

PUBLICATION

Changes to Georgia's Mechanics' Lien Law

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Georgia has enacted several substantial revisions to its mechanics' lien statutes that will take effect on March 31, 2009. These changes will impact not only owners and contractors, but also all professionals with rights under the current lien laws, including, among others, mechanics, contractors, subcontractors, materialmen, laborers, architects, land surveyors and professional engineers. Many of the key changes are highlighted below.

1. *Deadline to File Liens:* Beginning March 31, 2009, claimants must file their liens within 90 days after completing their work or supplying materials. This change eliminates uncertainty caused by the current three-month deadline.
2. *Changes to the Deadline for Filing Actions to Perfect Liens and Related Procedures:* There are four primary changes concerning actions to perfect liens. First, a 365-day deadline replaces the current 12-month deadline to file suit. Second, this revised window to file runs from the date that the lien was filed. The current deadline runs from the last date that the work was performed or materials supplied. Thus, depending on when the lien is filed, the lien claimant will have as many as 90 additional days to file its action as compared to the current law. Third, the new statute clarifies that a lien claimant may bring its actions to perfect the lien by "lawsuit, proof of claim in a bankruptcy case, or a binding arbitration." Fourth, the new statute extends the deadline to file the required notice of commencement of the "lien action" from 14 to 30 days.
3. *Lien Forms:* The new statutes change the claim of lien form, which must be followed for the lien to be valid and enforceable. For example, the form must now include, in at least 12-point bold font, a notice regarding the owner's right to contest the lien and the following language: "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 is filed in that time period." In contrast to the current law, owners or contractors will not be required to take any action to invalidate liens that do not comply with these requirements. Additionally, new language was inserted to clarify that the phrase "the date a claim becomes due" means "the same as the last date the labor, services, or materials were supplied to the premises."
4. *Notice of Liens:* Under the new law, lien claimants must send a copy of the lien to the owner or contractor no later than two business days after the date the claim of lien is filed. Currently, lien claimants are required to send a copy of the lien to the owner or contractor "at the time of filing" the lien. The new statute defines "business day" as "any day that is not a Saturday, Sunday, or legal holiday."
5. *Notice of Contest of Lien:* Following the lead of other states, a new provision allows owners and contractors to file a Notice of Contest of Lien to shorten the time to file an action to perfect a lien. The notice must: (a) contain the specific language set forth in the statute; (b) be written in boldface capital letters in at least 12-point font; and (c) be sent to the lien claimant within seven days of its filing by registered or certified mail or statutory overnight delivery. The lien claimant has 60 days from receiving the notice to commence a lien action to perfect its lien.
6. *Lien Waiver Forms and Procedures:* The new statutes make several changes to the lien waiver forms and procedures. Under the new law, interim and final lien waivers must contain the specific language set forth in the statute, also written in boldface capital letters in at least 12-point font. Unlike the current forms, the new forms now include a release of any rights against any labor and/or material bond through the date of the waiver. Also, the new lien waivers must contain a mandatory notice

(again written in boldface capital letters in at least 12-point font) alerting the lien claimant to the consequences of signing the waiver.

7. *Affidavit of Non-Payment*: The new law will extend the deadline to file an affidavit of nonpayment to avoid the preclusive effect of a lien waiver from 30 to 60 days. In addition, the affiant must send a copy of the affidavit to the owner within seven days of filing the affidavit. The affiant must also send a copy to the contractor within that seven-day window if the filing party is not in privity with the owner and a notice of commencement has been filed. The copies must be sent by registered or certified mail or statutory overnight mail. The statute provides a form for the affidavit, which must be strictly followed.
8. *Lien Discharge Bonds*: Under the new law, if a party files a lien discharge bond, that party must provide notice and a copy of the bond to the lien claimant or the property owner within seven days after filing.
9. *Liens of Persons Without Privity of Contract*: The new law provides that persons filing a "notice to contractor" to preserve their lien rights must now provide notice to the owner and/or contractor through registered or certified mail or statutory overnight delivery.

The amended statutes leave some ambiguity concerning what procedures to use after March 31, 2009, for liens that are filed before March 31, 2009. For example, does the deadline to file suit to perfect a lien filed on March 30, 2009, run from the date that the lien was filed or from the last date that the work was performed or materials supplied? Or, if the suit is filed on March 17, 2009, does the deadline to file the required notice of commencement expire on March 31 (as the current law dictates) or will it run until April 16? In light of these uncertainties, following the shortest deadline will be the most prudent course of action.

Given the substantial number of changes to Georgia's lien laws and the fact that strict compliance with the statutory requirements is mandatory, we strongly urge consulting with your attorney to begin incorporating these changes.