



## **2009 GEORGIA LIEN LAW CHANGES**

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|  | <u>Page</u> |
|--|-------------|
| Introduction to Lien Law Revisions .....             | 1           |
| The Lien Filing Timeframe.....                       | 2           |
| Timeframe for Filing A Legal Action.....             | 2           |
| Changes To Notice to Contractor Procedures.....      | 3           |
| Revised Method For Calculating Deadlines .....       | 4           |
| Changed Requirements For Mailing Claims Of Lien..... | 5           |
| Revised Timeframe For Notice Of Legal Action .....   | 6           |
| Lien Discharge Bond Changes.....                     | 7           |
| New Notice Of Contest of Lien .....                  | 8           |
| New Lien Waiver Forms.....                           | 9           |
| Changes To Affidavits Of Nonpayment .....            | 10          |
| Revisions To The Claim Of Lien Form .....            | 12          |
| Conclusion .....                                     | 13          |

### **FORMS**

|  |   |
|--|---|
| Notice of Contest of Lien.....               | 1 |
| Interim Waiver and Release Upon Payment..... | 2 |
| Waiver And Release Upon Final Payment .....  | 4 |
| Affidavit Of Nonpayment .....                | 5 |

# **2009 GEORGIA LIEN LAW CHANGES**

## **Introduction To Lien Law Revisions**

In the Summer of 2008, the Georgia Legislature passed Senate Bill 374 and thereby made the most sweeping changes yet to the Georgia lien laws. These changes, which go into effect on March 31, 2009, have wide-ranging impacts. The required forms for perfecting and releasing lien rights have been changed. Timeframes and notice requirements have been altered. A new claim of lien form is required. New procedures for various lien law measures have been introduced, and old procedures have been varied and, in most cases, improved.

In the paragraphs below, you will find a summary of the important changes made to the Georgia lien law, as well as a reference to the now current lien law provision which will be altered as of March 31, 2009. Where appropriate, you will see comments on the impact of these changes and suggestions for the proper management of lien law issues. Please understand that one aspect of the Georgia lien law has not changed—"substantial compliance" with lien law requirements is almost never good enough. Your failure to strictly observe the lien law requirements, as changed this year, will almost always lead to a forfeiture of your lien rights or a failure to gain the benefits otherwise available to you under the Georgia lien statute.

Finally, like any good construction lawyer, we caution you that neither the summary below nor the sample forms are offered as legal advice, but merely as a general description of the revised lien law statute.

Please go to [http://www.legis.ga.gov/legis/2007\\_08/versions/sb374\\_AP\\_11.htm](http://www.legis.ga.gov/legis/2007_08/versions/sb374_AP_11.htm), to get a complete copy of the Senate bill, as adopted.

## **The Lien Filing Timeframe**

**PRE 3/31/09 LAW:** A claim of lien must be filed within three months after the lien claimant's completion of its work (i.e., after the last lienable labor, services, materials or equipment is provided to the project).

**NEW LAW:** The claim of lien must be filed within 90 days after the lien claimant's completion of its work.

**COMMENT:** Just when you understood how to calculate the timeframe for filing a lien, the rules have changed! The three month lien filing timeframe was easy to calculate. For instance, if the last work was performed on January 10, then the lien filing deadline was April 9. The criticism of the old "three month" rule was that it did not produce a consistent timeframe for filing a claim of lien—that is, the lien filing timeframe could be slightly more than, or slightly less than, 90 days, depending on the months of the year involved in calculating the three month timeframe. Also, a number of would-be lien claimants assumed that the statutory timeframe was 90 days, since that 90-day timeframe has been adopted in a number of states. Still, the "old" law was generally understood and the timeframe easy to calculate.

## **Timeframe For Filing A Legal Action To Enforce Lien Rights**

**PRE 3/31/09 LAW:** In order to enforce your lien rights, you are required to file a legal action (e.g., a lawsuit or a proof of claim in bankruptcy) within 12 months from the time that the debt became due. The required legal action should be initiated by the lien claimant against the party with whom it had a contract, and if the venue provisions of the Georgia law allow it, the property

owner can be joined in that necessary step in the enforcement of lien rights. The 12-month period runs from the date the “debt became due,” which is interpreted by the Georgia courts to mean the last date on which the lien claimant supplied lienable labor, materials, services or equipment to the project, irrespective of when the lien claimant was entitled to be paid.

**NEW LAW:** The lien claimant now must file a legal action (e.g., a lawsuit, a proof of claim in bankruptcy, or an arbitration demand) against the party with whom it contracted for labor, materials or services within 365 days from the date of filing of the claim of lien. There are several changes reflected here:

- The 12-month timeframe has been converted to 365 days, following the same logic (or lack thereof) which led to the change in the lien filing timeframe from three months to 90 days.
- The 365-day deadline for filing an action runs, not from the date the debt became due, but from the date the claim of lien was filed.
- The lien statute was clarified to identify an arbitration action as one of the “legal” actions which will satisfy the filing requirement.

**COMMENT:** Consistent with the decision to change the lien filing period from 3 months to 90 days, the Legislature decided to set out the legal action deadline in days as opposed to months.

## **Changes To Notice To Contractor Procedures**

**PRE 3/31/09 LAW:** Subcontractors and suppliers who do not have a direct contract with the general contractor are generally required to provide the owner and general contractor with a

Notice to Contractor in order to preserve their lien rights, *if* a proper Notice of Commencement has been timely recorded and posted at the job site. The existing law provides that the Notice to Contractor shall be “given” to the owner or the agent of the owner and to the contractor at the addresses set out in the Notice of Commencement, but is silent as to how the notice is to be “given.”

**NEW LAW:** The revised statute specifically requires that the Notice to Contractor shall be sent by registered or certified mail or statutory overnight delivery (such as U.S.P.S. Express Mail or UPS or Fed Ex overnight service) to the owner or the agent of the owner and to the contractor at the addresses set forth in the Notice of Commencement. Remember, if a Notice of Commencement has not been properly filed and posted as required by the Georgia lien law, the Notice to Contractor provisions of the lien law do not apply. But, where a Notice of Commencement has been filed, this new change should eliminate potential arguments about whether or not the Notice to Contractor was properly “served.”

## **Revised Method For Calculating Deadlines**

**PRE 3/31/09 LAW:** If the deadline for filing a lien, or filing an action to enforce your lien rights, or any other deadline under the lien law, falls on a weekend day or on a holiday, you are required to meet the filing or other deadline by the business day prior to the weekend or holiday deadline.

**NEW LAW:** If a lien law deadline falls on a weekend or holiday, the time period for meeting that deadline now will be extended to the next day that is not a weekend or holiday. This change

is consistent with the manner in which Georgia law calculates most deadlines of legal significance. In the past, many lien claimants assumed, to their detriment, that a lien filing deadline, for instance, would extend to the next business day if the deadline fell on a weekend when the courts were closed. The revised law now will save such lien filers from what was a previously-erroneous assumption.

## **Changed Requirements For Mailing Claims Of Lien**

**PRE 3/31/09 LAW:** When a claim of lien is filed, the lien claimant is required to mail a copy of the claim of lien by registered or certified mail or statutory overnight delivery to the owner or the general contractor as agent of the owner “at the time” the lien is filed. The existing lien law does not make it clear whether the claim of lien must be mailed the same day that the lien is filed, or within a few days of the lien filing, and the lack of clarity has led to occasional arguments regarding the timeliness of the service of the claim of lien. The failure to timely mail the claim of lien invalidates the lien claim.

**NEW LAW:** Under the revised statute, a true and accurate copy of the claim of lien must be sent by registered or certified mail or by statutory overnight delivery to the property owner within two business days after the claim of lien is filed. If the owner’s address cannot be found, the copy of the claim of lien may be sent to the contractor, as the agent of the owner. 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 registered address or to the registered agent’s address will satisfy the service requirement. And, if a Notice of Commencement has been filed as required, the lien claimant also must 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.

**COMMENT:** The change is part of an effort to bring certainty to an issue which was not clearly treated in the statute, and thus to avoid needless arguments. Since the lien law is strictly construed, and even minor departures from the lien law requirements typically will void a party's lien rights, certainty in defining each step to be touched by the lien claimant is a desirable goal. In addition, the revision now guarantees that, at least when a Notice of Commencement has been filed, the general contractor will be made aware of the filing of liens by lower-tier subcontractors and suppliers.

## **Revised Timeframe For Notice Of The Legal Action To Enforce Lien Rights**

**PRE 3/31/09 LAW:** Within 14 days after the filing of an action by the lien claimant against the party with whom it contracted, which is the first step in the enforcement of the lien claimant's rights, the lien claimant is obligated to file a notice of the legal action with the Clerk of the Superior Court of the county in which the lien was filed.

**NEW LAW:** The lien statute has been revised to increase, from 14 days to 30 days, the timeframe for filing the notice of the commencement of a legal action by the lien claimant.

**COMMENT:** The 14 day period has been extended to 30 days primarily as a result of the delay experienced by some lien filers in getting back from the clerk of the court or the arbitration

tribunal a stamped “filed” copy of the legal action filed with the court or arbitration tribunal, showing the case or matter number of the lien action. The goal was to insure that valid lien claims were not dismissed because of the courthouse recording timeframes and procedures.

## **Lien Discharge Bond Changes**

**PRE 3/31/09 LAW:** The property owner or the contractor may discharge a claim of lien by filing a bond in the office of the Superior Court of the county in which the real estate is located. The bond shall be in double the amount of the claim of lien (although with respect to residential property, the bond shall in the amount claimed under the lien), and upon the filing of a proper bond, the lien against the property is discharged.

**NEW LAW:** The lien bond discharge provisions remain unchanged, except that the revised statute requires that, within seven days of filing a lien discharge bond, the party filing the bond must send a notice of the filing of the bond and a copy of the bond by registered or certified mail or statutory overnight delivery to the lien claimant at the addressed stated on the lien, or if the claimant’s address does not appear on the lien, then to the person filing the lien on behalf of the lien claimant at the address indicated on the claim of lien. If the bond is filed by the contractor, then the notice of the filing of the bond and a copy of the bond must be sent to the owner of the property, and this requirement can be satisfied by sending the notice and copy of the bond to the owner’s address, or to the registered agent’s address, on file with the Georgia Secretary of State.

**COMMENT:** Under the existing law, lien claimants sometimes initiated legal actions to foreclose on their lien rights, without knowing that the claim of lien had been discharged by a

lien bond. Providing notice to all involved parties of the lien discharge bond filing should cure that problem. The revised statute does provide that the failure to send the notice of the filing of the lien bond will not invalidate the bond.

## **New Notice Of Contest Of Lien**

**PRE 3/31/09 LAW:** The existing lien law does not provide a statutory provision for forcing a lien claimant to expedite the filing of a legal action to enforce its claim of lien rights.

**NEW LAW:** The revised lien law added a provision which allows an owner or a contractor, or their agents, to shorten the prescribed time in which a lien claimant must commence a lien action, by filing in the office of the Superior Court Clerk a “Notice of Contest of Lien,” in the form set out in the revised lien statute. The notice provides that the lien claimant must commence a lien action to enforce its lien within 60 days from the receipt of the Notice of Contest of Lien; and, if the lien claimant fails to do so, the claim of lien is deemed void. With the Notice of Contest of Lien, the party contesting the lien also must file proof of delivery of the Notice on the lien claimant. The Notice of Contest of Lien must be sent, within seven days of its filing, by registered or certified mail or statutory overnight delivery to the lien claimant at the address noted on the face of the lien claim. The claim will be extinguished by law 90 days after the filing of the Notice of Contest of Lien if no Notice of Commencement of a lien action has been filed with the Superior Court Clerk in that timeframe.

**COMMENT:** This new procedure was born out of desire to allow owners or general contractors to challenge improper or overstated liens, without having to wait for perhaps a year before

knowing whether or not the lien claimant would actually pursue a legal action to enforce its lien rights.

## **New Lien Waiver Forms**

**PRE 3/31/09 LAW:** When a party is requested to execute an interim or final lien waiver on a Georgia construction project, the lien waiver form must “follow substantially” the lien waiver form set out in the Georgia lien statute. Otherwise, the lien waiver is invalid. And, even though the lien waiver form states that the lien waiver is conditioned on the signing party’s actually receiving the payment promised in the lien waiver, the Georgia lien statute provides that the “conditional” lien waiver shall become “unconditional” and binding 30 days after the date of the execution of the lien waiver, regardless of whether the party actually receives the promised payment.

**NEW LAW:** The interim and final lien waiver forms still must “substantially follow” the statutory forms, but the statutory forms have been changed. The lien waiver forms now must appear in bold face capital letters in at least 12 point font. In addition, the “conditional” lien waivers become “unconditional” and binding 60 days after the lien waiver is executed. The lien waiver form must contain a notice warning the party signing the lien waiver that the lien waiver will become final and binding 60 days after the date of the lien waiver, unless the party signing the lien waiver files either a claim of lien or an affidavit of nonpayment prior to the expiration of that 60-day period. The failure to include this notice on the face of the lien waiver form invalidates the lien waiver.

The final or “unconditional” lien waiver form has been revised to remove the “unconditional” label and language. The final lien waiver is conditional on the payment of the amount promised in the final lien waiver, but subject also to the conclusive presumption of payment 60 days after the lien waiver is signed, unless a claim of lien or affidavit of nonpayment is filed within that 60-day period. The lien waiver forms also have been altered to add language releasing bond rights in addition to lien rights.

**COMMENT:** The “bold face capital letters” requirement makes for a hard-to-read lien waiver form. The required warning of the risks that a “conditional” lien waiver form will become “unconditional” and binding is a much-needed improvement. Many contractors, subcontractors and suppliers signing the conditional lien waiver forms assumed that the lien waiver meant what it said—it was not binding until the payment amount set out in the lien waiver was paid. For many subcontractors and suppliers, the 30-day period until the lien waiver became “unconditional” ran before the subcontractor or supplier was entitled to be paid by the terms of its subcontract or purchase order. The extension of this timeframe to 60 days should lessen the need to file affidavits of nonpayment or claims of lien in order to avoid a premature loss of lien rights.

## **Changes To Affidavits Of Nonpayment**

**PRE 3/31/09 LAW:** Within 30 days after signing an interim or unconditional lien waiver, a party not yet paid the amount promised in the lien waiver can file an Affidavit of Nonpayment with the Clerk of the Superior Court in the county in which the property is located. The timely filing of a proper Affidavit of Nonpayment shall prevent the conditional lien waiver from

becoming final and binding on the party. Once paid, the party will be required to execute in recordable form an affidavit swearing that payment in full has been received. Once recorded, this Affidavit of Payment will nullify the previously-filed Affidavit of Nonpayment.

**NEW LAW:** The Affidavit of Nonpayment statutory form has been changed. The new form to be filed must be in all bold face capital letters in at least 12 point font. In addition, the Affidavit of Nonpayment now must be filed within 60 days, as opposed to 30 days, of the execution of the lien waiver in order to defeat the presumption of payment to the potential lien claimant. And, within seven days of the filing of the Affidavit of Nonpayment, the filing party now is required to 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 has been filed, a copy of the Affidavit of Nonpayment also must be sent to the contractor at the address shown on the Notice of Commencement. The copy of the Affidavit of Nonpayment which must be sent to the owner can be sent to the owner's address listed with the Georgia Secretary of State's Corporations Division, if applicable, or to the address of the registered agent for the owner, as that address appears on file with the Georgia Secretary of State. Language detailing the new requirements for serving the Affidavit of Nonpayment on the owner and, if appropriate, the contractor is another required addition to the new form.

**COMMENT:** As previously noted, the increase of the filing timeframe from 30 days to 60 days should prevent some of the unnecessary filings of Affidavits of Nonpayment by subcontractors or suppliers whose subcontracts or purchase orders do not entitle them to payment within 30 days of the signing of the lien waiver form. And, the required serving of notice of the filing of

an Affidavit of Nonpayment is an appropriate reminder to the owner and general contractor of the absence of a promised payment. Once again, the “all bold face caps” requirement seems unnecessary, but it is now the law.

## **Revisions To The Claim Of Lien Form**

**PRE 3/31/09 LAW:** The existing statute sets out suggested claim of lien language which must be followed “in substance.” Subject to an argument that the claim of lien form does not “in substance follow” the statutory language, nothing in the existing lien law requires that a claim of lien be made on a specified statutory form, although the Georgia case law has made it clear that certain information (e.g., the name of the person claiming the lien, the amount of lien, the date the claim first came due, the project name, the name of the true owner of the property, a description of the property, and the purposes for which labor or material were supplied) must be included in the claim of lien.

**NEW LAW:** Any lien filed after March 31, 2009, must 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 the filing of the claim of lien if no Notice of Commencement of Lien Action is filed in that time period.” The failure to include this language in the claim of lien shall invalidate the lien and prevent it from being filed. No release or voiding of such liens shall be required. The lien shall expire and be disregarded once it is determined that a Notice of Commencement of a legal action was not timely filed in response to a Notice of Contest of Lien. The claim of lien also must contain a statement advising the owner of the property of the right to file a notice of contest of the lien. The absence of the required statement or notice shall

invalidate the lien. Finally, the claim of lien language was modified to clarify that the reference in the claim of lien form to the date when the “claim became due” is the date on which the last lienable labor, materials, services or equipment were provided to the project.

**COMMENT:** In order to state valid claims of lien, your traditional claim of lien form will have to be revised to include the required statement and notice described above. The changes here are rational and helpful. The inclusion of an automatic timeframe for voiding a claim of lien should help property owners and contractors deal with stale liens as to which no legal action is pursued by the lien claimant.

## **Conclusion**

As this summary of the most significant changes in the lien law demonstrates, effective March 31, 2009, the Georgia lien law landscape will change in many and significant ways. Until March 31, 2009, however, construction industry participants must be careful to continue to observe the “existing” provisions of the Georgia lien law. For example, for projects which will begin prior to March 31 and extend thereafter, owners and general contractors will want to attach to their subcontracts and supply agreements copies of lien waiver forms which comply with the existing Georgia statute and require their use through March 30, 2009, but also attach to their subcontracts and supply agreements the revised lien waiver forms and require their execution on or after March 31, 2009. Although there undoubtedly may be areas of the new lien law which will require some definition and explanation by the courts, those who may be affected by the lien law are cautioned to strictly follow the new statutory requirements.

# **FORMS**

***For Informational Purposes Only***

**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)**

**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.**

**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.**

**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.**

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