

Senate Bill 206

By: Senator Ligon, Jr. of the 3rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to
2 general provisions applicable to counties and municipal corporations, so as to revise
3 provisions relating to water liens; to provide for procedures for water liens, amended water
4 liens, and cancellation of water liens and the forms therefor; to provide for bonds; to provide
5 for contest of liens; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general
10 provisions applicable to counties and municipal corporations, is amended by revising Code
11 Section 36-60-17, relating to water supplier's cut off of water to premises because of
12 indebtedness of prior owner, occupant, or lessee prohibited, as follows:

13 "36-60-17.

14 (a) No public or private water supplier shall refuse to supply water to any single or
15 multifamily residential property ~~to which water has been furnished through the use of a~~
16 ~~separate water meter for each residential unit on application of the owner or new resident~~
17 ~~tenant of the premises because of the indebtedness of a prior owner, prior occupant, or prior~~
18 ~~lessee to the water supplier for water previously furnished to such premises, current owner,~~
19 occupant, or tenant because of the indebtedness to such supplier of any other party,
20 including a prior owner, occupant, or tenant, or require any party to assume responsibility
21 for the indebtedness to such supplier of any other party as a precondition to supplying
22 service. Nothing contained in this Code section shall prevent a public or private water
23 supplier from denying an application for service because of the applicant's indebtedness
24 to such supplier.

25 (b) For each new or current account, ~~to supply water to any premises or property, the~~
26 ~~public or~~ and private water supplier suppliers shall maintain a record of identifying
27 information on the ~~user of~~ applicant for the water service and shall seek reimbursement of

28 unpaid charges for water service furnished initially from the person who incurred the
29 charges.

30 (c) Unless a lien for unpaid services has been properly filed as provided in this Code
31 section, a public or private water supplier shall seek payment only from the applicant for
32 the services provided. A public or private water supplier shall not impose a lien against
33 real property to secure unpaid charges for water furnished unless the owner of such real
34 property is the person who incurred the charges.

35 (d)(1) A public or private water supplier shall have a general lien on the real property of
36 the party to whom a service is supplied.

37 (2) A general lien shall not be effective or enforceable unless created and declared in
38 accordance with this paragraph and otherwise shall not be effective or enforceable. A
39 general lien claimant shall:

40 (A) Provide services by the party claiming the lien upon application of the party
41 against whom the lien is filed;

42 (B) File for record a claim of lien within 90 days of the past due date for services
43 provided as reflected on the billing of the claiming party, which claim shall be in
44 substantially the following form:

45 ' _____, a supplier of water, claims a lien in the amount of
46 \$ _____ on any property owned by _____ for satisfaction of a claim
47 which became past due on _____ (date) for water services for _____ (specify the time
48 period for which it was provided) .';

49 (C) Include in the claim of lien filed a notice regarding the right to contest the lien
50 pursuant to paragraph (9) of this subsection;

51 (D) File such claim of lien in the general execution docket kept in the office of the
52 clerk of the superior court of the county where the property to which services were
53 provided is located if the party against whom the claim of lien is filed is the owner of
54 such property. If the party against whom the claim of lien is filed is not the owner of
55 the property to which services were provided, the lien claimant may file in the current
56 county of residence of such party or any other county where such party may own
57 property; and

58 (E) Send, no later than two business days after the date the claim of lien is filed of
59 record, a copy of the claim of lien by registered or certified mail or statutory overnight
60 delivery to the party against whom the claim is made.

61 (3)(A) A claim of lien may be amended at any time to reduce the amount claimed, and
62 such amended claim of lien shall relate back to the date of filing for record of the
63 original claim of lien. An amended claim of lien filed for record pursuant to this
64 subsection shall be in substantially the following form:

65 That certain claim of lien filed by _____ against
 66 _____ on _____ (date) _____ and recorded in Book
 67 _____, Page _____ in the lien index of _____ (name of county or counties)
 68 _____ is hereby amended by reducing the amount of such claim of lien to \$ _____
 69 (specify reduced amount claimed) _____. The remaining terms of such original claim
 70 of lien are hereby incorporated by reference into this amended claim of lien. This
 71 amended claim of lien relates back to the date that such original claim of lien was
 72 filed for record.'; and

73 (B) An amended claim of lien shall be sent to the party against whom the lien was filed
 74 in the same manner as required for a claim of lien in subparagraph (E) of paragraph (2)
 75 of this subsection.

76 (4) The priority of a claim of lien shall be governed the same as liens for taxes under
 77 Code Section 48-2-56.

78 (5) The filing fees for a claim of lien under this Code section and any related document
 79 created pursuant to this Code section shall be the amount set by Code Section 15-6-77 for
 80 liens on real estate.

81 (6) A claim of lien specified in this Code section shall be dissolved if the:

82 (A) Lien has been waived in writing by the lien claimant; or

83 (B) Claim of lien is cancelled by the lien claimant.

84 (7) Upon full payment of all services supplied, a lien claimant shall either deliver a
 85 cancellation of lien or cause the lien to be canceled of record within ten days of such
 86 payment. Any lien claimant who fails to do so shall be liable to the party against whom
 87 the lien is claimed for all actual damages, reasonable attorney's fees, and expenses
 88 incurred by such party in having the lien cancelled. A cancellation shall be in
 89 substantially the following form:

90 'Clerk, Superior Court of _____ County

91 You are authorized and directed to cancel of record the lien which was filed against

92 _____ on _____ (date) _____ and recorded by you in Book _____,

93 Page _____.

94 This _____ day of _____.

95 _____
 96 Lien claimant or attorney'

97 (8)(A) When any person entitled under this Code section to claim a lien against any
 98 real estate located in this state files a claim of lien in the office of the clerk of the

99 superior court of the county in which the real estate is located, the owner of the real
100 estate may, before or after foreclosure proceedings are instituted, discharge the lien by
101 filing a bond in the office of such clerk. The bond shall be conditioned to pay to the
102 lienholder the sum that may be found to be due the lien claimant upon the trial of any
103 action that may be filed by the party subject to the lien to contest such lien. The bond
104 shall be in the amount claimed under such lien and shall be either a bond with good
105 security approved by the clerk of the court or a cash bond. Upon the filing of the bond
106 provided for in this Code section, the real estate shall be discharged from the lien.
107 Within seven days of filing such bond and any attachments, the party filing the bond
108 shall send a notice of filing such bond and a copy of the bond by registered or certified
109 mail or statutory overnight delivery to the lien claimant at the address stated on the lien
110 or, if no such address is shown for the lien claimant, to the person shown as having filed
111 such lien on behalf of the claimant at the indicated address of such person; provided
112 that whenever the lien claimant or owner is an entity on file with the Secretary of State's
113 Corporations Division, sending such notice and copy of the bond to the company's or
114 registered agent's address on file with the Secretary of State shall be deemed sufficient;
115 provided, however, that the failure to send such notice and copy of the bond shall not
116 invalidate the bond for purposes of discharge of a claim of lien under this Code section.
117 With respect to property bonds, the clerk shall not accept any real property bond unless
118 the real property is scheduled in an affidavit attached thereto setting forth a description
119 of the property and indicating the record owner thereof, including any liens and
120 encumbrances and amounts thereof, the market value, and the value of the sureties'
121 interest therein, which affidavit shall be executed by the owner or owners of the
122 interest; the bond and affidavit shall be recorded in the same manner and at the same
123 cost as other deeds of real property. So long as the bond exists, it shall constitute a lien
124 against the property described in the attached affidavit.
125 (B) The clerk of the superior court shall have the right to rely upon the amount
126 specified in the claim of lien in determining the sufficiency of any bond to discharge
127 under this Code section. The failure to specify both the amount claimed due under the
128 lien and the date such claim was due shall not constitute notice for any purposes.
129 (9)(A) The party against whom a claim of lien is filed, the owner, or the party's or
130 owner's agent or attorney may contest the validity of any claim of lien, and no action
131 to enforce any such claim of lien may be taken by the lienholder during the pendency
132 of such contest, by:
133 (i) Sending a notice of contest of lien by registered or certified mail or statutory
134 overnight delivery to the lien claimant at the address noted on the face of the lien.
135 Service shall be deemed complete upon mailing; and

136 (ii) Recording in the superior court clerk's office in the county where the claim of lien
 137 was filed a notice in substantially the following form, in boldface capital letters in at
 138 least 12 point font, along with proof of delivery to the lien claimant of such notice:

139 NOTICE OF CONTEST OF LIEN

140 TO: _____
 141 [NAME AND ADDRESS OF LIEN CLAIMANT]

142 YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM
 143 OF LIEN FILED BY YOU ON _____ 20 _____, AND RECORDED IN
 144 BOOK _____, PAGE _____ OF THE PUBLIC RECORDS OF
 145 _____ COUNTY, GEORGIA, AGAINST PROPERTY OWNED
 146 BY _____ AND THAT YOU
 147 MUST COMMENCE A LIEN ACTION TO ENFORCE YOUR LIEN WITHIN 60
 148 DAYS FROM RECEIPT OF THIS NOTICE.

149 THIS DAY OF _____, 20 _____.

150 THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO
 151 NOT: (1) COMMENCE A LIEN ACTION FOR RECOVERY OF THE AMOUNT
 152 OF THE LIEN CLAIM WITHIN 60 DAYS FROM RECEIPT OF THIS NOTICE;
 153 AND (2) FILE A NOTICE OF COMMENCEMENT OF LIEN ACTION WITHIN
 154 30 DAYS OF FILING THE ABOVE-REFERENCED LIEN ACTION.

155 SIGNED: _____
 156 (OWNER, AGENT, OR ATTORNEY)'

157 (B) The clerk of the superior court shall cross-reference the notice of contest of lien,
 158 together with such proof of delivery, to the claim of lien.

159 (C) The lien shall be extinguished by law 90 days after the filing of the proof of
 160 delivery of notice of contest of lien if no notice of commencement of lien action is filed
 161 in that time period. No release or voiding of the claim of lien shall be required. This
 162 paragraph shall not be construed to extend the time in which a lien action must be filed.

163 (d)(e) A public or private supplier of gas, sewerage service, or electricity shall not impose
 164 a lien against real property to secure unpaid charges for gas, sewerage service, or electricity
 165 unless the owner of such real property is the person who incurred the charges."

166

SECTION 2.

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