mail a copy thereof together with a copy of the
960 deposit or bond used to transfer by registered or certified mail
961 to the lienor named in the claim of lien so transferred, at the
962 address stated therein. Upon filing the certificate of transfer,
963 the real property shall thereupon be released from the lien
964 claimed, and such lien shall be transferred to said security. In
965 the absence of allegations of privity between the lienor and the
966 owner, and subject to any order of the court increasing the
967 amount required for the lien transfer deposit or bond, no other
968 judgment or decree to pay money may be entered by the court
969 against the owner. The clerk is ~~shall be~~ entitled to a service
970 charge for making and serving the certificate, in the amount of
971 up to \$20, from which the clerk shall remit \$5 to the Department
972 of Revenue for deposit into the General Revenue Fund. If the
973 transaction involves the transfer of multiple liens, an
974 additional charge of up to \$10 for each additional lien shall be
975 charged, from which the clerk shall remit \$2.50 to the
976 Department of Revenue for deposit into the General Revenue Fund.
977 For recording the certificate and approving the bond, the clerk
978 shall receive her or his usual statutory service charges as
979 prescribed in s. 28.24. Any number of liens may be transferred
980 to one such security.

981 (3) Any party having an interest in such security or the
982 property from which the lien was transferred may at any time,
983 and any number of times, file a complaint in chancery in the
984 circuit court of the county where such security is deposited, or
985 file a motion in a pending action to enforce a lien, for an
986 order to require additional security, reduction of security,

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987 change or substitution of sureties, payment of discharge
988 thereof, or any other matter affecting said security. If the
989 court finds that the amount of the deposit or bond in excess of
990 the amount claimed in the claim of lien is insufficient to pay
991 the lienor's attorney ~~attorney's~~ fees and court costs incurred
992 in the action to enforce the lien, the court must increase the
993 amount of the cash deposit or lien transfer bond. Nothing in
994 this section shall be construed to vest exclusive jurisdiction
995 in the circuit courts over transfer bond claims for nonpayment
996 of an amount within the monetary jurisdiction of the county
997 courts.

998 Section 14. Section 713.25, Florida Statutes, is repealed.

999 Section 15. Section 713.29, Florida Statutes, is amended to
1000 read:

1001 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
1002 enforce a lien, including a lien that has been transferred to
1003 security, or to enforce a claim against a bond under this part,
1004 the prevailing party is entitled to recover a reasonable fee for
1005 the services of her or his attorney for trial and appeal or for
1006 arbitration, in an amount to be determined by the court, which
1007 fee must be taxed as part of the prevailing party's costs, as
1008 allowed in equitable actions.

1009 Section 16. Paragraph (b) of subsection (2) and paragraph
1010 (e) of subsection (5) of section 95.11, Florida Statutes, are
1011 amended to read:

1012 95.11 Limitations other than for the recovery of real
1013 property.—Actions other than for recovery of real property shall
1014 be commenced as follows:

1015 (2) WITHIN FIVE YEARS.—

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1016 (b) A legal or equitable action on a contract, obligation,
1017 or liability founded on a written instrument, except for an
1018 action to enforce a claim against a payment bond, which shall be
1019 governed by the applicable provisions of paragraph (5) (e), s.
1020 255.05(9) ~~s. 255.05(10)~~, s. 337.18(1), or s. 713.23(1) (e), and
1021 except for an action for a deficiency judgment governed by
1022 paragraph (5) (h).

1023 (5) WITHIN ONE YEAR.—

1024 (e) Except for actions governed by s. 255.05(9) ~~s.~~
1025 ~~255.05(10)~~, s. 337.18(1), or s. 713.23(1) (e), an action to
1026 enforce any claim against a payment bond on which the principal
1027 is a contractor, subcontractor, or sub-subcontractor as defined
1028 in s. 713.01, for private work as well as public work, from the
1029 last furnishing of labor, services, or materials or from the
1030 last furnishing of labor, services, or materials by the
1031 contractor if the contractor is the principal on a bond on the
1032 same construction project, whichever is later.

1033 Section 17. This act shall take effect July 1, 2022.