

Senate Bill 374

By: Senators Weber of the 40th and Seabaugh of the 28th

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia  
2 Annotated, relating to mechanics and materialmen, so as to provide for definitions; to revise  
3 certain time periods for filing materialmen's and mechanics' liens; to provide for certain  
4 notices regarding waiver of lien or claim upon bond; to set filing fees for such liens; to define  
5 certain terms; to provide that certain notices shall be sent by registered or overnight mail or  
6 statutory overnight delivery; to provide that certain liens are unenforceable if an action is not  
7 commenced within 365 days; to provide for a notice of contest of lien; to provide for the  
8 computation of certain time periods; to provide for related matters; to provide for an effective  
9 date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,  
13 relating to mechanics and materialmen, is amended by adding new paragraphs to Code  
14 Section 44-14-360, relating to definitions, to read as follows:

15 "(.1) 'Business day' means any day that is not a Saturday, Sunday, or legal holiday."

16 "(2.1) 'Lien action' means a lawsuit, proof of claim in a bankruptcy case, or a binding  
17 arbitration."

18

19 **SECTION 2.**

20 Said part is further amended by revising Code Section 44-14-361.1, relating to how liens are  
21 declared and created, as follows:

22 "44-14-361.1.

23 (a) To make good the liens specified in paragraphs (1) through (8) of subsection (a) of  
24 Code Section 44-14-361, they must be created and declared in accordance with the  
25 following provisions, and on failure of any of them the lien shall not be effective or  
26 enforceable:

1 (1) A substantial compliance by the party claiming the lien with his or her contract for  
 2 building, repairing, or improving; for architectural services furnished; for registered  
 3 forester services furnished or performed; for registered land surveying or registered  
 4 professional engineering services furnished or performed; or for materials or machinery  
 5 furnished or set up;

6 (2) The filing for record of his or her claim of lien within ~~three months~~ 90 days after the  
 7 completion of the work, the furnishing of the architectural services, or the furnishing or  
 8 performing of such surveying or engineering services or within ~~three months~~ 90 days  
 9 after the material or machinery is furnished in the office of the clerk of the superior court  
 10 of the county where the property is located; ~~which.~~ The lien shall include a statement  
 11 regarding its expiration pursuant to Code Section 44-14-367 and a notice to the owner of  
 12 the property on which a claim of lien is filed that such owner has the right to contest the  
 13 lien; the absence of such statement or notice shall invalidate the lien. The claim shall be  
 14 in substance as follows:

15 'A.B., a mechanic, contractor, subcontractor, materialman, machinist, manufacturer,  
 16 registered architect, registered forester, registered land surveyor, registered professional  
 17 engineer, or other person (as the case may be) claims a lien in the amount of (specify  
 18 the amount claimed) on the house, factory, mill, machinery, or railroad (as the case may  
 19 be) and the premises or real estate on which it is erected or built, of C.D. (describing  
 20 the houses, premises, real estate, or railroad), for satisfaction of a claim which became  
 21 due on (specify the date the claim was due, which is the same as the last date the labor,  
 22 services, or materials were supplied to the premises) for building, repairing, improving,  
 23 or furnishing material (or whatever the claim may be).'

24 ~~At the time of filing for record of his claim of lien~~ No later than two business days after  
 25 the date the claim of lien is filed of record, the lien claimant shall send a true and accurate  
 26 copy of the claim of lien by registered or certified mail or statutory overnight delivery to  
 27 the owner of the property or, if the owner's address cannot be found, the contractor, as  
 28 the agent of the owner; provided, however, if the property owner is an entity on file with  
 29 the Secretary of State's Corporations Division, sending a copy of the claim of lien to the  
 30 entity's address or the registered agent's address shall satisfy this requirement. In all  
 31 cases in which a notice of commencement is filed with the clerk of the superior court  
 32 pursuant to subsection (b) of Code Section 44-14-361.5, a lien claimant shall also send  
 33 a copy of the claim of lien by registered or certified mail or statutory overnight delivery  
 34 to the contractor at the address shown on the notice of commencement;

35 (3) The commencement of ~~an~~ a lien action for the recovery of the amount of the party's  
 36 claim within ~~12 months~~ 365 days from the ~~time the same shall become due~~ date of filing  
 37 for record of his or her claim of lien. In addition, within ~~14~~ 30 days after filing

1 commencing such lien action, the party claiming the lien shall file a notice with the clerk  
 2 of the superior court of the county wherein the subject lien was filed. The notice shall  
 3 contain a caption referring to the then owner of the property against which the lien was  
 4 filed and referring to a deed or other recorded instrument in the chain of title of the  
 5 affected property. The notice shall be executed, under oath, by the party claiming the lien  
 6 or by such party's attorney of record, but failure to execute the notice under oath shall be  
 7 an amendable defect which may be cured by the party claiming the lien or by such party's  
 8 attorney without leave of court at any time before entry of the pretrial order and thereafter  
 9 by leave of court. An amendment of notice pursuant to this Code section shall relate back  
 10 to the date of filing of the notice. The notice shall identify the court or arbitration venue  
 11 wherein the lien action is brought; the style and number, if any, of the lien action,  
 12 including the names of all parties thereto; the date of the filing of the lien action; and the  
 13 book and page number of the records of the county wherein the subject lien is recorded  
 14 in the same manner in which liens specified in Code Section 44-14-361 are filed. The  
 15 clerk of the superior court shall enter on the subject lien so referred to the book and page  
 16 on which the notice is recorded and shall index such notice in the name of the then  
 17 purported owner as shown by the caption contained in such notice. A separate lis pendens  
 18 notice need not be filed with the commencement of this action; and

19 (4) In the event any contractor or subcontractor procuring material, architect's services,  
 20 registered forester's services, registered land surveyor's services, or registered  
 21 professional engineer's services, labor, or supplies for the building, repairing, or  
 22 improving of any real estate, building, or other structure shall abscond or die or leave the  
 23 state ~~within 12 months from the date such services, labor, supplies, or material are~~  
 24 ~~furnished to him or her~~ during the required time period for filing a lien action, so that  
 25 personal jurisdiction cannot be obtained on the contractor or subcontractor in ~~an~~ a lien  
 26 action for the services, material, labor, or supplies, or if the contractor or subcontractor  
 27 shall be adjudicated a bankrupt, or if, after the filing of ~~an~~ a lien action, no final judgment  
 28 can be obtained against him or her for the value of such material, services, labor, or  
 29 supplies because of his or her death, adjudication in bankruptcy, or the contract between  
 30 the party claiming the lien and the contractor or subcontractor includes a provision  
 31 preventing payment to the claimant until after the contractor or the subcontractor has  
 32 received payment, then and in any of these events, the person or persons furnishing  
 33 material, services, labor, and supplies shall be relieved of the necessity of filing ~~an~~ a lien  
 34 action or obtaining judgment against the contractor or subcontractor as a prerequisite to  
 35 enforcing a lien against the property improved by the contractor or subcontractor. Subject  
 36 to Code Section 44-14-361, the person or persons furnishing material, services, labor, and  
 37 supplies may enforce the lien directly against the property so improved in ~~an~~ a lien action

1 against the owner thereof, if filed within ~~12 months from the time the lien becomes due~~  
2 the required time period for filing a lien action, with the judgment rendered in any such  
3 proceeding to be limited to a judgment in rem against the property improved and to  
4 impose no personal liability upon the owner of the property; provided, however, that in  
5 such lien action for recovery, the owner of the real estate improved, who has paid the  
6 agreed price or any part of same, may set up the payment in any lien action brought and  
7 prove by competent and relevant evidence that the payments were applied as provided  
8 by law, and no judgment shall be rendered against the property improved. Within ~~14~~ 30  
9 days after filing such lien action, the party claiming the lien shall file a notice with the  
10 clerk of the superior court of the county wherein the subject lien was filed. The notice  
11 shall contain a caption referring to the then owner of the property against which the lien  
12 was filed and referring to a deed or other recorded instrument in the chain of title of the  
13 affected property. The notice shall be executed, under oath, by the party claiming the lien  
14 or by his or her attorney of record. The notice shall identify the court or arbitration venue  
15 wherein the lien action is brought; the style and number of the lien action, if any,  
16 including the names of all parties thereto; the date of the filing of the lien action; and the  
17 book and page number of the records of the county wherein the subject lien is recorded  
18 in the same manner in which liens specified in Code Section 44-14-361 are filed. The  
19 clerk of the superior court shall enter on the subject lien so referred to the book and page  
20 on which the notice is recorded and shall index such notice in the name of the then  
21 purported owner as shown by the caption contained in such notice. A separate lis pendens  
22 notice need not be filed with the commencement of this action.

23 (b) As between themselves, the liens provided for in Code Section 44-14-361 shall rank  
24 according to the date filed; but all of the liens mentioned in this Code section for repairs,  
25 building, or furnishing materials or services, upon the same property, shall, as to each  
26 other, be of the same date when declared and filed for record within ~~three months~~ 90 days  
27 after the work is done or before that time.

28 (c) The liens specified in Code Section 44-14-361 shall be inferior to liens for taxes, to the  
29 general and special liens of laborers, to the general lien of landlords of rent when a distress  
30 warrant is issued out and levied, to claims for purchase money due persons who have only  
31 given bonds for titles, and to other general liens when actual notice of the general lien of  
32 landlords and others has been communicated before the work was done or materials or  
33 services furnished; but the liens provided for in Code Section 44-14-361 shall be superior  
34 to all other liens not excepted by this subsection.

35 (d) In any proceeding brought by any materialman, by any mechanic, by any laborer, by  
36 any subcontractor, or by any mechanic of any sort employed by any subcontractor or by  
37 any materialmen furnishing material to any subcontractor, or by any laborer furnishing

1 labor to any subcontractor, to enforce such a lien, the contractor having a direct contractual  
 2 relationship with the subcontractor shall not be a necessary party; but he or she may be  
 3 made a party. In any proceedings brought by any mechanic employed by any subcontractor,  
 4 by any materialmen furnishing material to any subcontractor, or by any laborer furnishing  
 5 labor to any subcontractor, the subcontractor shall not be a necessary party; but he or she  
 6 may be made a party. The contractor or subcontractor or both may intervene in the  
 7 proceedings at any time before judgment for the purpose of resisting the establishment of  
 8 the lien or of asserting against the lienor any claim of the contractor or subcontractor  
 9 growing out of or related to the transaction upon which the asserted lien is based.

10 (e) In no event shall the aggregate amount of liens set up by Code Section 44-14-361  
 11 exceed the contract price of the improvements made or services performed.

12 (f) The filing fees for a claim of materialman's or mechanic's lien and any related  
 13 document created pursuant to this Code section, including but not limited to a notice of  
 14 commencement of action, shall be the amount set by Code Section 15-6-77 for liens on real  
 15 estate and personal property."

### 16 SECTION 3.

17 Said part is further amended by revising subsection (c) of Code Section 44-14-361.5, relating  
 18 to liens of persons without privity of contract, as follows:

19 "~~(c) A Notice to Contractor~~ notice to contractor shall be ~~given~~ sent by registered or  
 20 certified mail or statutory overnight delivery to the owner or the agent of the owner and to  
 21 the contractor at the addresses set forth in the ~~Notice of Commencement~~ notice of  
 22 commencement setting forth:

23 (1) The name, address, and telephone number of the person providing labor, services, or  
 24 materials;

25 (2) The name and address of each person at whose instance the labor, services, or  
 26 materials are being furnished;

27 (3) The name of the project and location of the project set forth in the ~~Notice of~~  
 28 ~~Commencement~~ notice of commencement; and

29 (4) A description of the labor, services, or materials being provided and, if known, the  
 30 contract price or anticipated value of the labor, services, or materials to be provided or  
 31 the amount claimed to be due, if any."

### 32 SECTION 4.

33 Said part is further amended by revising subsection (a) of Code Section 44-14-364, relating  
 34 to the release of lien on filing of bond, as follows:



1 "44-14-366.

2 (a) A right to claim a lien or to claim upon a bond may not be waived in advance of  
3 furnishing of labor, services, or materials. Any purported waiver or release of lien or bond  
4 claim or of this Code section executed or made in advance of furnishing of labor, services,  
5 or materials is null, void, and unenforceable.

6 (b) No oral or written statement by the claimant purporting to waive, release, impair, or  
7 otherwise adversely affect a lien or bond claim is enforceable or creates an estoppel or  
8 impairment of claim of lien or claim upon a bond unless:

9 (1) It is pursuant to a waiver and release form duly executed by claimant prescribed  
10 below; and

11 (2) The claimant has received payment for the claim as set forth in subsection (f) of this  
12 Code section.

13 (c) When a claimant is requested to execute a waiver and release in exchange for or in  
14 order to induce payment other than final payment, the waiver and release ~~must~~ shall  
15 substantially follow ~~substantially~~ the following form, in boldface capital letters in at least  
16 12 point font and the priority of such claimant's lien rights, except as to retention, shall  
17 upon such payment thereafter run from the day after the date specified in such Interim  
18 Waiver and Release upon Payment form:

19 INTERIM WAIVER AND RELEASE  
20 UPON PAYMENT

21 ~~STATE OF GEORGIA~~

22 ~~COUNTY OF \_\_\_\_\_~~

23 ~~The undersigned mechanic and/or materialman has been employed by~~  
24 ~~\_\_\_\_\_ (name of contractor) to furnish \_\_\_\_\_~~  
25 ~~(describe materials and/or labor) for the construction of improvements known as~~  
26 ~~\_\_\_\_\_ (title of the project or building) which is located in the City~~  
27 ~~of \_\_\_\_\_, County of \_\_\_\_\_, and is owned by~~  
28 ~~\_\_\_\_\_ (name of owner) and more particularly described as follows:~~

29 \_\_\_\_\_  
30 \_\_\_\_\_  
31 \_\_\_\_\_

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

1 Upon the receipt of the sum of \$ \_\_\_\_\_, the mechanic and/or materialman waives  
 2 and releases any and all liens or claims of liens it has upon the foregoing described  
 3 property through the date of \_\_\_\_\_ (date) and excepting those  
 4 rights and liens that the mechanic and/or materialman might have in any retained  
 5 amounts, on account of labor or materials, or both, furnished by the undersigned to or on  
 6 account of said contractor for said building or premises.

7 Given under hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

8 \_\_\_\_\_ (Seal)  
 9 \_\_\_\_\_

10 \_\_\_\_\_  
 11 (Witness)

12 \_\_\_\_\_  
 13 (Address)

14 Provided, however, that the failure to correctly complete any of the blank spaces in the  
 15 above form shall not invalidate said form so long as the subject matter of said release may  
 16 reasonably be determined:

17 (d) When a claimant is requested to execute a waiver and release in exchange for or in  
 18 order to induce payment of final payment, the waiver and release must follow substantially  
 19 the following form:

20 UNCONDITIONAL WAIVER AND RELEASE  
 21 UPON FINAL PAYMENT

22 STATE OF GEORGIA  
 23 COUNTY OF \_\_\_\_\_

24 The undersigned mechanic and/or materialman has been employed by  
 25 \_\_\_\_\_ (name of contractor) to furnish \_\_\_\_\_  
 26 (describe materials and/or labor) for the construction of improvements known as  
 27 \_\_\_\_\_ (title of the project or building) which is located in the City  
 28 of \_\_\_\_\_, County of \_\_\_\_\_, and is owned by  
 29 \_\_\_\_\_ (name of owner) and more particularly described as  
 30 follows:

31 \_\_\_\_\_  
 32 \_\_\_\_\_  
 33 \_\_\_\_\_

~~(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.)~~

~~Upon the receipt of the sum of \$ \_\_\_\_\_, the mechanic and/or materialman waives and releases any and all liens or claims of liens or any right against any labor and/or material bond it has upon the foregoing described property.~~

~~Given under hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.~~

\_\_\_\_\_  
\_\_\_\_\_  
(Seal)

\_\_\_\_\_

(Witness)

\_\_\_\_\_

(Address)

~~NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT YET BEEN PAID, USE A CONDITIONAL RELEASE FORM.~~

**'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 \_\_\_\_\_, 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.)

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 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 \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(ADDRESS)

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.'

Provided, however, that the failure to correctly complete any of the blank spaces in the above form shall not invalidate said form so long as the subject matter of said release may reasonably be determined.

(d) When a claimant is requested to execute a waiver and release in exchange for or in order to induce payment making of final payment, the waiver and release must shall

1 substantially follow ~~substantially~~ the following form in boldface capital letters in at least  
2 12 point font:

3 UNCONDITIONAL WAIVER AND RELEASE  
4 UPON FINAL PAYMENT

5 STATE OF GEORGIA

6 COUNTY OF \_\_\_\_\_

7 The ~~undersigned mechanic and/or materialman~~ has been employed by  
8 \_\_\_\_\_ (name of contractor) to furnish \_\_\_\_\_  
9 (describe materials and/or labor) for the construction of improvements known as  
10 \_\_\_\_\_ (title of the project or building) which is located in the City  
11 of \_\_\_\_\_, County of \_\_\_\_\_, and is owned by  
12 \_\_\_\_\_ (name of owner) and more particularly described as  
13 follows:

14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_

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

21 Upon the receipt of the sum of \$ \_\_\_\_\_, the mechanic and/or materialman waives  
22 and releases any and all liens or claims of liens or any right against any labor and/or  
23 material bond it has upon the foregoing described property.

24 Given under hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

25 \_\_\_\_\_ (Seal)  
26 \_\_\_\_\_

27 \_\_\_\_\_  
28 (Witness)

29 \_\_\_\_\_  
30 (Address)

31 NOTICE: ~~THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND~~  
32 ~~STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS~~  
33 ~~DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU~~

1 ~~HAVE NOT BEEN PAID. IF YOU HAVE NOT YET BEEN PAID, USE A~~  
2 ~~CONDITIONAL RELEASE FORM.~~

3 **'WAIVER AND RELEASE**  
4 **UPON FINAL PAYMENT**

5 **STATE OF GEORGIA**

6 **COUNTY OF \_\_\_\_\_**

7 **THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN**  
8 **EMPLOYED BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO**

9 **FURNISH \_\_\_\_\_ (DESCRIBE MATERIALS AND/OR**  
10 **LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS**

11 **\_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH**

12 **IS LOCATED IN THE CITY OF \_\_\_\_\_, COUNTY OF**

13 **\_\_\_\_\_, AND IS OWNED BY \_\_\_\_\_ (NAME OF**

14 **OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_

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

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

29 **GIVEN UNDER HAND AND SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.**

30 \_\_\_\_\_ (SEAL)  
31 \_\_\_\_\_

1 \_\_\_\_\_  
 2 (WITNESS)  
 3 \_\_\_\_\_

4 (ADDRESS)

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

14 Provided, however, that the failure to correctly complete any of the blank spaces in the  
 15 above form shall not invalidate said form so long as the subject matter of said release may  
 16 reasonably be determined.

17 (e) Nothing contained in this Code section shall affect:

18 (1) The enforceability of any subordination of lien rights by a potential lien claimant to  
 19 the rights of any other party which may have or acquire an interest in all or any part of  
 20 the real estate, factories, railroads, or other property for which the potential lien claimant  
 21 has furnished labor, services, or material, even though such subordination is entered into  
 22 in advance of furnishing labor, services, or material and even though the claimant has not  
 23 actually received payment in full for its claim;

24 (2) The enforceability of any waiver of lien rights given in connection with the  
 25 settlement of a bona fide dispute concerning the amount due the lien claimant for labor,  
 26 services, or material which have already been furnished;

27 (3) The validity of a cancellation or release of a recorded claim of lien or preliminary  
 28 notice of lien rights; or

29 (4) The provisions of paragraph (2) of subsection (a) of Code Section 44-14-361.2,  
 30 paragraphs (3) and (4) of subsection (a) and subsections (b) and (c) of Code Section  
 31 44-14-361.4, or Code Section 44-14-364.

32 (f)(1) When a waiver and release provided for in this Code section is executed by the  
 33 claimant, it shall be binding against the claimant for all purposes, subject only to payment  
 34 in full of the amount set forth in the waiver and release.

35 (2) Such amounts shall conclusively be deemed paid in full upon the earliest to occur of:

36 (A) Actual receipt of funds;

1 (B) Execution by the claimant of a separate written acknowledgment of payment in  
 2 full; or  
 3 (C) ~~Thirty~~ Sixty days after the date of the execution of the waiver and release, unless  
 4 prior to the expiration of said ~~30~~ 60 day period the claimant files a claim of lien or files  
 5 in the county in which the property is located an ~~Affidavit of Nonpayment~~ affidavit of  
 6 nonpayment, using substantially the following form in boldface capital letters in at least  
 7 12 point font:

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

10 ~~STATE OF GEORGIA~~

11 ~~COUNTY OF \_\_\_\_\_~~

12 ~~The undersigned mechanic and/or materialman has been employed by~~  
 13 ~~\_\_\_\_\_ (name of contractor) to furnish~~  
 14 ~~\_\_\_\_\_ (describe materials and/or labor) for the construction of~~  
 15 ~~improvements known as \_\_\_\_\_ (title of the project or building)~~  
 16 ~~which is located in the City of \_\_\_\_\_, County of \_\_\_\_\_, and is owned~~  
 17 ~~by \_\_\_\_\_ (name of owner) and more particularly described as~~  
 18 ~~follows:~~

19 \_\_\_\_\_  
 20 \_\_\_\_\_  
 21 \_\_\_\_\_

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

26 Pursuant to O.C.G.A. Section 44-14-366 the undersigned executed a lien waiver and  
 27 release with respect to this property dated \_\_\_\_\_, \_\_\_\_\_. The amount set  
 28 forth in said waiver and release (\$ \_\_\_\_\_) has not been paid, and the undersigned  
 29 hereby gives notice of such nonpayment:

30 The above facts are sworn true and correct by the undersigned, this \_\_\_\_\_ day of  
 31 \_\_\_\_\_, \_\_\_\_\_.

32 \_\_\_\_\_(SEAL)  
 33 Claimant's Signature

1 Sworn to and executed  
2 in the presence of:

3 \_\_\_\_\_

4 Witness

5 \_\_\_\_\_

6 Notary Public

7 **'AFFIDAVIT OF NONPAYMENT UNDER**  
8 **O.C.G.A. SECTION 44-14-366**

9 **STATE OF GEORGIA**

10 **COUNTY OF \_\_\_\_\_**

11 **THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN**  
12 **EMPLOYED BY \_\_\_\_\_ (NAME OF**  
13 **CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE**  
14 **MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF**  
15 **IMPROVEMENTS KNOWN AS \_\_\_\_\_ (TITLE OF THE**  
16 **PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF**  
17 **\_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY**  
18 **\_\_\_\_\_ (NAME OF OWNER) AND MORE**  
19 **PARTICULARLY DESCRIBED AS FOLLOWS:**

20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_

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

27 **PURSUANT TO O.C.G.A. SECTION 44-14-366 THE UNDERSIGNED**  
28 **EXECUTED A LIEN WAIVER AND RELEASE WITH RESPECT TO THIS**  
29 **PROPERTY DATED \_\_\_\_\_, \_\_\_\_\_. THE AMOUNT SET FORTH IN**  
30 **SAID WAIVER AND RELEASE (\$ \_\_\_\_\_) HAS NOT BEEN PAID, AND THE**  
31 **UNDERSIGNED HEREBY GIVES NOTICE OF SUCH NONPAYMENT.**  
32 **THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE**  
33 **UNDERSIGNED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.**

(SEAL)

CLAIMANT'S SIGNATURE

SWORN TO AND EXECUTED

IN THE PRESENCE OF:

\_\_\_\_\_  
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.'

(3) A claimant who is paid, in full, the amount set forth in the waiver and release form after filing an ~~Affidavit of Nonpayment~~ affidavit of nonpayment shall upon request execute in recordable form an affidavit swearing that payment in full has been received. Upon recordation thereof in the county in which the Affidavit of Nonpayment was recorded, the ~~Affidavit of Nonpayment~~ affidavit of nonpayment to which it relates shall be deemed void.

(4) Nothing in this Code section shall shorten the time within which to file a claim of lien.

(5) A waiver and release provided in this Code section shall be suspended upon filing of an ~~Affidavit of Nonpayment~~ affidavit of nonpayment until payment in full has been received.

1 (6) The claimant may rely upon the information contained in the waiver and release form  
 2 when completing for filing the ~~Affidavit of Nonpayment~~ affidavit of nonpayment or  
 3 claim of lien."

#### 4 SECTION 6.

5 Said part is further amended by revising Code Section 44-14-367, relating to notice regarding  
 6 the process to void liens not perfected by statute, in its entirety as follows:

7 "44-14-367.

8 Failure of a lien claimant to commence a lien action to collect the amount of his or her  
 9 claim within 365 days from the date of filing the lien, or failure of the lien claimant to file  
 10 the statutory notice of commencement of lien action in the county where the property is  
 11 located, renders the claim of lien unenforceable. A claim of lien may be disregarded if no  
 12 notice of commencement of lien action was filed within 395 days from the date the claim  
 13 of lien was filed. Any lien filed after March 31, 2009, shall include on the face of the lien  
 14 the following statement in at least 12 point bold font: 'This claim of lien expires and is  
 15 void 395 days from the date of filing of the claim of lien if no notice of commencement of  
 16 lien action is filed in that time period.' Failure to include such language shall invalidate the  
 17 lien and prevent it from being filed. No release or voiding of such liens shall be required.  
 18 A lien shall expire sooner and be disregarded once it is determined that no notice of  
 19 commencement was timely filed in response to a notice of contest pursuant to Code Section  
 20 44-14-368."

#### 21 SECTION 7.

22 Said part is further amended by inserting new Code sections to read as follows:

23 "44-14-368.

24 (a) An owner or an owner's agent or attorney, or the contractor or contractor's agent or  
 25 attorney, may elect to shorten the time prescribed in which to commence a lien action to  
 26 enforce any claim of lien by recording in the superior court clerk's office a notice in  
 27 substantially the following form, in boldface capital letters in at least 12 point font, along  
 28 with proof of delivery upon the lien claimant:

#### 29 'NOTICE OF CONTEST OF LIEN

30 TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

31 **YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF**  
 32 **LIEN FILED BY YOU ON \_\_\_\_\_ 20\_\_\_\_, AND RECORDED IN**  
 33 **\_\_\_\_\_ BOOK \_\_\_\_\_, PAGE \_\_\_\_\_ OF THE PUBLIC RECORDS**  
 34 **OF \_\_\_\_\_ COUNTY, GEORGIA, AGAINST PROPERTY OWNED BY**

1 \_\_\_\_\_, AND THAT THE TIME WITHIN WHICH YOU  
 2 MAY COMMENCE A LIEN ACTION TO ENFORCE YOUR LIEN IS LIMITED  
 3 TO 60 DAYS FROM RECEIPT OF THIS NOTICE. THIS \_\_\_\_ DAY  
 4 OF \_\_\_\_\_, 20\_\_.

5 THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO  
 6 NOT: (1) COMMENCE A LIEN ACTION FOR RECOVERY OF THE AMOUNT  
 7 OF THE LIEN CLAIM PURSUANT TO O.C.G.A. SECTION 44-14-361.1 WITHIN  
 8 60 DAYS FROM RECEIPT OF THIS NOTICE; AND (2) FILE A NOTICE OF  
 9 COMMENCEMENT OF LIEN ACTION WITHIN 30 DAYS OF FILING THE  
 10 ABOVE-REFERENCED LIEN ACTION.

11 **SIGNED:** \_\_\_\_\_  
 12 **(OWNER, CONTRACTOR, AGENT OR ATTORNEY)'**

13 (b) The clerk of the superior court shall cross-reference the notice of contest of lien to the  
 14 lien. The owner or his or her agent or attorney, or the contractor or his or her agent or  
 15 attorney, shall send a copy of the notice of contest of lien within seven days of filing by  
 16 registered or certified mail or statutory overnight delivery to the lien claimant at the address  
 17 noted on the face of the lien. Service shall be deemed complete upon mailing.

18 (c) The lien shall be extinguished by law 90 days after the filing of the notice of contest  
 19 of lien if no notice of commencement of lien action is filed in that time period. No release  
 20 or voiding of such liens shall be required. This subsection shall not be construed to extend  
 21 the time in which a lien action must begin.

22 44-14-369.

23 For the purposes of this part, the computation of time shall be determined pursuant to  
 24 paragraph (3) of subsection (d) of Code Section 1-3-1."

25 **SECTION 8.**

26 This Act shall become effective on March 31, 2009.

27 **SECTION 9.**

28 All laws and parts of laws in conflict with this Act are repealed.