

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Business & Professions
2 Subcommittee

3 Representative Toledo offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (a), (d), and (f) of subsection (2)
8 of section 255.05, Florida Statutes, are amended to read:

9 255.05 Bond of contractor constructing public buildings;
10 form; action by claimants.-

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

Amendment No. 1.

17 NOTICE OF CONTEST OF CLAIM
18 AGAINST PAYMENT BOND

19 To: ...(Name and address of claimant)...

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

25 DATED on,

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

27 The claim of a claimant upon whom such notice is served and who
28 fails to institute a suit to enforce his or her claim against
29 the payment bond within 60 days after service of such notice is
30 extinguished automatically. The contractor or the contractor's
31 attorney shall serve a copy of the notice of contest on ~~to~~ the
32 claimant at the address shown in the notice of nonpayment or
33 most recent amendment thereto and shall certify to such service
34 on the face of the notice and record the notice.

35 2. A claimant, except a laborer, who is not in privity
36 with the contractor shall, before commencing or not later than
37 45 days after commencing to furnish labor, services, or
38 materials for the prosecution of the work, serve the contractor

Amendment No. 1.

39 | with a written notice that he or she intends to look to the bond
40 | for protection. A claimant who is not in privity with the
41 | contractor and who has not received payment for furnishing his
42 | or her labor, services, or materials shall serve a written
43 | notice of nonpayment on the contractor, and a copy of the notice
44 | on the surety. The notice of nonpayment shall be under oath and
45 | served during the progress of the work or thereafter but may not
46 | be served earlier than 45 days after the first furnishing of
47 | labor, services, or materials by the claimant or later than 90
48 | days after the final furnishing of the labor, services, or
49 | materials by the claimant or, with respect to rental equipment,
50 | later than 90 days after the date that the rental equipment was
51 | last on the job site available for use. Any notice of nonpayment
52 | served by a claimant who is not in privity with the contractor
53 | which includes sums for retainage must specify the portion of
54 | the amount claimed for retainage. An action for the labor,
55 | services, or materials may not be instituted against the
56 | contractor or the surety unless the notice to the contractor and
57 | notice of nonpayment have been served, if required by this
58 | section. Notices required or permitted under this section must
59 | be served in accordance with s. 713.18. A claimant may not waive
60 | in advance his or her right to bring an action under the bond
61 | against the surety. In any action brought to enforce a claim
62 | against a payment bond under this section, the prevailing party
63 | is entitled to recover a reasonable fee for the services of his

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Amendment No. 1.

64 or her attorney for trial and appeal or for arbitration, in an
65 amount to be determined by the court, which fee must be taxed as
66 part of the prevailing party's costs, as allowed in equitable
67 actions. The time periods for service of a notice of nonpayment
68 or for bringing an action against a contractor or a surety are
69 ~~shall be~~ measured from the last day of furnishing labor,
70 services, or materials by the claimant and may not be measured
71 by other standards, such as the issuance of a certificate of
72 occupancy or the issuance of a certificate of substantial
73 completion. The negligent inclusion or omission of any
74 information in the notice of nonpayment that has not prejudiced
75 the contractor or surety does not constitute a default that
76 operates to defeat an otherwise valid bond claim. A claimant who
77 serves a fraudulent notice of nonpayment forfeits his or her
78 rights under the bond. A notice of nonpayment is fraudulent if
79 the claimant has willfully exaggerated the amount unpaid,
80 willfully included a claim for work not performed or materials
81 not furnished for the subject improvement, or prepared the
82 notice with such willful and gross negligence as to amount to a
83 willful exaggeration. However, a minor mistake or error in a
84 notice of nonpayment, or a good faith dispute as to the amount
85 unpaid, does not constitute a willful exaggeration that operates
86 to defeat an otherwise valid claim against the bond. The service
87 of a fraudulent notice of nonpayment is a complete defense to
88 the claimant's claim against the bond. The notice of nonpayment

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Amendment No. 1.

89 | under this subparagraph must include the following information,
90 | current as of the date of the notice, and must be in
91 | substantially the following form:

92 | NOTICE OF NONPAYMENT

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

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

95 | The undersigned claimant notifies you that:

96 | 1. Claimant has furnished ...(describe labor, services, or
97 | materials)... for the improvement of the real property
98 | identified as ...(property description).... The corresponding
99 | amount unpaid to date is \$...., of which \$.... is unpaid
100 | retainage.

101 | 2. Claimant has been paid to date the amount of \$.... for
102 | previously furnishing ...(describe labor, services, or
103 | materials)... for this improvement.

104 | 3. Claimant expects to furnish ...(describe labor,
105 | services, or materials)... for this improvement in the future
106 | (if known), and the corresponding amount expected to become due
107 | is \$.... (if known).

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

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Amendment No. 1.

111 DATED on,

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

113 STATE OF FLORIDA

114 COUNTY OF

115 The foregoing instrument was sworn to (or affirmed) and
116 subscribed before me this....day of, ... (year)...., by
117 ... (name of signatory)....

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

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

121 Personally Known OR Produced Identification

122 Type of Identification Produced.....

123 (d) A person may not require a claimant to furnish a
124 waiver that is different from the forms in paragraphs (b) and
125 (c) in exchange for or to induce a progress payment or final
126 payment, unless the claimant has entered into a direct contract
127 which requires the claimant to furnish a form that is different
128 from the forms in paragraphs (b) and (c).

129 (f) Any provisions in a waiver that are not related to the
130 waiver of right to claim against a payment bond as provided in
131 this section are unenforceable, unless the claimant has

Amendment No. 1.

132 otherwise agreed to those provisions in the claimant's direct
133 contract is not substantially similar to the forms in this
134 subsection is enforceable in accordance with its terms.

135 Section 2. Paragraph (c) of subsection (1) of section
136 337.18, Florida Statutes, is amended to read:

137 337.18 Surety bonds for construction or maintenance
138 contracts; requirement with respect to contract award; bond
139 requirements; defaults; damage assessments.-

140 (1)

141 (c) A claimant, except a laborer, who is not in privity
142 with the contractor shall, before commencing or not later than
143 90 days after commencing to furnish labor, materials, or
144 supplies for the prosecution of the work, furnish the contractor
145 with a notice that he or she intends to look to the bond for
146 protection. A claimant who is not in privity with the contractor
147 and who has not received payment for his or her labor,
148 materials, or supplies shall deliver to the contractor and to
149 the surety written notice of the performance of the labor or
150 delivery of the materials or supplies and of the nonpayment. The
151 notice of nonpayment may be served at any time during the
152 progress of the work or thereafter but not before 45 days after
153 the first furnishing of labor, services, or materials, and not
154 later than 90 days after the final furnishing of the labor,
155 services, or materials by the claimant or, with respect to
156 rental equipment, not later than 90 days after the date that the

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Amendment No. 1.

157 rental equipment was last on the job site available for use. An
158 action by a claimant, except a laborer, who is not in privity
159 with the contractor for the labor, materials, or supplies may
160 not be instituted against the contractor or the surety unless
161 both notices have been given. Notices required or permitted
162 under this section may be served in any manner provided in s.
163 713.18, and provisions for the waiver and release of claims
164 against the payment bond contained in s. 255.05(2) shall apply
165 to all contracts under this section.

166 Section 3. Subsections (8), (12), and (26) of section
167 713.01, Florida Statutes, are amended to read:

168 713.01 Definitions.—As used in this part, the term:

169 (8) "Contractor" means a person other than a materialman
170 or laborer who enters into a contract with the owner of real
171 property for improving it, or who takes over from a contractor
172 as so defined the entire remaining work under such contract. The
173 term "contractor" includes an architect, landscape architect, or
174 engineer who improves real property pursuant to a design-build
175 contract authorized by s. 489.103(16). The term also includes a
176 licensed building or general contractor as defined in paragraphs
177 489.105(3)(a) and (b) who provides construction management
178 services, which include responsibility for scheduling and
179 coordination in both preconstruction and construction phases and
180 for the successful, timely, and economical completion of the
181 construction project, or who provides program management

Amendment No. 1.

182 services, which include responsibility for schedule control,
183 cost control, and coordination in providing or procuring
184 planning, design, and construction.

185 (12) "Final furnishing" means the last date that the
186 lienor furnishes labor, services, or materials. Such date may
187 not be measured by other standards, such as the issuance of a
188 certificate of occupancy or the issuance of a certificate of
189 final completion, and does not include the correction of
190 deficiencies in the lienor's previously performed work or
191 materials supplied. With respect to rental equipment, the term
192 means the date that the rental equipment was last on the ~~job~~
193 site of the improvement and available for use. With respect to
194 specially fabricated materials, the term means the date that the
195 last portion of the specially fabricated materials is delivered
196 to the site of the improvement, or if any portion of the
197 specially fabricated materials is not delivered to the site of
198 the improvement by no fault of the lienor, the term means 1 year
199 after the date the lienor completes the fabrication, 1 year
200 after the date the lienor receives the last portion of the
201 specially fabricated materials needed to complete the order, or
202 the date the notice of commencement expires, whichever is later.

203 (26) "Real property" means the land that is improved and
204 the improvements thereon, including fixtures, except any such
205 property owned by the state or any county, municipality, school
206 board, or governmental agency, commission, or political

Amendment No. 1.

207 subdivision, provided, however, that a private leasehold
208 interest in such government-owned property which is improved and
209 the leasehold improvements shall be considered real property for
210 purposes of this part.

211 Section 4. Subsection (3) of section 713.07, Florida
212 Statutes, is amended to read:

213 713.07 Priority of liens.—

214 (3) All such liens shall have priority over any
215 conveyance, encumbrance or demand not recorded against the real
216 property before ~~prior to~~ the time such lien attached as provided
217 herein, including those subordinate conveyances, encumbrances,
218 or demands that would otherwise relate back to any conveyance,
219 encumbrance, or demand recorded before the time such lien
220 attaches pursuant to the operation of any common law doctrine or
221 remedy; but any conveyance, encumbrance, or demand recorded
222 before ~~prior to~~ the time such lien attaches and any proceeds
223 thereof, regardless of when disbursed, shall have priority over
224 such liens.

225 Section 5. Section 713.09, Florida Statutes, is amended to
226 read:

227 713.09 Single claim of lien.—A lienor may ~~is required to~~
228 record only one claim of lien covering his or her entire demand
229 against the real property when the amount demanded is for labor
230 or services or material furnished for more than one improvement
231 under the same direct contract or multiple direct contracts. The

Amendment No. 1.

232 single claim of lien is sufficient even though the improvement
233 is for one or more improvements located on separate lots,
234 parcels, or tracts of land. If materials to be used on one or
235 more improvements on separate lots, parcels, or tracts of land
236 ~~under one direct contract~~ are delivered by a lienor to a place
237 designated by the person with whom the materialman contracted,
238 other than the site of the improvement, the delivery to the
239 place designated is prima facie evidence of delivery to the site
240 of the improvement and incorporation in the improvement. The
241 single claim of lien may be limited to a part of multiple lots,
242 parcels, or tracts of land and their improvements or may cover
243 all of the lots, parcels, or tracts of land and improvements. If
244 a ~~In each~~ claim of lien under this section is for multiple
245 direct contracts, the owner under the direct contracts must be
246 the same person for all lots, parcels, or tracts of land against
247 which a single claim of lien is recorded.

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

250 713.13 Notice of commencement.—

251 (1) (a) Except for an improvement that is exempt under
252 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
253 agent before actually commencing to improve any real property,
254 or recommencing completion of any improvement after default or
255 abandonment, whether or not a project has a payment bond
256 complying with s. 713.23, shall record a notice of commencement

Amendment No. 1.

257 in the clerk's office and forthwith post either a certified copy
258 thereof or a notarized statement that the notice of commencement
259 has been filed for recording along with a copy thereof. The
260 notice of commencement shall contain the following information:

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

268 2. A general description of the improvement.

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

272 4. The name and address of the lessee, if the A lessee who
273 contracts for the improvements as is an owner as defined in s.
274 713.01 under s. 713.01(23) and must be listed as the owner
275 together with a statement that the ownership interest is a
276 leasehold interest.

277 5. 4. The name and address of the contractor.

278 6. 5. The name and address of the surety on the payment
279 bond under s. 713.23, if any, and the amount of such bond.

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

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Amendment No. 1.

- 306 ~~a. Name and address:.....~~
- 307 ~~b. Interest in property:.....~~
- 308 c. Name and address of fee simple titleholder (if
- 309 different from Owner listed above):.....
- 310 5.a. ~~4.a.~~ Contractor: ...(name and address)....
- 311 b. Contractor's phone number:.....
- 312 6. ~~5.~~ Surety (if applicable, a copy of the payment bond is
- 313 attached):
- 314 a. Name and address:.....
- 315 b. Phone number:.....
- 316 c. Amount of bond: \$.....
- 317 7.a. ~~6.a.~~ Lender: ...(name and address)....
- 318 b. Lender's phone number:.....
- 319 8. ~~7.~~ Persons within the State of Florida designated by
- 320 Owner upon whom notices or other documents may be served as
- 321 provided in ~~by~~ Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
- 322 Statutes:
- 323 a. Name and address:.....
- 324 b. Phone numbers of designated persons:.....
- 325 9.a. ~~8.a.~~ In addition to himself or herself, Owner
- 326 designates of to receive a copy of the
- 327 Lienor's Notice as provided in Section 713.13(1)(b), Florida
- 328 Statutes.
- 329 b. Phone number of person or entity designated by
- 330 owner:.....

Amendment No. 1.

331 10. 9. Expiration date of notice of commencement (the
332 expiration date will be 1 year after ~~from~~ the date of recording
333 unless a different date is specified).....

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

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

345 ...(Signatory's Title/Office)...

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

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

Amendment No. 1.

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

353 | Personally Known OR Produced Identification

354 | Type of Identification Produced.....

355 | Section 7. Section 713.132, Florida Statutes, is amended
356 | to read:

357 | 713.132 Notice of termination.-

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

361 | (a) The same information as the notice of commencement;

362 | (b) The recording office document with the ~~book and page~~
363 | reference numbers and date of the notice of commencement;

364 | (c) A statement of the date as of which the notice of
365 | commencement is terminated, which date may not be earlier than
366 | 30 days after the notice of termination is recorded;

367 | (d) A statement specifying that the notice applies to all
368 | the real property subject to the notice of commencement or
369 | specifying the portion of such real property to which it
370 | applies;

371 | (e) A statement that all lienors have been paid in full;
372 | and

373 | (f) A statement that the owner has, before recording the
374 | notice of termination, served a copy of the notice of

Amendment No. 1.

375 termination ~~on the contractor and~~ on each lienor who has a
376 direct contract with the owner or who has timely served a notice
377 to owner, and a statement that the owner will serve a copy of
378 the notice of termination on each lienor who timely serves a
379 notice to owner after the notice of termination has been
380 recorded. The owner is not required to serve a copy of the
381 notice of termination on any lienor who has executed a waiver
382 and release of lien upon final payment in accordance with s.
383 713.20.

384 (2) An owner has the right to rely on a contractor's
385 affidavit given under s. 713.06(3)(d), except with respect to
386 lienors who have already given notice, in connection with the
387 execution, swearing to, and recording of a notice of
388 termination. However, the notice of termination must be
389 accompanied by the contractor's affidavit.

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

394 (4) If an owner or a contractor, by fraud or collusion,
395 knowingly makes any fraudulent statement or affidavit in a
396 notice of termination or any accompanying affidavit, the owner
397 and the contractor, or either of them, ~~as the case may be,~~ is
398 liable to any lienor who suffers damages as a result of the

Amendment No. 1.

399 filing of the fraudulent notice of termination; and any such
400 lienor has a right of action for damages ~~occasioned thereby.~~

401 (5)-(4) A notice of termination shall be served prior to
402 recording, on each lienor who has a direct contract with the
403 owner and one each lienor who has timely and properly served a
404 notice to owner in accordance with this part. A notice of
405 termination must be recorded in the public records of the county
406 where the project is located. If properly served prior to
407 recording in accordance with this subsection, the notice of
408 commencement terminates 30 days after the notice of termination
409 is recorded in the public records is effective to terminate the
410 notice of commencement at the later of 30 days after recording
411 of the notice of termination or such later the date stated in
412 the notice of termination as the date on which the notice of
413 commencement is terminated. However, if a lienor, who began work
414 under the notice of commencement before its termination, lacks a
415 direct contract with the owner, and timely serves his or her
416 notice to owner after the notice of termination has been
417 recorded, the owner must serve a copy of the notice of
418 termination upon such lienor, and the termination of the notice
419 of commencement as to that lienor is effective 30 days after
420 service of the notice of termination, if the notice of
421 termination has been served pursuant to paragraph (1)(f) on the
422 contractor and on each lienor who has a direct contract with the
423 owner or who has served a notice to owner.

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Amendment No. 1.

424 Section 8. Paragraph (a) of subsection (3) of section
425 713.18, Florida Statutes, is amended to read:

426 713.18 Manner of serving notices and other instruments.—

427 (3) (a) Service of an instrument pursuant to this section
428 is effective on the date of mailing or shipping the instrument
429 if it:

430 1. Is sent to the last address shown in the notice of
431 commencement or any amendment thereto or, in the absence of a
432 notice of commencement, to the last address shown in the
433 building permit application, or to the last known address of the
434 person to be served; and

435 2. Is returned as being "refused," "moved, not
436 forwardable," or "unclaimed," or is otherwise not delivered or
437 deliverable through no fault of the person serving the item.

438 Section 9. Subsections (6) and (8) of section 713.20,
439 Florida Statutes, are amended to read:

440 713.20 Waiver or release of liens.—

441 (6) A person may not require a lienor to furnish a lien
442 waiver or release of lien that is different from the forms in
443 subsection (4) or subsection (5) in exchange for or to induce a
444 progress payment or final payment, unless the lienor has entered
445 into a direct contract which requires the lienor to furnish a
446 form that is different from the forms in subsection (4) or
447 subsection (5).

Amendment No. 1.

448 (8) Any provisions in a lien waiver or lien release that
449 are not related to the waiver or release of lien rights as
450 provided in this section are unenforceable, unless the lienor
451 has otherwise agreed to those provisions in the lienor's direct
452 contract is not substantially similar to the forms in
453 subsections (4) and (5) is enforceable in accordance with the
454 terms of the lien waiver or lien release.

455 Section 10. Paragraph (d) of subsection (1) of section
456 713.23, Florida Statutes, is amended to read:

457 713.23 Payment bond.—

458 (1)

459 (d) In addition, a lienor who has not received payment for
460 furnishing his or her labor, services, or materials must, as a
461 condition precedent to recovery under the bond, serve a written
462 notice of nonpayment on ~~to~~ the contractor, and a copy of the
463 notice on the surety. The notice must be under oath and served
464 during the progress of the work or thereafter, but may not be
465 served later than 90 days after the final furnishing of labor,
466 services, or materials by the lienor, or, with respect to rental
467 equipment, later than 90 days after the date the rental
468 equipment was on the job site and available for use. A notice of
469 nonpayment that includes sums for retainage must specify the
470 portion of the amount claimed for retainage. The required notice
471 satisfies this condition precedent with respect to the payment
472 described in the notice of nonpayment, including unpaid finance

Amendment No. 1.

473 charges due under the lienor's contract, and with respect to any
474 other payments which become due to the lienor after the date of
475 the notice of nonpayment. The time period for serving a notice
476 of nonpayment ~~is shall be~~ measured from the last day of
477 furnishing labor, services, or materials by the lienor and may
478 not be measured by other standards, such as the issuance of a
479 certificate of occupancy or the issuance of a certificate of
480 substantial completion. The failure of a lienor to receive
481 retainage sums not in excess of 10 percent of the value of
482 labor, services, or materials furnished by the lienor is not
483 considered a nonpayment requiring the service of the notice
484 provided under this paragraph. If the payment bond is not
485 recorded before commencement of construction, the time period
486 for the lienor to serve a notice of nonpayment may at the option
487 of the lienor be calculated from the date specified in this
488 section or the date the lienor is served a copy of the bond.
489 However, the limitation period for commencement of an action on
490 the payment bond as established in paragraph (e) may not be
491 expanded. The negligent inclusion or omission of any information
492 in the notice of nonpayment that has not prejudiced the
493 contractor or surety does not constitute a default that operates
494 to defeat an otherwise valid bond claim. A lienor who serves a
495 fraudulent notice of nonpayment forfeits his or her rights under
496 the bond. A notice of nonpayment is fraudulent if the lienor has
497 willfully exaggerated the amount unpaid, willfully included a

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Published On: 12/10/2019 6:06:35 PM

Amendment No. 1.

498 claim for work not performed or materials not furnished for the
499 subject improvement, or prepared the notice with such willful
500 and gross negligence as to amount to a willful exaggeration.
501 However, a minor mistake or error in a notice of nonpayment, or
502 a good faith dispute as to the amount unpaid, does not
503 constitute a willful exaggeration that operates to defeat an
504 otherwise valid claim against the bond. The service of a
505 fraudulent notice of nonpayment is a complete defense to the
506 lienor's claim against the bond. The notice under this paragraph
507 must include the following information, current as of the date
508 of the notice, and must be in substantially the following form:

509 NOTICE OF NONPAYMENT

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

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

512 The undersigned lienor notifies you that:

513 1. The lienor has furnished ...(describe labor, services,
514 or materials)... for the improvement of the real property
515 identified as ...(property description).... The corresponding
516 amount unpaid to date is \$...., of which \$.... is unpaid
517 retainage.

518 2. The lienor has been paid to date the amount of \$....
519 for previously furnishing ...(describe labor, services, or
520 materials)... for this improvement.

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Published On: 12/10/2019 6:06:35 PM

Amendment No. 1.

521 3. The lienor expects to furnish ...(describe labor,
522 services, or materials)... for this improvement in the future
523 (if known), and the corresponding amount expected to become due
524 is \$.... (if known).

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

528 DATED on,

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

530 STATE OF FLORIDA

531 COUNTY OF.....

532 The foregoing instrument was sworn to (or affirmed) and
533 subscribed before me this day of, ...(year)..., by
534 ...(name of signatory)....

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

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

538 Personally Known OR Produced Identification

539 Type of Identification Produced.....

540 Section 11. Subsections (3) and (5) of section 713.235,
541 Florida Statutes, are amended to read:

Amendment No. 1.

542 713.235 Waivers of right to claim against payment bond;
543 forms.—

544 (3) A person may not require a claimant to furnish a
545 waiver that is different from the forms in subsections (1) and
546 (2) in exchange for or to induce a progress payment or final
547 payment, unless the claimant has entered into a direct contract
548 which requires the claimant to furnish a form that is different
549 from the forms in subsections (1) and (2).

550 (5) Any provisions in a waiver that are not related to the
551 waiver of a claim against the payment bond as provided in this
552 section are unenforceable, unless the claimant has otherwise
553 agreed to those provisions in the claimant's direct contract ~~is~~
554 ~~not substantially similar to the forms in this section is~~
555 ~~enforceable in accordance with its terms.~~

556 Section 12. Subsection (1) of section 713.24, Florida
557 Statutes, is amended to read:

558 713.24 Transfer of liens to security.—

559 (1) Any lien claimed under this part may be transferred,
560 by any person having an interest in the real property upon which
561 the lien is imposed or the contract under which the lien is
562 claimed, from such real property to other security by doing one
563 of the following ~~either~~:

564 (a) Depositing in the clerk's office a sum of money. ~~or~~

Amendment No. 1.

565 (b) 1. Recording ~~Filing~~ in the clerk's office a bond
566 executed as surety by a surety insurer licensed to do business
567 in this state, or

568 2. Recording in the clerk's office a bond executed as
569 surety by a surety insurer licensed to do business in this state
570 which was furnished by a subcontractor under whose subcontract
571 the lienor's claim emanates, which bond must be recorded and
572 served with a notice of bond in the same manner as a payment
573 bond furnished pursuant to s. 713.23(2). For purposes of this
574 subparagraph, the subcontract payment bond must have been
575 furnished at the time the subcontractor's work commenced and
576 before the claim of lien was recorded. The subcontract payment
577 bond may not be used to transfer a lien of the contractor or the
578 subcontractor that is the principal on the subcontract payment
579 bond. Any provision in the subcontract payment bond which
580 restricts the classes of persons who are protected by the
581 subcontract payment bond, which restricts the venue of any
582 proceeding relating to the subcontract payment bond, which
583 limits or expands the effective duration of the subcontract
584 payment bond, or which includes conditions precedent to the
585 enforcement of a claim against the subcontract payment bond
586 beyond those provided in this part is unenforceable.

587
588 Such deposit or bond shall ~~either~~ to be in an amount at least
589 equal to the amount demanded in such claim of lien, plus

Amendment No. 1.

590 interest thereon at the legal rate for 3 years, plus \$1,000 or
591 35 ~~25~~ percent of the amount demanded in the claim of lien,
592 whichever is greater, to apply on any attorney's fees and court
593 costs that may be taxed in any proceeding to enforce said lien.
594 Such deposit or bond shall be conditioned to pay any judgment or
595 decree which may be rendered for the satisfaction of the lien
596 for which such claim of lien was recorded. Upon making such
597 deposit or filing such bond, the clerk shall make and record a
598 certificate showing the transfer of the lien from the real
599 property to the security and shall mail a copy thereof by
600 registered or certified mail to the lienor named in the claim of
601 lien so transferred, at the address stated therein. Upon filing
602 the certificate of transfer, the real property shall thereupon
603 be released from the lien claimed, and such lien shall be
604 transferred to said security. In the absence of allegations of
605 privity between the lienor and the owner, and subject to any
606 order of the court increasing the amount required for the lien
607 transfer deposit or bond, no other judgment or decree to pay
608 money may be entered by the court against the owner. The clerk
609 shall be entitled to a service charge for making and serving the
610 certificate, in the amount of up to \$20, from which the clerk
611 shall remit \$5 to the Department of Revenue for deposit into the
612 General Revenue Fund. If the transaction involves the transfer
613 of multiple liens, an additional charge of up to \$10 for each
614 additional lien shall be charged, from which the clerk shall

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Amendment No. 1.

615 remit \$2.50 to the Department of Revenue for deposit into the
616 General Revenue Fund. For recording the certificate and
617 approving the bond, the clerk shall receive her or his usual
618 statutory service charges as prescribed in s. 28.24. Any number
619 of liens may be transferred to one such security.

620 Section 13. Section 713.29, Florida Statutes, is amended
621 to read:

622 713.29 Attorney's fees.—In any action brought to enforce a
623 lien, including a lien that has been transferred to security, or
624 to enforce a claim against a bond under this part, the
625 prevailing party is entitled to recover a reasonable fee for the
626 services of her or his attorney for trial and appeal or for
627 arbitration, in an amount to be determined by the court, which
628 fee must be taxed as part of the prevailing party's costs, as
629 allowed in equitable actions.

630 Section 14. This act shall take effect July 1, 2020.

631

632

633

634 **T I T L E A M E N D M E N T**

635 Remove everything before the enacting clause and insert:

636 An act relating to liens and bonds; amending s.

637 255.05, F.S.; requiring that a copy of a notice of

638 nonpayment be served on the surety; providing that

639 certain waivers and releases are unenforceable;

Amendment No. 1.

640 amending s. 337.18, F.S.; providing that certain
641 waivers and release apply to certain contracts;
642 amending s. 713.01, F.S.; revising the definition of
643 the term "contractor," "real property," and "final
644 furnishing"; amending s. 713.07, F.S.; providing that
645 certain liens have priority over certain subordinate
646 conveyances, encumbrances, or demands; amending s.
647 713.09, F.S.; providing that one claim of lien may be
648 used for multiple contracts; amending s. 713.13, F.S.;
649 revising information to be included in a notice of
650 commencement; amending 713.132, F.S., amending when a
651 notice of termination takes effect and who must
652 receive a notice of termination; amending s. 713.18,
653 F.S.; providing that service of an instrument is
654 effective on the date of shipping; amending ss. 713.20
655 and 713.235, F.S.; providing that certain waivers and
656 releases are unenforceable; amending s. 713.23, F.S.;
657 requiring that a copy of a notice of nonpayment be
658 served on the surety; amending s. 713.24, F.S.;
659 amending the process to transfer a lien to a security;
660 amending 713.29, F.S., amending when attorney's fees
661 may be recovered; providing an effective date.

662