

CHANGE IS COMING GEORGIA'S NEW LIEN LAW

By Frank E. Riggs, Esq., Partner, Troutman Sanders LLP

In 2008, the Georgia Legislature passed the most sweeping changes yet to the Georgia lien laws. In the last issue of *Georgia Construction Today*, Mike Dunham, the Georgia Branch AGC Executive Vice President, shared with you the Chapter's role in the passage of these extensive lien law revisions. In this article, we will briefly highlight for you the most significant, but not all of the changes going into effect on March 31, 2009. For a more comprehensive article, complete with the revised statutory lien forms, please visit Georgia Branch, AGC's website at www.agcga.org; click on *News*, then on *Useful Industry Articles*.

Lien Filing Timeframe And Mailing Requirements

- A claim of lien must be filed within 90 days after the lien claimant's performance of its last lienable work, as opposed to the three-month deadline under existing law.
- Within two business days after the claim of lien is filed, a copy of the claim of lien must be mailed by registered or certified mail or statutory overnight delivery to the property owner.
- If the property owner's address cannot be found or if a Notice of Commencement has been filed, a copy of the claim lien also must be similarly served on the contractor at the address shown on the Notice of Commencement.

Legal Action To Enforce Lien Rights

- To preserve a lien claim, the lien claimant must file a lawsuit, bankruptcy claim, or arbitration claim against the party with whom it contracted within 365 days from the date the claim of lien is filed.
- An arbitration demand is now included as one of the "legal actions" which will satisfy the filing requirement.
- The lien claimant has 30 days, as opposed to 14 days, from the filing of the legal action to file a notice that the legal action has been commenced with the Superior Court where the lien was filed.

Serving Lien Discharge Bonds

- Within 7 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.
- If the lien discharge bond is filed by the contractor, the notice of filing of the bond and a copy of the bond must be sent to the property owner.

New Notice Of Contest Of Lien

- The owner or contractor can file a Notice of Contest of Lien demanding that the lien claimant file an action to enforce its lien within 60 days or the claim of lien will be deemed void.
- The Notice of Contest of Lien must be sent, within 7 days of its filing, by registered or certified mail or statutory overnight delivery to the lien claimant. Proof of this service also must be filed with the Notice of Contest.

New Required Lien Waiver Forms

- Lien waivers must be in bold face capital letters in at least 12 point font.
- Interim and final lien waivers, conditioned on the receipt of payment, become “unconditional” and binding 60 days after the date of the lien waiver, even if the promised payment is not received, unless a claim of lien or an Affidavit of Nonpayment is filed within that 60-day period.
- Interim and final lien waiver forms must contain a notice warning that the lien may become final and binding 60 days after the date of the lien waiver.
- The final lien waiver form has been revised to remove the “unconditional” language. The final lien waiver is conditioned on payment, but subject to the same conclusive presumption of payment 60 days after the lien waiver is signed.
- Lien waiver forms are altered to release bond rights in addition to lien rights.

Changes To Affidavits Of Nonpayment

- Affidavits of Nonpayment must be in bold face capital letters and at least 12 point font.
- Within seven days of filing the Affidavit of Nonpayment, a copy must be sent by registered or certified mail or statutory overnight delivery to the property owner.
- 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 must be sent to the contractor.
- Statutory language detailing the new requirements for serving the Affidavit of Nonpayment must be included in the new form.

Revisions To The Claim Of Lien Form

- Any lien filed after March 31, 2009, must include 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 claim of lien must contain a statement advising the property owner of the right to file a Notice of Contest of Lien.
- The absence of *either* the required statement regarding the Notice of Contest or the required notice regarding the potential lien expiration will invalidate the lien.

A Final Warning

As this summary demonstrates, effective March 31, 2009, the Georgia lien law landscape will change in many significant ways. Until March 31, 2009, however, be careful to continue to observe the “existing” provisions of the Georgia lien law.

About the author: Frank E. Riggs, Esq., is a partner with Troutman Sanders LLP in its Atlanta office and the head of the firm’s Construction Practice Group. He was a member of the Advisory Committee appointed by the Georgia Senate to study and recommend lien law changes in 2008. He is a frequent national speaker and writer on construction law issues and can be reached at frank.riggs@troutmansanders.com.