

## CHAPTER 97-219

### Committee Substitute for House Bill No. 889

An act relating to liens; amending s. 255.05, F.S.; including unpaid finance charges due under a claimant's contract among charges which may be assessed against certain contractors' bonds; revising language with respect to the timeframe for notice of intent to look to such a bond for recovery; providing for the time period for notice of nonpayment; providing forms for waiver of rights to claim against the bond for progress payments and final payments; amending s. 713.06, F.S.; providing for service of notice of commencement rather than mailing with respect to liens of persons not in privity; amending s. 713.132, F.S.; providing that a notice of termination is effective under certain circumstances; amending s. 713.135, F.S.; providing that certain applicants for a building permit must file certain information with respect to the notice of commencement; amending s. 713.20, F.S.; allowing an owner to withhold certain amounts from payments to contractors in certain situations; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsection (2) of section 255.05, Florida Statutes, are amended to read:

255.05 Bond of contractor constructing public buildings; form; action by materialmen.—

(1)(a) Any person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work, to execute, deliver to the public owner, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. The bond must state the name and principal business address of both the principal and the surety and must contain a description of the project sufficient to identify it. Such bond shall be conditioned that the contractor perform the contract in the time and manner prescribed in the contract and promptly make payments to all persons defined in s. 713.01 whose claims derive directly or indirectly from the prosecution of the work provided for in the contract. Any claimant may apply to the governmental entity having charge of the work for copies of the contract and bond and shall thereupon be furnished with a certified copy of the contract and bond. The claimant shall have a right of action against the contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's contract. Such action shall not involve the public authority in any expense. When such work is done for the state and the contract is for \$100,000 or less, no payment and performance

bond shall be required. At the discretion of the official or board awarding such contract when such work is done for any county, city, political subdivision, or public authority, any person entering into such a contract which is for \$200,000 or less may be exempted from executing the payment and performance bond. When such work is done for the state, the director of the Department of Management Services may delegate to state agencies the authority to exempt any person entering into such a contract amounting to more than \$100,000 but less than \$200,000 from executing the payment and performance bond. In the event such exemption is granted, the officer or officials shall not be personally liable to persons suffering loss because of granting such exemption. The Department of Management Services shall maintain information on the number of requests by state agencies for delegation of authority to waive the bond requirements by agency and project number and whether any request for delegation was denied and the justification for the denial.

(2)(a) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing within 45 days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall, within 90 days after performance of the labor or after complete delivery of the materials or supplies or, with respect to rental equipment, within 90 days after the date that the rental equipment was last on the job site available for use, deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. No action for the labor, materials, or supplies may be instituted against the contractor or the surety unless both notices have been given. No action shall be instituted against the contractor or the surety on the payment bond or the payment provisions of a combined payment and performance bond after 1 year from the performance of the labor or completion of delivery of the materials or supplies. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

(b) When a person is required to execute a waiver of his or her right to make a claim against the payment bond in exchange for, or to induce payment of, a progress payment, the waiver may be in substantially the following form:

WAIVER OF RIGHT TO CLAIM  
AGAINST THE PAYMENT BOND (PROGRESS PAYMENT)

The undersigned, in consideration of the sum of \$...., hereby waives its right to claim against the payment bond for labor, services, or materials furnished through ...(insert date)... to ...(insert the name of your customer)... on the job of ...(insert the name of the owner)...., for improvements to the following described project:

(description of project)

This waiver does not cover any retention or labor, services, or materials furnished after the date specified.

DATED ON ....., 19....

...(Claimant)...  
By:.....

(c) When a person is required to execute a waiver of his or her right to make a claim against the payment bond, in exchange for, or to induce payment of, the final payment, the waiver may be in substantially the following form:

WAIVER OF RIGHT TO CLAIM  
AGAINST THE PAYMENT BOND (FINAL PAYMENT)

The undersigned, in consideration of the final payment in the amount of \$...., hereby waives its right to claim against the payment bond for labor, services, or materials furnished to ...(insert the name of your customer)... on the job of ...(insert the name of the owner)...., for improvements to the following described project:

(description of project)

DATED ON ....., 19....

...(Claimant)...  
By:.....

(d) A person may not require a claimant to furnish a waiver that is different from the forms in paragraphs (b) and (c) of this subsection.

(e) A claimant who executes a waiver in exchange for a check may condition the waiver on payment of the check.

(f) A waiver that is not substantially similar to the forms in this subsection is enforceable in accordance with its terms.

Section 2. Paragraphs (b) and (d) of subsection (2) of section 713.06, Florida Statutes, 1996 Supplement, are amended to read:

713.06 Liens of persons not in privity; proper payments.—

(2)

(b) If the owner, in his notice of commencement, has designated a person in addition to himself to receive a copy of such lienor's notice, as provided in s. 713.13(1)(b), the lienor shall serve ~~mail~~ a copy of his notice on ~~to~~ the

person so designated. The failure by the lienor to serve mail such copy, however, does not invalidate an otherwise valid lien.

(d) A notice to an owner served on a lender must be in writing, must be served in accordance with s. 713.18, and shall be addressed and delivered to the lender by certified mail, return receipt requested, to the persons designated, if any, and to the place and address designated in the notice of commencement. Any lender who, after receiving a notice provided under this subsection, pays a contractor on behalf of the owner for an improvement shall make proper payments as provided in paragraph (3)(c) as to each such notice received by the lender. The failure of a lender to comply with this paragraph renders the lender liable to the owner for all damages sustained by the owner as a result of that failure. This paragraph does not give any person other than an owner a claim or right of action against a lender for the failure of the lender to comply with this paragraph. Further, this paragraph does not prohibit a lender from disbursing construction funds at any time directly to the owner, in which event the lender has no obligation to make proper payments under this paragraph.

Section 3. Subsection (4) of section 713.132, Florida Statutes, is amended to read:

713.132 Notice of termination.—

(4) A notice of termination is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or the date stated in the notice of termination as the date on which the notice of commencement is terminated, provided that the notice of termination has been served pursuant to subsection (1)(f) on the contractor and on each lienor who has given notice.

Section 4. Paragraph (d) of subsection (1) of section 713.135, Florida Statutes, 1996 Supplement, is amended to read:

713.135 Notice of commencement and applicability of lien.—

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

(d) Furnish to the applicant two or more copies of a form of notice of commencement conforming with s. 713.13. If the direct contract is greater than \$2,500, the applicant shall file with the issuing authority prior to the first inspection either a certified copy of the recorded notice of commencement or a notarized statement that the notice of commencement has been filed for recording, along with a copy thereof. In the absence of the filing of a certified copy of the recorded notice of commencement, the issuing authority shall not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, or any other means such certified copy with the issuing authority. Nothing herein shall be interpreted as requiring or encouraging the recording of a notice of commencement prior to the issuance of a building permit. If a local government requires a separate permit or inspection for installation of temporary electrical service or other temporary utility service, land clearing, or other preliminary site work, such

permits may be issued and such inspections may be conducted without providing the issuing authority with a certified copy of a recorded notice of commencement or a notarized statement regarding a recorded notice of commencement.

Section 5. Subsections (6) and (7) of section 713.20, Florida Statutes, 1996 Supplement, are amended to read:

713.20 Waiver or release of liens.—

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5).

(7) A lienor who executes a lien waiver and release in exchange for a check may condition the waiver and release on payment of the check. How-  
ever, in the absence of a payment bond protecting the owner, the owner may  
withhold from any payment to the contractor the amount of any such unpaid  
check until any such condition is satisfied.

Section 6. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.