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Mechanic's and Materialmen's Liens in Georgia Research Guide

By Benjamin Yancey

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Introduction, Scope, and Jurisdiction

The Georgia Legislature, like several other states, has enacted a statute to protect contractors and laborers when providing services or supplying materials and equipment to construction projects. These protections are known as Mechanic's and Materialmen's Liens and are placed on the property under construction. Mechanic's and Materialmen's liens are in derogation of common law and therefore creatures of statute. The Georgia Statute is located at *O.C.G.A. § 44-14-360:369*.

Mechanic's and Materialmen's Liens balance the interest of several parties working on a construction project. These parties include the owner, general contractor, subcontractors, professionals, material suppliers, etc. The large number of parties involved can make difficult to ensure that everyone's interests are protected. These statutes ensure payment for the subcontractor or material supplier not in privity with the general contractor or owner and requires the filing of several notices of the possible lien claims. Failing to comply with these statutes and notice requirements can result in the removal of a lien and no compensation to contractors or professionals working on the project.

This guide is focused on Georgia Mechanic's and Materialmen's Liens and **should not** be used in a jurisdiction outside the State of Georgia. Different states have set different notice and procedure requirements to claim liens and no state shares the exact same statute. This can make claiming a lien extremely difficult for contractors who work in several states and requires reviewing each state's statute. This guide is meant to inform someone interested in practicing Construction Law in Georgia and provides the various sources to consult when claiming a Mechanic's and Materialmen's Lien as well as several of the required forms.

Disclaimer

This research guide is a starting point for a law student or an attorney to research the area of Mechanic's and Materialmen's Liens. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law Library or consult an attorney.

Primary Sources

Mechanics and Materialman Lien Statutes are state specific and attorneys should locate the statute that applies in their jurisdiction. The following are the relevant statutes and cases binding in Georgia.

Statutes:

The Georgia Statutes provide the procedure to establish a Mechanic's and Materialmen's Lien. Judges strictly enforce the notice requirements and practitioners should pay particular attention to statutes regarding notice.

- I. *O.C.G.A § 44-14-360*: Definitions- this defines the essential terms of art used in the statute such as "Business Day", "Contractor", "Lien Action", "Materials", "Materialmen", "Subcontractor", etc.
 - a. It is always a good practice to read the definition section of any code section however it is imperative when practicing in an unfamiliar or specialized area of the law. Attorneys attempting to expand their practice into construction law, should spend some time ensuring they understand the specialized language used in this code section. Assumptions can quickly lead to mistakes.
- II. *O.C.G.A § 44-14-361*: Creation of Liens; Labor, Services, or Materials Furnished- identifies who has the rights to a lien.
 - a. This is the most important section of the code regarding Mechanic's and Materialmen's Lien. This section provides the different notice requirements to create a valid lien.
- III. *O.C.G.A § 44-14-361.1*: How Liens are Created and Declared
 - a. Provides the procedure for obtaining a Mechanic's or Materialmen's Lien.
- IV. *O.C.G.A § 44-14-361.2*: Dissolving Liens
- V. *O.C.G.A § 44-14-361.3*: Preliminary Notice of Lien Rights

- a. Georgia like many States do not require Preliminary Notices; however, they are a safety measure to avoid any challenges to the lien by the owner through a Contractor Dissolution Affidavit.
- VI. *O.C.G.A § 44-14-361.4*: Cancellation or Expiration of Preliminary Notice.
- VII. *O.C.G.A § 44-14-361.5*: Notice to Contractor and Notice of Commencement
 - a. Applies to contractors not in privity of contract with the prime/general contractor.
 - b. Provides what information must be included in these notices to claim a lien or commence an action.
- VIII. *O.C.G.A § 44-14-363*: Special Liens
- IX. *O.C.G.A § 44-14-364*: Discharge of Lien by Bond
 - a. Typically applies to government projects that require a performance bond to replace or cover any liens filed against the project.
- X. *O.C.G.A § 44-14-365*: Employment of Professionals
- XI. *O.C.G.A § 44-14-367*: Failure to commence Lien Action; Expiration of Lien
- XII. *O.C.G.A § 44-14-368*: Notice to Contest Lien with Form.

Cases:

- I. *In re American Bldg. Consultants, Inc.*, 138 B.R. 1015 (1992).
 - a. Failing to file a claim of lien within three months of completing work on a project will sacrifice a subcontractor's rights to claim a lien.
- II. *Harris Ventures, Inc. v. Mallory & Evans, Inc.*, 291 Ga. App. 843 (2008).
 - a. Failing to correctly file the Notice of Commencement will relieve a Subcontractor's duty to file a Notice to Contractor and still allow them to retain their rights to claim a lien.
- III. *General Elec. Co. v. North Point Ministries, Inc.*, 289 Ga. App. 382 (2008).
 - a. A legal description of the property and the name of the true owner are matters of substance, "not mere technicalities."
- IV. *Madison Retail Suwanee, LLC v. Orion Enterprises Sales & Service, Inc.*, 309 Ga. App. 712 (2011).
 - a. The Subcontractor's Claim of Lien was still effective when omitting one word of the owner's name. (Retail)
 - b. This case highlights an example of a mere technicality.
- V. *Capitol Materials, Inc. v. JLB Buckhead, LLC*, 337 Ga. App. 848 (2016).
 - a. Failing to list the construction lender on the Notice of Commencement rendered it fatally defective and excused the Material Supplier's late filing of the Notice to Contractor.
 - b. Here, the contractor was primarily operating in Texas and applied the Texas statute regarding Notices of Commencement. Texas does not share the same requirement of

listing the construction lender as in Georgia's statute, and the court held that this was more than a mere technicality.

Forms

Below are several different forms for preliminary notices, notice to contractors, notice of commencements, and the claim of lien itself. It is important to check the date and ensure that these forms are current. Attorneys can compare the different language and clauses used in these forms to decide what works best for their practice. However, attorneys should always review the statutes to confirm that they are in compliance.

I. Preliminary Notices:

- a. *Ga. Construction Mechanics' and Materialmen's Liens with Forms § 7:17*, Hinkle March 2017
- b. *Ga. Construction Mechanics' and Materialmen's Liens with Forms § 7:18*, Hinkle March 2017
- c. *Ga. Construction Mechanics' and Materialmen's Liens with Forms § 7:19*, Hinkle March 2017
- d. *Preliminary Notice of Mechanic's Lien Rights (Ga)*, by Practical Law Real Estate (October 2016). Located in the Westlaw Practical Law materials.
- e. *Preliminary Notice of Lien Rights*, Southeast Transaction Guide §283.25, Bender (2017).

II. Notice to Contractor

- a. *Ga. Construction Mechanics' and Materialmen's Liens with Forms § 7:28*, Hinkle (March 2017)
- b. *Notice to Contractor (Mechanic's Liens) (Ga)*, by Practical Law Real Estate (March 2017). Located in the Westlaw Practical Law materials.
- c. *Notice to Contractor by Person Not in Privity of Contract*, Southeast Transaction Guide §283.26, Bender (2017).

III. Notice of Commencement

- a. *Ga. Construction Mechanics' and Materialmen's Liens with Forms § 7:27*, Hinkle March 2017
- b. *Notice of Commencement of Mechanic's Lien Action (Ga)*, by Practical Law Real Estate (February 2016). Located in the Westlaw Practical Law materials.
- c. *Notice of Commencement (Mechanic's Liens) (Ga)*, by Practical Law Real Estate (October 2016). Located in the Westlaw Practical Law materials.
- d. *Notice of Commencement*, Southeast Transaction Guide §283.24, Bender (2017)

IV. Claim of Lien

- a. *Ga. Construction Mechanics' and Materialmen's Liens with Forms § 7:9*, Hinkle March 2017
- b. *Claim of Mechanic's Lien (Ga)*, by Practical Law Real Estate (November 2016). Located in the Westlaw Practical Law materials.

- c. *Amended Claim of Mechanic's Lien (Ga)*, by Practical Law Real Estate (March 2017). Located in the Westlaw Practical Law materials.
- d. *Claim of Lien*, Southeast Transaction Guide §283.80, Bender (2017)
- e. *Amended Claim of Lien*, Southeast Transaction Guide §283.81, Bender (2015)

Secondary Sources

Secondary sources such as legal encyclopedias, treatises, restatements, and law review articles can provide the necessary overview and introduction into Construction Law generally and more particularly Mechanics and Materialman Liens.

Encyclopedias & Treatises:

I. Georgia Jurisprudence-

- a. *Mechanic's and Materialmen's Liens, 2 Ga. Jur. Ch. 21B (2017)*
 - i. Provides basic knowledge of what the liens are, who they protect, and what property they attach to.
 - ii. Has fifteen separate subchapters that address specific issues that are further broken down into subsections. For example, "Persons having a claim of lien" or "Preliminary Notice Requirements".

II. Georgia Construction Mechanics' & Materialmen's Liens with Forms, Daniel F. Hinkel (The better of these two encyclopedias and provides more detailed instruction on the process.)

- a. *Chapter 1: Mechanics' Lien Laws in General, Ga. Construction Mechanics' and Materialmen's Liens, (2017)*
 - i. Provides more history and knowledge of the origin of these liens in Georgia.
- b. *Chapter 7: Claim of Lien, Ga. Construction Mechanics' and Materialmen's Liens, (2017)*
 - i. This chapter covers the full procedure for claiming a Mechanic's and Materialmen's lien in Georgia as well as providing the corresponding forms to complete at each step.

Law Review Articles:

I. Mercer Law Review

- a. Mercer releases the *Annual Survey of Georgia Law* every fall which typically includes a section dedicated to Construction Law.

- b. This article highlights any changes to the code or relevant cases that were decided in the past year. This is a good source to stay up to date with changes in the law.
- c. These articles can be found on the Mercer Law School website at <http://www2.law.mercer.edu/lawreview/onlineissues.cfm>, but are only current through the 2012 edition as of now.

Specialized Resources:

I. Practice Guides:

a. Westlaw:

- i. Westlaw's Practical Law provides 20 sources related to Georgia Construction Law and all are dedicated to Mechanic's and Materialmen's liens.
 - 1. *Understanding Mechanic's Liens* is the only Practice note provided and supplies basic knowledge of Mechanic's and Materialmen's Liens. West's other secondary sources provide a better explanation and background.
 - 2. There are 16 sample forms that cover all the of required notices and the claim of lien itself.
 - 3. *Mechanic's Lien Workflow Checklist* is the only checklist available but is a great resource that clearly lays out the several deadlines for the notices requirements.
- ii. To locate these resources, follow these steps: Westlaw → Practical Law → Real Estate → Construction → Limit to Georgia

b. Lexis:

- i. Much like Westlaw Lexis provides similar practical materials. These sources are not as good as Westlaw; however, they do provide links to the case law and statutes.
 - 1. *Georgia Mechanic's Lien Law* is the only practical note and does not provide as good of coverage as other secondary sources.
 - 2. There are 28 sample forms that also cover all the notices and the claim of lien.
 - 3. This is a great source to stay updated on new Georgia cases and litigation because Lexis provides links and updates to cases and legislation on point.
- ii. To locate these resources, follow these steps: Lexis → Practical Guidance → Real Estate → Mechanic's Lien → Subtopics → Georgia

II. *Lienlawonline.com*

- a. This resource is restricted and requires attorneys to incur a charge, but having access through a firm or personal account will keep attorneys up to date on any changes in State Mechanic's and Materialmen's Lien Laws.
- b. Limited access that tracks a particular State can be purchased for \$99 or Nationwide access to all States' Lien Laws can be purchased for \$249. If planning on practicing in several states this is an imperative resource that allows you to track changes in the law and be aware of the several different notice requirements. It can also be very helpful when attempting to expand your practice into new states.

Associations:

- I. Atlanta Bar Association (ABA)- Construction Law Section
 - a. Given Atlanta's continuous growth and development it is no surprise that Construction Law is a popular practice in the Atlanta area. As a result, the Atlanta Bar Association has a section dedicated to Construction Law.
 - b. This section has breakfasts and CLE's throughout the year to keep attorneys updated on changes in Georgia Construction Law and provide opportunities to meet and network with local construction attorneys.

- II. The Associated General Contractors of America
 - a. This association is directed toward Contractors but provides certain Construction Law information and particularly a State Law Matrix.
 - b. The State Law Matrix provides a breakdown of each State's Construction Laws and their many differences. This can be helpful for attorneys planning of practicing in several states.