

Senate Bill 315

By: Senators Tippins of the 37th, Dugan of the 30th, Cowser of the 46th, Stone of the 23rd, Ligon, Jr. of the 3rd and others

AS PASSED SENATE

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 that a waiver and release
3 of lien and bond rights shall only be applicable to the issues of the waiver and release and
4 shall not affect any other rights or remedies available under the law; to revise language and
5 appearance requirements of statutory forms; to revise procedures; to provide for related
6 matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,
10 relating to mechanics and materialmen, is amended by revising Code Section 44-14-366,
11 relating to waiver of lien or claim upon bond in advance of furnishing labor, services, or
12 materials void, interim waiver and release upon payment, unconditional waiver and release
13 upon final payment, and affidavit of nonpayment, as follows:

14 "44-14-366.

15 (a) Waivers and releases provided for under this Code section shall be limited to waivers
16 and releases of lien and labor or material bond rights and shall not be deemed to affect any
17 other rights or remedies of the claimant.

18 ~~(a)~~(b) A right to claim a lien or to claim upon a bond may not be waived in advance of
19 furnishing of labor, services, or materials. Any purported waiver or release of lien or bond
20 claim or of this Code section executed or made in advance of furnishing of labor, services,
21 or materials is null, void, and unenforceable.

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

25 (1) It is pursuant to a waiver and release form duly executed by the claimant prescribed
26 below; and

27 (2) The claimant has received payment for the claim as set forth in subsection ~~(f)~~ (g) of
28 this Code section.

29 ~~(c)~~(d) When a claimant is requested to execute a waiver and release in exchange for or in
30 order to induce payment other than final payment, the waiver and release shall substantially
31 follow the language of the following form, in boldface capital letters ~~be~~ in at least 12 point
32 font, and need not be in boldface capital letters, and the priority of such claimant's lien
33 rights, except as to retention, shall upon such payment thereafter run from the day after the
34 date specified in such ~~Interim Waiver and Release~~ upon of Lien and Payment Bond Rights
35 Upon Interim Payment form:

36 **'INTERIM WAIVER AND RELEASE OF LIEN**
37 **AND PAYMENT BOND RIGHTS UPON INTERIM PAYMENT**

38 **STATE OF GEORGIA**
39 **COUNTY OF _____**

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

48 _____
49 _____
50 _____

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

55 **UPON THE RECEIPT OF THE SUM OF \$_____, THE MECHANIC**
56 **AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS**
57 **OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED**
58 **PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL**
59 **BOND THROUGH THE DATE OF _____ (DATE) AND**
60 **EXCEPTING THOSE RIGHTS AND LIENS THAT THE MECHANIC AND/OR**

61 MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON
62 ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE
63 UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID
64 BUILDING OR PREMISES.

65 GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, ____.

66 _____ (SEAL)

67 _____

68 _____

69 (WITNESS)

70 _____

71 (ADDRESS)

72 NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU
73 SHALL BE CONCLUSIVELY DEEMED TO HAVE ~~BEEN PAID IN FULL THE~~
74 ~~AMOUNT STATED~~ WAIVED AND RELEASED ANY AND ALL LIENS AND
75 CLAIMS OF LIENS UPON THE FOREGOING DESCRIBED PROPERTY AND
76 ANY RIGHTS REGARDING ANY LABOR OR MATERIAL BOND
77 REGARDING THE SAID PROPERTY TO THE EXTENT (AND ONLY TO THE
78 EXTENT) SET FORTH ABOVE, EVEN IF YOU HAVE NOT ACTUALLY
79 RECEIVED SUCH PAYMENT, 60 90 DAYS AFTER THE DATE STATED
80 ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR
81 A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 90 DAY
82 PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE
83 FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND
84 INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION
85 § 44-14-366.'

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

89 ~~(d)~~(e) When a claimant is requested to execute a waiver and release in exchange for or in
90 order to induce making of final payment, the waiver and release shall substantially follow
91 the language of the following form, be in boldface capital letters in at least 12 point font,
92 and need not be in boldface capital letters:

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**'WAIVER AND RELEASE OF LIEN
AND PAYMENT BOND RIGHTS 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
_____, 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 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 _____, ____.

(WITNESS)

(ADDRESS)

126 **NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU**
 127 **SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE**
 128 **AMOUNT STATED WAIVED AND RELEASED ANY AND ALL LIENS AND**
 129 **CLAIMS OF LIENS UPON THE FOREGOING DESCRIBED PROPERTY AND**
 130 **ANY RIGHTS REGARDING ANY LABOR OR MATERIAL BOND**
 131 **REGARDING THE SAID PROPERTY TO THE EXTENT (AND ONLY TO THE**
 132 **EXTENT) SET FORTH ABOVE, EVEN IF YOU HAVE NOT ACTUALLY**
 133 **RECEIVED SUCH PAYMENT, ~~60~~ 90 DAYS AFTER THE DATE STATED**
 134 **ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR**
 135 **~~A CLAIM OF LIEN~~ PRIOR TO THE EXPIRATION OF SUCH ~~60~~ 90 DAY**
 136 **PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE**
 137 **~~FACE OF THE FORM~~ SHALL RENDER THE FORM UNENFORCEABLE AND**
 138 **INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION §**
 139 **44-14-366.'**

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

143 ~~(e)~~(f) Nothing contained in this Code section shall affect:

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

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

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

155 (4) The provisions of paragraph (2) of subsection (a) of Code Section 44-14-361.2,
 156 paragraphs (3) and (4) of subsection (a) and subsections (b) and (c) of Code Section
 157 44-14-361.4, or Code Section 44-14-364.

158 ~~(f)~~(g)(1) When a waiver and release provided for in this Code section is executed by the
 159 claimant, it shall be binding against the claimant for ~~all purposes~~ of the waiver of lien and
 160 labor or material bond rights to the extent stated in the waiver and release, subject only
 161 to payment in full of the amount set forth in the waiver and release the provisions of
 162 paragraphs (2) and (3) of this subsection.

163 (2) Such ~~amounts~~ lien and labor or material bond waivers and releases shall conclusively
 164 be deemed ~~paid in full~~ effective upon the earliest to occur of:

165 (A) Actual receipt of funds in the amount set forth in the waiver and release;

166 (B) Execution by the claimant of a separate written acknowledgment of payment in
 167 full; or

168 (C) ~~Ninety Sixty~~ days after the date of the execution of the waiver and release, unless
 169 prior to the expiration of said ~~60~~ 90 day period the claimant files ~~a claim of lien or files~~
 170 in the county in which the property is located an affidavit of nonpayment, using
 171 substantially the language in the following form in boldface capital letters, where such
 172 language shall be in at least 12 point font and need not be in boldface capital letters:

173 **'AFFIDAVIT OF NONPAYMENT UNDER**
 174 **O.C.G.A. SECTION § 44-14-366**

175 **STATE OF GEORGIA**
 176 **COUNTY OF _____**

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

186 _____
 187 _____
 188 _____

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

193 **PURSUANT TO O.C.G.A. SECTION § 44-14-366 THE UNDERSIGNED**
 194 **EXECUTED A LIEN WAIVER AND RELEASE WITH RESPECT TO THIS**
 195 **PROPERTY DATED _____, _____. THE AMOUNT SET FORTH IN**
 196 **SAID WAIVER AND RELEASE (\$_____) HAS NOT BEEN PAID IN FULL**

197 **AND \$ _____ OF THE AMOUNT SET FORTH IN SAID**
 198 **WAIVER AND RELEASE REMAINS UNPAID, AND THE UNDERSIGNED**
 199 **HEREBY GIVES NOTICE OF SUCH NONPAYMENT.**

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

202 _____(SEAL)
 203 **CLAIMANT'S SIGNATURE**

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

206 _____
 207 **WITNESS**

208 _____
 209 **NOTARY PUBLIC**

210 **WITHIN SEVEN DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT,**
 211 **THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY**
 212 **REGISTERED OR CERTIFIED MAIL OR STATUTORY OVERNIGHT**
 213 **DELIVERY TO THE OWNER OF THE PROPERTY. IF THE FILING PARTY**
 214 **IS NOT IN PRIVITY OF CONTRACT WITH THE PROPERTY OWNER AND**
 215 **A NOTICE OF COMMENCEMENT IS FILED FOR THE IMPROVEMENT ON**
 216 **THE PROPERTY FOR WHICH THE FILING PARTY'S LABOR, SERVICES,**
 217 **OR MATERIALS WERE FURNISHED, A COPY OF THE AFFIDAVIT SHALL**
 218 **BE SENT TO THE CONTRACTOR AT THE ADDRESS SHOWN ON THE**
 219 **NOTICE OF COMMENCEMENT. WHENEVER THE OWNER OF THE**
 220 **PROPERTY IS AN ENTITY ON FILE WITH THE SECRETARY OF STATE'S**
 221 **CORPORATIONS DIVISION, SENDING A COPY OF THE LIEN TO THE**
 222 **COMPANY'S ADDRESS OR THE REGISTERED AGENT'S ADDRESS ON**
 223 **FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED**
 224 **SUFFICIENT.'**

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

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

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

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

236 **SECTION 2.**

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