

The House Committee on Judiciary offers the following substitute to SB 374:

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

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

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

SECTION 2.

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

"44-14-361.1.

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

S. B. 374 (SUB)

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

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

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

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

(3) The commencement of an a lien action for the recovery of the amount of the party's claim within ~~12 months~~ 365 days from the ~~time the same shall become due~~ date of filing 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

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

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

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

SECTION 3.

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

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

- (1) The name, address, and telephone number of the person providing labor, services, or materials;
- (2) The name and address of each person at whose instance the labor, services, or materials are being furnished;
- (3) The name of the project and location of the project set forth in the ~~Notice of Commencement~~ notice of commencement; and
- (4) A description of the labor, services, or materials being provided and, if known, the contract price or anticipated value of the labor, services, or materials to be provided or the amount claimed to be due, if any."

SECTION 4.

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

1 "(a) When any person entitled under this part to claim a lien against any real estate located
 2 in this state files his or her lien in the office of the clerk of the superior court of the county
 3 in which the real estate is located, the owner of the real estate or the contractor employed
 4 to improve the property may, before or after foreclosure proceedings are instituted,
 5 discharge the lien by filing a bond in the office of that clerk. The bond shall be conditioned
 6 to pay to the holder of the lien the sum that may be found to be due the holder upon the trial
 7 of any lien action that may be filed by the lienholder to recover the amount of his or her
 8 claim within ~~12 months~~ 365 days from the time the claim ~~becomes due~~ of lien is filed. The
 9 bond shall be in double the amount claimed under that lien and shall be either a bond with
 10 good security approved by the clerk of the court or a cash bond, except in cases involving
 11 a lien against residential property, in which event the bond shall be in the amount claimed
 12 under the lien. Upon the filing of the bond provided for in this Code section, the real estate
 13 shall be discharged from the lien. Within seven days of filing such bond and any
 14 attachments, the party filing the bond shall send a notice of filing such bond and a copy of
 15 the bond by registered or certified mail or statutory overnight delivery to the lien claimant
 16 at the address stated on the lien or, if no such address is shown for the lien claimant, to the
 17 person shown as having filed such lien on behalf of the claimant at the indicated address
 18 of such person or, if the bond is filed by a contractor, to the owner of the property, provided
 19 that whenever the lien claimant or the owner is an entity on file with the Secretary of
 20 State's Corporations Division, sending the notice of filing such bond and a copy of the
 21 bond to the company's address or the registered agent's address on file with the Secretary
 22 of State shall be deemed sufficient; provided, however, that the failure to send the notice
 23 of filing the bond and copy of the bond shall not invalidate the bond for purposes of
 24 discharge of a claim of lien under this Code section. With respect to property bonds, the
 25 clerk shall not accept any real property bond unless the real property is scheduled in an
 26 affidavit attached thereto setting forth a description of the property and indicating the
 27 record owner thereof, including any liens and encumbrances and amounts thereof, the
 28 market value, and the value of the sureties' interest therein, which affidavit shall be
 29 executed by the owner or owners of the interest; the bond and affidavit shall be recorded
 30 in the same manner and at the same cost as other deeds of real property. So long as the
 31 bond exists, it shall constitute a lien against the property described in the attached
 32 affidavit."

33 SECTION 5.

34 Said part is further amended by revising Code Section 44-14-366, relating to a waiver of lien
 35 or claim upon bond in advance of furnishing labor, services, or materials void, as follows:

"44-14-366.

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

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

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

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

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

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 of final payment, the waiver and release must follow substantially the following form:

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 _____, 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 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

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

~~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 _____, 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 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.~~

'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
_____, 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 _____, ____.

(SEAL)

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;

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

(C) ~~Thirty~~ Sixty days after the date of the execution of the waiver and release, unless prior to the expiration of said ~~30~~ 60 day period the claimant files a claim of lien or files in the county in which the property is located an ~~Affidavit of Nonpayment~~ affidavit of nonpayment, using substantially the following form in boldface capital letters in at least 12 point font:

~~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 _____, _____.~~

_____ (SEAL)

Claimant's Signature

Sworn to and executed
in the presence of:

Witness

Notary Public

'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 , **.**

(SEAL)

CLAIMANT'S SIGNATURESWORN TO AND EXECUTEDIN THE PRESENCE OF:WITNESSNOTARY 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.

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

SECTION 6.

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

"44-14-367.

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

SECTION 7.

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

"44-14-368.

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

'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)'

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

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

44-14-369.

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

SECTION 8.

This Act shall become effective on March 31, 2009.

SECTION 9.

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