

Council Substitute for House Bill No. 1285

An act relating to construction liens; amending s. 255.05, F.S.; requiring a performance bond for certain contracts with private entities for specified public works projects; requiring that certain notices by claimants be in writing; revising requirements relating to when claimants must provide certain notices; amending s. 713.01, F.S.; defining the term “final furnishing”; revising the definition of the term “furnish materials”; creating s. 713.012, F.S.; requiring that certain notices, demands, or requests be in writing; amending s. 713.015, F.S.; requiring that certain notices pertaining to direct contracts greater than \$2,500 for improvements to certain property be in writing; amending s. 713.02, F.S.; providing for an owner and contractor to agree to the furnishing of a payment bond; exempting an owner who agrees from certain statutory provisions; amending s. 713.07, F.S.; providing for the recommencement of construction following the termination of certain contracts; amending s. 713.08, F.S.; requiring that certain claims of lien be prepared and sworn to or affirmed by the lienor or various agents of the lienor; revising and conforming certain exceptions to a time limitation on recording of a claim of lien; amending s. 713.13, F.S.; revising the form for notices of commencement to include an additional warning and notarized statements and signatures; providing that the failure of a person to make a specified statement under oath deprives the person of a lien; requiring that notices of commencement include the tax folio number; providing for the recording of amended notices of commencement; amending s. 713.135, F.S.; requiring that building permits contain certain written statements; amending s. 713.16, F.S.; requiring a statement of account be under oath; revising provisions relating to a lienor’s right to demand a statement of account; requiring that the claim of lien be recorded; deleting provisions relating to the failure to furnish the statement; amending s. 713.18, F.S.; providing procedures for service of notices and other instruments upon a limited liability company; amending s. 713.22, F.S.; extending the duration of certain liens for which amended claims of lien are filed; amending s. 713.31, F.S.; providing for the award of attorney’s fees and costs to prevailing parties in certain actions relating to fraudulent liens; repealing s. 713.36, F.S., relating to an effective date, to delete an obsolete provision; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and paragraph (a) of 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 or

private entity, 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 or before recommencing the work after a default or abandonment, 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. A public entity may not require a contractor to secure a surety bond under this section from a specific agent or bonding company. The bond must state on its front page: the name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and, if different from the owner, the contracting public entity; the contract number assigned by the contracting public entity; and a description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement. Such bond shall be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract and promptly making payments to all persons defined in s. 713.01 who furnish labor, services, or materials for 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 Secretary ~~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. Any provision in a payment bond furnished for public work contracts as provided by this subsection which restricts the classes of persons as defined in s. 713.01 protected by the bond or the venue of any proceeding relating to such bond is unenforceable.

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

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: (Name and address of claimant)

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

DATED on,

Signed: (Contractor or Attorney)

The claim of any claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of such notice and record the notice. Service is complete upon mailing.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials, ~~or supplies~~ for the prosecution of the work, furnish the contractor with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, services, or materials, ~~or supplies~~ shall 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. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. No action for the labor, materials, or supplies may be instituted against the contractor or the surety unless both notices have been given. Notices required or permitted under this section may be served in accordance with s. 713.18. 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. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety shall be measured from the last day of furnishing labor, services, or materials by the claimant and shall not be

measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion.

Section 2. Subsections (12) through (28) of section 713.01, Florida Statutes, are renumbered as subsections (13) through (29), respectively, present subsection (12) is amended, and a new subsection (12) is added to that section, to read:

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

(12) “Final furnishing” means the last date that the lienor furnishes labor, services, or materials. Such date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include correction of deficiencies in the lienor’s previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the job site and available for use.

~~(13)(12) “Furnish materials” means supply materials which are incorporated in the improvement including normal wastage in construction operations; or specially fabricated materials for incorporation in the improvement, not including any design work, submittals, or the like preliminary to actual fabrication of the materials; or supply materials used for the construction and not remaining in the improvement, subject to diminution by the salvage value of such materials; and includes supplying rental equipment tools, appliances, or machinery used on the particular improvement to the extent of the reasonable rental value for the period of actual use (not determinable by the contract for rental unless the owner is a party thereto), but does not include supplying handtools. The delivery of materials to the site of the improvement is prima facie evidence of incorporation of such materials in the improvement. The delivery of rental equipment to the site of the improvement is prima facie evidence of the period of the actual use of the rental equipment from the delivery through the time the equipment is last available for use at the site, or 2 business days after the lessor of the rental equipment receives a written notice from the owner or the lessee of the rental equipment to pick up the equipment, whichever occurs first.~~

Section 3. Section 713.012, Florida Statutes, is created to read:

713.012 Written notices, demands, or requests.—Notices, demands, or requests permitted or required under this part, except any required by s. 713.14, must be in writing.

Section 4. Section 713.015, Florida Statutes, is amended to read:

713.015 Mandatory provisions for direct contracts.—

(1) Any direct contract greater than \$2,500 between an owner and a contractor, related to improvements to real property consisting of single or multiple family dwellings up to and including four units, must contain the following notice provision printed in no less than 12-point 14-point, capitalized, boldfaced type on the front page of the contract or on a separate page, signed by the owner and dated:

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

(2)(a) If the contract is written, the notice must be in the contract document. If the contract is oral or implied, the notice must be provided in a document referencing the contract.

(b) The failure to provide such written notice does not bar the enforcement of a lien against a person who has not been adversely affected.

(c) Nothing in This section may not shall be construed to adversely affect the lien and bond rights of lienors who are not in privity with the owner. This section does not apply when the owner is a contractor licensed under chapter 489 or is a person who created parcels or offers parcels for sale or lease in the ordinary course of business.

Section 5. Subsection (6) of section 713.02, Florida Statutes, is amended to read:

713.02 Types of lienors and exemptions.—

(6) In any direct contract The owner and contractor may agree that require the contractor shall to furnish a payment bond as provided in s. 713.23, and upon receipt of the bond the owner is shall be exempt from the other provisions of this part as to that direct contract, but this does not exempt the owner from the lien of the contractor who furnishes the bond. If the bond is provided, it shall secure all liens subsequently accruing under this part as provided in s. 713.23.

Section 6. Subsection (4) of section 713.07, Florida Statutes, is amended to read:

713.07 Priority of liens.—

(4) If construction ceases or the direct contract is terminated before completion and the owner desires to recommence construction, he or she may pay all lienors in full or pro rata in accordance with s. 713.06(4) prior to recommencement in which event all liens for the recommenced construction shall take priority from such recommencement; or the owner may record an affidavit in the clerk's office stating his or her intention to recommence construction and that all lienors giving notice have been paid in full except those listed therein as not having been so paid in which event 30 days after such recording, the rights of any person acquiring any interest, lien, or encumbrance on said property or of any lienor on the recommenced construction shall be paramount to any lien on the prior construction unless such prior lienor records a claim of lien within said 30-day period. A copy of said affidavit shall be served on each lienor named therein. Before recommencing, the owner shall record and post a notice of commencement for the recommenced construction, as provided in s. 713.13.

Section 7. Subsections (2) and (5) of section 713.08, Florida Statutes, are amended to read:

713.08 Claim of lien.—

(2) The claim of lien may be prepared by the lienor or the lienor's employee or attorney and shall be signed and sworn to or affirmed verified by the lienor or the lienor's ~~her or his~~ agent acquainted with the facts stated therein.

(5) The claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor. ~~However,; 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; provided if the original contractor defaults or the contract is terminated under s. 713.07(4), a no claim for a lien attaching prior to such termination may not default shall be recorded after 90 days following from the date of such termination default or 90 days after the final performance of labor or services or furnishing of materials, whichever occurs first. The time period for recording a claim of lien shall be measured from the last day of furnishing of labor, services, or materials by the lienor, whichever occurs first and shall not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion.~~ The claim of lien shall be recorded in the clerk's office. If such real property is situated in two or more counties, the claim of lien shall be recorded in the clerk's office in each of such counties. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The validity of the lien and the right to record a claim therefor shall not be affected by the insolvency, bankruptcy, or death of the owner before the claim of lien is recorded.

Section 8. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended, subsections (5) and (6) of that section are renumbered as subsections (6) and (7), respectively, and a new subsection (5) is added to that section, to read:

713.13 Notice of commencement.—

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

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

2. A general description of the improvement.

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

4. The name and address of the contractor.

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

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

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

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

Permit No.....Tax Folio No.....
NOTICE OF COMMENCEMENT
State of...
County of...

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

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

- 2. General description of improvement:.....
- 3. Owner information:.....
 - a. Name and address:.....
 - b. Interest in property:.....
 - c. Name and address of fee simple titleholder (if other than Owner):.....
- 4.a. Contractor: (name and address).
- b. Contractor’s phone number:.....
- 5. Surety
 - a. Name and address:.....
 - b. Phone number:.....
 - c. Amount of bond: \$......
- 6.a. Lender: (name and address).
- b. Lender’s phone number:.....
- 7.a. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes: (name and address).
 - b. Phone numbers of designated persons:.....
- 8.a. In addition to himself or herself, Owner designates of to receive a copy of the Lienor’s Notice as provided in Section 713.13(1)(b), Florida Statutes.
 - b. Phone number of person or entity designated by owner:.....
- 9. Expiration date of notice of commencement (the expiration date is 1 year from the date of recording unless a different date is specified).....

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

(Signature of Owner or Owner’s Authorized Officer/Director/Partner/Manager)

(Signatory’s Title/Office)

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

~~Sworn to (or affirmed) and subscribed before me this day of, (year), by (name of person making statement).~~

(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.....

Verification pursuant to Section 92.525, Florida Statutes.

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true to the best of my knowledge and belief.

(Signature of Natural Person Signing Above)

(5)(a) A notice of commencement that is recorded within the effective period may be amended to extend the effective period, change erroneous information in the original notice, or add information that was omitted from the original notice. However, in order to change contractors, a new notice of commencement or notice of recommencement must be executed and recorded.

(b) The amended notice must identify the official records book and page where the original notice of commencement is recorded, and a copy of the amended notice must be served by the owner upon the contractor and each lienor who serves notice before or within 30 days after the date the amended notice is recorded.

Section 9. Paragraph (a) of subsection (1) and paragraph (a) of subsection (6) of section 713.135, Florida Statutes, are 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:

(a) Print on the face of each permit card in no less than ~~14-point~~ ~~18-point~~, capitalized, boldfaced type: “WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.”

(6)(a) In addition to any other information required by the authority issuing the permit, the building permit application must be in substantially the following form:

Tax Folio No.....

BUILDING PERMIT APPLICATION

Owner's Name

Owner's Address

Fee Simple Titleholder's Name (If other than owner)

Fee Simple Titleholder's Address (If other than owner)

City

State..... Zip.....

Contractor's Name

Contractor's Address

City

State..... Zip.....

Job Name

Job Address

City..... County.....

Legal Description

Bonding Company

Bonding Company Address

City..... State.....

Architect/Engineer's Name

Architect/Engineer's Address

Mortgage Lender's Name

Mortgage Lender's Address

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc.

OWNER'S AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION.

IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

(Signature of Owner or Agent)

(including contractor)

STATE OF FLORIDA
COUNTY OF

Sworn to (or affirmed) and subscribed before me this day of, (year),
by (name of person making statement).

(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.....

(Signature of Contractor)

STATE OF FLORIDA
COUNTY OF

Sworn to (or affirmed) and subscribed before me this day of, (year),
by (name of person making statement).

(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.....

(Certificate of Competency Holder)
Contractor’s State Certification or Registration No.....
Contractor’s Certificate of Competency No.....

APPLICATION APPROVED BY
.....Permit Officer

Section 10. Subsections (2), (5), and (6) of section 713.16, Florida Statutes, are amended to read:

713.16 Demand for copy of contract and statements of account; form.—

(2) The owner may serve in writing a demand of any lienor for a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor. Any such demand to a lienor must be served on the lienor at the address and to the attention of any person who is designated to receive the demand in the notice to owner served by such lienor. The failure or refusal to furnish the statement does not deprive the lienor of his or her lien if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to owner. The failure or refusal to furnish the statement under

oath within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person so failing or refusing to furnish such statement of his or her lien. If the owner serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor's last response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or her lien. The negligent inclusion or omission of any information deprives the person of his or her lien to the extent the owner can demonstrate prejudice from such act or omission by the lienor. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim of lien being enforced through a foreclosure case filed prior to the date the demand for statement is received by the lienor.

(5)(a) Any lienor who has ~~recorded~~ filed a claim of lien may make written demand on the owner for a written statement under oath showing:

1. The amount of ~~the all~~ direct contract under which the lien was recorded ~~contracts; the amount paid by or on behalf of the owner for all labor, services, and materials furnished pursuant to the direct contracts;~~

2. The dates and amounts paid or to be paid by or on behalf of the owner for all improvements described in the any direct contract ~~contracts;~~ and

3. The reasonable estimated costs of completing the, ~~according to the terms and specifications of same, any~~ direct contract under which the lien was claimed pursuant to the scope of the direct contract; and ~~construction has ceased.~~

4. If known, the actual cost of completion ~~must be provided.~~

(b) Any owner who does not provide the statement within 30 days after demand, or who provides a false or fraudulent statement, is not a prevailing party for purposes of an award of attorney's fees under s. 713.29. The written demand must include the following warning in conspicuous type in substantially the following form:

WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING THIS STATEMENT.

(6) For purposes of this section, the term "information" means the nature and quantity of the labor, services, and materials furnished or to be furnished by a lienor and the amount paid, the amount due, and the amount to become due on the lienor's account. ~~The failure to furnish the statement under oath does not constitute an omission of information and shall deprive the lienor of his or her lien.~~

Section 11. Section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving notices and other instruments.—

(1) Service of notices, claims of lien, affidavits, assignments, and other instruments permitted or required under this part, or copies thereof when so permitted or required, unless otherwise specifically provided in this part, must be made by one of the following methods:

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

(b) By sending the same by registered or certified mail, with postage prepaid, or by overnight or second-day delivery with evidence of delivery, which may be in an electronic format.

(c) If the method specified in paragraph (a) or paragraph (b) cannot be accomplished, by posting on the premises.

~~(2)~~1. Notwithstanding subsection (1), if a notice to owner, a notice to contractor under s. 713.23, or a preliminary notice under s. 255.05 is mailed by registered or certified mail with postage prepaid to the person to be served at any of the addresses set forth in subsection (3) subparagraph 2. within 40 days after the date the lienor first furnishes labor, services, or materials, service of that notice is effective as of the date of mailing if the person who served the notice maintains a registered or certified mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing or if the person who served the notice maintains electronic tracking records generated through use of the United States Postal Service Confirm service or a similar service containing the postal tracking number, the name and address of the person served, and verification of the date of receipt by the United States Postal Service.

~~(3)~~2. If an instrument served pursuant to this section to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served, is not received, but is returned as being “refused,” “moved, not forwardable,” or “unclaimed,” or is otherwise not delivered or deliverable through no fault of the person serving the item, then service is effective on the date the instrument notice was sent.

~~(c) If none of the foregoing methods can be accomplished, by posting on the premises.~~

~~(4)~~(2) If the real property is owned by more than one person or a partnership, a lienor may serve any notices or other papers under this part on any one of such owners or partners, and such notice is deemed notice to all owners and partners.

Section 12. Subsection (1) of section 713.22, Florida Statutes, is amended to read:

713.22 Duration of lien.—

(1) No lien provided by this part shall continue for a longer period than 1 year after the claim of lien has been recorded or 1 year after the recording of an amended claim of lien that shows a later date of final furnishing of labor, services, or materials, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for a valuable consideration and without notice, unless a notice of lis pendens is recorded.

Section 13. Paragraph (c) of subsection (2) of section 713.31, is amended to read:

713.31 Remedies in case of fraud or collusion.—

(2)

(c) An owner against whose interest in real property a fraudulent lien is filed, or any contractor, subcontractor, or sub-subcontractor who suffers damages as a result of the filing of the fraudulent lien, shall have a right of action for damages occasioned thereby. The action may be instituted independently of any other action, or in connection with a summons to show cause under s. 713.21, or as a counterclaim or cross-claim to any action to enforce or to determine the validity of the lien. The prevailing party in an action under this paragraph may recover reasonable attorney's fees and costs. If the lienor who files a fraudulent lien is not the prevailing party, the lienor shall be liable to the owner or the defrauded party who prevails in an action under this subsection in damages, which shall include court costs, clerk's fees, a reasonable attorney's fee and costs for services in securing the discharge of the lien, the amount of any premium for a bond given to obtain the discharge of the lien, interest on any money deposited for the purpose of discharging the lien, and punitive damages in an amount not exceeding the difference between the amount claimed by the lienor to be due or to become due and the amount actually due or to become due.

Section 14. Section 713.36, Florida Statutes, is repealed.

Section 15. This act shall take effect July 1, 2007.

Approved by the Governor June 26, 2007.

Filed in Office Secretary of State June 26, 2007.