

By the Committee on Judiciary; and Senators Grall and Perry

590-03285-23

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1 A bill to be entitled
2 An act relating to liens and bonds; amending s.
3 255.05, F.S.; revising when a notice of contest of
4 claim against a payment bond must be served; requiring
5 that a copy of a notice of nonpayment be served on the
6 surety; revising the process for notarizing a notice
7 of nonpayment; revising authorized alternative forms
8 of security; requiring service of documents to be made
9 in a specified manner; conforming provisions to
10 changes made by the act; making technical changes;
11 amending s. 337.18, F.S.; requiring service of
12 documents to be made in a specified manner; conforming
13 provisions to changes made by the act; amending s.
14 713.01, F.S.; revising and providing definitions;
15 creating s. 713.011, F.S.; providing for the
16 computation of time when certain time periods fall on
17 specified days or during an emergency; tolling
18 specified time periods for recording a document or
19 filing an action under certain circumstances; amending
20 s. 713.10, F.S.; revising the extent of certain liens;
21 amending s. 713.13, F.S.; conforming a cross-
22 reference; revising the process for notarizing a
23 notice of commencement; making technical changes;
24 amending s. 713.132, F.S.; revising requirements for a
25 notice of termination; revising when an owner may
26 record a notice of termination; specifying when a
27 notice of termination terminates a notice of
28 commencement; amending s. 713.135, F.S.; defining the
29 term "copy of the notice of commencement"; providing

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30 applicability; revising the dollar threshold of an
31 exception; providing immunity; amending s. 713.18,
32 F.S.; requiring service of documents relating to
33 construction bonds to be made in a specified manner;
34 authorizing employees or agents of specified entities
35 to receive service of certain documents; making
36 technical changes; amending s. 713.21, F.S.;

37 authorizing the full or partial release of a lien
38 under specified conditions; making technical changes;
39 amending s. 713.22, F.S.; requiring the clerk to serve
40 a copy of a notice of contest of lien on certain
41 persons after it has been recorded; making technical
42 changes; amending s. 713.23, F.S.; requiring that a
43 copy of a notice of nonpayment be served on the
44 surety; revising the process for notarizing a notice
45 of nonpayment under a payment bond; requiring the
46 clerk to serve a copy of a notice of contest of lien
47 on certain persons after it has been recorded;

48 amending s. 713.24, F.S.; revising the amount required
49 in addition to the deposit or bond that applies toward
50 attorney fees and court costs; requiring the clerk to
51 make a copy of the deposit or bond used to transfer a
52 lien to other security and mail it to the lienor;
53 making technical changes; repealing s. 713.25, F.S.,
54 relating to applicability of chapter 65-456, Laws of
55 Florida; amending s. 713.29, F.S.; authorizing
56 attorney fees in actions brought to enforce a lien
57 that has been transferred to security; making
58 technical changes; providing an effective date.

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

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

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

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

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

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

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

DATED on,

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

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89 The claim of a claimant upon whom such notice is served and who
90 fails to institute a suit to enforce his or her claim against
91 the payment bond within 60 days after service of such notice is
92 extinguished automatically. The contractor or the contractor's
93 attorney shall serve a copy of the notice of contest on ~~to~~ the
94 claimant at the address shown in the notice of nonpayment or
95 most recent amendment thereto and shall certify to such service
96 on the face of the notice and record the notice.

97 2. A claimant, except a laborer, who is not in privity with
98 the contractor shall, before commencing or not later than 45
99 days after commencing to furnish labor, services, or materials
100 for the prosecution of the work, serve the contractor with a
101 written notice that he or she intends to look to the bond for
102 protection. If the payment bond is not recorded before the
103 commencement of work or before the recommencement of work after
104 a default or abandonment as required by subsection (1), the
105 claimant may serve the contractor with such written notice up to
106 45 days after the date that the claimant is served with a copy
107 of the bond. A claimant who is not in privity with the
108 contractor and who has not received payment for furnishing his
109 or her labor, services, or materials shall serve a written
110 notice of nonpayment on the contractor and a copy of the notice
111 of nonpayment on the surety. The notice of nonpayment must ~~shall~~
112 be under oath and served during the progress of the work or
113 thereafter but may not be served earlier than 45 days after the
114 first furnishing of labor, services, or materials by the
115 claimant or later than 90 days after the final furnishing of the
116 labor, services, or materials by the claimant or, with respect

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117 to rental equipment, later than 90 days after the date that the
118 rental equipment was last on the ~~job~~ site of the improvement and
119 available for use. Any notice of nonpayment served by a claimant
120 who is not in privity with the contractor which includes sums
121 for retainage must specify the portion of the amount claimed for
122 retainage. An action for the labor, services, or materials may
123 not be instituted against the contractor or the surety unless
124 the notice to the contractor and notice of nonpayment have been
125 served, if required by this section. Notices required or
126 permitted under this section must be served in accordance with
127 s. 713.18. A claimant may not waive in advance his or her right
128 to bring an action under the bond against the surety. In any
129 action brought to enforce a claim against a payment bond under
130 this section, the prevailing party is entitled to recover a
131 reasonable fee for the services of his or her attorney for trial
132 and appeal or for arbitration, in an amount to be determined by
133 the court or arbitrator, which fee must be taxed as part of the
134 prevailing party's costs, as allowed in equitable actions. The
135 time periods for service of a notice of nonpayment or for
136 bringing an action against a contractor or a surety are ~~shall be~~
137 measured from the last day of furnishing labor, services, or
138 materials by the claimant and may not be measured by other
139 standards, such as the issuance of a certificate of occupancy or
140 the issuance of a certificate of substantial completion. The
141 negligent inclusion or omission of any information in the notice
142 of nonpayment that has not prejudiced the contractor or surety
143 does not constitute a default that operates to defeat an
144 otherwise valid bond claim. A claimant who serves a fraudulent
145 notice of nonpayment forfeits his or her rights under the bond.

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146 A notice of nonpayment is fraudulent if the claimant has
147 willfully exaggerated the amount unpaid, willfully included a
148 claim for work not performed or materials not furnished for the
149 subject improvement, or prepared the notice with such willful
150 and gross negligence as to amount to a willful exaggeration.
151 However, a minor mistake or error in a notice of nonpayment, or
152 a good faith dispute as to the amount unpaid, does not
153 constitute a willful exaggeration that operates to defeat an
154 otherwise valid claim against the bond. The service of a
155 fraudulent notice of nonpayment is a complete defense to the
156 claimant's claim against the bond. The notice of nonpayment
157 under this subparagraph must include the following information,
158 current as of the date of the notice, and must be in
159 substantially the following form:

160
161 NOTICE OF NONPAYMENT

162
163 To: ...(name of contractor and address)...

164
165 ...(name of surety and address)...

166
167 The undersigned claimant notifies you that:

168 1. Claimant has furnished ...(describe labor, services, or
169 materials)... for the improvement of the real property
170 identified as ...(property description).... The corresponding
171 amount unpaid to date is \$...., of which \$.... is unpaid
172 retainage.

173 2. Claimant has been paid to date the amount of \$.... for
174 previously furnishing ...(describe labor, services, or

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175 materials)... for this improvement.

176 3. Claimant expects to furnish ...(describe labor,
177 services, or materials)... for this improvement in the future
178 (if known), and the corresponding amount expected to become due
179 is \$.... (if known).

180
181 I declare that I have read the foregoing Notice of Nonpayment
182 and that the facts stated in it are true to the best of my
183 knowledge and belief.

184
185 DATED on,

186
187 ...(signature and address of claimant)...

188
189 STATE OF FLORIDA
190 COUNTY OF

191
192 The foregoing instrument was sworn to (or affirmed) and
193 subscribed before me by means of physical presence or sworn to
194 (or affirmed) by online notarization this day of,
195 ...(year)..., by ...(name of signatory)....

196 ...(Signature of Notary Public - State of Florida)..
197 ...(Print, Type, or Stamp Commissioned Name of Notary
198 Public)...

199
200 Personally Known OR Produced Identification

201
202 Type of Identification Produced.....
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204 (7) In lieu of the bond required by this section, a
205 contractor may file with the state, county, city, or other
206 political authority an alternative form of security in the form
207 of cash;; a money order;; a certified check;; a cashier's
208 check;; ~~an irrevocable letter of credit,~~ or a domestic corporate
209 bond, note, or debenture as authorized in s. 625.317 ~~security of~~
210 ~~a type listed in part II of chapter 625.~~ Any such alternative
211 form of security is ~~shall be~~ for the same purpose and ~~be~~ subject
212 to the same conditions as those applicable to the bond required
213 by this section. The determination of the value of an
214 alternative form of security shall be made by the appropriate
215 state, county, city, or other political subdivision.

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

218 Section 2. Paragraph (c) of subsection (1) of section
219 337.18, Florida Statutes, is amended, and subsection (6) is
220 added to that section, to read:

221 337.18 Surety bonds for construction or maintenance
222 contracts; requirement with respect to contract award; bond
223 requirements; defaults; damage assessments.-

224 (1)

225 (c) A claimant, except a laborer, who is not in privity
226 with the contractor shall, before commencing or not later than
227 90 days after commencing to furnish labor, materials, or
228 supplies for the prosecution of the work, furnish the contractor
229 with a notice that he or she intends to look to the bond for
230 protection. A claimant who is not in privity with the contractor
231 and who has not received payment for his or her labor,
232 materials, or supplies shall deliver to the contractor and to

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233 the surety written notice of the performance of the labor or
234 delivery of the materials or supplies and of the nonpayment. The
235 notice of nonpayment may be served at any time during the
236 progress of the work or thereafter but not before 45 days after
237 the first furnishing of labor, services, or materials, and not
238 later than 90 days after the final furnishing of the labor,
239 services, or materials by the claimant or, with respect to
240 rental equipment, not later than 90 days after the date that the
241 rental equipment was last on the ~~job~~ site of the improvement and
242 available for use. An action by a claimant, except a laborer,
243 who is not in privity with the contractor for the labor,
244 materials, or supplies may not be instituted against the
245 contractor or the surety unless both notices have been given.
246 Written notices required or permitted under this section must
247 may be served in accordance with ~~any manner provided in~~ s.
248 713.18.

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

251 Section 3. Present subsections (13) through (29) of section
252 713.01, Florida Statutes, are redesignated as subsections (14)
253 through (30), respectively, a new subsection (13) is added to
254 that section, and subsections (4), (8), and (12) of that section
255 are amended, to read:

256 713.01 Definitions.—As used in this part, the term:

257 (4) "Clerk's office" means the office of the clerk of the
258 circuit court of the county, or another office serving as the
259 county recorder as provided by law, in which the real property
260 is located.

261 (8) "Contractor" means a person other than a materialman or

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262 laborer who enters into a contract with the owner of real
263 property for improving it, ~~or who takes over from a contractor~~
264 as so defined the entire remaining work under such contract. The
265 term "contractor" includes an architect, landscape architect, or
266 engineer who improves real property pursuant to a design-build
267 contract authorized by s. 489.103(16). The term also includes a
268 licensed general contractor or building contractor, as those
269 terms are defined in s. 489.105(3)(a) and (b), respectively, who
270 provides construction management services, which include
271 scheduling and coordinating preconstruction and construction
272 phases for the construction project, or who provides program
273 management services, which include schedule control, cost
274 control, and coordinating the provision or procurement of
275 planning, design, and construction for the construction project.

276 (12) "Final furnishing" means the last date that the lienor
277 furnishes labor, services, or materials. Such date may not be
278 measured by other standards, such as the issuance of a
279 certificate of occupancy or the issuance of a certificate of
280 final completion, and does not include the correction of
281 deficiencies in the lienor's previously performed work or
282 materials supplied. With respect to rental equipment, the term
283 means the date that the rental equipment was last on the ~~job~~
284 site of the improvement and available for use.

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

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

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291 713.011 Computation of time.-

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

298 (2) If a clerk's office is directed to close by a federal,
299 state, or local governmental order in response to a state of
300 emergency declared under chapter 252, the time periods for
301 recording a document or filing an action with such clerk's
302 office under this part are tolled until the first business day
303 after the clerk's office reopens.

304 Section 5. Paragraph (b) of subsection (2) of section
305 713.10, Florida Statutes, is amended, and subsection (4) is
306 added to that section, to read:

307 713.10 Extent of liens.-

308 (2)

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

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

317 2. The terms of the lease expressly prohibit such
318 liability, and a notice advising that leases for the rental of
319 premises on a parcel of land prohibit such liability has been

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320 recorded in the official records of the county in which the
 321 parcel of land is located before the recording of a notice of
 322 commencement for improvements to the premises, and the notice
 323 includes the following:

324 a. The name of the lessor.

325 b. The legal description of the parcel of land to which the
 326 notice applies.

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

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

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

334

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

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

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

346 713.13 Notice of commencement.—

347 (1) (a) Except for an improvement that is exempt under
 348 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized

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349 agent before actually commencing to improve any real property,
350 or recommencing completion of any improvement after default or
351 abandonment, whether or not a project has a payment bond
352 complying with s. 713.23, shall record a notice of commencement
353 in the clerk's office and ~~forthwith~~ post either a certified copy
354 thereof or a notarized statement that the notice of commencement
355 has been filed for recording along with a copy thereof. The
356 notice of commencement must ~~shall~~ contain all of the following
357 information:

358 1. A description sufficient for identification of the real
359 property to be improved. The description must ~~should~~ include the
360 legal description of the property and ~~also should include~~ the
361 street address and tax folio number of the property if available
362 or, if the ~~there is no~~ street address is not available, such
363 additional information as will describe the physical location of
364 the real property to be improved.

365 2. A general description of the improvement.

366 3. The name and address of the owner, the owner's interest
367 in the site of the improvement, and the name and address of the
368 fee simple titleholder, if other than such owner. A lessee who
369 contracts for the improvements is an owner as defined in s.
370 713.01 ~~under s. 713.01(23)~~ and must be listed as the owner
371 together with a statement that the ownership interest is a
372 leasehold interest.

373 4. The name and address of the contractor.

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

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

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378 7. The name and address within the state of a person other
 379 than himself or herself who may be designated by the owner as
 380 the person upon whom notices or other documents may be served
 381 under this part; and service upon the person so designated
 382 constitutes service upon the owner.

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

385
 386 Permit No..... Tax Folio No.....

NOTICE OF COMMENCEMENT

387
 388 State of....
 389 County of....

390
 391 The undersigned hereby gives notice that improvement will be
 392 made to certain real property, and in accordance with Chapter
 393 713, Florida Statutes, the following information is provided in
 394 this Notice of Commencement.

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

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

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

400 a. Name and address:.....

401 b. Interest in property:.....

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

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

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

406 5. Surety (if applicable, a copy of the payment bond is

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attached):

- a. Name and address:.....
- b. Phone number:.....
- c. Amount of bond: \$.....
- 6.a. Lender: ... (name and address)....
- b. Lender's phone number:.....
- 7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:
 - a. Name and address:.....
 - b. Phone numbers of designated persons:.....
- 8.a. In addition to himself or herself, Owner designates of to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.
 - b. Phone number of person or entity designated by owner:.....
- 9. Expiration date of notice of commencement (the expiration date will be 1 year after ~~from~~ the date of recording unless a different date is specified).....

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

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

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

The foregoing instrument was acknowledged before me by means of
 physical presence or sworn to (or affirmed) by online
notarization this day of, ...(year)...., by ...(name of
person)... as ...(type of authority, . . . e.g. officer,
trustee, attorney in fact)... for ...(name of party on behalf of
whom instrument was executed)....

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

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

Personally Known OR Produced Identification

Type of Identification Produced.....

Section 7. Present subsection (4) of section 713.132,
Florida Statutes, is redesignated as subsection (5) and amended,
a new subsection (4) is added to that section, and subsections
(1) and (3) of that section are amended, to read:

713.132 Notice of termination.—

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

(a) The same information that is in ~~as~~ the notice of

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465 commencement.~~†~~

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

469 (c) A statement of the date as of which the notice of
470 commencement is terminated, which date may not be earlier than
471 30 days after the notice of termination is recorded.~~†~~

472 (d) A statement specifying that the notice applies to all
473 the real property subject to the notice of commencement or
474 specifying the portion of such real property to which it
475 applies.~~†~~

476 (e) A statement that all lienors have been paid in full.~~†~~
477 and

478 (f) A statement that the owner has, before recording the
479 notice of termination, served a copy of the notice of
480 termination ~~on the contractor and~~ on each lienor who has a
481 direct contract with the owner or who has timely served a notice
482 to owner, and a statement that the owner will serve a copy of
483 the notice of termination on each lienor who timely serves a
484 notice to owner after the notice of termination has been
485 recorded. The owner is not required to serve a copy of the
486 notice of termination on any lienor who has executed a waiver
487 and release of lien upon final payment in accordance with s.
488 713.20.

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

493 (4) If an owner or a contractor, by fraud or collusion,

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494 knowingly makes any fraudulent statement or affidavit in a
495 notice of termination or any accompanying affidavit, the owner
496 and the contractor, or either of them, ~~as the case may be,~~ is
497 liable to any lienor who suffers damages as a result of the
498 filing of the fraudulent notice of termination,^r and any such
499 lienor has a right of action for damages ~~occasioned thereby.~~

500 (5)-(4) A notice of termination must be served on each
501 lienor who has a direct contract with the owner and on each
502 lienor who has timely and properly served a notice to owner in
503 accordance with this part before the recording of the notice of
504 termination. A notice of termination must be recorded in the
505 official records of the county in which the improvement is
506 located. If properly served before recording in accordance with
507 this subsection, the notice of termination terminates the period
508 of effectiveness of the notice of commencement 30 days after the
509 notice of termination is recorded in the official records ~~is~~
510 ~~effective to terminate the notice of commencement at the later~~
511 ~~of 30 days after recording of the notice of termination or a~~
512 ~~later~~ the date stated in the notice of termination as the date
513 on which the notice of commencement is terminated. However, if a
514 lienor who began work under the notice of commencement before
515 its termination lacks a direct contract with the owner and
516 timely serves his or her notice to the owner after the notice of
517 termination has been recorded, the owner must serve a copy of
518 the notice of termination upon such lienor, and the termination
519 of the notice of commencement as to that lienor is effective 30
520 days after service of the notice of termination, ~~if the notice~~
521 ~~of termination has been served pursuant to paragraph (1) (f) on~~
522 ~~the contractor and on each lienor who has a direct contract with~~

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523 ~~the owner or who has served a notice to owner.~~

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

526 713.135 Notice of commencement and applicability of lien.—

527 (1) When a ~~any~~ person applies for a building permit, the
528 authority issuing such permit shall:

529 (a) Print on the face of each permit card in no less than
530 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR
531 FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR
532 PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
533 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE ~~JOB~~ SITE OF THE
534 IMPROVEMENT BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN
535 FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE
536 RECORDING YOUR NOTICE OF COMMENCEMENT."

537 (b) Provide the applicant and the owner of the real
538 property upon which improvements are to be constructed with a
539 printed statement stating that the right, title, and interest of
540 the person who has contracted for the improvement may be subject
541 to attachment under the Construction Lien Law. The Department of
542 Business and Professional Regulation shall furnish, for
543 distribution, the statement described in this paragraph, and the
544 statement must be a summary of the Construction Lien Law and
545 must include an explanation of the provisions of the
546 Construction Lien Law relating to the recording, and the posting
547 of copies, of notices of commencement and a statement
548 encouraging the owner to record a notice of commencement and
549 post a copy of the notice of commencement in accordance with s.
550 713.13. The statement must also contain an explanation of the
551 owner's rights if a lienor fails to furnish the owner with a

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552 notice as provided in s. 713.06(2) and an explanation of the
553 owner's rights as provided in s. 713.22. The authority that
554 issues the building permit must obtain from the Department of
555 Business and Professional Regulation the statement required by
556 this paragraph and must mail, deliver by electronic mail or
557 other electronic format or facsimile, or personally deliver that
558 statement to the owner or, in a case in which the owner is
559 required to personally appear to obtain the permit, provide that
560 statement to any owner making improvements to real property
561 consisting of a single or multiple family dwelling up to and
562 including four units. However, the failure by the authorities to
563 provide the summary does not subject the issuing authority to
564 liability.

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

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

574 Require ~~If the direct contract is greater than \$2,500,~~
575 the applicant to shall file with the issuing authority before
576 ~~prior to~~ the first inspection ~~either a certified copy of the~~
577 ~~recorded~~ notice of commencement if the direct contract is
578 greater than \$7,500. For purposes of this paragraph, the term
579 "copy of the notice of commencement" means a certified copy of
580 the recorded notice of commencement, or a notarized statement

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581 that the notice of commencement has been filed for recording,
582 along with a copy thereof, or the clerk's office's official
583 records identifying information that includes the instrument
584 number for the notice of commencement or the number and page of
585 book where the notice of commencement is recorded, as identified
586 by the clerk.

587 1. In the absence of the filing of a ~~certified~~ copy of the
588 ~~recorded~~ notice of commencement, the issuing authority or a
589 private provider performing inspection services may not perform
590 or approve subsequent inspections until the applicant files by
591 mail, facsimile, hand delivery, or any other means such
592 ~~certified~~ copy with the issuing authority.

593 2. The ~~certified~~ copy of the notice of commencement must
594 contain the name and address of the owner, the name and address
595 of the contractor, and the location or address of the property
596 being improved. The issuing authority shall verify that the name
597 and address of the owner, the name of the contractor, and the
598 location or address of the property being improved which is
599 contained in the ~~certified~~ copy of the notice of commencement is
600 consistent with the information in the building permit
601 application.

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

605 4. This paragraph subsection does not require the recording
606 of a notice of commencement before ~~prior to~~ the issuance of a
607 building permit. If a local government requires a separate
608 permit or inspection for installation of temporary electrical
609 service or other temporary utility service, land clearing, or

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610 other preliminary site work, such permits may be issued and such
611 inspections may be conducted without providing the issuing
612 authority with a ~~certified~~ copy of the ~~a recorded~~ notice of
613 commencement ~~or a notarized statement regarding a recorded~~
614 ~~notice of commencement. This subsection does not apply to a~~
615 ~~direct contract to repair or replace an existing heating or air-~~
616 ~~conditioning system in an amount less than \$15,000.~~

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

622
623 This subsection does not apply to a direct contract to repair or
624 replace an existing heating or air-conditioning system in an
625 amount less than \$15,000.

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

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

638 713.18 Manner of serving documents ~~notices and other~~

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639 ~~instruments.~~

640 (1) Unless otherwise specifically provided by law, service
641 of any document notices, ~~claims of lien, affidavits,~~
642 ~~assignments, and other instruments~~ permitted or required under
643 this part, s. 255.05, or s. 337.18, or copies thereof when so
644 permitted or required, ~~unless otherwise specifically provided in~~
645 ~~this part,~~ must be made by one of the following methods:

646 (a) By hand ~~actual~~ delivery to the person to be served; if
647 a partnership, to one of the partners; if a corporation, to an
648 officer or a ~~director, managing agent, or business agent; or,~~
649 if a limited liability company, to a member or manager; or to an
650 employee or agent authorized by the partnership, corporation, or
651 limited liability company to receive service of such document.

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

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

659 (2) Notwithstanding subsection (1), service of a notice to
660 owner or a preliminary notice to contractor under this part, s.
661 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date
662 of mailing and the requirements for service under this section
663 have been satisfied if all of the following requirements have
664 been met:

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

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668 ~~addresses set forth~~ in subsection (3).~~†~~

669 (b) The notice is mailed within 40 days after the date the
670 lienor first furnishes labor, services, or materials.~~†~~~~and~~

671 (c)1. The person who served the notice maintains a
672 ~~registered or certified~~ mail log that shows the registered or
673 certified mail number issued by the United States Postal
674 Service, the name and address of the person served, and the date
675 stamp of the United States Postal Service confirming the date of
676 mailing; or

677 2. The person who served the notice maintains ~~electronic~~
678 tracking records approved or generated by the United States
679 Postal Service containing the postal tracking number,~~the name~~
680 ~~and address of the person served,~~ and verification of the date
681 of receipt by the United States Postal Service.

682 (3) (a) Notwithstanding subsection (1), service of a
683 document under an instrument pursuant to this section is
684 effective on the date of mailing or shipping, and the
685 requirements for service under this section have been satisfied,
686 ~~the instrument~~ if the document is it:

687 1. ~~Is~~ Sent to the last address shown in the notice of
688 commencement or any amendment thereto or, in the absence of a
689 notice of commencement, to the last address shown in the
690 building permit application, or to the last known address of the
691 person to be served; and

692 2. ~~Is~~ Returned as being "refused," "moved, not
693 forwardable," or "unclaimed," or is otherwise not delivered or
694 deliverable through no fault of the person serving the document
695 ~~item.~~

696 (b) If the address shown in the notice of commencement or

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697 any amendment thereto ~~to the notice of commencement~~, or, in the
698 absence of a notice of commencement, in the building permit
699 application, is incomplete for purposes of mailing or delivery,
700 the person serving the document ~~item~~ may complete the address
701 and properly format it according to United States Postal Service
702 addressing standards using information obtained from the
703 property appraiser or another public record without affecting
704 the validity of service under this section.

705 (4) A document ~~notice~~ served by a lienor on one owner or
706 one partner of a partnership owning the real property is deemed
707 served on ~~notice to~~ all owners and partners.

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

710 713.21 Discharge of lien.—A lien properly perfected under
711 this chapter may be discharged, or released in whole or in part,
712 by any of the following methods:

713 (1) By entering satisfaction of the lien upon the margin of
714 the record thereof in the clerk's office when not otherwise
715 prohibited by law. This satisfaction must ~~shall~~ be signed by the
716 lienor or, the lienor's agent or attorney and attested by the
717 ~~said~~ clerk. Any person who executes a claim of lien has ~~shall~~
718 ~~have~~ authority to execute a satisfaction in the absence of
719 actual notice of lack of authority to any person relying on the
720 same.

721 (2) By the satisfaction or release of the lienor, duly
722 acknowledged and recorded in the clerk's office. The
723 satisfaction or release must include the lienor's notarized
724 signature and set forth the official records' reference number
725 and recording date affixed by the recording office on the

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726 subject lien. Any person who executes a claim of lien ~~has shall~~
727 ~~have~~ authority to execute a satisfaction or release in the
728 absence of actual notice of lack of authority to any person
729 relying on the same.

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

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

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

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

747 713.22 Duration of lien.—

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

753

754

NOTICE OF CONTEST OF LIEN

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

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

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

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

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

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for

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784 furnishing his or her labor, services, or materials must, as a
785 condition precedent to recovery under the bond, serve a written
786 notice of nonpayment ~~on to~~ the contractor and a copy of the
787 notice of nonpayment on the surety. The notice of nonpayment
788 must be under oath and served during the progress of the work or
789 thereafter, but may not be served later than 90 days after the
790 final furnishing of labor, services, or materials by the lienor,
791 or, with respect to rental equipment, later than 90 days after
792 the date the rental equipment was on the ~~job~~ site of the
793 improvement and available for use. A notice of nonpayment that
794 includes sums for retainage must specify the portion of the
795 amount claimed for retainage. The required notice satisfies this
796 condition precedent with respect to the payment described in the
797 notice of nonpayment, including unpaid finance charges due under
798 the lienor's contract, and with respect to any other payments
799 which become due to the lienor after the date of the notice of
800 nonpayment. The time period for serving a notice of nonpayment
801 is ~~shall be~~ measured from the last day of furnishing labor,
802 services, or materials by the lienor and may not be measured by
803 other standards, such as the issuance of a certificate of
804 occupancy or the issuance of a certificate of substantial
805 completion. The failure of a lienor to receive retainage sums
806 not in excess of 10 percent of the value of labor, services, or
807 materials furnished by the lienor is not considered a nonpayment
808 requiring the service of the notice provided under this
809 paragraph. If the payment bond is not recorded before
810 commencement of construction, the time period for the lienor to
811 serve a notice of nonpayment may, at the option of the lienor,
812 be calculated from the date specified in this section or the

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813 date the lienor is served a copy of the bond. However, the
814 limitation period for commencement of an action on the payment
815 bond as established in paragraph (e) may not be expanded. The
816 negligent inclusion or omission of any information in the notice
817 of nonpayment that has not prejudiced the contractor or surety
818 does not constitute a default that operates to defeat an
819 otherwise valid bond claim. A lienor who serves a fraudulent
820 notice of nonpayment forfeits his or her rights under the bond.
821 A notice of nonpayment is fraudulent if the lienor has willfully
822 exaggerated the amount unpaid, willfully included a claim for
823 work not performed or materials not furnished for the subject
824 improvement, or prepared the notice with such willful and gross
825 negligence as to amount to a willful exaggeration. However, a
826 minor mistake or error in a notice of nonpayment, or a good
827 faith dispute as to the amount unpaid, does not constitute a
828 willful exaggeration that operates to defeat an otherwise valid
829 claim against the bond. The service of a fraudulent notice of
830 nonpayment is a complete defense to the lienor's claim against
831 the bond. The notice under this paragraph must include the
832 following information, current as of the date of the notice, and
833 must be in substantially the following form:

834

835 NOTICE OF NONPAYMENT

836

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

838

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

840

841 The undersigned lienor notifies you that:

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842 1. The lienor has furnished ...(describe labor, services,
 843 or materials)... for the improvement of the real property
 844 identified as ...(property description).... The corresponding
 845 amount unpaid to date is \$...., of which \$.... is unpaid
 846 retainage.

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

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

854
 855 I declare that I have read the foregoing Notice of Nonpayment
 856 and that the facts stated in it are true to the best of my
 857 knowledge and belief.

858
 859 DATED on,

860
 861 ...(signature and address of lienor)...

862
 863 STATE OF FLORIDA
 864 COUNTY OF.....

865
 866 The foregoing instrument was sworn to (or affirmed) and
 867 subscribed before me by means of physical presence or sworn to
 868 (or affirmed) by online notarization this day of,
 869 ...(year)..., by ...(name of signatory)....

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

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

873
874 Personally Known OR Produced Identification

875
876 Type of Identification Produced.....

877 (e) An action for the labor, or ~~or~~ materials, or supplies may
878 not be instituted or prosecuted against the contractor or surety
879 unless both notices have been given, if required by this
880 section. An action may not be instituted or prosecuted against
881 the contractor or against the surety on the bond under this
882 section after 1 year from the performance of the labor or
883 completion of delivery of the materials and supplies. The time
884 period for bringing an action against the contractor or surety
885 on the bond is ~~shall be~~ measured from the last day of furnishing
886 labor, services, or materials by the lienor. The time period may
887 not be measured by other standards, such as the issuance of a
888 certificate of occupancy or the issuance of a certificate of
889 substantial completion. A contractor or the contractor's
890 attorney may elect to shorten the time within which an action to
891 enforce any claim against a payment bond provided under this
892 section or s. 713.245 must be commenced at any time after a
893 notice of nonpayment, if required, has been served for the claim
894 by recording in the clerk's office a notice in substantially the
895 following form:

896 NOTICE OF CONTEST OF CLAIM
897 AGAINST PAYMENT BOND

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

899 You are notified that the undersigned contests your notice

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900 of nonpayment, dated,, and served on the undersigned
 901 on,, and that the time within which you may file suit
 902 to enforce your claim is limited to 60 days after ~~from~~ the date
 903 of service of this notice.

904 DATED on,

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

906

907 The claim of any lienor upon whom the notice is served and who
 908 fails to institute a suit to enforce his or her claim against
 909 the payment bond within 60 days after service of the notice is
 910 ~~shall be~~ extinguished automatically. The contractor or the
 911 contractor's attorney shall serve, in accordance with s. 713.18,
 912 a copy of the notice of contest to the lienor at the address
 913 shown in the notice of nonpayment or most recent amendment
 914 thereto and shall certify to such service on the face of the
 915 notice and record the notice. After the clerk records the notice
 916 with the certificate of service, the clerk shall serve, in
 917 accordance with s. 713.18, a copy of such recorded notice on the
 918 lienor and the contractor or the contractor's attorney.

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

921 713.24 Transfer of liens to security.-

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

926 (a) Depositing in the clerk's office a sum of money; or

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

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929
930 ~~either to be~~ in an amount equal to the amount demanded in such
931 claim of lien, plus interest thereon at the legal rate for 3
932 years, plus \$5,000 ~~\$1,000~~ or 25 percent of the amount demanded
933 in the claim of lien, whichever is greater, to apply on any
934 attorney ~~attorney's~~ fees and court costs that may be taxed in
935 any proceeding to enforce the ~~said~~ lien. Such deposit or bond
936 must ~~shall~~ be conditioned to pay any judgment or decree which
937 may be rendered for the satisfaction of the lien for which such
938 claim of lien was recorded. Upon making such deposit or filing
939 such bond, the clerk shall make and record a certificate, which
940 must include a copy of the deposit or bond used to transfer,
941 showing the transfer of the lien from the real property to the
942 security and shall mail a copy thereof together with a copy of
943 the deposit or bond used to transfer by registered or certified
944 mail to the lienor named in the claim of lien so transferred, at
945 the address stated therein. Upon filing the certificate of
946 transfer, the real property is ~~shall thereupon be~~ released from
947 the lien claimed, and such lien is ~~shall be~~ transferred to the
948 ~~said~~ security. In the absence of allegations of privity between
949 the lienor and the owner, and subject to any order of the court
950 increasing the amount required for the lien transfer deposit or
951 bond, no other judgment or decree to pay money may be entered by
952 the court against the owner. The clerk is ~~shall be~~ entitled to a
953 service charge for making and serving the certificate, in the
954 amount of up to \$20, from which the clerk shall remit \$5 to the
955 Department of Revenue for deposit into the General Revenue Fund.
956 If the transaction involves the transfer of multiple liens, the
957 clerk must charge an additional service charge of up to \$10 for

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958 each additional lien ~~shall be charged~~, from which the clerk
959 shall remit \$2.50 to the Department of Revenue for deposit into
960 the General Revenue Fund. For recording the certificate and
961 approving the bond, the clerk shall receive her or his usual
962 statutory service charges as prescribed in s. 28.24. Any number
963 of liens may be transferred to one such security.

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

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

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

984 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
985 enforce a lien, including a lien that has been transferred to
986 security, or to enforce a claim against a bond under this part,

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987 the prevailing party is entitled to recover a reasonable fee for
988 the services of her or his attorney for trial and appeal or for
989 arbitration, in an amount to be determined by the court, which
990 fee must be taxed as part of the prevailing party's costs, as
991 allowed in equitable actions.

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