

# PUBLICATION

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## Significant Changes to Georgia Lien Law on January 1: Are You Prepared?

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**Important changes to the Georgia law on waivers for mechanic's lien and payment bond claims (lien waivers) are effective January 1, 2021. Under current Georgia law, lien waivers are "conditional," meaning they do not waive lien and payment bond rights until payment of the amount stated in the lien waiver is received. However, Georgia law presumes that payment occurred (and the lien waiver becomes effective) *even if* there was no payment unless an "Affidavit of Nonpayment" is filed within 60 days of signing the lien waiver. Alternatively, filing a timely claim of lien within that same 60-day period also satisfies the Affidavit of Nonpayment requirement.**

It has been commonly understood that the only practical effect of failing to file a timely Affidavit of Nonpayment (or claim of lien) was to prevent the signing party from filing a lien or payment bond claim for the amount shown in the lien waiver. A 2019 Georgia Court of Appeals case upended that understanding by holding that the presumption of payment applied to any claim for the amount owed, including a breach of contract claim against the party owing the debt.

Effective January 1, 2021, Georgia law overturns that decision and makes additional important changes. Here is what you need to know:

1. Failing to timely file an Affidavit of Nonpayment will only waive your right to file a lien or payment bond claim. The prior understanding of the effect of lien waivers will be restored.
2. Filing a timely claim of lien will no longer prevent the lien waiver from going into effect. A timely Affidavit of Nonpayment *must* be filed. Note, however, that filing the affidavit only prevents the lien waiver from going into effect. A timely claim of lien *must* still be filed or the right to lien is waived.
3. The time for filing an Affidavit of Nonpayment is extended from 60 to 90 days after signing the lien waiver.
4. The statutory forms for lien waivers and for Affidavits of Nonpayment have changed. [Click here](#) for copies of the updated forms.

To avoid confusion that may arise from projects that are ongoing before and after January 1, please follow these steps:

5. Until January 1, 2021, continue to follow the current law and to use the current statutory forms for lien waivers and Affidavits of Nonpayment.
6. Beginning January 1, 2021, use the new statutory forms for all projects, including those that began before January 1.

7. Beginning January 1, 2021, if you need to contest a lien waiver that was signed on the pre-2021 form, we recommend a hybrid approach. File an Affidavit of Nonpayment within 60-days rather than the new 90-day period, using the new Affidavit of Nonpayment form that is effective January 1, 2021.

We urge you to update everyone within your organization about these changes. As always, remain vigilant in tracking your deadlines to preserve your lien and payment rights. If you have questions about these new laws or any other aspect of Georgia lien law, please contact the authors or any member of [Baker Donelson's Construction Team](#).