

SUMMARY OF LAWS AND CLERICAL DUTIES REQUIRED FOR MATERIALMEN'S LIENS

Statutory Provisions

O.G.G.A § 44-14-361.1. How liens declared and created; 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 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 claim of lien within three months 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 three months 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, which 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) for building, repairing, improving, or furnishing material (or whatever the claim may be)."

At the time of filing for record of his claim of lien, the lien claimant shall send a copy of the claim of lien by registered or certified mail to the owner of the property or the contractor, as the agent of the owner;

(3) The commencement of an action for the recovery of the amount of the party's claim within 12 months from the time the same shall become due. In addition, within 14 days after filing such 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 wherein the action is brought; the style and number of the action, including the names of all parties thereto; the date of the filing of the 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 within 12 months from the date such services, labor, supplies, or material are furnished to him or her, so that personal jurisdiction cannot be obtained on the contractor or subcontractor in an 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 an 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 an 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 an action against the owner thereof, if filed within 12 months from the time the lien becomes due, 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 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 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 14 days after filing such 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 wherein the action is brought; the style and number of the action, including the names of all parties thereto; the date of the filing of the 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.
- (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 three months 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 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 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.

Clerical Duties of Clerk of Superior Court

O.G.G.A § 44-14-361.1 and relative case law (viz., *Palmer, et. al. v. Duncan Wholesale, Inc.* 262 Ga. 28, 413 (S. Ct. 1992, No. S91G0484) specify that a materialmen's lien "effectively permits the transfer of liability from the person who actually contracted with the materialman for materials to be used in improving real estate to the owner of the improved property, even though that property owner usually will have no relationship with the materialman, contractual or otherwise."

Accordingly, it is the duty of the clerk of superior court (when presented a materialmen's lien for filing) to index on the appropriate lien index the names of the person(s) who actually contracted with the materialman for materials to be used in improving real estate and the owner(s) of the property that was improved. Doing so provides public notice that a lien has been claimed against the property of the real estate owner for which the materialman provided supplies and/or services for repairing or improving such property.