

1                               A bill to be entitled  
2       An act relating to construction contracting; amending  
3       s. 95.11, F.S.; adding a cross-reference; amending s.  
4       255.05, F.S.; requiring that the bond number be stated  
5       on the first page of the bond; providing that a public  
6       entity may not make payment to the contractor unless  
7       the public entity has received a certified copy of the  
8       bond; providing that a provision in a payment bond  
9       furnished for a public works contract that limits or  
10      expands the effective duration of the bond or adds  
11      conditions precedent is unenforceable; requiring a  
12      contractor, or the contractor's attorney, to serve  
13      rather than mail a notice of contest of claim against  
14      the payment bond; providing prerequisites for  
15      commencement of an action against a payment bond;  
16      requiring payment bond forms to reference specified  
17      notice and time limitation provisions; providing that  
18      payment to a contractor who has furnished a payment  
19      bond on a public works project may not be conditioned  
20      upon production of certain documents if the surety has  
21      given written consent; providing for the surety to  
22      withhold or revoke consent; creating s. 255.0518,  
23      F.S.; requiring that the state, a county, a  
24      municipality, or any other public body or institution  
25      open sealed bids received in response to a competitive  
26      solicitation at a public meeting, announce the name of  
27      each bidder and the price submitted, and make  
28      available upon request the names of bidders and

29        submitted prices; amending s. 713.10, F.S.; providing  
30        that a specified notice concerning a lessor's  
31        liability for liens for improvements made by the  
32        lessee prohibits liens even if other leases do not  
33        expressly prohibit liens or if certain other  
34        provisions are not identical; amending s. 713.13,  
35        F.S.; revising a notice form to clarify that the  
36        notice of commencement expires 1 year after the date  
37        of recording; removing a clause relating to perjury;  
38        providing additional time for service when a notice of  
39        commencement is not recorded with a copy of the bond  
40        attached; reenacting and amending s. 489.118, F.S.;  
41        reviving certain grandfathering provisions and setting  
42        a new deadline by which certain registered contractors  
43        may apply for certification; amending s. 713.132,  
44        F.S.; requiring notice of termination to be served on  
45        lienors in privity with the owner; amending s. 713.16,  
46        F.S.; revising requirements for demands for a copy of  
47        a construction contract and a statement of account;  
48        authorizing a lienor to make certain written demands  
49        to an owner for certain written statements; providing  
50        requirements for such written demands; amending s.  
51        713.18, F.S.; providing additional methods by which  
52        certain items may be served; revising provisions  
53        relating to when service of specified items is  
54        effective; specifying requirements for certain written  
55        instruments under certain circumstances; amending s.  
56        713.22, F.S.; requiring that the clerk serve rather

57 than mail a notice of contest of lien; amending s.  
58 713.23, F.S.; revising the contents of a notice to  
59 contractor; requiring that a contractor serve rather  
60 than mail a notice of contest of claim against the  
61 payment bond and a notice of bond; clarifying the  
62 attachment of the bond to the notice; providing that a  
63 provision in a payment bond that limits or expands the  
64 effective duration of the bond or adds conditions  
65 precedent is unenforceable; clarifying applicability  
66 of certain provisions; providing effective dates.

67  
68 Be It Enacted by the Legislature of the State of Florida:

69  
70 Section 1. Paragraph (b) of subsection (2) and paragraph  
71 (e) of subsection (5) of section 95.11, Florida Statutes, are  
72 amended to read:

73 95.11 Limitations other than for the recovery of real  
74 property.—Actions other than for recovery of real property shall  
75 be commenced as follows:

76 (2) WITHIN FIVE YEARS.—

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

82 (5) WITHIN ONE YEAR.—

83 (e) Except for actions governed by s. 255.05(10), s.  
84 337.18(1), or s. 713.23(1)(e), an action to enforce any claim

85 against a payment bond on which the principal is a contractor,  
86 subcontractor, or sub-subcontractor as defined in s. 713.01, for  
87 private work as well as public work, from the last furnishing of  
88 labor, services, or materials or from the last furnishing of  
89 labor, services, or materials by the contractor if the  
90 contractor is the principal on a bond on the same construction  
91 project, whichever is later.

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

95 255.05 Bond of contractor constructing public buildings;  
96 form; action by claimants ~~materialmen~~.

97 (1) ~~(a)~~ A ~~Any~~ person entering into a formal contract with  
98 the state or any county, city, or political subdivision thereof,  
99 or other public authority or private entity, for the  
100 construction of a public building, for the prosecution and  
101 completion of a public work, or for repairs upon a public  
102 building or public work shall be required, before commencing the  
103 work or before recommencing the work after a default or  
104 abandonment, to execute, ~~deliver to the public owner,~~ and record  
105 in the public records of the county where the improvement is  
106 located, a payment and performance bond with a surety insurer  
107 authorized to do business in this state as surety. A public  
108 entity may not require a contractor to secure a surety bond  
109 under this section from a specific agent or bonding company.

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

111 1. The name, principal business address, and phone number  
112 of the contractor, the surety, the owner of the property being

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113 improved, and, if different from the owner, the contracting  
114 public entity.~~†~~

115 2. The contract number assigned by the contracting public  
116 entity.~~†~~

117 3. The bond number assigned by the surety. ~~and~~

118 4. A description of the project sufficient to identify it,  
119 such as a legal description or the street address of the  
120 property being improved, and a general description of the  
121 improvement.

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

130 (c) The ~~Such~~ bond shall be conditioned upon the  
131 contractor's performance of the construction work in the time  
132 and manner prescribed in the contract and promptly making  
133 payments to all persons defined in s. 713.01 who furnish labor,  
134 services, or materials for the prosecution of the work provided  
135 for in the contract. ~~A~~ Any claimant may apply to the  
136 governmental entity having charge of the work for copies of the  
137 contract and bond and shall thereupon be furnished with a  
138 ~~certified~~ copy of the contract and the recorded bond. The  
139 claimant shall have a cause ~~right~~ of action against the  
140 contractor and surety for the amount due him or her, including

141 unpaid finance charges due under the claimant's contract. Such  
142 action may ~~shall~~ not involve the public authority in any  
143 expense.

144 (d) When the ~~such~~ work is done for the state and the  
145 contract is for \$100,000 or less, no payment and performance  
146 bond shall be required. At the discretion of the official or  
147 board awarding such contract when such work is done for any  
148 county, city, political subdivision, or public authority, a ~~any~~  
149 person entering into such a contract that ~~which~~ is for \$200,000  
150 or less may be exempted from executing the payment and  
151 performance bond. When such work is done for the state, the  
152 Secretary of Management Services may delegate to state agencies  
153 the authority to exempt any person entering into such a contract  
154 amounting to more than \$100,000 but less than \$200,000 from  
155 executing the payment and performance bond. If an ~~In the event~~  
156 ~~such~~ exemption is granted, the officer or official is ~~officials~~  
157 ~~shall not be~~ personally liable to persons suffering loss because  
158 of granting such exemption. The Department of Management  
159 Services shall maintain information on the number of requests by  
160 state agencies for delegation of authority to waive the bond  
161 requirements by agency and project number and whether any  
162 request for delegation was denied and the justification for the  
163 denial.

164 (e) Any provision in a payment bond issued on or after  
165 October 1, 2012, furnished for public work contracts as provided  
166 by this subsection which further restricts the classes of  
167 persons ~~as defined in s. 713.01~~ protected by the bond, which  
168 restricts ~~or~~ the venue of any proceeding relating to such bond,

169 which limits or expands the effective duration of the bond, or  
170 which adds conditions precedent to the enforcement of a claim  
171 against the bond beyond those provided in this section is  
172 unenforceable.

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

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

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

187  
188 The state is ~~shall~~ not ~~be held~~ liable to any laborer,  
189 materialman, or subcontractor for any amounts greater than the  
190 pro rata share as determined under this section.

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

197 available, but not less than \$250 million.

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

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

213  
214                   NOTICE OF CONTEST OF CLAIM  
215                   AGAINST PAYMENT BOND  
216

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

218  
219       You are notified that the undersigned contests your notice  
220 of nonpayment, dated ....., ....., and served on the  
221 undersigned on ....., ....., and that the time within  
222 which you may file suit to enforce your claim is limited to 60  
223 days after the date of service of this notice.  
224

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

226  
227 Signed: ... (Contractor or Attorney) ...

228  
229 The claim of a ~~any~~ claimant upon whom such notice is served and  
230 who fails to institute a suit to enforce his or her claim  
231 against the payment bond within 60 days after service of such  
232 notice shall be extinguished automatically. The contractor or  
233 the contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the  
234 notice of contest to the claimant at the address shown in the  
235 notice of nonpayment or most recent amendment thereto and shall  
236 certify to such service on the face of the ~~such~~ notice and  
237 record the notice. ~~Service is complete upon mailing.~~

238 2. A claimant, except a laborer, who is not in privity  
239 with the contractor shall, before commencing or not later than  
240 45 days after commencing to furnish labor, services, or  
241 materials for the prosecution of the work, furnish the  
242 contractor with a written notice that he or she intends to look  
243 to the bond for protection. A claimant who is not in privity  
244 with the contractor and who has not received payment for his or  
245 her labor, services, or materials shall deliver to the  
246 contractor and to the surety written notice of the performance  
247 of the labor or delivery of the materials or supplies and of the  
248 nonpayment. The notice of nonpayment shall ~~may~~ be served ~~at any~~  
249 ~~time~~ during the progress of the work or thereafter but may not  
250 be served earlier than ~~before~~ 45 days after the first furnishing  
251 of labor, services, or materials or, ~~and not~~ later than 90 days  
252 after the final furnishing of the labor, services, or materials

253 by the claimant or, with respect to rental equipment, not later  
254 than 90 days after the date that the rental equipment was last  
255 on the job site available for use. Any notice of nonpayment  
256 served by a claimant who is not in privity with the contractor  
257 which includes sums for retainage must specify the portion of  
258 the amount claimed for retainage. An ~~No~~ action for the labor,  
259 materials, or supplies may not be instituted against the  
260 contractor or the surety unless the notice to the contractor and  
261 notice of nonpayment have been served, if required by this  
262 section ~~both notices have been given~~. Notices required or  
263 permitted under this section shall ~~may~~ be served in accordance  
264 with s. 713.18. A claimant may not waive in advance his or her  
265 right to bring an action under the bond against the surety. In  
266 any action brought to enforce a claim against a payment bond  
267 under this section, the prevailing party is entitled to recover  
268 a reasonable fee for the services of his or her attorney for  
269 trial and appeal or for arbitration, in an amount to be  
270 determined by the court, which fee must be taxed as part of the  
271 prevailing party's costs, as allowed in equitable actions. The  
272 time periods for service of a notice of nonpayment or for  
273 bringing an action against a contractor or a surety shall be  
274 measured from the last day of furnishing labor, services, or  
275 materials by the claimant and may ~~shall~~ not be measured by other  
276 standards, such as the issuance of a certificate of occupancy or  
277 the issuance of a certificate of substantial completion.

278 (6) All payment bond forms used by a public owner and all  
279 payment bonds executed pursuant to this section by a surety  
280 shall make reference to this section by number, and ~~and~~ shall

281 contain reference to the notice and time limitation provisions  
282 in subsections ~~subsection~~ (2) and (10), and shall comply with  
283 the requirements of paragraph (1)(a).

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

299 Section 3. Effective upon this act becoming a law, section  
300 255.0518, Florida Statutes, is created  
301 to read:

302 255.0518 Public bids; bid opening.—Notwithstanding s.  
303 119.071(1)(b), the state or any county or municipality thereof  
304 or any department or agency of the state, county, or  
305 municipality or any other public body or institution shall:

306 (1) When opening sealed bids or the portion of any sealed  
307 bids that include the prices submitted that are received  
308 pursuant to a competitive solicitation for construction or

309 repairs on a public building or public work, open the sealed  
310 bids at a public meeting conducted in compliance with s.  
311 286.011.

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

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

316 Section 4. Paragraph (b) of subsection (2) of section  
317 713.10, Florida Statutes, is amended to read:

318 713.10 Extent of liens.—

319 (2)

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

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

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

335 a. The name of the lessor.

336 b. The legal description of the parcel of land to which

the notice applies.

c. The specific language contained in the various leases prohibiting such liability.

d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

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

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

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

713.13 Notice of commencement.—

(1)

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

Permit No..... Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....

County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter

713, Florida Statutes, the following information is provided in this Notice of Commencement.

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

2. General description of improvement:.....

3. Owner information or Lessee information if the Lessee contracted for the improvement:

a. Name and address:.....

b. Interest in property:.....

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

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

b. Contractor's phone number:.....

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

a. Name and address:.....

b. Phone number:.....

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

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

b. Lender's phone number:.....

7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....

8.a. In addition to himself or herself, Owner designates ..... of ..... to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

393           b. Phone number of person or entity designated by  
394 owner:.....

395           9. Expiration date of notice of commencement (the  
396 expiration date ~~may not be before the completion of construction~~  
397 ~~and final payment to the contractor, but~~ will be 1 year from the  
398 date of recording unless a different date is specified).....  
399

400 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE  
401 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER  
402 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA  
403 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS  
404 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND  
405 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU  
406 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN  
407 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF  
408 COMMENCEMENT.  
409

410 ~~Under penalty of perjury, I declare that I have read the~~  
411 ~~foregoing notice of commencement and that the facts stated~~  
412 ~~therein are true to the best of my knowledge and belief.~~  
413

414 ... (Signature of Owner or Lessee, or Owner's or Lessee's  
415 Authorized Officer/Director/Partner/Manager) ...  
416

417 ... (Signatory's Title/Office) ...  
418

419 The foregoing instrument was acknowledged before me this ....  
420 day of ....., ...(year) ..., by ...(name of person) ... as ...(type

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of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

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

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

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

Type of Identification Produced.....

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

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

449           489.118 Certification of registered contractors;  
450 grandfathering provisions.—The board shall, upon receipt of a  
451 completed application and appropriate fee, issue a certificate  
452 in the appropriate category to any contractor registered under  
453 this part who makes application to the board and can show that  
454 he or she meets each of the following requirements:

455           (1) Currently holds a valid registered local license in  
456 one of the contractor categories defined in s. 489.105(3)(a)-(q)  
457 ~~489.105(3)(a)-(p)~~.

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

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

476           (4) Has not had his or her contractor's license revoked at

any time, had his or her contractor's license suspended within the last 5 years, or been assessed a fine in excess of \$500 within the last 5 years.

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

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

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

713.132 Notice of termination.—

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

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

(4) A notice of termination is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or the date stated in the notice of termination as the date on which the notice of commencement is terminated, if ~~provided that~~ the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on

505 each lienor who has a direct contract with the owner or who has  
506 served a notice to owner ~~given notice~~.

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

509 713.16 Demand for copy of contract and statements of  
510 account; form.—

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

532 (2) The owner may serve in writing a demand of any lienor

533 for a written statement under oath of his or her account showing  
534 the nature of the labor or services performed and to be  
535 performed, if any, the materials furnished, the materials to be  
536 furnished, if known, the amount paid on account to date, the  
537 amount due, and the amount to become due, if known, as of the  
538 date of the statement by the lienor. Any such demand to a lienor  
539 must be served on the lienor at the address and to the attention  
540 of any person who is designated to receive the demand in the  
541 notice to owner served by such lienor and must include a  
542 description of the property and the names of the owner, the  
543 contractor, and the lienor's customer, as set forth in the  
544 lienor's notice to owner. The failure or refusal to furnish the  
545 statement does not deprive the lienor of his or her lien if the  
546 demand is not served at the address of the lienor or directed to  
547 the attention of the person designated to receive the demand in  
548 the notice to owner. The failure or refusal to furnish the  
549 statement under oath within 30 days after the demand, or the  
550 furnishing of a false or fraudulent statement, deprives the  
551 person so failing or refusing to furnish such statement of his  
552 or her lien. If the owner serves more than one demand for  
553 statement of account on a lienor and none of the information  
554 regarding the account has changed since the lienor's last  
555 response to a demand, the failure or refusal to furnish such  
556 statement does not deprive the lienor of his or her lien. The  
557 negligent inclusion or omission of any information deprives the  
558 person of his or her lien to the extent the owner can  
559 demonstrate prejudice from such act or omission by the lienor.  
560 The failure to furnish a response to a demand for statement of

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account does not affect the validity of any claim of lien being enforced through a foreclosure case filed before ~~prior to~~ the date the demand for statement is received by the lienor.

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

REQUEST FOR SWORN STATEMENT OF ACCOUNT

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

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

The undersigned hereby demands a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement for the improvement of real property identified as ...(property description)....

...(name of contractor)...

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

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

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

590

591           (4) When a contractor has furnished a payment bond

592 pursuant to s. 713.23, he or she may, when an owner makes any

593 payment to the contractor or directly to a lienor, serve a

594 written demand on any other lienor for a written statement under

595 oath of his or her account showing the nature of the labor or

596 services performed and to be performed, if any, the materials

597 furnished, the materials to be furnished, if known, the amount

598 paid on account to date, the amount due, and the amount to

599 become due, if known, as of the date of the statement by the

600 lienor. Any such demand to a lienor must be served on the lienor

601 at the address and to the attention of any person who is

602 designated to receive the demand in the notice to contractor

603 served by such lienor. The demand must include a description of

604 the property and the names of the owner, the contractor, and the

605 lienor's customer, as set forth in the lienor's notice to

606 contractor. The failure or refusal to furnish the statement does

607 not deprive the lienor of his or her rights under the bond if

608 the demand is not served at the address of the lienor or

609 directed to the attention of the person designated to receive

610 the demand in the notice to contractor. The failure to furnish

611 the statement within 30 days after the demand, or the furnishing

612 of a false or fraudulent statement, deprives the person who

613 fails to furnish the statement, or who furnishes the false or

614 fraudulent statement, of his or her rights under the bond. If

615 the contractor serves more than one demand for statement of

616 account on a lienor and none of the information regarding the

617 account has changed since the lienor's last response to a  
618 demand, the failure or refusal to furnish such statement does  
619 not deprive the lienor of his or her rights under the bond. The  
620 negligent inclusion or omission of any information deprives the  
621 person of his or her rights under the bond to the extent the  
622 contractor can demonstrate prejudice from such act or omission  
623 by the lienor. The failure to furnish a response to a demand for  
624 statement of account does not affect the validity of any claim  
625 on the bond being enforced in a lawsuit filed prior to the date  
626 the demand for statement of account is received by the lienor.

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

631 1. The amount of the direct contract under which the lien  
632 was recorded;

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

636 3. The reasonable estimated costs of completing the direct  
637 contract under which the lien was claimed pursuant to the scope  
638 of the direct contract; and

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

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

substantially the following form:

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

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

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

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

713.18 Manner of serving notices and other instruments.—

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

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

673 (b) By common carrier delivery service or ~~sending the same~~  
674 by registered, Global Express Guaranteed, or certified mail,  
675 with postage or shipping paid by the sender and prepaid, ~~or by~~  
676 ~~overnight or second-day delivery~~ with evidence of delivery,  
677 which may be in an electronic format.

678 (c) ~~If the method specified in paragraph (a) or paragraph~~  
679 ~~(b) cannot be accomplished,~~ By posting on the site of the  
680 improvement if service as provided by paragraph (a) or paragraph  
681 (b) cannot be accomplished ~~premises.~~

682 (2) Notwithstanding subsection (1), service of ~~if~~ a notice  
683 to owner ~~or,~~ a preliminary notice to contractor under s. 255.05,  
684 s. 337.18, or s. 713.23, ~~or a preliminary notice under s. 255.05~~  
685 ~~is mailed by registered or certified mail with postage prepaid~~  
686 ~~to the person to be served at any of the addresses set forth in~~  
687 ~~subsection (3) within 40 days after the date the lienor first~~  
688 ~~furnishes labor, services, or materials, service of that notice~~  
689 is effective as of the date of mailing if:

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

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

696 (c)1. The person who served the notice maintains a  
697 registered or certified mail log that shows the registered or  
698 certified mail number issued by the United States Postal  
699 Service, the name and address of the person served, and the date  
700 stamp of the United States Postal Service confirming the date of

mailing; or ~~if~~

2. The person who served the notice maintains electronic tracking records generated by ~~through use of~~ the United States Postal Service ~~Confirm service or a similar service~~ containing the postal tracking number, the name and address of the person served, and verification of the date of receipt by the United States Postal Service.

(3) (a) Service of ~~If~~ an instrument ~~served~~ pursuant to this section is effective on the date of mailing the instrument if it:

1. Is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served; ~~and, is not received, but~~

2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item, ~~then service is effective on the date the instrument was sent.~~

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

729           (4) A notice served by a lienor on one owner or one  
730 partner of a partnership owning the real property ~~If the real~~  
731 ~~property is owned by more than one person or a partnership, a~~  
732 ~~lienor may serve any notices or other papers under this part on~~  
733 ~~any one of such owners or partners, and such notice is deemed~~  
734 ~~notice to all owners and partners.~~

735           Section 10. Section 713.22, Florida Statutes, is amended  
736 to read:

737           713.22 Duration of lien.—

738           (1) A ~~No~~ lien provided by this part does not ~~shall~~  
739 continue for a longer period than 1 year after the claim of lien  
740 has been recorded or 1 year after the recording of an amended  
741 claim of lien that shows a later date of final furnishing of  
742 labor, services, or materials, unless within that time an action  
743 to enforce the lien is commenced in a court of competent  
744 jurisdiction. A lien that has been continued beyond the 1-year  
745 period ~~The continuation of the lien effected by the commencement~~  
746 ~~of an~~ the action is ~~shall~~ not enforceable ~~be good~~ against  
747 creditors or subsequent purchasers for a valuable consideration  
748 and without notice, unless a notice of lis pendens is recorded.

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

755  
756                                   NOTICE OF CONTEST OF LIEN

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

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

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

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

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

713.23 Payment bond.—

(1)

(c) ~~Either~~ Before beginning or within 45 days after beginning to furnish labor, materials, or supplies, a lienor who

785 is not in privity with the contractor, except a laborer, shall  
786 serve the contractor with notice in writing that the lienor will  
787 look to the contractor's bond for protection on the work. If a  
788 notice of commencement with the attached bond is not recorded  
789 before commencement of construction, ~~or a reference to the bond~~  
790 ~~is not given in the notice of commencement, and in either case~~  
791 ~~if the lienor not in privity with the contractor is not~~  
792 ~~otherwise notified in writing of the existence of the bond, the~~  
793 lienor not in privity with the contractor may, in the  
794 alternative, elect to serve the notice to the contractor up to  
795 ~~shall have 45 days after from~~ the date the lienor is served with  
796 a copy notified of the existence of the bond within which to  
797 ~~serve the notice.~~ A notice to owner pursuant to s. 713.06 that  
798 has been timely served on the contractor satisfies the  
799 requirements of this paragraph. However, the limitation period  
800 for commencement of an action on the payment bond as established  
801 in paragraph (e) may not be expanded. The notice may be in  
802 substantially the following form and may be combined with a  
803 notice to owner given under s. 713.06 and, if so, may be  
804 entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR:

805  
806 NOTICE TO CONTRACTOR

807  
808 To ... (name and address of contractor) ...

809  
810 The undersigned hereby informs you that he or she has furnished  
811 or is furnishing services or materials as follows:  
812

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

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

...(name of lienor)...

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

...(date)...

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

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

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

(d) In addition, a lienor is required, as a condition  
precedent to recovery under the bond, to serve a written notice  
of nonpayment to the contractor and the surety not later than 90  
days after the final furnishing of labor, services, or materials

841 by the lienor. A written notice satisfies this condition  
842 precedent with respect to the payment described in the notice of  
843 nonpayment, including unpaid finance charges due under the  
844 lienor's contract, and with respect to any other payments which  
845 become due to the lienor after the date of the notice of  
846 nonpayment. The time period for serving a written notice of  
847 nonpayment shall be measured from the last day of furnishing  
848 labor, services, or materials by the lienor and shall not be  
849 measured by other standards, such as the issuance of a  
850 certificate of occupancy or the issuance of a certificate of  
851 substantial completion. The failure of a lienor to receive  
852 retainage sums not in excess of 10 percent of the value of  
853 labor, services, or materials furnished by the lienor is not  
854 considered a nonpayment requiring the service of the notice  
855 provided under this paragraph. If the payment bond is not  
856 recorded before commencement of construction, the time period  
857 for the lienor to serve a notice of nonpayment may at the option  
858 of the lienor be calculated from the date specified in this  
859 section or the date the lienor is served a copy of the bond.  
860 However, the limitation period for commencement of an action on  
861 the payment bond as established in paragraph (e) may not be  
862 expanded. The notice under this paragraph may be in  
863 substantially the following form:

864  
865 NOTICE OF NONPAYMENT

866  
867 To ...(name of contractor and address)...

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

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

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

(e) An ~~No~~ action for the labor or materials or supplies  
may not be instituted or prosecuted against the contractor or  
surety unless both notices have been given, if required by this  
section. An ~~No~~ action may not ~~shall~~ be instituted or prosecuted  
against the contractor or against the surety on the bond under  
this section after 1 year from the performance of the labor or  
completion of delivery of the materials and supplies. The time  
period for bringing an action against the contractor or surety  
on the bond shall be measured from the last day of furnishing  
labor, services, or materials by the lienor. The time period ~~and~~  
may ~~shall~~ not be measured by other standards, such as the  
issuance of a certificate of occupancy or the issuance of a  
certificate of substantial completion. A contractor or the  
contractor's ~~agent or~~ attorney may elect to shorten the  
~~prescribed~~ time within which an action to enforce any claim  
against a payment bond provided under this section or s. 713.245  
must ~~may~~ be commenced at any time after a notice of nonpayment,  
if required, has been served for the claim by recording in the  
clerk's office a notice in substantially the following form:

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NOTICE OF CONTEST OF CLAIM  
AGAINST PAYMENT BOND

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

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

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

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

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

(f) A ~~Any~~ lienor has a direct right of action on the bond against the surety. Any provision in a payment bond issued on or after October 1, 2012, which further restricts ~~A bond must not~~

925 ~~contain any provisions restricting~~ the classes of persons who  
926 are protected by the payment bond, which restricts ~~thereby or~~  
927 the venue of any proceeding relating to such payment bond, which  
928 limits or expands the effective duration of the payment bond, or  
929 which adds conditions precedent to the enforcement of a claim  
930 against a payment bond beyond those provided in this part is  
931 unenforceable. The surety is not entitled to the defense of pro  
932 tanto discharge as against any lienor because of changes or  
933 modifications in the contract to which the surety is not a  
934 party; but the liability of the surety may not be increased  
935 beyond the penal sum of the bond. A lienor may not waive in  
936 advance his or her right to bring an action under the bond  
937 against the surety.

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

948  
949 NOTICE OF BOND

950  
951 To ... (Name and Address of Lienor) ...  
952

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

957  
958 Signed: ...(Name of person recording notice)...

959  
960 The notice shall be verified. The person recording the notice of  
961 bond ~~clerk~~ shall serve mail a copy of the notice with a copy of  
962 the bond to the lienor at the address shown in the claim of  
963 lien, or the most recent amendment to it; shall certify to the  
964 service on the face of the notice; and shall record the notice.  
965 ~~The clerk shall receive the same fee as prescribed in s.~~  
966 ~~713.24(1) for certifying to a transfer of lien.~~

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

970 Section 12. Except as otherwise expressly provided in this  
971 act, this act shall take effect October 1, 2012.  
972