

## CHAPTER 2023-226

### Committee Substitute for Committee Substitute for House Bill No. 331

An act relating to liens and bonds; amending s. 255.05, F.S.; requiring the clerk to serve a copy of a notice of contest of claim on certain persons after it has been recorded; requiring the clerk of the court to charge fees for certain services; revising when a notice of contest of claim against a payment bond must be served; requiring that a copy of a notice of nonpayment be served on the surety; revising the process for notarizing a notice of nonpayment; revising authorized alternative forms of security; requiring service of documents to be made in a specified manner; conforming provisions to changes made by the act; making technical changes; amending s. 337.18, F.S.; requiring service of documents to be made in a specified manner; conforming provisions to changes made by the act; amending s. 713.01, F.S.; revising and providing definitions; creating s. 713.011, F.S.; providing for the computation of time when certain time periods fall on specified days or during an emergency; amending s. 713.10, F.S.; revising the extent of certain liens; amending s. 713.13, F.S.; revising the process for notarizing a notice of commencement; requiring the authority issuing a building permit to accept a recorded notice of commencement under certain circumstances; conforming a cross-reference; making technical changes; amending s. 713.132, F.S.; revising requirements for a notice of termination; revising when an owner may record a notice of termination; specifying when a notice of termination terminates a notice of commencement; amending s. 713.135, F.S.; providing a definition; providing applicability; revising the dollar threshold of an exception; providing immunity; amending s. 713.18, F.S.; requiring service of documents relating to construction bonds to be made in a specified manner; authorizing employees or agents of specified entities to receive service of certain documents; making technical changes; amending s. 713.21, F.S.; authorizing the full or partial release of a lien under specified conditions; making technical changes; amending s. 713.22, F.S.; requiring the clerk to serve a copy of a notice of contest of lien on certain persons after it has been recorded; requiring the clerk of the court to charge fees for certain services; making technical changes; amending s. 713.23, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; revising the process for notarizing a notice of nonpayment under a payment bond; requiring the clerk to serve a copy of a notice of contest of lien on certain persons after it has been recorded; requiring the clerk of the court to charge fees for certain services; amending s. 713.24, F.S.; revising the amount required in addition to the deposit or bond that applies toward attorney fees and court costs; requiring the clerk to make a copy of the deposit or bond used to transfer a lien to other security and mail it to the lienor; making technical changes; repealing s. 713.25, F.S., relating to applicability of ch. 65-456, Laws of Florida; amending s. 713.29, F.S.; authorizing attorney fees in actions brought to enforce a lien that has

been transferred to security; making technical changes; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) and subsection (7) of section 255.05, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

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

(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 time within which an action to enforce any claim against a payment bond must 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 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 is extinguished automatically. The contractor or the contractor’s attorney shall serve a copy of the notice of contest ~~on~~ 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 notice and record the notice. After the clerk records the notice with the certificate of service, the clerk shall serve, in accordance with s. 713.18, a copy of such recorded notice on the claimant and the contractor or the contractor’s attorney. The clerk of the court shall charge fees for such services as provided by law.

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, serve the contractor with a written notice that he or she intends to look to the bond for protection. If the payment bond is not recorded before the commencement of work or before the recommencement of work after a default or abandonment as required by subsection (1), the claimant may serve the contractor with such written notice up to 45 days after the date that the claimant is served with a copy of the bond. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on the contractor and a copy of the notice of nonpayment on the surety. The notice of nonpayment must shall be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, later than 90 days after the date that the rental equipment was last on the job site of the improvement and 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 action for the labor, services, or materials 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. Notices required or permitted under this section must 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 or arbitrator, 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 are shall be measured from the last day of furnishing labor, services, or materials by the claimant and may 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 negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following

information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

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

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

The undersigned claimant notifies you that:

- 1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description) .... The corresponding amount unpaid to date is \$....., of which \$..... is unpaid retainage.
- 2. Claimant has been paid to date the amount of \$..... for previously furnishing ...(describe labor, services, or materials)... for this improvement.
- 3. Claimant expects to furnish ...(describe labor, services, or materials) ... for this improvement in the future (if known), and the corresponding amount expected to become due is \$..... (if known).

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

DATED on ....., .....

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

STATE OF FLORIDA

COUNTY OF .....

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

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

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

Personally Known .....OR Produced Identification .....

Type of Identification Produced .....

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

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

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

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

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing 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 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 of the improvement and available for use. An action by a claimant, except a laborer, who is not in privity with the contractor for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Written notices required or permitted under this section ~~must~~ may be served in accordance with any ~~manner provided in~~ s. 713.18.

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

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

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

(4) “Clerk’s office” means the office of the clerk of the circuit court of the county, or another office serving as the county recorder as provided by law, in which the real property is located.

(8) “Contractor” means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it; or who takes over from a contractor as so defined the entire remaining work under such contract. The term “contractor” includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16). The term also includes a licensed general contractor or building contractor, as those terms are defined in s. 489.105(3)(a) and (b), respectively, who provides construction management services, which include scheduling and coordinating preconstruction and construction phases for the construction project, or who provides program management services, which include schedule control, cost control, and coordinating the provision or procurement of planning, design, and construction for the construction project.

(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 the 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 of the improvement and available for use.

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

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

713.011 Computation of time.—

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

(2) If the clerk’s office is closed in response to an emergency for 1 or more days so that a person may not present a document for recording or an action for filing in person to the clerk’s staff, the time period for recording a document or filing an action with the clerk’s office under this part is tolled.

When the clerk’s office reopens, the time period is extended by the number of days the clerk’s office was closed.

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

713.10 Extent of liens.—

(2)

(b) The interest of the lessor is not 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.

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

Section 6. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended, and paragraph (h) is added to that subsection, to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under 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 must ~~shall~~ contain all of the following information:

1. A description sufficient for identification of the real property to be improved. The description must ~~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 ~~the there is no~~ street address is not 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. A lessee who contracts for the improvements is an owner as defined in s. 713.01 ~~under s. 713.01(23)~~ and must be listed as the owner together with a statement that the ownership interest is a leasehold interest.

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 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 will be 1 year after ~~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 OF THE IMPROVEMENT 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 Lessee, or Owner’s or Lessee’s Authorized Officer/ Director/Partner/Manager)...

...(Signatory’s Title/Office)...

The foregoing instrument was acknowledged before me by means of  physical presence or sworn to (or affirmed) by  online notarization 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.....

(h) The authority issuing a building permit must accept a recorded notice of commencement from an owner or the owner’s authorized agent if the notice of commencement is in the form provided in paragraph (d).

Section 7. Subsections (1), (3), and (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 all of the following:

(a) The same information that is in as the notice of commencement,;

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

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

(d) A statement specifying that the notice applies to all the real property subject to the notice of commencement or specifying the portion of such real property to which it applies.

(e) A statement that all lienors have been paid in full ~~and~~

(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 timely served a notice to owner, and a statement that the owner will serve a copy of the notice of termination on each lienor who timely serves a notice to owner after the notice of termination has been recorded.~~ 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.

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

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

(5)(4) A notice of termination must be served before recording on each lienor who has a direct contract with the owner and on each lienor who has timely and properly served a notice to owner in accordance with this part before the recording of the notice of termination. A notice of termination must be recorded in the official records of the county in which the improvement is located. If properly served before recording in accordance with this subsection, the notice of termination terminates the period of effectiveness of the notice of commencement 30 days after the notice of termination is recorded in the official records is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or a later the date stated in the notice of termination as the date on which the notice of commencement is terminated. However, if a lienor who began work under the notice of commencement before its termination lacks a direct contract with the owner and timely serves his or her notice to owner after the notice of termination has been recorded, the owner must

serve a copy of the notice of termination upon such lienor, and the termination of the notice of commencement as to that lienor is effective 30 days after service of the notice of termination, if 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.

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

713.135 Notice of commencement and applicability of lien.—

(1) When a ~~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, 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 OF THE IMPROVEMENT BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.”

(b) Provide the applicant and the owner of the real property upon which improvements are to be constructed with a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the Construction Lien Law. The Department of Business and Professional Regulation shall furnish, for distribution, the statement described in this paragraph, and the statement must be a summary of the Construction Lien Law and must include an explanation of the provisions of the Construction Lien Law relating to the recording, and the posting of copies, of notices of commencement and a statement encouraging the owner to record a notice of commencement and post a copy of the notice of commencement in accordance with s. 713.13. The statement must also contain an explanation of the owner’s rights if a lienor fails to furnish the owner with a notice as provided in s. 713.06(2) and an explanation of the owner’s rights as provided in s. 713.22. The authority that issues the building permit must obtain from the Department of Business and Professional Regulation the statement required by this paragraph and must mail, deliver by electronic mail or other electronic format or facsimile, or personally deliver that statement to the owner or, in a case in which the owner is required to personally appear to obtain the permit, provide that statement to any owner making improvements to real property consisting of a single or multiple family dwelling up to and including four units. However, the failure by the authorities to provide the summary does not subject the issuing authority to liability.

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

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

~~(e) Require~~ If the direct contract is greater than \$2,500, the applicant to shall file with the issuing authority before prior to the first inspection either a certified copy of the recorded notice of commencement if the direct contract is greater than \$5,000. For purposes of this paragraph, the term “copy of the notice of commencement” means 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, or the clerk’s office’s official records identifying information that includes the instrument number for the notice of commencement or the number and page of book where the notice of commencement is recorded, as identified by the clerk.

1. In the absence of the filing of a certified copy of the recorded notice of commencement, the issuing authority or a private provider performing inspection services may 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.

2. The certified copy of the notice of commencement must contain the name and address of the owner, the name and address of the contractor, and the location or address of the property being improved. The issuing authority shall verify that the name and address of the owner, the name of the contractor, and the location or address of the property being improved which is contained in the certified copy of the notice of commencement is consistent with the information in the building permit application.

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

4. ~~This paragraph subsection~~ does not require the recording of a notice of commencement before 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 the a recorded notice of commencement ~~or a notarized statement regarding a recorded notice of commencement. This subsection does not apply to a direct contract to repair or replace an existing heating or air-conditioning system in an amount less than \$15,000.~~

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

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

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

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

713.18 Manner of serving documents notices and other instruments.—

(1) Unless otherwise specifically provided by law, service of any document notices, claims of lien, affidavits, assignments, and other instruments permitted or required under this part, s. 255.05, or s. 337.18, 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 hand actual delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer or, director, managing agent, or business agent; or, if a limited liability company, to a member or manager; or to an employee or agent authorized by the partnership, corporation, or limited liability company to receive service of such document.

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

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

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

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served and addressed as prescribed 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

2. The person who served the notice maintains electronic tracking records approved or generated by the United States Postal 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) Notwithstanding subsection (1), service of a document under an instrument pursuant to this section is effective on the date of mailing or shipping, and the requirements for service under this section have been satisfied, the instrument if the document meets both of the following requirements it:

1. It 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~~

2. It 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 document item.

(b) If the address shown in the notice of commencement or any amendment ~~thereto 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 document 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 document notice served by a lienor on one owner or one partner of a partnership owning the real property is deemed served on ~~notice to~~ all owners and partners.

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

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

(1) By entering satisfaction of the lien upon the margin of the record thereof in the clerk’s office when not otherwise prohibited by law. This satisfaction must ~~shall~~ be signed by the lienor or, the lienor’s agent or

attorney and attested by said clerk. Any person who executes a claim of lien has ~~shall have~~ authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

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

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

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

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

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

713.22 Duration of lien.—

(2) An owner or the owner's 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 ~~is shall be~~ extinguished automatically. The clerk shall serve, in accordance with s. 713.18, a copy of the notice of contest ~~on to~~ the lienor 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 notice and record the notice. After the clerk records the notice with the certificate of service, the clerk shall serve, in accordance with s. 713.18, a copy of such recorded notice on the lienor and the owner or the owner's attorney. The clerk of the court shall charge fees for such services as provided by law.

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

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment ~~on to~~ the contractor and a copy of the notice of nonpayment on the surety. The notice of nonpayment must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was on the job site of the improvement and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required 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 notice of nonpayment ~~is shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor and may 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 negligent inclusion or omission of any information in the

notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor’s claim against the bond. The notice under this paragraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

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

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

The undersigned lienor notifies you that:

- 1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is \$....., of which \$..... is unpaid retainage.
- 2. The lienor has been paid to date the amount of \$..... for previously furnishing ...(describe labor, services, or materials)... for this improvement.
- 3. The lienor expects to furnish ...(describe labor, services, or materials) ... for this improvement in the future (if known), and the corresponding amount expected to become due is \$..... (if known).

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

DATED on ....., .....

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

STATE OF FLORIDA

COUNTY OF.....

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

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

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

Personally Known ..... OR Produced Identification .....

Type of Identification Produced .....

(e) An action for the labor, ~~or~~ materials, or supplies may not be instituted or prosecuted against the contractor or surety unless both notices have been given, if required by this section. An action must ~~may not~~ be instituted or prosecuted against the contractor or against the surety on the bond under this section within ~~after~~ 1 year after ~~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 is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor. The time period may 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 attorney may elect to shorten the time within which an action to enforce any claim against a payment bond provided under this section or s. 713.245 must 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 after ~~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 ~~is shall be~~ extinguished automatically. The contractor or the contractor's attorney shall serve, in accordance with s. 713.18, 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. After the clerk records the notice with the certificate of service, the clerk shall serve, in accordance with s. 713.18, a copy of such recorded notice on the lienor and the contractor or the contractor's attorney. The clerk of the court shall charge fees for such services as provided by law.

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

713.24 Transfer of liens to security.—

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

(a) Depositing in the clerk's office a sum of money;<sup>;</sup> or

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

~~either to be~~ in an amount equal to the amount demanded in such claim of lien, plus interest thereon at the legal rate for 3 years, plus ~~\$5,000~~ \$1,000 or 25 percent of the amount demanded in the claim of lien, whichever is greater, to apply on any ~~attorney~~ attorney's fees and court costs that may be taxed in any proceeding to enforce said lien. Such deposit or bond must shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded. Upon making such deposit or filing such bond, the clerk shall make and record a certificate, which must include a copy of the deposit or bond used to transfer, showing the transfer of the lien from the real property to the security and shall mail a copy thereof together with a copy of the deposit or bond used to transfer by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon filing the certificate of transfer, the real property ~~is shall thereupon be~~ released from the lien claimed, and such lien ~~is shall be~~ transferred to said security. In the absence of allegations of privity between the lienor and the owner, and subject to any order of the court increasing the amount required for the lien transfer deposit or bond, no other judgment or decree to pay money may be entered by the court against the owner. The clerk ~~is shall be~~ entitled to a service charge for making and serving the certificate, in the amount of up to \$20, from which the clerk shall remit \$5 to the Department of Revenue for deposit into the General Revenue Fund. If the transaction involves the transfer of multiple liens, the clerk shall charge an additional service charge of up to \$10 for each additional lien ~~shall be charged~~, from which the clerk shall remit \$2.50 to the Department of Revenue for deposit into the General

Revenue Fund. For recording the certificate and approving the bond, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

(3) Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited, or file a motion in a pending action to enforce a lien, for an order to require additional security, reduction of security, change or substitution of sureties, payment of discharge thereof, or any other matter affecting said security. If the court finds that the amount of the deposit or bond in excess of the amount claimed in the claim of lien is insufficient to pay the lienor's ~~attorney~~ attorney's fees and court costs incurred in the action to enforce the lien, the court must increase the amount of the cash deposit or lien transfer bond. ~~Nothing in This section may not shall~~ be construed to vest exclusive jurisdiction in the circuit courts over transfer bond claims for nonpayment of an amount within the monetary jurisdiction of the county courts.

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

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

713.29 Attorney Attorney's fees.—In any action brought to enforce a lien, including a lien that has been transferred to security, or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his 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.

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

Approved by the Governor June 12, 2023.

Filed in Office Secretary of State June 12, 2023.