

1 A bill to be entitled
2 An act relating to liens and bonds; amending s.
3 255.05, F.S.; requiring the clerk to serve a copy of a
4 notice of contest of claim on certain persons after it
5 has been recorded; revising when a notice of contest
6 of claim against a payment bond must be served;
7 requiring that a copy of a notice of nonpayment be
8 served on the surety; revising the process for
9 notarizing a notice of nonpayment; revising authorized
10 alternative forms of security; requiring service of
11 documents to be made in a specified manner; conforming
12 provisions to changes made by the act; making
13 technical changes; amending s. 337.18, F.S.; requiring
14 service of documents to be made in a specified manner;
15 conforming provisions to changes made by the act;
16 amending s. 713.01, F.S.; revising and providing
17 definitions; creating s. 713.011, F.S.; providing for
18 the computation of time when certain time periods fall
19 on specified days or during an emergency; amending s.
20 713.10, F.S.; revising the extent of certain liens;
21 amending s. 713.13, F.S.; conforming a cross-
22 reference; revising the process for notarizing a
23 notice of commencement; making technical changes;
24 amending s. 713.132, F.S.; revising requirements for a
25 notice of termination; revising when an owner may

26 record a notice of termination; specifying when a
27 notice of termination terminates a notice of
28 commencement; amending s. 713.135, F.S.; providing a
29 definition; providing applicability; revising the
30 dollar threshold of an exception; providing immunity;
31 amending s. 713.18, F.S.; requiring service of
32 documents relating to construction bonds to be made in
33 a specified manner; authorizing employees or agents of
34 specified entities to receive service of certain
35 documents; making technical changes; amending s.
36 713.21, F.S.; authorizing the full or partial release
37 of a lien under specified conditions; making technical
38 changes; amending s. 713.22, F.S.; requiring the clerk
39 to serve a copy of a notice of contest of lien on
40 certain persons after it has been recorded; making
41 technical changes; amending s. 713.23, F.S.; requiring
42 that a copy of a notice of nonpayment be served on the
43 surety; revising the process for notarizing a notice
44 of nonpayment under a payment bond; requiring the
45 clerk to serve a copy of a notice of contest of lien
46 on certain persons after it has been recorded;
47 amending s. 713.24, F.S.; revising the amount required
48 in addition to the deposit or bond that applies toward
49 attorney fees and court costs; requiring the clerk to
50 make a copy of the deposit or bond used to transfer a

51 | lien to other security and mail it to the lienor;
 52 | making technical changes; repealing s. 713.25, F.S.,
 53 | relating to applicability of ch. 65-456, Laws of
 54 | Florida; amending s. 713.29, F.S.; authorizing
 55 | attorney fees in actions brought to enforce a lien
 56 | that has been transferred to security; making
 57 | technical changes; providing an effective date.
 58 |

59 | Be It Enacted by the Legislature of the State of Florida:
 60 |

61 | Section 1. Paragraph (a) of subsection (2) and subsection
 62 | (7) of section 255.05, Florida Statutes, are amended, and
 63 | subsection (12) 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

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. After the clerk
 96 records the notice with the certificate of service, the clerk
 97 shall serve, in accordance with s. 713.18, a copy of such
 98 recorded notice on the claimant and the contractor or the
 99 contractor's attorney.

100 2. A claimant, except a laborer, who is not in privity

101 with the contractor shall, before commencing or not later than
102 45 days after commencing to furnish labor, services, or
103 materials for the prosecution of the work, serve the contractor
104 with a written notice that he or she intends to look to the bond
105 for protection. If the payment bond is not recorded before the
106 commencement of work or before the recommencement of work after
107 a default or abandonment as required by subsection (1), the
108 claimant may serve the contractor with such written notice up to
109 45 days after the date that the claimant is served with a copy
110 of the bond. A claimant who is not in privity with the
111 contractor and who has not received payment for furnishing his
112 or her labor, services, or materials shall serve a written
113 notice of nonpayment on the contractor and a copy of the notice
114 of nonpayment on the surety. The notice of nonpayment ~~must~~ shall
115 be under oath and served during the progress of the work or
116 thereafter but may not be served earlier than 45 days after the
117 first furnishing of labor, services, or materials by the
118 claimant or later than 90 days after the final furnishing of the
119 labor, services, or materials by the claimant or, with respect
120 to rental equipment, later than 90 days after the date that the
121 rental equipment was last on the ~~job~~ site of the improvement and
122 available for use. Any notice of nonpayment served by a claimant
123 who is not in privity with the contractor which includes sums
124 for retainage must specify the portion of the amount claimed for
125 retainage. An action for the labor, services, or materials may

126 | not be instituted against the contractor or the surety unless
 127 | the notice to the contractor and notice of nonpayment have been
 128 | served, if required by this section. Notices required or
 129 | permitted under this section must be served in accordance with
 130 | s. 713.18. A claimant may not waive in advance his or her right
 131 | to bring an action under the bond against the surety. In any
 132 | action brought to enforce a claim against a payment bond under
 133 | this section, the prevailing party is entitled to recover a
 134 | reasonable fee for the services of his or her attorney for trial
 135 | and appeal or for arbitration, in an amount to be determined by
 136 | the court or arbitrator, which fee must be taxed as part of the
 137 | prevailing party's costs, as allowed in equitable actions. The
 138 | time periods for service of a notice of nonpayment or for
 139 | bringing an action against a contractor or a surety are ~~shall be~~
 140 | measured from the last day of furnishing labor, services, or
 141 | materials by the claimant and may not be measured by other
 142 | standards, such as the issuance of a certificate of occupancy or
 143 | the issuance of a certificate of substantial completion. The
 144 | negligent inclusion or omission of any information in the notice
 145 | of nonpayment that has not prejudiced the contractor or surety
 146 | does not constitute a default that operates to defeat an
 147 | otherwise valid bond claim. A claimant who serves a fraudulent
 148 | notice of nonpayment forfeits his or her rights under the bond.
 149 | A notice of nonpayment is fraudulent if the claimant has
 150 | willfully exaggerated the amount unpaid, willfully included a

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

163
 164 NOTICE OF NONPAYMENT

165
 166 To: ... (name of contractor and address)...

167
 168 ... (name of surety and address)...

169
 170 The undersigned claimant notifies you that:

- 171 1. Claimant has furnished ... (describe labor, services, or
 172 materials) ... for the improvement of the real property
 173 identified as ... (property description) The corresponding
 174 amount unpaid to date is \$...., of which \$.... is unpaid
 175 retainage.

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

179 3. Claimant expects to furnish ...(describe labor,
180 services, or materials)... for this improvement in the future
181 (if known), and the corresponding amount expected to become due
182 is \$.... (if known).

183
184 I declare that I have read the foregoing Notice of Nonpayment
185 and that the facts stated in it are true to the best of my
186 knowledge and belief.

187
188 DATED on,

189
190(signature and address of claimant)...

191
192 STATE OF FLORIDA
193 COUNTY OF

194
195 The foregoing instrument was sworn to (or affirmed) and
196 subscribed before me by means of physical presence or sworn to
197 (or affirmed) by online notarization this day of,
198 ...(year)..., by ...(name of signatory)....

199
200 ...(Signature of Notary Public - State of Florida)...

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

203
 204 Personally Known OR Produced Identification

205
 206 Type of Identification Produced

207 (7) In lieu of the bond required by this section, a
 208 contractor may file with the state, county, city, or other
 209 political authority an alternative form of security in the form
 210 of cash;; a money order;; a certified check;; a cashier's
 211 check;; ~~an irrevocable letter of credit,~~ or a domestic corporate
 212 bond, note, or debenture as authorized in s. 625.317 ~~security of~~
 213 ~~a type listed in part II of chapter 625.~~ Any such alternative
 214 form of security is ~~shall be~~ for the same purpose and ~~be~~ subject
 215 to the same conditions as those applicable to the bond required
 216 by this section. ~~The determination of the value of an~~
 217 ~~alternative form of security shall be made by the~~ appropriate
 218 state, county, city, or other political subdivision shall
 219 determine the required value of an alternative form of security.

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

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

225 337.18 Surety bonds for construction or maintenance

226 | contracts; requirement with respect to contract award; bond
 227 | requirements; defaults; damage assessments.—
 228 | (1)
 229 | (c) A claimant, except a laborer, who is not in privity
 230 | with the contractor shall, before commencing or not later than
 231 | 90 days after commencing to furnish labor, materials, or
 232 | supplies for the prosecution of the work, furnish the contractor
 233 | with a notice that he or she intends to look to the bond for
 234 | protection. A claimant who is not in privity with the contractor
 235 | and who has not received payment for his or her labor,
 236 | materials, or supplies shall deliver to the contractor and to
 237 | the surety written notice of the performance of the labor or
 238 | delivery of the materials or supplies and of the nonpayment. The
 239 | notice of nonpayment may be served at any time during the
 240 | progress of the work or thereafter but not before 45 days after
 241 | the first furnishing of labor, services, or materials, and not
 242 | later than 90 days after the final furnishing of the labor,
 243 | services, or materials by the claimant or, with respect to
 244 | rental equipment, not later than 90 days after the date that the
 245 | rental equipment was last on the ~~job~~ site of the improvement and
 246 | available for use. An action by a claimant, except a laborer,
 247 | who is not in privity with the contractor for the labor,
 248 | materials, or supplies may not be instituted against the
 249 | contractor or the surety unless both notices have been given.
 250 | Written notices required or permitted under this section must

251 ~~may~~ be served in accordance with ~~any manner provided in~~ s.
 252 713.18.

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

255 Section 3. Subsections (13) through (29) of section
 256 713.01, Florida Statutes, are renumbered as subsections (14)
 257 through (30), respectively, subsections (4), (8), and (12) are
 258 amended, and a new subsection (13) is added to that section, to
 259 read:

260 713.01 Definitions.—As used in this part, the term:

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

265 (8) "Contractor" means a person other than a materialman
 266 or laborer who enters into a contract with the owner of real
 267 property for improving it, or who takes over from a contractor
 268 as so defined the entire remaining work under such contract. The
 269 term "contractor" includes an architect, landscape architect, or
 270 engineer who improves real property pursuant to a design-build
 271 contract authorized by s. 489.103(16). The term also includes a
 272 licensed general contractor or building contractor, as those
 273 terms are defined in s. 489.105(3)(a) and (b), respectively, who
 274 provides construction management services, which include
 275 scheduling and coordinating preconstruction and construction

276 phases for the construction project, or who provides program
277 management services, which include schedule control, cost
278 control, and coordinating the provision or procurement of
279 planning, design, and construction for the construction project.

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

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

293 Section 4. Section 713.011, Florida Statutes, is created
294 to read:

295 713.011 Computation of time.—

296 (1) In computing any time period under this part, if the
297 last day of the time period is a Saturday, Sunday, or holiday
298 specified in s. 110.117(1), or any day observed as a holiday by
299 the clerk's office or designated as a holiday by the chief judge
300 of the circuit, the time period is extended to the end of the

301 next business day.

302 (2) If the clerk's office is closed in response to an
 303 emergency for 1 or more days so that a person may not present a
 304 document for recording or an action for filing in person to the
 305 clerk's staff, the time period for recording a document or
 306 filing an action with the clerk's office under this part is
 307 tolled. When the clerk's office reopens, the time period is
 308 extended by the number of days the clerk's office was closed.

309 Section 5. Paragraph (b) of subsection (2) of section
 310 713.10, Florida Statutes, is amended, and subsection (4) is
 311 added to that section, to read:

312 713.10 Extent of liens.—

313 (2)

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

316 1. The lease, or a short form or a memorandum of the lease
 317 that contains the specific language in the lease prohibiting
 318 such liability, is recorded in the official records of the
 319 county where the premises are located before the recording of a
 320 notice of commencement for improvements to the premises and the
 321 terms of the lease expressly prohibit such liability; or

322 2. The terms of the lease expressly prohibit such
 323 liability, and a notice advising that leases for the rental of
 324 premises on a parcel of land prohibit such liability has been
 325 recorded in the official records of the county in which the

326 parcel of land is located before the recording of a notice of
 327 commencement for improvements to the premises, and the notice
 328 includes the following:

- 329 a. The name of the lessor.
- 330 b. The legal description of the parcel of land to which
- 331 the notice applies.
- 332 c. The specific language contained in the various leases
- 333 prohibiting such liability.
- 334 d. A statement that all or a majority of the leases
- 335 entered into for premises on the parcel of land expressly
- 336 prohibit such liability.

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

339
 340 A notice that is consistent with subparagraph 2. effectively
 341 prohibits liens for improvements made by a lessee even if other
 342 leases for premises on the parcel do not expressly prohibit
 343 liens or if provisions of each lease restricting the application
 344 of liens are not identical.

345 (4) The interest of the lessor is not subject to liens for
 346 improvements made by the lessee when the lessee is a mobile home
 347 owner who is leasing a mobile home lot in a mobile home park
 348 from the lessor.

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

351 713.13 Notice of commencement.—

352 (1)(a) Except for an improvement that is exempt under
 353 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
 354 agent before actually commencing to improve any real property,
 355 or recommencing completion of any improvement after default or
 356 abandonment, whether or not a project has a payment bond
 357 complying with s. 713.23, shall record a notice of commencement
 358 in the clerk's office and ~~forthwith~~ post either a certified copy
 359 thereof or a notarized statement that the notice of commencement
 360 has been filed for recording along with a copy thereof. The
 361 notice of commencement must ~~shall~~ contain all of the following
 362 information:

363 1. A description sufficient for identification of the real
 364 property to be improved. The description must ~~should~~ include the
 365 legal description of the property and ~~also should include~~ the
 366 street address and tax folio number of the property if available
 367 or, if the ~~there is no~~ street address is not available, such
 368 additional information as will describe the physical location of
 369 the real property to be improved.

370 2. A general description of the improvement.

371 3. The name and address of the owner, the owner's interest
 372 in the site of the improvement, and the name and address of the
 373 fee simple titleholder, if other than such owner. A lessee who
 374 contracts for the improvements is an owner as defined in s.
 375 713.01 ~~under s. 713.01(23)~~ and must be listed as the owner

376 together with a statement that the ownership interest is a
 377 leasehold interest.

378 4. The name and address of the contractor.

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

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

383 7. The name and address within the state of a person other
 384 than himself or herself who may be designated by the owner as
 385 the person upon whom notices or other documents may be served
 386 under this part; and service upon the person so designated
 387 constitutes service upon the owner.

388 (d) A notice of commencement must be in substantially the
 389 following form:

390
 391 Permit No..... Tax Folio No.....

392 NOTICE OF COMMENCEMENT

393 State of....

394 County of....

395
 396 The undersigned hereby gives notice that improvement will be
 397 made to certain real property, and in accordance with Chapter
 398 713, Florida Statutes, the following information is provided in
 399 this Notice of Commencement.

400 1. Description of property: ...(legal description of the

401 property, and street address if available)....

402 2. General description of improvement:.....

403 3. Owner information or Lessee information if the Lessee

404 contracted for the improvement:

405 a. Name and address:.....

406 b. Interest in property:.....

407 c. Name and address of fee simple titleholder (if

408 different from Owner listed above):.....

409 4.a. Contractor: ...(name and address)....

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

411 5. Surety (if applicable, a copy of the payment bond is

412 attached):

413 a. Name and address:.....

414 b. Phone number:.....

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

416 6.a. Lender: ...(name and address)....

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

418 7. Persons within the State of Florida designated by Owner

419 upon whom notices or other documents may be served as provided

420 by Section 713.13(1)(a)7., Florida Statutes:

421 a. Name and address:.....

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

423 8.a. In addition to himself or herself, Owner designates

424 of to receive a copy of the Lienor's

425 Notice as provided in Section 713.13(1)(b), Florida Statutes.

426 b. Phone number of person or entity designated by
 427 owner:.....

428 9. Expiration date of notice of commencement (the
 429 expiration date will be 1 year after ~~from~~ the date of recording
 430 unless a different date is specified).....

431
 432 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
 433 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
 434 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
 435 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
 436 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
 437 POSTED ON THE ~~JOB~~ SITE OF THE IMPROVEMENT BEFORE THE FIRST
 438 INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR
 439 LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR
 440 NOTICE OF COMMENCEMENT.

441
 442 ... (Signature of Owner or Lessee, or Owner's or Lessee's
 443 Authorized Officer/Director/Partner/Manager)...

444
 445 ... (Signatory's Title/Office)...

446
 447 The foregoing instrument was acknowledged before me by means of
 448 physical presence or sworn to (or affirmed) by online
 449 notarization this day of, ...(year)...., by ...(name of
 450 person)... as ...(type of authority, . . . e.g. officer,

451 trustee, attorney in fact)... for ...(name of party on behalf of
 452 whom instrument was executed)....

453

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

455

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

457

458 Personally Known OR Produced Identification

459

460 Type of Identification Produced.....

461 Section 7. Subsections (1), (3), and (4) of section
 462 713.132, Florida Statutes, are amended to read:

463 713.132 Notice of termination.-

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

468 (a) The same information that is in ~~as~~ the notice of
 469 commencement .~~†~~

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

473 (c) A statement of the date as of which the notice of
 474 commencement is terminated, which date may not be earlier than
 475 30 days after the notice of termination is recorded .~~†~~

476 (d) A statement specifying that the notice applies to all
 477 the real property subject to the notice of commencement or
 478 specifying the portion of such real property to which it
 479 applies.~~†~~

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

482 (f) A statement that the owner has, before recording the
 483 notice of termination, served a copy of the notice of
 484 termination ~~on the contractor and~~ on each lienor who has a
 485 direct contract with the owner or who has timely served a notice
 486 to owner, and a statement that the owner will serve a copy of
 487 the notice of termination on each lienor who timely serves a
 488 notice to owner after the notice of termination has been
 489 recorded. The owner is not required to serve a copy of the
 490 notice of termination on any lienor who has executed a waiver
 491 and release of lien upon final payment in accordance with s.
 492 713.20.

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

497 (4) If an owner or a contractor, by fraud or collusion,
 498 knowingly makes any fraudulent statement or affidavit in a
 499 notice of termination or any accompanying affidavit, the owner
 500 and the contractor, or either of them, ~~as the case may be,~~ is

501 | liable to any lienor who suffers damages as a result of the
 502 | filing of the fraudulent notice of termination,~~+~~ and any such
 503 | lienor has a right of action for damages ~~occasioned thereby.~~

504 | (5)-(4) A notice of termination must be served before
 505 | recording on each lienor who has a direct contract with the
 506 | owner and on each lienor who has timely and properly served a
 507 | notice to owner in accordance with this part before the
 508 | recording of the notice of termination. A notice of termination
 509 | must be recorded in the official records of the county in which
 510 | the improvement is located. If properly served before recording
 511 | in accordance with this subsection, the notice of termination
 512 | terminates the period of effectiveness of the notice of
 513 | commencement 30 days after the notice of termination is recorded
 514 | in the official records ~~is effective to terminate the notice of~~
 515 | ~~commencement at the later of 30 days after recording of the~~
 516 | ~~notice of termination~~ or a later the date stated in the notice
 517 | of termination as the date on which the notice of commencement
 518 | is terminated. However, if a lienor who began work under the
 519 | notice of commencement before its termination lacks a direct
 520 | contract with the owner and timely serves his or her notice to
 521 | owner after the notice of termination has been recorded, the
 522 | owner must serve a copy of the notice of termination upon such
 523 | lienor, and the termination of the notice of commencement as to
 524 | that lienor is effective 30 days after service of the notice of
 525 | termination, ~~if the notice of termination has been served~~

526 ~~pursuant to paragraph (1) (f) on the contractor and on each~~
 527 ~~lienor who has a direct contract with the owner or who has~~
 528 ~~served a notice to owner.~~

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

531 713.135 Notice of commencement and applicability of lien.—

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

534 (a) Print on the face of each permit card in no less than
 535 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR
 536 FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR
 537 PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
 538 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE ~~JOB~~ SITE OF THE
 539 IMPROVEMENT BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN
 540 FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE
 541 RECORDING YOUR NOTICE OF COMMENCEMENT."

542 (b) Provide the applicant and the owner of the real
 543 property upon which improvements are to be constructed with a
 544 printed statement stating that the right, title, and interest of
 545 the person who has contracted for the improvement may be subject
 546 to attachment under the Construction Lien Law. The Department of
 547 Business and Professional Regulation shall furnish, for
 548 distribution, the statement described in this paragraph, and the
 549 statement must be a summary of the Construction Lien Law and
 550 must include an explanation of the provisions of the

551 Construction Lien Law relating to the recording, and the posting
552 of copies, of notices of commencement and a statement
553 encouraging the owner to record a notice of commencement and
554 post a copy of the notice of commencement in accordance with s.
555 713.13. The statement must also contain an explanation of the
556 owner's rights if a lienor fails to furnish the owner with a
557 notice as provided in s. 713.06(2) and an explanation of the
558 owner's rights as provided in s. 713.22. The authority that
559 issues the building permit must obtain from the Department of
560 Business and Professional Regulation the statement required by
561 this paragraph and must mail, deliver by electronic mail or
562 other electronic format or facsimile, or personally deliver that
563 statement to the owner or, in a case in which the owner is
564 required to personally appear to obtain the permit, provide that
565 statement to any owner making improvements to real property
566 consisting of a single or multiple family dwelling up to and
567 including four units. However, the failure by the authorities to
568 provide the summary does not subject the issuing authority to
569 liability.

570 (c) In addition to providing the owner with the statement
571 as required by paragraph (b), inform each applicant who is not
572 the person whose right, title, and interest is subject to
573 attachment that, as a condition to the issuance of a building
574 permit, the applicant must promise in good faith that the
575 statement will be delivered to the person whose property is

576 subject to attachment.

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

579 (e) Require ~~If the direct contract is greater than \$2,500,~~
580 the applicant to shall file with the issuing authority before
581 ~~prior to~~ the first inspection ~~either a certified~~ copy of the
582 ~~recorded~~ notice of commencement if the direct contract is
583 greater than \$7,500. For purposes of this paragraph, the term
584 "copy of the notice of commencement" means a certified copy of
585 the recorded notice of commencement, or a notarized statement
586 that the notice of commencement has been filed for recording,
587 along with a copy thereof, or the clerk's office's official
588 records identifying information that includes the instrument
589 number for the notice of commencement or the number and page of
590 book where the notice of commencement is recorded, as identified
591 by the clerk.

592 1. In the absence of the filing of a ~~certified~~ copy of the
593 ~~recorded~~ notice of commencement, the issuing authority or a
594 private provider performing inspection services may not perform
595 or approve subsequent inspections until the applicant files by
596 mail, facsimile, hand delivery, or any other means such
597 ~~certified~~ copy with the issuing authority.

598 2. The ~~certified~~ copy of the notice of commencement must
599 contain the name and address of the owner, the name and address
600 of the contractor, and the location or address of the property

601 being improved. The issuing authority shall verify that the name
602 and address of the owner, the name of the contractor, and the
603 location or address of the property being improved which is
604 contained in the ~~certified~~ copy of the notice of commencement is
605 consistent with the information in the building permit
606 application.

607 3. The issuing authority shall provide the recording
608 information on the ~~certified~~ copy of the ~~recorded~~ notice of
609 commencement to any person upon request.

610 4. This ~~paragraph subsection~~ does not require the
611 recording of a notice of commencement before ~~prior to~~ the
612 issuance of a building permit. If a local government requires a
613 separate permit or inspection for installation of temporary
614 electrical service or other temporary utility service, land
615 clearing, or other preliminary site work, such permits may be
616 issued and such inspections may be conducted without providing
617 the issuing authority with a ~~certified~~ copy of the ~~a recorded~~
618 notice of commencement ~~or a notarized statement regarding a~~
619 ~~recorded notice of commencement. This subsection does not apply~~
620 ~~to a direct contract to repair or replace an existing heating or~~
621 ~~air-conditioning system in an amount less than \$15,000.~~

622 (f)~~(e)~~ Not require that a notice of commencement be
623 recorded as a condition of the application for, or processing or
624 issuance of, a building permit. However, this paragraph does not
625 modify or waive the inspection requirements set forth in this

626 subsection.

627

628 This subsection does not apply to a direct contract to repair or
 629 replace an existing heating or air-conditioning system in an
 630 amount less than \$15,000.

631 (3) An issuing authority under subsection (1) is not
 632 liable in any civil action for the failure to verify that a
 633 certified copy of the recorded notice of commencement, a
 634 notarized statement that the notice of commencement has been
 635 filed for recording along with a copy thereof, or the clerk's
 636 office's official records identifying information that includes
 637 the instrument number for the notice of commencement or the
 638 number and page of book where the notice of commencement is
 639 recorded, as identified by the clerk, has been filed in
 640 accordance with this section.

641 Section 9. Section 713.18, Florida Statutes, is amended to
 642 read:

643 713.18 Manner of serving documents ~~notices and other~~
 644 ~~instruments.~~-

645 (1) Unless otherwise specifically provided by law, service
 646 of any document ~~notices, claims of lien, affidavits,~~
 647 ~~assignments, and other instruments~~ permitted or required under
 648 this part, s. 255.05, or s. 337.18, or copies thereof when so
 649 permitted or required, ~~unless otherwise specifically provided in~~
 650 ~~this part,~~ must be made by one of the following methods:

651 (a) By hand ~~actual~~ delivery to the person to be served; if
 652 a partnership, to one of the partners; if a corporation, to an
 653 officer or, ~~director, managing agent, or business agent; or~~, if
 654 a limited liability company, to a member or manager; or to an
 655 employee or agent authorized by the partnership, corporation, or
 656 limited liability company to receive service of such document.

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

661 (c) By posting on the site of the improvement if service
 662 as provided by paragraph (a) or paragraph (b) cannot be
 663 accomplished.

664 (2) Notwithstanding subsection (1), service of a notice to
 665 owner or a preliminary notice to contractor under this part, s.
 666 255.05, or s. 337.18, or s. 713.23 is effective as of the date
 667 of mailing and the requirements for service under this section
 668 have been satisfied if all of the following requirements have
 669 been met:

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

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

676 (c)1. The person who served the notice maintains a
 677 ~~registered or certified~~ mail log that shows the registered or
 678 certified mail number issued by the United States Postal
 679 Service, the name and address of the person served, and the date
 680 stamp of the United States Postal Service confirming the date of
 681 mailing; or

682 2. The person who served the notice maintains ~~electronic~~
 683 tracking records approved or generated by the United States
 684 Postal Service containing the postal tracking number, ~~the name~~
 685 ~~and address of the person served,~~ and verification of the date
 686 of receipt by the United States Postal Service.

687 (3)(a) Notwithstanding subsection (1), service of a
 688 document under an instrument pursuant to this section is
 689 effective on the date of mailing or shipping, and the
 690 requirements for service under this section have been satisfied,
 691 ~~the instrument~~ if the document meets both of the following
 692 requirements it:

693 1. It is sent to the last address shown in the notice of
 694 commencement or any amendment thereto or, in the absence of a
 695 notice of commencement, to the last address shown in the
 696 building permit application, or to the last known address of the
 697 person to be served. ~~;~~ ~~and~~

698 2. It is returned as being "refused," "moved, not
 699 forwardable," or "unclaimed," or is otherwise not delivered or
 700 deliverable through no fault of the person serving the document

701 ~~item.~~

702 (b) If the address shown in the notice of commencement or
 703 any amendment thereto ~~to the notice of commencement~~, or, in the
 704 absence of a notice of commencement, in the building permit
 705 application, is incomplete for purposes of mailing or delivery,
 706 the person serving the document ~~item~~ may complete the address
 707 and properly format it according to United States Postal Service
 708 addressing standards using information obtained from the
 709 property appraiser or another public record without affecting
 710 the validity of service under this section.

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

714 Section 10. Section 713.21, Florida Statutes, is amended
 715 to read:

716 713.21 Discharge of lien.—A lien properly perfected under
 717 this chapter may be discharged, or released in whole or in part,
 718 by any of the following methods:

719 (1) By entering satisfaction of the lien upon the margin
 720 of the record thereof in the clerk's office when not otherwise
 721 prohibited by law. This satisfaction must ~~shall~~ be signed by the
 722 lienor or, the lienor's agent or attorney and attested by said
 723 clerk. Any person who executes a claim of lien has ~~shall have~~
 724 authority to execute a satisfaction in the absence of actual
 725 notice of lack of authority to any person relying on the same.

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

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

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

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

750 Section 11. Subsection (2) of section 713.22, Florida

751 Statutes, is amended to read:

752 713.22 Duration of lien.—

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

758 NOTICE OF CONTEST OF LIEN

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

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

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

767 The lien of any lienor upon whom such notice is served and who
 768 fails to institute a suit to enforce his or her lien within 60
 769 days after service of such notice is ~~shall be~~ extinguished
 770 automatically. The clerk shall serve, in accordance with s.
 771 713.18, a copy of the notice of contest on ~~to~~ the lienor ~~lien~~
 772 ~~claimant~~ at the address shown in the claim of lien or most
 773 recent amendment thereto and shall certify to such service and
 774 the date of service on the face of the notice and record the
 775 notice. After the clerk records the notice with the certificate

776 of service, the clerk shall serve, in accordance with s. 713.18,
 777 a copy of such recorded notice on the lienor and the owner or
 778 the owner's attorney.

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

781 713.23 Payment bond.—

782 (1)

783 (d) In addition, a lienor who has not received payment for
 784 furnishing his or her labor, services, or materials must, as a
 785 condition precedent to recovery under the bond, serve a written
 786 notice of nonpayment on ~~to~~ the contractor and a copy of the
 787 notice of nonpayment on the surety. The notice of nonpayment
 788 must be under oath and served during the progress of the work or
 789 thereafter, but may not be served later than 90 days after the
 790 final furnishing of labor, services, or materials by the lienor,
 791 or, with respect to rental equipment, later than 90 days after
 792 the date the rental equipment was on the ~~job~~ site of the
 793 improvement and available for use. A notice of nonpayment that
 794 includes sums for retainage must specify the portion of the
 795 amount claimed for retainage. The required notice satisfies this
 796 condition precedent with respect to the payment described in the
 797 notice of nonpayment, including unpaid finance charges due under
 798 the lienor's contract, and with respect to any other payments
 799 which become due to the lienor after the date of the notice of
 800 nonpayment. The time period for serving a notice of nonpayment

801 is ~~shall be~~ measured from the last day of furnishing labor,
802 services, or materials by the lienor and may not be measured by
803 other standards, such as the issuance of a certificate of
804 occupancy or the issuance of a certificate of substantial
805 completion. The failure of a lienor to receive retainage sums
806 not in excess of 10 percent of the value of labor, services, or
807 materials furnished by the lienor is not considered a nonpayment
808 requiring the service of the notice provided under this
809 paragraph. If the payment bond is not recorded before
810 commencement of construction, the time period for the lienor to
811 serve a notice of nonpayment may, at the option of the lienor,
812 be calculated from the date specified in this section or the
813 date the lienor is served a copy of the bond. However, the
814 limitation period for commencement of an action on the payment
815 bond as established in paragraph (e) may not be expanded. The
816 negligent inclusion or omission of any information in the notice
817 of nonpayment that has not prejudiced the contractor or surety
818 does not constitute a default that operates to defeat an
819 otherwise valid bond claim. A lienor who serves a fraudulent
820 notice of nonpayment forfeits his or her rights under the bond.
821 A notice of nonpayment is fraudulent if the lienor has willfully
822 exaggerated the amount unpaid, willfully included a claim for
823 work not performed or materials not furnished for the subject
824 improvement, or prepared the notice with such willful and gross
825 negligence as to amount to a willful exaggeration. However, a

826 | minor mistake or error in a notice of nonpayment, or a good
 827 | faith dispute as to the amount unpaid, does not constitute a
 828 | willful exaggeration that operates to defeat an otherwise valid
 829 | claim against the bond. The service of a fraudulent notice of
 830 | nonpayment is a complete defense to the lienor's claim against
 831 | the bond. The notice under this paragraph must include the
 832 | following information, current as of the date of the notice, and
 833 | must be in substantially the following form:

834 |
 835 | NOTICE OF NONPAYMENT
 836 |

837 | To ...(name of contractor and address)...

838 |
 839 | ...(name of surety and address)...

840 |
 841 | The undersigned lienor notifies you that:

842 | 1. The lienor has furnished ...(describe labor, services,
 843 | or materials)... for the improvement of the real property
 844 | identified as ...(property description).... The corresponding
 845 | amount unpaid to date is \$...., of which \$.... is unpaid
 846 | retainage.

847 | 2. The lienor has been paid to date the amount of \$....
 848 | for previously furnishing ...(describe labor, services, or
 849 | materials)... for this improvement.

850 | 3. The lienor expects to furnish ...(describe labor,

851 services, or materials)... for this improvement in the future
852 (if known), and the corresponding amount expected to become due
853 is \$.... (if known).

854
855 I declare that I have read the foregoing Notice of Nonpayment
856 and that the facts stated in it are true to the best of my
857 knowledge and belief.

858
859 DATED on,

860
861 ... (signature and address of lienor)...

862
863 STATE OF FLORIDA
864 COUNTY OF.....

865
866 The foregoing instrument was sworn to (or affirmed) and
867 subscribed before me by means of physical presence or sworn to
868 (or affirmed) by online notarization this day of,
869 ...(year)..., by ...(name of signatory)....

870 ...(Signature of Notary Public - State of Florida)..
871 ...(Print, Type, or Stamp Commissioned Name of Notary
872 Public)...

873
874 Personally Known OR Produced Identification

875

876 | Type of Identification Produced

877 | (e) An action for the labor, ~~or~~ materials, or supplies may
 878 | not be instituted or prosecuted against the contractor or surety
 879 | unless both notices have been given, if required by this
 880 | section. An action must ~~may not~~ be instituted or prosecuted
 881 | against the contractor or against the surety on the bond under
 882 | this section within ~~after~~ 1 year after ~~from~~ the performance of
 883 | the labor or completion of delivery of the materials and
 884 | supplies. The time period for bringing an action against the
 885 | contractor or surety on the bond is ~~shall be~~ measured from the
 886 | last day of furnishing labor, services, or materials by the
 887 | lienor. The time period may not be measured by other standards,
 888 | such as the issuance of a certificate of occupancy or the
 889 | issuance of a certificate of substantial completion. A
 890 | contractor or the contractor's attorney may elect to shorten the
 891 | time within which an action to enforce any claim against a
 892 | payment bond provided under this section or s. 713.245 must be
 893 | commenced at any time after a notice of nonpayment, if required,
 894 | has been served for the claim by recording in the clerk's office
 895 | a notice in substantially the following form:

896 | NOTICE OF CONTEST OF CLAIM
 897 | AGAINST PAYMENT BOND

898 | To: ... (Name and address of lienor) ...

899 | You are notified that the undersigned contests your notice
 900 | of nonpayment, dated,, and served on the undersigned

901 on , , and that the time within which you may file suit
 902 to enforce your claim is limited to 60 days after ~~from~~ the date
 903 of service of this notice.

904 DATED on ,

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

906 The claim of any lienor upon whom the notice is served and who
 907 fails to institute a suit to enforce his or her claim against
 908 the payment bond within 60 days after service of the notice is
 909 ~~shall be~~ extinguished automatically. The contractor or the
 910 contractor's attorney shall serve, in accordance with s. 713.18,
 911 a copy of the notice of contest to the lienor at the address
 912 shown in the notice of nonpayment or most recent amendment
 913 thereto and shall certify to such service on the face of the
 914 notice and record the notice. After the clerk records the notice
 915 with the certificate of service, the clerk shall serve, in
 916 accordance with s. 713.18, a copy of such recorded notice on the
 917 lienor and the contractor or the contractor's attorney.

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

920 713.24 Transfer of liens to security.—

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

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

926 (b) Filing in the clerk's office a bond executed as surety
927 by a surety insurer licensed to do business in this state,
928
929 ~~either to be~~ in an amount equal to the amount demanded in such
930 claim of lien, plus interest thereon at the legal rate for 3
931 years, plus \$5,000 ~~\$1,000~~ or 25 percent of the amount demanded
932 in the claim of lien, whichever is greater, to apply on any
933 attorney ~~attorney's~~ fees and court costs that may be taxed in
934 any proceeding to enforce said lien. Such deposit or bond must
935 ~~shall~~ be conditioned to pay any judgment or decree which may be
936 rendered for the satisfaction of the lien for which such claim
937 of lien was recorded. Upon making such deposit or filing such
938 bond, the clerk shall make and record a certificate, which must
939 include a copy of the deposit or bond used to transfer, showing
940 the transfer of the lien from the real property to the security
941 and shall mail a copy thereof together with a copy of the
942 deposit or bond used to transfer by registered or certified mail
943 to the lienor named in the claim of lien so transferred, at the
944 address stated therein. Upon filing the certificate of transfer,
945 the real property is ~~shall thereupon be~~ released from the lien
946 claimed, and such lien is ~~shall be~~ transferred to said security.
947 In the absence of allegations of privity between the lienor and
948 the owner, and subject to any order of the court increasing the
949 amount required for the lien transfer deposit or bond, no other
950 judgment or decree to pay money may be entered by the court

951 against the owner. The clerk is ~~shall be~~ entitled to a service
 952 charge for making and serving the certificate, in the amount of
 953 up to \$20, from which the clerk shall remit \$5 to the Department
 954 of Revenue for deposit into the General Revenue Fund. If the
 955 transaction involves the transfer of multiple liens, the clerk
 956 shall charge an additional service charge of up to \$10 for each
 957 additional lien ~~shall be charged~~, from which the clerk shall
 958 remit \$2.50 to the Department of Revenue for deposit into the
 959 General Revenue Fund. For recording the certificate and
 960 approving the bond, the clerk shall receive her or his usual
 961 statutory service charges as prescribed in s. 28.24. Any number
 962 of liens may be transferred to one such security.

963 (3) Any party having an interest in such security or the
 964 property from which the lien was transferred may at any time,
 965 and any number of times, file a complaint in chancery in the
 966 circuit court of the county where such security is deposited, or
 967 file a motion in a pending action to enforce a lien, for an
 968 order to require additional security, reduction of security,
 969 change or substitution of sureties, payment of discharge
 970 thereof, or any other matter affecting said security. If the
 971 court finds that the amount of the deposit or bond in excess of
 972 the amount claimed in the claim of lien is insufficient to pay
 973 the lienor's attorney ~~attorney's~~ fees and court costs incurred
 974 in the action to enforce the lien, the court must increase the
 975 amount of the cash deposit or lien transfer bond. ~~Nothing in~~

976 This section may not ~~shall~~ be construed to vest exclusive
977 jurisdiction in the circuit courts over transfer bond claims for
978 nonpayment of an amount within the monetary jurisdiction of the
979 county courts.

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

981 Section 15. Section 713.29, Florida Statutes, is amended
982 to read:

983 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
984 enforce a lien, including a lien that has been transferred to
985 security, or to enforce a claim against a bond under this part,
986 the prevailing party is entitled to recover a reasonable fee for
987 the services of her or his attorney for trial and appeal or for
988 arbitration, in an amount to be determined by the court, which
989 fee must be taxed as part of the prevailing party's costs, as
990 allowed in equitable actions.

991 Section 16. This act shall take effect October 1, 2023.