

Effective: July 1, 2010

Ga. Code Ann., § 44-14-361.1

§ 44-14-361.1. How liens created and declared; record; commencement of action; notice; exceptions priorities

Currentness

(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, 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.

Credits

Laws 1873, p. 42, § 7; Laws 1874, p. 45, § 1; Laws 1941, p. 345, § 1; Laws 1952, p. 291, § 1; Laws 1953, Jan.-Feb. Sess., p. 582, §§ 3-5; Laws 1956, p. 185, §§ 2, 3; Laws 1956, p. 562, § 3; Laws 1960, p. 103, § 1; Laws 1967, p. 456, § 1; Laws 1968, p. 317, § 1; Laws 1977, p. 675, § 1; Laws 1981, p. 846, § 1; Laws 1983, p. 1450, § 1; Laws 1984, p. 22, § 44; Laws 1985, p. 1322, § 3; Laws 1989, p. 438, § 1; Laws 1991, p. 639, § 1; Laws 1997, p. 829, § 1; Laws 1998, p. 860, § 1; Laws 2000, p. 1589, § 3; [Laws 2008, Act 766, § 2, eff. March 31, 2009](#); [Laws 2010, Act 618, § 1, eff. July 1, 2010](#).

Formerly Code 1873, § 1980; Code 1882, § 1980; Civil Code 1895, § 2804; Civil Code 1910, § 3353; Code 1933, § 67-2002; [Code 1981, § 44-14-362](#).