



## Georgia

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### Statutory Outline

TITLE 44. PROPERTY.

CHAPTER 14. MORTGAGES, CONVEYANCES TO SECURE DEBT, AND LIENS.

ARTICLE 8. LIENS.

PART 3. MECHANICS AND MATERIALMEN.

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**Section 44-14-360. Definitions.** As used in this part, the term:

- (.1) "Business day" means any day that is not a Saturday, Sunday, or legal holiday.
- (1) "Contractor" means a contractor having privity of contract with the owner of the real estate.
- (2) "Land surveyor" means the same as the definition thereof in Code Section 43-15-2.
- (2.1) "Lien action" means a lawsuit, proof of claim in a bankruptcy case, or a binding arbitration.
- (3) "Materials," in addition to including those items for which liens are already permitted under this part, means tools, appliances, machinery, or equipment used in making improvements to the real estate, to the extent of the reasonable value or the contracted rental price, whichever is greater, of such tools, appliances, machinery, or equipment.
- (4) "Materialmen" means all persons furnishing the materials, tools, appliances, machinery, or equipment included in the definition of materials in paragraph (3) of this Code section.
- (5) "Professional engineer" means the same as the definition thereof in Code Section 43-15-2.
- (6) "Registered forester" means the same as the definition of such term in Code Section 12-6-41.
- (7) "Registered land surveyors" and "registered professional engineers" means land surveyors or professional engineers who are registered as land surveyors or professional engineers under Chapter 15 of Title 43 at the time of performing, rendering, or furnishing services protected under this part.
- (8) "Residential property" means single-family and two-family, three-family, and four-family residential real estate.
- (9) "Subcontractor" means, but is not limited to, subcontractors having privity of contract with the contractor.

**Section 44-14-361. Creation of liens; property to which lien attaches; items to be included in lien.**

(a) The following persons shall each have a special lien on the real estate, factories, railroads, or other property for which they furnish labor, services, or materials:

- (1) All mechanics of every sort who have taken no personal security for work done and material furnished in building, repairing, or improving any real estate of their employers;
- (2) All contractors, all subcontractors and all materialmen furnishing material to subcontractors, and all laborers furnishing labor to subcontractors, materialmen, and persons furnishing material for the improvement of real estate;
- (3) All registered architects furnishing plans, drawings, designs, or other architectural services on or with respect to any real estate;
- (4) All registered foresters performing or furnishing services on or with respect to any real estate;
- (5) All registered land surveyors and registered professional engineers performing or furnishing services on or with respect to any real estate;
- (6) All contractors, all subcontractors and materialmen furnishing material to subcontractors, and all laborers furnishing labor for subcontractors for building factories, furnishing material for factories, or furnishing machinery for factories;
- (7) All machinists and manufacturers of machinery, including corporations engaged in such business, who may furnish or put up any mill or other machinery in any county or who may repair the same;
- (8) All contractors to build railroads; and
- (9) All suppliers furnishing rental tools, appliances, machinery, or equipment for the improvement of real estate.

(b) Each special lien specified in subsection (a) of this Code section may attach to the real estate of the owner for which the labor, services, or materials are furnished if they are furnished at the instance of the owner, contractor, or some other person acting for the owner or contractor and shall include the value of work done and materials furnished in any easement or public right of way adjoining said real estate if the work done or materials furnished in the easement or public right of way is for the benefit of said real estate and is within the scope of the owner's contract for improvements to said real estate.

(c) Each special lien specified in subsection (a) of this Code section shall include the amount due and owing the lien claimant under the terms of its express or implied contract, subcontract, or purchase order subject to subsection (e) of Code Section 44-14-361.1.

(d) Each special lien specified in subsection (a) of this Code section shall include interest on the principal amount due in accordance with Code Section 7-4-2 or 7-4-16.

**Section 44-14-361.1. How liens declared and created; amendment; record; commencement of action; notice; priorities; parties; limitation on aggregate amount of liens.**

(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:

(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 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 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. 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)."

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, that 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 a lien action for the recovery of the amount of the party's claim within 365 days from the date of filing for record of his or her claim of lien. In addition, within 30 days after commencing such lien action, the party claiming the lien shall file a notice with the clerk of the superior court of the county wherein the subject lien was filed. The notice shall contain a caption referring to the then owner of the property against which the lien was filed and referring to a deed or other recorded instrument in the chain of title of the affected property. The notice shall be executed, under oath, by the party claiming the lien or by such party's attorney of record, but failure to execute the notice under oath shall be an amendable defect which may be cured by the party claiming the lien or by such party's attorney without leave of court at any time before entry of the pretrial order and thereafter by leave of court. An amendment of notice pursuant to this Code section shall relate back to the date of filing of the notice. The notice shall identify the court or arbitration venue wherein the lien action is brought; the style and number, if any, of the lien action, including the names of all parties thereto; the date of the filing of the lien action; and the book and page number of the records of the county wherein the subject lien is recorded in the same manner in which liens specified in Code

Section 44-14-361 are filed. The clerk of the superior court shall enter on the subject lien so referred to the book and page on which the notice is recorded and shall index such notice in the name of the then purported owner as shown by the caption contained in such notice. A separate lis pendens notice need not be filed with the commencement of this action; and

(4) In the event any contractor or subcontractor procuring material, architect's services, registered forester's services, registered land surveyor's services, or registered professional engineer's services, labor, or supplies for the building, repairing, or improving of any real estate, building, or other structure shall abscond or die or leave the state during the required time period for filing a lien action, so that personal jurisdiction cannot be obtained on the contractor or subcontractor in a lien action for the services, material, labor, or supplies, or if the contractor or subcontractor shall be adjudicated a bankrupt, or if, after the filing of a lien action, no final judgment can be obtained against him or her for the value of such material, services, labor, or supplies because of his or her death, adjudication in bankruptcy, or the contract between the party claiming the lien and the contractor or subcontractor includes a provision preventing payment to the claimant until after the contractor or the subcontractor has received payment, then and in any of these events, the person or persons furnishing material, services, labor, and supplies shall be relieved of the necessity of filing a lien action or obtaining judgment against the contractor or subcontractor as a prerequisite to enforcing a lien against the property improved by the contractor or subcontractor. Subject to Code Section 44-14-361, the person or persons furnishing material, services, labor, and supplies may enforce the lien directly against the property so improved in a lien action against the owner thereof, if filed within the required time period for filing a lien action, with the judgment rendered in any such proceeding to be limited to a judgment in rem against the property improved and to impose no personal liability upon the owner of the property; provided, however, that in such lien action for recovery, the owner of the real estate improved, who has paid the agreed price or any part of same, may set up the payment in any lien action brought and prove by competent and relevant evidence that the payments were applied as provided by law, and no judgment shall be rendered against the property improved. Within 30 days after filing such lien action, the party claiming the lien shall file a notice with the clerk of the superior court of the county wherein the subject lien was filed. The notice shall contain a caption referring to the then owner of the property against which the lien was filed and referring to a deed or other recorded instrument in the chain of title of the affected property. The notice shall be executed, under oath, by the party claiming the lien or by his or her attorney of record. The notice shall identify the court or arbitration venue wherein the lien action is brought; the style and number of the lien action, if any, including the names of all parties thereto; the date of the filing of the lien action; and the book and page number of the records of the county wherein the subject lien is recorded in the same manner in which liens specified in Code Section 44-14-361 are filed. The clerk of the superior court shall enter on the subject lien so referred to the book and page on which the notice is recorded and shall index such notice in the name of the then purported owner as shown by the caption contained in such notice. A separate lis pendens notice need not be filed with the commencement of this action.

(a.1) A claim of lien may be amended at any time to reduce the amount claimed, and such amended claim of lien shall relate back to the date of filing for record of the original claim of lien. An amended claim of lien filed for record pursuant to this subsection shall be in substance as follows:

"That certain claim of lien filed by A.B. against property of C.D. on (date) and recorded at book (book#), page (page#) in the lien index of (name of county) County is hereby amended by reducing the amount of such claim of lien to (specify reduced amount claimed). The remaining terms of such original claim of lien are hereby incorporated by reference into this amended claim of lien. This amended claim of lien relates back to the date that such original claim of lien was filed for record."

and shall be sent to the owner of the property in the same manner as required for a claim of lien in paragraph (2) of subsection (a) of this Code section.

(b) As between themselves, the liens provided for in Code Section 44-14-361 shall rank according to the date filed; but all of the liens mentioned in this Code section for repairs, building, or furnishing materials or services,

upon the same property, shall, as to each other, be of the same date when declared and filed for record within 90 days after the work is done or before that time.

(c) The liens specified in Code Section 44-14-361 shall be inferior to liens for taxes, to the general and special liens of laborers, to the general lien of landlords of rent when a distress warrant is issued out and levied, to claims for purchase money due persons who have only given bonds for titles, and to other general liens when actual notice of the general lien of landlords and others has been communicated before the work was done or materials or services furnished; but the liens provided for in Code Section 44-14-361 shall be superior to all other liens not excepted by this subsection.

(d) In any proceeding brought by any materialman, by any mechanic, by any laborer, by any subcontractor, or by any mechanic of any sort employed by any subcontractor or by 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 44-14-361.2. Dissolution of lien.**

(a) The special lien specified in subsection (a) of Code Section 44-14-361 shall be dissolved if the owner, purchaser from owner, or lender providing construction or purchase money or any other loan secured by real estate shows that:

(1) The lien has been waived in writing by lien claimant; or

(2)(A) They or any of them have obtained the sworn written statement of the contractor or person other than the owner at whose instance the labor, services, or materials were furnished, or the owner when conveying title in a bona fide sale or loan transaction, that the agreed price or reasonable value of the labor, services, or materials has been paid or waived in writing by the lien claimant; and

(B) When the sworn written statement was obtained or given as a part of a transaction:

(i) Involving a conveyance of title in a bona fide sale;

(ii) Involving a loan in which the real estate is to secure repayment of the loan; or

(iii) Where final disbursement of the contract price is made by the owner to the contractor

there was not of record, at the time of the settlement of the transaction a valid preliminary notice or claim of lien which had not been previously canceled, dissolved, or expired.

(b) As used in paragraph (2) of subsection (a) of this Code section, the term:

(1) "Person other than the owner" shall not include a subcontractor.

(2) "Final disbursement" of the contract price means payment of the agreed price between the owner and contractor for the improvements made upon the real estate or the reasonable value of the labor, services, and materials incorporated in the improvements upon the real estate and shall include payment of the balance of the contract price to an escrow agent.

**Section 44-14-361.3. Preliminary notice of lien; form; notice to contractor; filing; necessity of preliminary notice.**

(a) Prior to filing a claim of lien, a person having a lien under paragraphs (1) through (8) of subsection (a) of Code Section 44-14-361 may at such person's option file a preliminary notice of lien rights. The preliminary notice of lien rights in order to be effective shall:

- (1) Be filed with the clerk of superior court of the county in which the real estate is located within 30 days after the date a party delivered any materials or provided any labor or services for which a lien may be claimed;
- (2) State the name, address, and telephone number of the potential lien claimant;
- (3) State the name and address of the contractor or other person at whose instance the labor, services, or materials were furnished;
- (4) State the name of the owner of the real estate and include a description sufficient to identify the real estate against which the lien is or may be claimed; and
- (5) Include a general description of the labor, services, or materials furnished or to be furnished.

(b) A party filing a preliminary notice of lien rights except a contractor shall, within seven days of filing the notice, send by registered or certified mail or statutory overnight delivery a copy of the notice to the contractor on the property named in the notice or to the owner of the property. The lien claimant may rely on the building permit issued on the property for the name of the contractor.

(c) The clerk of each superior court shall maintain within the records of that office a record separate from all other real estate records in which preliminary notices specified in subsection (a) of this Code section and affidavits specified in subsection (c) of Code Section 44-14-361.4 shall be filed. Each such notice and affidavit shall be indexed under the name of the owner as contained in the preliminary notice. The clerk shall collect a filing fee of \$5.00 for the filing of each preliminary notice.

(d) A person having a lien under paragraphs (1) through (8) of subsection (a) of Code Section 44-14-361 may enforce the lien without filing a preliminary notice of lien.

**Section 44-14-361.4. Cancellation or expiration of preliminary notice; demand for filing of claim of lien.**

(a) A preliminary notice of lien rights filed pursuant to Code Section 44-14-361.3 shall be dissolved if it is canceled and a preliminary notice also expires and is dissolved under any of the following conditions:

- (1) The lien has been waived in writing by the lien claimant;
- (2) The time has expired for filing the claim of lien as required in Code Section 44-14-361.1;
- (3) On residential property, a demand for filing of a claim of lien has been sent by registered or certified mail or statutory overnight delivery to the potential lien claimant at the address specified in the preliminary notice of lien rights and at least ten days have elapsed since the date of such mailing without the filing of a claim of lien; or
- (4) On all property except residential property, a demand for filing of a claim of lien has been sent by registered or certified mail or statutory overnight delivery to the potential lien claimant at the address specified in the preliminary notice of lien rights and at least ten days have elapsed since the date of such mailing without the filing of a claim of lien; provided, however, the demand for filing of a claim of lien shall not be sent until the contractor's contract is substantially complete or until the potential lien claimant's contract has been terminated or the potential lien claimant has abandoned the contract.

(b) A demand for filing of claim of lien shall contain the same information required to be contained in the preliminary notice of lien rights and shall contain the following statement addressed to the potential lien claimant:

"This demand was mailed to you on \_\_\_\_\_ pursuant to Code Section 44-14-361.4. You are notified that unless you file a claim of lien with respect to this claim on or before the tenth day after said date of mailing your right to claim a lien will be dissolved."

(c) If a demand for filing of a claim of lien is mailed as provided in this Code section and no claim of lien is filed within ten days after said date of mailing, the preliminary notice of lien rights may be canceled as provided in

this subsection. In order to obtain cancellation, the person who mailed the demand or his attorney shall file with the clerk of superior court a copy of the demand and his or her affidavit that the demand was mailed as provided in paragraph (3) or (4) of subsection (a) of this Code section and that ten days have elapsed since said date of mailing without the filing of a claim of lien by the potential lien claimant. Upon such filing, the clerk of superior court shall cancel of record the preliminary notice of lien rights.

**Section 44-14-361.5. Liens of persons without privity of contract.**

(a) To make good the liens specified in paragraphs (1), (2), and (6) through (9) of subsection (a) of Code Section 44-14-361, any person having a right to a lien who does not have privity of contract with the contractor and is providing labor, services, or materials for the improvement of property shall, within 30 days from the filing of the notice of commencement or 30 days following the first delivery of labor, services, or materials to the property, whichever is later, give a written notice to contractor as set out in subsection (c) of this Code section to the owner or the agent of the owner and to the contractor for a project on which there has been filed with the clerk of the superior court a notice of commencement setting forth therein the information required in subsection (b) of this Code section.

(b) Not later than 15 days after the contractor physically commences work on the property, a notice of commencement shall be filed by the owner, the agent of the owner, or by the contractor with the clerk of the superior court in the county in which the project is located. A copy of the notice of commencement shall be posted on the project site. The notice of commencement shall include:

- (1) The name, address, and telephone number of the contractor;
- (2) The name and location of the project being constructed and the legal description of the property upon which the improvements are being made;
- (3) The name and address of the true owner of the property;
- (4) The name and address of the person other than the owner at whose instance the improvements are being made, if not the true owner of the property;
- (5) The name and the address of the surety for the performance and payment bonds, if any; and
- (6) The name and address of the construction lender, if any.

The contractor shall be required to give a copy of the notice of commencement to any subcontractor, materialman, or person who makes a written request of the contractor. Failure to give a copy of the notice of commencement within ten calendar days of receipt of the written request from the subcontractor, materialman, or person shall render the provision of this Code section inapplicable to the subcontractor, materialman, or person making the request.

(c) A notice to contractor shall be 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 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; 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.

(d) The failure to file a notice of commencement shall render the provisions of this Code section inapplicable. The filing of a notice of commencement shall not constitute a cloud, lien, or encumbrance upon or defect to the title of the real property described in the notice of commencement, nor shall it alter the aggregate amounts of liens allowable, nor shall it affect the priority of any loan in which the property is to secure payment of the loan filed before or after the notice of commencement, nor shall it affect the future advances under any such loan. Nothing contained in this Code section shall affect the provisions of Code Section 44-14-361.2.

(e) The clerk of each superior court shall file the notice of commencement within the records of that office and maintain an index separate from other real estate records or an index with the preliminary notices specified in subsection (a) of Code Section 44-14-361.3. Each such notice of commencement shall be indexed under the name of the true owner and the contractor as contained in the notice of commencement.

**Section 44-14-362. Cancellation of preliminary notice upon final payment; form of cancellation.**

(a) Upon final payment after all labor, services, or materials have been furnished, a person who has filed a preliminary notice of lien rights shall either deliver a cancellation of the preliminary notice of lien rights at the time of final payment or cause the notice to be canceled of record within ten days after final payment. Any person who fails to so cancel a preliminary notice shall be liable to the owner for all actual damages, costs, and reasonable attorney's fees incurred by the owner in having the preliminary notice canceled.

(b) The cancellation required under this Code section shall be in the following form:

Clerk, Superior Court of \_\_\_\_\_ County

You are authorized and directed to cancel of record the preliminary notice of lien rights which we filed on the property owned by \_\_\_\_\_ (state name of owner) on \_\_\_\_\_ (give date) and recorded by you in Book \_\_\_\_\_, Page \_\_\_\_\_, of preliminary notices kept by you.

This \_\_\_\_\_ day \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ Lien claimant

\_\_\_\_\_ or attorney

**Section 44-14-363. Special liens on personalty; notice; enforcement; priorities; maximum claims for storage; recordation.**

(a) All mechanics of every sort shall have a special lien on personal property for work done and material furnished in manufacturing or repairing the personal property and for storage of the personal property after its manufacture or repair, which storage begins accruing after 30 days' written notice to the owner of the fact that storage is accruing and of the daily dollar amount thereof; and said notice shall be mailed to the owner by certified mail or statutory overnight delivery addressed to the owner at his last known address. Such special liens may be asserted by the retention of the personal property or the mechanic may surrender the personal property and give credit when the lien is enforced in accordance with Code Section 44-14-550; and if such special liens are asserted by retention of the personal property, the mechanic shall not be required to surrender the property to the holder of a subordinate security interest or lien. Such liens shall be superior to all liens except liens for taxes and, except as provided in subsection (2) of Code Section 11-9-310, such other liens as the mechanic may have had actual notice of before the work was done or material furnished.

(b) The maximum amount of storage that may be charged shall be \$1.00 per day. Nothing contained in this Code section shall allow a fee for storage to be charged on any item with a fair market value in excess of \$200.00. Storage charges pursuant to this Code section shall not apply to motor vehicles now or hereafter covered by Chapter 3 of Title 40 nor shall the storage fee be charged if there is a bona fide dispute between the customer and the mechanic as to the manner of repair or the charges for repair.

(c)(1) When possession of the property is surrendered to the debtor, the mechanic shall record his or her claim of lien within 90 days after the work is done and the material is furnished or, in the case of repairs made on or to farm machinery, within 180 days after the work is done and the material is furnished. The claim of lien shall be recorded in the office of the clerk of the superior court of the county where the owner of the property resides. The claim shall be in substance as follows:

"A.B., mechanic, claims a lien on \_\_\_\_\_ (here describe the property) of C.B., for work done, material furnished, and storage accruing (as the case may be) in manufacturing, repairing, and storing (as the case may be) the same."



(2) If possession of the personal property subject to a special lien as provided in this Code section is surrendered to the debtor and if such special lien is not preserved by recording the claim of lien as provided in paragraph (1) of this subsection, the mechanic acquires a special lien on other personal property belonging to the debtor which comes into the possession of the mechanic, except that this sentence shall not apply to consumer goods which are being used by a consumer for personal, family, or household purposes or which have been bought by a consumer for use for personal, family, or household purposes. The special lien created by this paragraph shall be subject to the provisions of this Code section as to foreclosure and recording.

**Section 44-14-364. Release of lien on approval of bond; amount; real property bonds; schedule, affidavit, and recordation; superior court clerk held harmless for good faith discretionary acts in connection with bond approval.**

(a) When any person entitled under this part to claim a lien against any real estate located in this state files his or her lien in the office of the clerk of the superior court of the county in which the real estate is located, the owner of the real estate or the contractor employed to improve the property may, before or after foreclosure proceedings are instituted, discharge the lien upon the approval of a bond by the clerk of superior court. The bond shall be conditioned to pay to the holder of the lien the sum that may be found to be due the holder upon the trial of any lien action that may be filed by the lienholder to recover the amount of his or her claim within 365 days from the time the claim of lien is filed. The bond shall be in double the amount claimed under that lien and shall be either a bond with good security approved by the clerk of superior court or a cash bond, except in cases involving a lien against the owner's domicile, in which event the bond shall be in the amount claimed under the lien. An owner or contractor may be required to provide supporting data to the clerk to prove the value of domiciled property when such property serves as a bond to discharge a lien provided for in this Code section. Upon the approval by the clerk of the bond provided for in this Code section, the real estate shall be discharged from the lien. For purposes of this subsection, the term "domicile" means the established, fixed, permanent, or ordinary dwelling place of the owner.

(b) Within seven days of filing the bond required by subsection (a) of this Code section and any attachments, the party filing such bond shall send a notice of filing such bond and a copy of the bond by registered or certified mail or statutory overnight delivery to the lien claimant at the address stated on the lien or, if no such address is shown for the lien claimant, to the person shown as having filed such lien on behalf of the claimant at the indicated address of such person or, if the bond is filed by a contractor, to the owner of the property, provided that whenever the lien claimant or the owner is an entity on file with the Secretary of State's Corporations Division, sending the notice of filing such bond and a copy of the bond to the company's address or the registered agent's address on file with the Secretary of State shall be deemed sufficient; provided, however, that the failure to send the notice of filing the bond and copy of the bond shall not invalidate the bond for purposes of discharge of a claim of lien under this Code section. With respect to property bonds, the clerk shall not accept any real property bond unless the real property is scheduled in an affidavit attached thereto setting forth a description of the property and indicating the record owner thereof, including any liens and encumbrances and amounts thereof, the market value, and the value of the sureties' interest therein, which affidavit shall be executed by the owner or owners of the interest; the bond and affidavit shall be recorded in the same manner and at the same cost as other deeds of real property. So long as the bond exists, it shall constitute a lien against the property described in the attached affidavit.

(c) The clerk of the superior court shall have the right to rely upon the amount specified in the claim of lien in determining the sufficiency of any bond to discharge under this Code section. The failure to specify both the amount claimed due under the lien and the date said claim was due shall result in such lien not constituting notice for any purposes.

(d) The clerk of the superior court shall be held harmless for good faith regarding any discretionary act in connection with approval of any bond provided for in this Code section.

**Section 44-14-365. Rights as to liens of partnerships, corporations, and associations made up of or employing registered architects, foresters, land surveyors, or professional engineers.**

If services are performed or furnished with respect to any real estate by any registered architect, registered forester, registered land surveyor, or registered professional engineer who is a member of a partnership or who is an agent or employee of a corporation or an association and the contract for the services is made for or on behalf of the owner with the partnership or corporation or association, the partnership, corporation, or association shall be entitled to all the privileges and benefits of Code Sections 44-14-361 and 44-14-362, just as if the partnership, corporation, or association was a registered architect, a registered forester, a registered professional engineer, or a registered land surveyor.

**Section 44-14-366. Waiver of lien or claim upon bond in advance of furnishing labor, services, or materials void; interim waiver and release upon payment; unconditional waiver and release upon final payment; affidavit of nonpayment.**

(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 shall substantially follow 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 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 making of final payment, the waiver and release shall substantially follow the following form in boldface capital letters in at least 12-point font:

**"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)

(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.

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

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

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

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

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

(f)(1) When a waiver and release provided for in this Code section is executed by the claimant, it shall be binding against the claimant for all purposes, subject only to payment in full of the amount set forth in the waiver and release.

(2) Such amounts shall conclusively be deemed paid in full upon the earliest to occur of:

(A) Actual receipt of funds;

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

(C) Sixty days after the date of the execution of the waiver and release, unless prior to the expiration of said 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, 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

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 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 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 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 or claim of lien.

**Section 44-14-367. Notice; required statement.**

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 44-14-368. Notice of contest of lien.**

(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.

**Section 44-14-369. Computation of certain time periods.**

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.

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