

By Senator Bogdanoff

25-00695A-12

20121202__

1 A bill to be entitled
2 An act relating to construction liens and bonds;
3 amending s. 255.05, F.S.; requiring that the bond
4 number be stated on the first page of a payment and
5 performance bond relating to a public works
6 construction project; providing that a provision that
7 limits the effective duration of the bond is
8 unenforceable; requiring that a contractor serve a
9 notice of contest to a claimant against the bond;
10 extending the time period for a claimant to serve a
11 notice to contractor or a notice of nonpayment or to
12 file suit against the contractor or surety if the bond
13 is not recorded or if the claimant was not notified of
14 the existence of the bond in writing; requiring that a
15 claimant who is not in privity with a contractor serve
16 the notice of nonpayment on the contractor and the
17 surety; making organizational and technical changes;
18 amending s. 713.132, F.S.; requiring that an owner
19 serve a copy of a notice of termination on each lienor
20 who has a direct contract with the owner before a
21 notice of termination may take effect; amending s.
22 713.16, F.S.; requiring that an owner or contract
23 provide specified information sufficient for a lienor
24 to properly identify an account when a sworn statement
25 of account is requested; deleting a requirement that a
26 lienor have recorded a lien before the lienor may
27 demand an accounting from the owner; requiring that
28 the demand for an accounting which is served on the
29 owner include specified information sufficient for the

25-00695A-12

20121202__

owner to identify the project in question; amending s.
713.18, F.S.; providing additional methods by which
certain items may be served; specifying the effective
date of the service of a notice that is served;
authorizing a person who serves an item to correct an
address under certain circumstances; amending s.
713.22, F.S.; requiring that the owner or owner's
attorney serve a notice of contest of lien; amending
s. 713.23, F.S.; authorizing the use of a combined
notice to owner and notice to contractor form;
revising the format of the notice to contractor;
requiring that the contractor or the contractor's
attorney serve the notice of contest; providing that a
provision of a payment bond which restricts the
classes of lienors and the effective duration of the
bond is unenforceable; requiring that the person who
records in the clerk's office a notice of a transfer
of lien to a payment bond attach a copy of the bond;
requiring that the person recording the notice of bond
serve a copy of the notice along with a copy of the
bond; specifying the relationship of provisions
relating to payment bonds with other laws; making
technical changes; providing an effective date.

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

Section 1. Subsection (1), paragraph (a) of subsection (2),
and subsection (10) of section 255.05, Florida Statutes, are
amended to read:

25-00695A-12

20121202__

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

(1) ~~(a)~~ Any person entering into a formal contract with the state or any county, municipality ~~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 must ~~shall be required~~, before commencing the work or before recommencing the work after a default or abandonment, ~~to~~ execute and, 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) A public entity may not require a contractor to secure a surety bond under this section from a specific agent or bonding company.

(b) The payment and performance bond must state on its front page: the name, principal business address, and phone number of the contractor; the surety and the bond number assigned by the surety; the owner of the property being improved, and, if different from the owner, the contracting public entity; the contract number assigned by the contracting public entity; and a description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement.

(c) The payment and performance ~~Such~~ bond shall be conditioned upon the contractor's performance of the

25-00695A-12

20121202__

88 construction work in the time and manner prescribed in the
89 contract and upon the contractor's prompt ~~promptly making~~
90 payments to all persons defined as a lienor in s. 713.01 who
91 furnish labor, services, or materials for the prosecution of the
92 work provided for in the contract.

93 (d) The contractor shall record the payment and performance
94 bond upon issuance in the official records of the county in
95 which the public works will be located.

96 (e) ~~Any claimant may apply to~~ The governmental entity
97 having charge of the work shall provide a certified copy for
98 ~~copies~~ of the contract and of the bond to any claimant upon
99 request ~~and shall thereupon be furnished with a certified copy~~
100 ~~of the contract and bond.~~ The claimant has ~~shall have~~ a right of
101 action against the contractor and surety for the amount due him
102 or her, including unpaid finance charges due under the
103 claimant's contract. Such action may ~~shall~~ not involve the
104 public authority in any expense.

105 (f)1. A payment and performance bond is not required for a
106 contract with the state for \$100,000 or less. ~~When such work is~~
107 ~~done for the state and the contract is for \$100,000 or less, no~~
108 ~~payment and performance bond shall be required.~~

109 2. At the discretion of The official or board awarding a
110 such contract ~~when such work is done for a~~ any county,
111 municipality ~~city~~, political subdivision, or public authority
112 may exempt a contract, ~~any person entering into such a contract~~
113 ~~which is for \$200,000 or less~~ from the requirement for a ~~may be~~
114 ~~exempted from executing the payment and performance bond.~~

115 3. When such work is done for the state, The Secretary of
116 Management Services may delegate to a state agency ~~agencies~~ the

25-00695A-12

20121202__

117 authority to exempt ~~any person entering into such~~ a contract for
118 ~~amounting to~~ more than \$100,000 but less than \$200,000 from the
119 requirement for a ~~executing the~~ payment and performance bond. If
120 ~~In the event~~ such exemption is granted, the officer or officials
121 are shall not be personally liable to a person who suffers a
122 persons suffering loss due to the ~~because of granting such~~
123 exemption. The Department of Management Services shall maintain
124 information on the number of requests by state agencies for
125 delegation of authority to waive the bond requirements by agency
126 and project number and whether any request for delegation was
127 denied and the justification for the denial.

128 (g) The persons who may be protected by a payment and
129 performance bond for payments due to them for furnishing labor,
130 services, or materials for the prosecution of the work are
131 limited to those persons defined as a lienor in s. 713.01. A ~~Any~~
132 provision of in a payment and performance bond furnished for a
133 public works contract ~~work contracts~~ as provided by this
134 subsection which further restricts the classes of persons ~~as~~
135 ~~defined in s. 713.01~~ protected by the bond or the venue of any
136 proceeding relating to such bond, or which limits the duration
137 of the bond, is unenforceable.

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

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

25-00695A-12

20121202__

146 2. Procedures for requiring certification from laborers,
147 materialmen, and subcontractors, as defined in s. 713.01, before
148 ~~prior to~~ final payment to the contractor, that they do not ~~that~~
149 ~~such laborers, materialmen, and subcontractors~~ have a claim ~~no~~
150 ~~claims~~ against the contractor resulting from the completion of
151 the work provided for in the contract.

152
153 The state is ~~shall~~ not ~~be held~~ liable to any laborer,
154 materialman, or subcontractor for any amount ~~amounts~~ greater
155 than the pro rata share as determined under this section.

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

163 2. For construction-management or design-build contracts,
164 if the public owner does not include in the bond amount the cost
165 of design or other nonconstruction services, the bond may not be
166 conditioned on performance of such services or payment to
167 persons furnishing such services. Notwithstanding paragraph (g)
168 ~~(a)~~, such a bond may exclude persons furnishing such services
169 from the classes of persons protected by the bond.

170 (2) (a) 1. If a claimant is no longer furnishing labor,
171 services, or materials on a project, a contractor ~~or the~~
172 ~~contractor's agent or attorney~~ may elect to shorten the
173 ~~prescribed time in this paragraph~~ within which an action to
174 enforce any claim against a payment bond must ~~provided pursuant~~

25-00695A-12

20121202__

175 ~~to this section may~~ be commenced by recording in the clerk's
176 office a notice in substantially the following form:

177 NOTICE OF CONTEST OF CLAIM
178 AGAINST PAYMENT BOND
179

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

181
182 You are notified that the undersigned contests your notice
183 of nonpayment, dated,, and served on the
184 undersigned on,, and that the time within
185 which you may file suit to enforce your claim is limited to 60
186 days after the date of service of this notice.

187
188 DATED on,

189
190 Signed:...(Contractor ~~or Attorney~~)...

191
192 The claim of any claimant upon whom such notice is served and
193 who fails to institute a suit to enforce his or her claim
194 against the payment bond within 60 days after service of the
195 ~~such~~ notice is ~~shall be~~ extinguished automatically. The
196 contractor ~~clerk~~ shall serve ~~mail~~ a copy of the notice of
197 contest to the claimant at the address shown in the notice of
198 nonpayment or the most recent amendment thereto and shall
199 certify to such service on the face of the ~~such~~ notice and
200 record the notice. ~~Service is complete upon mailing.~~

201 2.a. A claimant, except a laborer, who is not in privity
202 with the contractor must ~~shall~~, before commencing or not later
203 than 45 days after commencing to furnish labor, services, or

25-00695A-12

20121202__

204 materials for the prosecution of the work, serve ~~furnish~~ the
205 contractor with a written notice that he or she intends to look
206 to the bond for protection. If the payment bond is not recorded
207 before the commencement of construction or if the claimant was
208 not otherwise notified in writing of the existence of the bond,
209 the 45-day period runs from the date that the claimant is
210 notified in writing of the existence of the bond.

211 b. A claimant who is not in privity with the contractor and
212 who has not received payment for his or her labor, services, or
213 materials must serve on ~~shall deliver to~~ the contractor and to
214 the surety written notice of the performance of the labor or
215 services, or the delivery of ~~the~~ materials, ~~or supplies~~ and of
216 the nonpayment. Any notice of nonpayment served by a claimant
217 who is not in privity with the contractor which includes sums
218 for retainage must specify the portion of the amount claimed for
219 retainage. The notice of nonpayment must ~~may~~ be served at any
220 time during the progress of the work or thereafter but not
221 before 45 days after the first furnishing of labor, services, or
222 materials, and not later than 90 days after the final furnishing
223 of the labor, services, or materials by the claimant or, with
224 respect to rental equipment, not later than 90 days after the
225 date that the rental equipment was last on the job site
226 available for use. If the payment bond is not recorded before
227 the commencement of construction or if the claimant was not
228 otherwise notified in writing of the existence of the bond, the
229 time periods for serving a notice of nonpayment run from the
230 date that the claimant is notified in writing of the existence
231 of the bond. ~~Any notice of nonpayment served by a claimant who~~
232 ~~is not in privity with the contractor which includes sums for~~

25-00695A-12

20121202__

233 ~~retainage must specify the portion of the amount claimed for~~
234 ~~retainage.~~

235 c. An ~~No~~ action for ~~the~~ labor, services, or materials, ~~or~~
236 ~~supplies~~ may not be instituted against the contractor or the
237 surety unless the notice to the contractor and the notice of
238 nonpayment ~~both notices~~ have been given, if required by this
239 section. Service of all notices or other instruments required or
240 permitted under this section shall ~~may~~ be made ~~served~~ in
241 accordance with s. 713.18. A claimant may not waive in advance
242 his or her right to bring an action under the bond against the
243 surety. In any action brought to enforce a claim against a
244 payment bond under this section, the prevailing party is
245 entitled to recover a reasonable fee for the services of his or
246 her attorney for trial and appeal or for arbitration, in an
247 amount to be determined by the court, and the ~~which~~ fee must be
248 taxed as part of the prevailing party's costs, as allowed in
249 equitable actions. The time periods for service of a notice of
250 nonpayment or for bringing an action against a contractor or a
251 surety shall be measured from the last day of furnishing labor,
252 services, or materials by the claimant and may ~~shall~~ not be
253 measured by other standards, such as the issuance of a
254 certificate of occupancy or the issuance of a certificate of
255 substantial completion.

256 (10) (a) An action, except an action for recovery of
257 retainage, must be instituted against the contractor or the
258 surety on the payment bond or the payment provisions of a
259 combined payment and performance bond within 1 year after the
260 performance of the labor or completion of delivery of the
261 materials ~~or supplies~~. If the payment bond is not recorded

25-00695A-12

20121202

before the commencement of construction or if the claimant was not otherwise notified in writing of the existence of the bond, the 1-year period runs from the date that the claimant is notified in writing of the existence of the bond.

(b) An action for recovery of retainage must be instituted against the contractor or the surety within the 1-year period ~~1 year~~ after the performance of the labor or completion of delivery of the materials, as described in paragraph (a) or ~~supplies~~; however, such an action may not be instituted until one of the following conditions is satisfied:

1. ~~(a)~~ The public entity has paid out the claimant's retainage to the contractor, and the time provided under s. 218.735 or s. 255.073(3) for payment of that retainage to the claimant has expired. ~~+~~

2. ~~(b)~~ The claimant has completed all work required under its contract and 70 days have passed since the contractor sent its final payment request to the public entity. ~~+~~ ~~or~~

3. ~~(c)~~ At least 160 days have passed since reaching substantial completion of the construction services purchased, as defined in the contract, or if not defined in the contract, since reaching beneficial occupancy or use of the project.

4. ~~(d)~~ The claimant has asked the contractor, in writing, for any of the following information and the contractor has failed to respond to the claimant's request, in writing, within 10 days after receipt of the request:

a. ~~1.~~ Whether the project has reached substantial completion, as that term is defined in the contract, or if not defined in the contract, if beneficial occupancy or use of the project has occurred.

25-00695A-12

20121202__

291 ~~b.2.~~ Whether the contractor has received payment of the
292 claimant's retainage, and if so, the date the retainage was
293 received by the contractor.

294 ~~c.3.~~ Whether the contractor has sent its final payment
295 request to the public entity, and if so, the date on which the
296 final payment request was sent.

297
298 If none of the conditions described in subparagraph 1.,
299 subparagraph 2., subparagraph 3., or subparagraph 4. ~~paragraph~~
300 ~~(a), paragraph (b), paragraph (c), or paragraph (d)~~ is satisfied
301 and an action for recovery of retainage cannot be instituted
302 within the 1-year limitation period set forth in this
303 subsection, this limitation period shall be extended until 120
304 days after one of these conditions is satisfied.

305 Section 2. Section 713.132, Florida Statutes, is amended to
306 read:

307 713.132 Notice of termination.—

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

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

312 (b) The recording office document book and page reference
313 numbers and date of the notice of commencement;

314 (c) A statement of the date as of which the notice of
315 commencement is terminated, which date may not be earlier than
316 30 days after the notice of termination is recorded;

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

25-00695A-12

20121202__

320 applies;

321 (e) A statement that all lienors have been paid in full;
322 and

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

331 (2) An owner has the right to rely on a contractor's
332 affidavit given under s. 713.06(3)(d), except with respect to
333 lienors who have already given notice, in connection with the
334 execution, swearing to, and recording of a notice of
335 termination. However, the notice of termination must be
336 accompanied by the contractor's affidavit.

337 (3) An owner may not record a notice of termination except
338 after completion of construction, or after construction ceases
339 before completion and all lienors have been paid in full or pro
340 rata in accordance with s. 713.06(4). If an owner or a
341 contractor, by fraud or collusion, knowingly makes any
342 fraudulent statement or affidavit in a notice of termination or
343 any accompanying affidavit, the owner and the contractor, or
344 either of them, as the case may be, is liable to any lienor who
345 suffers damages as a result of the filing of the fraudulent
346 notice of termination; and any such lienor has a right of action
347 for damages occasioned thereby.

348 (4) A notice of termination is effective to terminate the

25-00695A-12

20121202__

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 served a notice to the owner or who has a direct contract with the owner ~~given notice~~.

Section 3. 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 a ~~such~~ copy of the contract or the ~~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 a copy of the contract or the statement ~~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 the ~~such~~ copy or statement furnished pursuant to a ~~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 the

25-00695A-12

20121202__

378 ~~such~~ documents must pay for the reproduction thereof, ~~+~~ and, if
379 the ~~such~~ person fails or refuses to do so, he or she is entitled
380 only to inspect the ~~such~~ documents at reasonable times and
381 places.

382 (2) The owner may serve in writing a demand of any lienor
383 for a written statement under oath of his or her account showing
384 the nature of the labor or services performed and to be
385 performed, if any, the materials furnished, the materials to be
386 furnished, if known, the amount paid on account to date, the
387 amount due, and the amount to become due, if known, as of the
388 date of the statement by the lienor. Any such demand to a lienor
389 must be served on the lienor at the address and to the attention
390 of any person who is designated to receive the demand in the
391 notice to owner served by such lienor and must include a
392 description of the project, including the names of the owner,
393 the contractor, and the lienor's customer, as set forth in the
394 lienor's notice to owner, sufficient for the lienor to properly
395 identify the account in question. The failure or refusal to
396 furnish the statement does not deprive the lienor of his or her
397 lien if the demand is not served at the address of the lienor or
398 directed to the attention of the person designated to receive
399 the demand in the notice to owner. The failure or refusal to
400 furnish the statement under oath within 30 days after the
401 demand, or the furnishing of a false or fraudulent statement,
402 deprives the person so failing or refusing to furnish such
403 statement of his or her lien. If the owner serves more than one
404 demand for statement of account on a lienor and none of the
405 information regarding the account has changed since the lienor's
406 last response to a demand, the failure or refusal to furnish

25-00695A-12

20121202__

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 specified in the lienor's

Notice to Owner, if such notice has been served):

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

25-00695A-12

20121202__

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

(4) ~~If 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 and the contractor has furnished a payment bond pursuant to s. 713.23, the contractor may 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 project, the names of the owner, the contractor, and the lienor's customer, as set forth in the lienor's notice to contractor, sufficient for the lienor to properly identify the account in question. 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

25-00695A-12

20121202__

465 none of the information regarding the account has changed since
466 the lienor's last response to a demand, the failure or refusal
467 to furnish such statement does not deprive the lienor of his or
468 her rights under the bond. The negligent inclusion or omission
469 of any information deprives the person of his or her rights
470 under the bond to the extent the contractor can demonstrate
471 prejudice from such act or omission by the lienor. The failure
472 to furnish a response to a demand for statement of account does
473 not affect the validity of any claim on the bond being enforced
474 in a lawsuit filed before ~~prior to~~ the date the demand for
475 statement of account is received by the lienor.

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

479 1. The amount of the direct contract under which the lien
480 was recorded;

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

484 3. The reasonable estimated costs of completing the direct
485 contract under which the lien was claimed pursuant to the scope
486 of the direct contract; and

487 4. If known, the actual cost of completion.

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

25-00695A-12

20121202__

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

499 (6) Any written demand served on the owner must include a
500 description of the project, the names of the contractor and the
501 lienor's customer, as set forth in the lienor's notice to owner,
502 sufficient for the owner to properly identify the project in
503 question.

504 (7)~~(6)~~ For purposes of this section, the term "information"
505 means the nature and quantity of the labor, services, and
506 materials furnished or to be furnished by a lienor and the
507 amount paid, the amount due, and the amount to become due on the
508 lienor's account.

509 Section 4. Section 713.18, Florida Statutes, is amended to
510 read:

511 713.18 Manner of serving notices and other instruments.—

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

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

521 (b) By sending the same by common carrier delivery service
522 or by registered, global express guaranteed, or certified mail,

25-00695A-12

20121202__

with postage or shipping prepaid, ~~and 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 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 or shipping 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 through use of the United States

25-00695A-12

20121202__

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 if the instrument:

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 instrument ~~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 thereto 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 the United States Postal Service addressing standards using information obtained from the property appraiser or another public record or directory 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~~

25-00695A-12

20121202__

581 ~~such owners or partners, and such notice~~ is deemed notice to all
582 owners and partners.

583 Section 5. Section 713.22, Florida Statutes, is amended to
584 read:

585 713.22 Duration of lien.—

586 (1) A ~~No~~ lien provided by this part does not ~~shall~~ continue
587 for a ~~longer~~ period longer than 1 year after the claim of lien
588 has been recorded or 1 year after the recording of an amended
589 claim of lien which ~~that~~ shows a later date of final furnishing
590 of labor, services, or materials, unless within that time an
591 action to enforce the lien is commenced in a court of competent
592 jurisdiction. A lien that is continued beyond the 1-year period
593 ~~The continuation of the lien effected by the commencement of an~~
594 ~~the action is~~ shall not enforceable ~~be good~~ against creditors or
595 subsequent purchasers for a valuable consideration and without
596 notice, unless a notice of lis pendens is recorded.

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

603 NOTICE OF CONTEST OF LIEN

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

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

25-00695A-12

20121202__

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 owner or the owner's attorney ~~clerk~~ shall serve mail a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or in the most recent amendment thereto and shall certify to such service on the face of the ~~such~~ notice and record the notice. ~~Service shall be deemed complete upon mailing.~~

Section 6. Paragraphs (c), (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 or, 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 is not recorded, 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 has not in privity with the ~~contractor shall have~~ 45 days after ~~from~~ the date the lienor is notified of the existence of the bond within which to serve the

25-00695A-12

20121202__

notice. 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 ~~notifies~~ 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)... ~~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.~~

... (name of lienor)...

... (Signature of lienor or lienor's representative ~~signature and~~
~~address)...~~

... (date)...

... (lienor's address)...

(e) An ~~No~~ action for the labor or materials ~~or supplies~~ may
not be instituted or prosecuted against the contractor or surety
unless the notice to contractor and the notice of nonpayment
~~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

25-00695A-12

20121202__

668 after 1 year from the performance of the labor or completion of
669 delivery of the materials ~~and supplies~~. The time period for
670 bringing an action against the contractor or surety on the bond
671 shall be measured from the last day of furnishing labor,
672 services, or materials by the lienor. The time period may ~~and~~
673 ~~shall~~ not be measured by other standards, such as the issuance
674 of a certificate of occupancy or the issuance of a certificate
675 of substantial completion. A contractor ~~or the contractor's~~
676 ~~agent or attorney~~ may elect to shorten the ~~prescribed~~ time
677 within which an action to enforce any claim against a payment
678 bond ~~provided~~ under this section or s. 713.245 must ~~may~~ be
679 commenced at any time after a notice of nonpayment, if required,
680 has been served for the claim by recording in the clerk's office
681 a notice in substantially the following form:

682 NOTICE OF CONTEST OF CLAIM
683 AGAINST PAYMENT BOND

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

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

690
691 DATED on,

692
693 Signed: ...(Contractor or Attorney)...

694
695 The claim of any lienor upon whom the notice is served and who
696 fails to institute a suit to enforce his or her claim against

25-00695A-12

20121202__

the payment bond within 60 days after service of the notice shall be extinguished automatically. The contractor ~~clerk~~ shall serve mail a copy of the notice of contest to the lienor at the address shown in the notice of nonpayment or in the 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) Any lienor has a direct right of action on the bond against the surety. A provision of a payment bond which further restricts ~~must not contain any provisions restricting~~ the classes of lienors ~~persons~~ protected by the payment bond thereby or the venue of any proceeding relating to the payment bond or which limits the effective duration of the payment bond, 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; however, ~~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

25-00695A-12

20121202__

a copy of 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 along with a
copy of the bond on 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) Section 713.24(3) applies ~~The provisions of s.~~
~~713.24(3) shall apply~~ to bonds under this section. However, this
section prevails in the event of a conflict with s. 713.24(3).

Section 7. This act shall take effect October 1, 2012.