

CHAPTER 2012-211

Committee Substitute for Committee Substitute for House Bill No. 897

An act relating to construction contracting; amending s. 95.11, F.S.; adding a cross-reference; amending s. 255.05, F.S.; requiring that the bond number be stated on the first page of the bond; providing that a public entity may not make payment to the contractor unless the public entity has received a certified copy of the bond; providing that a provision in a payment bond furnished for a public works contract that limits or expands the effective duration of the bond or adds conditions precedent is unenforceable; requiring a contractor, or the contractor's attorney, to serve rather than mail a notice of contest of claim against the payment bond; providing prerequisites for commencement of an action against a payment bond; requiring payment bond forms to reference specified notice and time limitation provisions; providing that payment to a contractor who has furnished a payment bond on a public works project may not be conditioned upon production of certain documents if the surety has given written consent; providing for the surety to withhold or revoke consent; creating s. 255.0518, F.S.; requiring that the state, a county, a municipality, or any other public body or institution open sealed bids received in response to a competitive solicitation at a public meeting, announce the name of each bidder and the price submitted, and make available upon request the names of bidders and submitted prices; amending s. 713.10, F.S.; providing that a specified notice concerning a lessor's liability for liens for improvements made by the lessee prohibits liens even if other leases do not expressly prohibit liens or if certain other provisions are not identical; amending s. 713.13, F.S.; revising a notice form to clarify that the notice of commencement expires 1 year after the date of recording; removing a clause relating to perjury; providing additional time for service when a notice of commencement is not recorded with a copy of the bond attached; reenacting and amending s. 489.118, F.S.; reviving certain grandfathering provisions and setting a new deadline by which certain registered contractors may apply for certification; amending s. 713.132, F.S.; requiring notice of termination to be served on lienors in privity with the owner; amending s. 713.16, F.S.; revising requirements for demands for a copy of a construction contract and a statement of account; authorizing a lienor to make certain written demands to an owner for certain written statements; providing requirements for such written demands; amending s. 713.18, F.S.; providing additional methods by which certain items may be served; revising provisions relating to when service of specified items is effective; specifying requirements for certain written instruments under certain circumstances; amending s. 713.22, F.S.; requiring that the clerk serve rather than mail a notice of contest of lien; amending s. 713.23, F.S.; revising the contents of a notice to contractor; requiring that a contractor serve rather than mail a notice of contest of claim against the payment bond and a notice of bond; clarifying

the attachment of the bond to the notice; providing that a provision in a payment bond that limits or expands the effective duration of the bond or adds conditions precedent is unenforceable; clarifying applicability of certain provisions; providing effective dates.

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

Section 1. Paragraph (b) of subsection (2) and paragraph (e) of subsection (5) of section 95.11, Florida Statutes, are amended to read:

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

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an action to enforce a claim against a payment bond, which shall be governed by the applicable provisions of paragraph (5)(e), s. ss. 255.05(10), s. 337.18(1), or s. and 713.23(1)(e).

(5) WITHIN ONE YEAR.—

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

Section 2. Subsection (1), paragraph (a) of subsection (2), and subsection (6) of section 255.05, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

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

(1)(a) ~~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.

(a) The bond must state on its front page:

1. 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.;

2. The contract number assigned by the contracting public entity.;

3. The bond number assigned by the surety. and

4. 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.

(b) Before commencing the work or before recommencing the work after a default or abandonment, the contractor shall provide to the public entity a certified copy of the recorded bond. Notwithstanding the terms of the contract or any other law governing prompt payment for construction services, the public entity may not make a payment to the contractor until the contractor has complied with this paragraph. This paragraph applies to contracts entered into on or after October 1, 2012.

(c) The 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. A 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 the recorded bond. The claimant shall have a cause 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 may shall not involve the public authority in any expense.

(d) When the 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, a any person entering into such a contract that 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 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. If an ~~In the event such~~ exemption is granted, the officer or official is ~~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.

(e) Any provision in a payment bond issued on or after October 1, 2012, furnished for public work contracts as provided by this subsection which further restricts the classes of persons as defined in s. 713.01 protected by the bond, which restricts or the venue of any proceeding relating to such bond, which limits or expands the effective duration of the bond, or which adds conditions precedent to the enforcement of a claim against the bond beyond those provided in this section is unenforceable.

(f)(b) The Department of Management Services shall adopt rules with respect to all contracts for \$200,000 or less, to provide:

1. Procedures for retaining up to 10 percent of each request for payment submitted by a contractor and procedures for determining disbursements from the amount retained on a pro rata basis to laborers, materialmen, and subcontractors, as defined in s. 713.01.

2. Procedures for requiring certification from laborers, materialmen, and subcontractors, as defined in s. 713.01, before ~~prior to~~ final payment to the contractor that such laborers, materialmen, and subcontractors have no claims against the contractor resulting from the completion of the work provided for in the contract.

The state ~~is~~ shall not be held liable to any laborer, materialman, or subcontractor for any amounts greater than the pro rata share as determined under this section.

(g)(e)1. The amount of the bond shall equal the contract price, except that for a contract in excess of \$250 million, if the state, county, municipality, political subdivision, or other public entity finds that a bond in the amount of the contract price is not reasonably available, the public owner shall set the amount of the bond at the largest amount reasonably available, but not less than \$250 million.

2. For construction-management or design-build contracts, if the public owner does not include in the bond amount the cost of design or other nonconstruction services, the bond may not be conditioned on performance of such services or payment to persons furnishing such services. Notwithstanding ~~paragraphs (c) and (e) paragraph (a)~~, such a bond may exclude persons furnishing such services from the classes of persons protected by the bond.

(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 must ~~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 a 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 contractor or the contractor's attorney ~~clerk~~ shall serve 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 the 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 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 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 shall ~~may~~ be served ~~at any time during~~ the progress of the work or thereafter but may not be served earlier than ~~before~~ 45 days after the first furnishing of labor, services, or materials ~~or, 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. An No ~~An~~ action for the labor, materials, or supplies may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section ~~both notices have been given~~. Notices required or permitted under this section shall ~~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 ~~may 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.

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

(11) When a contractor furnishes and records a payment and performance bond for a public works project in accordance with this section and provides the public authority with a written consent from the surety regarding the project or payment in question, the public authority may not condition its payment to the contractor on the production of a release, waiver, or like documentation from a claimant demonstrating that the claimant does not have an outstanding claim against the contractor, the surety, the payment bond, or the public authority for payments due on labor, services, or materials furnished on the public works project. The surety may, in a writing served on the public authority, revoke its consent or direct that the public authority withhold a specified amount from a payment, which shall be effective upon receipt. This subsection applies to contracts entered into on or after October 1, 2012.

Section 3. Effective upon this act becoming a law, section 255.0518, Florida Statutes, is created to read:

255.0518 Public bids; bid opening.—Notwithstanding s. 119.071(1)(b), the state or any county or municipality thereof or any department or agency of the state, county, or municipality or any other public body or institution shall:

(1) When opening sealed bids or the portion of any sealed bids that include the prices submitted that are received pursuant to a competitive solicitation for construction or repairs on a public building or public work, open the sealed bids at a public meeting conducted in compliance with s. 286.011.

(2) Announce at that meeting the name of each bidder and the price submitted.

(3) Make available upon request the name of each bidder and the price submitted.

Section 4. Paragraph (b) of subsection (2) of section 713.10, Florida Statutes, is amended to read:

713.10 Extent of liens.—

(2)

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

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

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

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

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

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

Section 5. Paragraphs (d) and (e) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)

(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 or Lessee information if the Lessee contracted for the improvement:

a. Name and address:.....

b. Interest in property:.....

c. Name and address of fee simple titleholder (if different from Owner listed above):.....

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

b. Contractor’s phone number:.....

5. Surety (if applicable, a copy of the payment bond is attached):

a. Name and address:.....

b. Phone number:.....

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

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

b. Lender’s phone number:.....

7. 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:

a. 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 ~~may not be before the completion of construction and final payment to the contractor, but~~ will be 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.

~~Under penalty of perjury, I declare that I have read the foregoing notice of commencement and that the facts stated therein are true to the best of my knowledge and belief.~~

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

...(Signatory’s Title/Office)...

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

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

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

Personally Known OR Produced Identification

Type of Identification Produced.....

(e) A copy of any payment bond must be attached at the time of recordation of the notice of commencement. The failure to attach a copy of the bond to the notice of commencement when the notice is recorded negates

the exemption provided in s. 713.02(6). However, if a payment bond under s. 713.23 exists but was not attached at the time of recordation of the notice of commencement, the bond may be used to transfer any recorded lien of a lienor except that of the contractor by the recordation and service of a notice of bond pursuant to s. 713.23(2). The notice requirements of s. 713.23 apply to any claim against the bond; however, the time limits for serving any required notices shall, at the option of the lienor, be calculated from the dates begin ~~running from the later of the time~~ specified in s. 713.23 or the date the notice of bond is served on the lienor.

Section 6. Section 489.118, Florida Statutes, is reenacted and amended to read:

489.118 Certification of registered contractors; grandfathering provisions.—The board shall, upon receipt of a completed application and appropriate fee, issue a certificate in the appropriate category to any contractor registered under this part who makes application to the board and can show that he or she meets each of the following requirements:

(1) Currently holds a valid registered local license in one of the contractor categories defined in s. ~~489.105(3)(a)-(q)~~ 489.105(3)(a)-(p).

(2) Has, for that category, passed a written examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(3) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the 5 years required by this subsection.

(4) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended within the last 5 years, or been assessed a fine in excess of \$500 within the last 5 years.

(5) Is in compliance with the insurance and financial responsibility requirements in s. 489.115(5).

Applicants wishing to obtain a certificate pursuant to this section must make application by November 1, 2015 ~~2005~~.

Section 7. Paragraph (f) of subsection (1) and subsection (4) of section 713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.—

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

(f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner ~~given notice~~. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(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, ~~if provided that the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner~~ given notice.

Section 8. Section 713.16, Florida Statutes, is amended to read:

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

(1) A copy of the contract of a lienor or owner and a statement of the amount due or to become due if fixed or ascertainable thereon must be furnished by any party thereto, upon written demand of an owner or a lienor contracting with or employed by the other party to such contract. If the owner or lienor refuses or neglects to furnish such copy of the contract or such statement, or willfully and falsely states the amount due or to become due if fixed or ascertainable under such contract, any person who suffers any detriment thereby has a cause of action against the person refusing or neglecting to furnish the same or willfully and falsely stating the amount due or to become due for his or her damages sustained thereby. The information contained in such copy or statement furnished pursuant to such written demand is binding upon the owner or lienor furnishing it unless actual notice of any modification is given to the person demanding the copy or statement before such person acts in good faith in reliance on it. The person demanding such documents must pay for the reproduction thereof; and, if such person fails or refuses to do so, he or she is entitled only to inspect such documents at reasonable times and places.

(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 and must include a description of the property and the names of the owner, the contractor, and the lienor's customer, as set forth in the lienor's notice to owner. 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 before ~~prior~~ to the date the demand for statement is received by the lienor.

(3) A request for sworn statement of account must be in substantially the following form:

REQUEST FOR SWORN STATEMENT OF ACCOUNT

WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

To: ...(Lienor's name and address)...

The undersigned hereby demands 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 for the improvement of real property identified as ...(property description)...

...(name of contractor)...

...(name of the lienor's customer, as set forth in the lienor's Notice to Owner, if such notice has been served)...

...(signature and address of owner)...

...(date of request for sworn statement of account)...

(4) When a contractor has furnished a payment bond pursuant to s. 713.23, he or she may, when an owner makes any payment to the contractor or directly to a lienor, serve a written demand on any other 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 contractor served by such lienor. The demand must include a description of the property and the names of the owner, the contractor, and the lienor's customer, as set forth in the lienor's notice to contractor. The failure or refusal to furnish the statement does not deprive the lienor of his or her rights under the bond 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 contractor. The failure to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his or her rights under the bond. If the contractor 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 rights under the bond. The negligent inclusion or omission of any information deprives the person of his or her rights under the bond to the extent the contractor 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 on the bond being enforced in a lawsuit filed prior to the date the demand for statement of account is received by the lienor.

(5)(a) Any lienor who is perfecting a claim of lien ~~has recorded a claim of lien~~ may serve with the claim of lien or thereafter make written demand on the owner for a written statement under oath showing:

1. The amount of the direct contract under which the lien was recorded;
2. The dates and amounts paid or to be paid by or on behalf of the owner for all improvements described in the direct contract;
3. The reasonable estimated costs of completing the direct contract under which the lien was claimed pursuant to the scope of the direct contract; and
4. If known, the actual cost of completion.

(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 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) Any written demand served on the owner must include a description of the property and the names of the contractor and the lienor's customer, as set forth in the lienor's notice to owner.

~~(7)(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.

Section 9. 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; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a limited liability company, to a member or manager.

(b) By common carrier delivery service or sending the same by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and 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 site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished premises.~~

(2) Notwithstanding subsection (1), service of if a notice to owner or, a preliminary notice to contractor under s. 255.05, s. 337.18, or 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) 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;

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served at any of the addresses set forth in subsection (3);

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

(c)1. 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

2. The person who served the notice maintains electronic tracking records generated by ~~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)(a) Service of If an instrument served pursuant to this section is effective on the date of mailing the instrument if it:

1. Is sent 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; ~~and, is not received, but~~

2. 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 was sent.~~

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

(4) A notice served by a lienor on one owner or one partner of a partnership owning the real property ~~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 10. Section 713.22, Florida Statutes, is amended to read:

713.22 Duration of lien.—

(1) ~~A~~ ~~No~~ lien provided by this part ~~does not~~ 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. A lien that has been continued beyond the 1-year period ~~The continuation of the lien effected by the commencement of an~~ ~~the action is~~ shall not ~~enforceable~~ be good against creditors or subsequent purchasers for a valuable consideration and without notice, unless a notice of lis pendens is recorded.

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

NOTICE OF CONTEST OF LIEN

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

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

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

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall serve, in accordance with s. 713.18, mail a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of the ~~such~~ notice and record the notice. ~~Service shall be deemed complete upon mailing.~~

Section 11. Paragraphs (c), (d), (e), and (f) of subsection (1) and subsections (2) and (4) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.—

(1)

(c) ~~Either~~ Before beginning or within 45 days after beginning to furnish labor, materials, or supplies, a lienor who is not in privity with the contractor,

except a laborer, shall serve the contractor with notice in writing that the lienor will look to the contractor’s bond for protection on the work. If a notice of commencement with the attached bond is not recorded before commencement of construction, or a reference to the bond is not given in the notice of commencement, and in either case if the lienor not in privity with the contractor is not otherwise notified in writing of the existence of the bond, the lienor not in privity with the contractor may, in the alternative, elect to serve the notice to the contractor up to shall have 45 days after from the date the lienor is served with a copy notified of the existence of the bond within which to serve the notice. A notice to owner pursuant to s. 713.06 that has been timely served on the contractor satisfies the requirements of this paragraph. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The notice may be in substantially the following form and may be combined with a notice to owner given under s. 713.06 and, if so, may be entitled “NOTICE TO OWNER/NOTICE TO CONTRACTOR:

NOTICE TO CONTRACTOR

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

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows:

...(general description of services or materials)... for the improvement of the real property identified as ...(property description)... under an order given by ...(lienor’s customer)....

This notice is to inform you that the undersigned intends to look to the contractor’s bond to secure payment for the furnishing of materials or services for the improvement of the real property.

...(name of lienor)...

...(signature of lienor or lienor’s representative)...

...(date)...

...(lienor’s address)...

The undersigned notifies you that he or she has furnished or is furnishing ... (services or materials)... for the improvement of the real property identified as ...(property description)... owned by ...(owner’s name and address)... under an order given by and that the undersigned will look to the contractor’s bond for protection on the work.

...(Lienor's signature and address)...

(d) In addition, a lienor is required, as a condition precedent to recovery under the bond, to serve a written notice of nonpayment to the contractor and the surety not later than 90 days after the final furnishing of labor, services, or materials by the lienor. A written notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor's contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a written notice of nonpayment shall be measured from the last day of furnishing labor, services, or materials by the lienor 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 failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The notice under this paragraph may be in substantially the following form:

NOTICE OF NONPAYMENT

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

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

The undersigned notifies you that he or she has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The amount now due and unpaid is \$.....

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

(e) An ~~No~~ action for the labor or materials or supplies may not be instituted or prosecuted against the contractor or surety unless both notices have been given, if required by this section. ~~An~~ ~~No~~ action may not ~~shall~~ be instituted or prosecuted against the contractor or against the surety on the bond under this section after 1 year from the performance of the labor or completion of delivery of the materials and supplies. The time period for bringing an action against the contractor or surety on the bond shall be measured from the last day of furnishing labor, services, or materials by the

lienor. The time period and may 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. A contractor or the contractor's agent or attorney may elect to shorten the prescribed time within which an action to enforce any claim against a payment bond provided under this section or s. 713.245 ~~must~~ may be commenced at any time after a notice of nonpayment, if required, has been served for the claim 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 lienor)...

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 from the date of service of this notice.

DATED on,

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

The claim of any lienor upon whom the 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 the notice shall be extinguished automatically. The contractor or the contractor's attorney clerk shall serve mail a copy of the notice of contest to the lienor at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice. ~~Service is complete upon mailing.~~

(f) A Any lienor has a direct right of action on the bond against the surety. Any provision in a payment bond issued on or after October 1, 2012, which further restricts ~~A bond must not contain any provisions restricting~~ the classes of persons who are protected by the payment bond, which restricts thereby or the venue of any proceeding relating to such payment bond, which limits or expands the effective duration of the payment bond, or which adds conditions precedent to the enforcement of a claim against a payment bond beyond those provided in this part is unenforceable. The surety is not entitled to the defense of pro tanto discharge as against any lienor because of changes or modifications in the contract to which the surety is not a party; but the liability of the surety may not be increased beyond the penal sum of the bond. A lienor may not waive in advance his or her right to bring an action under the bond against the surety.

(2) The bond shall secure every lien under the direct contract accruing subsequent to its execution and delivery, except that of the contractor. Every claim of lien, except that of the contractor, filed subsequent to execution and delivery of the bond shall be transferred to it with the same effect as liens transferred under s. 713.24. Record notice of the transfer shall be effected by the contractor, or any person having an interest in the property against which the claim of lien has been asserted, by recording in the clerk's office a notice, with the bond attached, in substantially the following form:

NOTICE OF BOND

To ...(Name and Address of Lienor)...

You are notified that the claim of lien filed by you on,, and recorded in Official Records Book at page of the public records of County, Florida, is secured by a bond, a copy being attached.

Signed: ...(Name of person recording notice)...

The notice shall be verified. The person recording the notice of bond ~~clerk~~ shall ~~serve mail~~ a copy of the notice with a copy of the bond to the lienor at the address shown in the claim of lien, or the most recent amendment to it; shall certify to the service on the face of the notice; and shall record the notice. ~~The clerk shall receive the same fee as prescribed in s. 713.24(1) for certifying to a transfer of lien.~~

(4) The provisions of s. 713.24(3) ~~shall~~ apply to bonds under this section except when those provisions conflict with this section.

Section 12. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2012.

Approved by the Governor May 4, 2012.

Filed in Office Secretary of State May 4, 2012.