

July 31, 2008

Georgia Legislature Revises Mechanics and Materialman's Liens Laws

New Changes Become Effective on March 31, 2009

The Georgia Legislature recently passed legislation making significant changes to the laws regarding mechanics and materialman's liens. The new law (1) changes applicable filing deadlines; (2) modifies the current forms of interim and final lien waivers, affidavits of non-payment, and contests of lien; and (3) provides for the automatic expiration of mechanics and materialman's liens. The changes go into effect on March 31, 2009.

A summary of the major changes is as follows:

- *Statutory forms of lien documents.* The new law slightly modifies the statutory forms of interim and final lien waivers, affidavits of non-payment, and contests of lien that should be used once the new law takes effect. The law provides that beginning on March 31, 2009, the new forms of interim and final lien waivers, affidavits of non-payment and contests of lien will be the only accepted forms and that any other forms will be invalid. The new forms are reprinted at the end of this Legal Alert.
- *Deadline to file a lien.* Currently, a claimant must file a lien within three months after work is completed or materials or services are provided. Under the new legislation, a claimant will have 90 days after work is completed or materials or services are provided to file a lien. If the deadline falls on a Saturday or non-business day, the deadline will be automatically extended to the next business day.
- *Deadline to file a lien action.* Under the current law, a claimant must file an action seeking collection on a lien within 12 months after work is completed or materials or services are provided. The revised legislation will give a claimant 365 days from the date the lien was filed to file a lien action. This lien action may be a lawsuit, a claim for binding arbitration or a proof of claim in a bankruptcy case.
- *Deadline to file a notice of commencement of lien action.* A claimant currently has 14 days after a lien action is filed to file a notice of commencement. Under the new legislation, a claimant will have 30 days after a lien action is filed to file its notice.
- *Deadline to file an affidavit of non-payment.* The time period in which to file an affidavit of non-payment currently is 30 days after a lien waiver has been signed. The new legislation extends this deadline to 60 days.
- *Automatic expiration of liens.* Once the new law takes effect, it provides that if a notice of lien action is not filed within 395 days of the date that the lien is filed, then the lien will be voided automatically without further action by an owner or contractor. If an owner or contractor files a notice of contest of lien, a lien claimant will then have 90 days to file a lien action and notice of commencement of lien action, or the new law provides that the lien will be automatically voided.

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- *Required claim of lien language.* The new law provides that after the new changes become effective, a claim of lien must include the statement below in boldface print in at least 12 point font. The new law states that without this language, a claim of lien will be invalid.

“THIS CLAIM OF LIEN EXPIRES AND IS VOID 395 DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF NO NOTICE OF COMMENCEMENT OF LIEN ACTION IS FILED IN THAT TIME PERIOD.”

Form of Interim and Final Lien Waivers, Affidavits of Non-payment, and Contests of Lien

Beginning March 31, 2009, the forms provided below should be used for all interim and final lien waivers, affidavits of non-payment, and contests of lien. All text must be in boldface capital letters in at least 12 point font.



If you have any questions about this alert, or the services we provide, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ [NAME OF CONTRACTOR] TO FURNISH _____ [DESCRIBE MATERIALS AND/OR LABOR] FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ [TITLE OF THE PROJECT OR BUILDING] WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, GEORGIA, AND IS OWNED BY _____, A _____ ("OWNER"), HAS AS ITS STREET ADDRESS(ES) _____

AND IS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN DEED TO OWNER DATED _____, 20__ AND RECORDED ON SAID DATE IN BOOK _____, BEGINNING AT PAGE _____, OF THE RECORDS OF THE CLERK OF SUPERIOR COURT OF _____ COUNTY, GEORGIA, WHICH DEED IS HEREIN INCORPORATED BY REFERENCE AND MADE A PART OF THIS WAIVER.

UPON THE RECEIPT OF THE SUM OF \$_____, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF _____ [DATE] AND EXCEPTING THOSE RIGHTS AND AND LIENS THAT THE MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

GIVEN UNDER HAND AND SEAL THIS ___ DAY OF _____, 20__.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

UNOFFICIAL WITNESS _____ (SEAL)

NOTARY PUBLIC

MY COMMISSION EXPIRES:_____

[NOTARIAL SEAL]

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.



**UNCONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT**

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ [NAME OF CONTRACTOR] TO FURNISH _____ [DESCRIBE MATERIALS AND/OR LABOR] FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ [TITLE OF THE PROJECT OR BUILDING] WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, GEORGIA, AND IS OWNED BY _____, A _____ ("OWNER"), HAS AS ITS STREET ADDRESS(ES) _____

_____ AND IS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN DEED TO OWNER DATED _____, 20__ AND RECORDED ON SAID DATE IN BOOK _____, BEGINNING AT PAGE _____, OF THE RECORDS OF THE CLERK OF SUPERIOR COURT OF _____ COUNTY, GEORGIA, WHICH DEED IS HEREIN INCORPORATED BY REFERENCE AND MADE A PART OF THIS WAIVER.

UPON THE RECEIPT OF THE SUM OF \$_____, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

GIVEN UNDER HAND AND SEAL THIS ___ DAY OF _____, 20__.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

UNOFFICIAL WITNESS _____(SEAL)

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

[NOTARIAL SEAL]

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.



AFFIDAVIT OF NONPAYMENT UNDER O.C.G.A. SECTION 44-14-366

STATE OF GEORGIA
COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

PURSUANT TO O.C.G.A. SECTION 44-14-366 THE UNDERSIGNED EXECUTED A LIEN WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED _____, _____. THE AMOUNT SET FORTH IN SAID WAIVER AND RELEASE (\$ _____) HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF SUCH NONPAYMENT.

THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE UNDERSIGNED, THIS _____ DAY OF _____, _____.

**SWORN TO AND EXECUTED
IN THE PRESENCE OF:**

CLAIMANT’S SIGNATURE (SEAL)

WITNESS

NOTARY PUBLIC

WITHIN SEVEN DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT, THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY REGISTERED OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF

THE PROPERTY. IF THE FILING PARTY IS NOT IN PRIVITY OF CONTRACT WITH THE PROPERTY OWNER AND A NOTICE OF COMMENCEMENT IS FILED FOR THE IMPROVEMENT ON THE PROPERTY FOR WHICH THE FILING PARTY'S LABOR, SERVICES, OR MATERIALS WERE FURNISHED, A COPY OF THE AFFIDAVIT SHALL BE SENT TO THE CONTRACTOR AT THE ADDRESS SHOWN ON THE NOTICE OF COMMENCEMENT. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON FILE WITH THE SECRETARY OF STATE'S CORPORATIONS DIVISION, SENDING A COPY OF THE LIEN TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED SUFFICIENT.

NOTICE OF CONTEST OF LIEN

TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF LIEN FILED BY YOU ON _____ 20____, AND RECORDED IN _____ BOOK _____, PAGE _____ OF THE PUBLIC RECORDS OF _____ COUNTY, GEORGIA, AGAINST PROPERTY OWNED BY _____, AND THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A LIEN ACTION TO ENFORCE YOUR LIEN IS LIMITED TO 60 DAYS FROM RECEIPT OF THIS NOTICE. THIS _____ DAY OF _____, 20__.

THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO NOT: (1) COMMENCE A LIEN ACTION FOR RECOVERY OF THE AMOUNT OF THE LIEN CLAIM PURSUANT TO O.C.G.A. SECTION 44-14-361.1 WITHIN 60 DAYS FROM RECEIPT OF THIS NOTICE; AND (2) FILE A NOTICE OF COMMENCEMENT OF LIEN ACTION WITHIN 30 DAYS OF FILING THE ABOVE-REFERENCED LIEN ACTION.

**SIGNED: _____
(OWNER, CONTRACTOR, AGENT OR ATTORNEY)**