

Rooftopper



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President's Message

We will soon be at the annual convention of the Roofing & Sheet Metal Contractors Association of Georgia at Hilton Head Island. It is going to be a great time for those attending.

A lot of planning and preparation has gone into the education programs and social events. As a result, we have sold out our room block and it looks like the turn-out is about twice the size of the "mini-conventions" that we have been having for the last couple of years.

I would like to make a personal thank you to our convention sponsors. The following companies have stepped up to help offset the cost of this years convention: American Professional Risk Services, Inc, Commercial Roofing Specialties, The Quarles Agency, Comp-ton Sales, Inc, and McElroy Metal, Inc.

You also should have received your new 2008 directory in the mail. If you didn't please give the office a call at 404-766-1632 and Vernon or Bob will be happy to get you a copy in the mail.

Look forward to seeing everyone July 23-27.

Matt Sowell
President
RSMCA of GA

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FORGET WHAT YOU KNEW ABOUT THE GEORGIA LIEN LAW: CHANGES FOR 2009

By David R. Hendrick

While most people were finally getting comfortable with the ins and outs of the puzzle known as the Georgia Mechanic's and Materialmen's lien law, the Georgia Senate recently created and charged a Lien Law Study Committee to review the lien statute and determine whether there were any areas which should be revised. The Committee, comprising five Senators and chaired by Senator Seabaugh, was advised by an Advisory Committee drawn from a broad spectrum of interested associations, groups

Lien Law Changes (continued)

and persons. The goal of the Committee was to review the lien statute and determine whether there were aspects of the current lien law that needed to be "fixed" or that should be modified to make the lien process more clear and consistent, more functional, or more closely reflective of the construction process, both residential or commercial, as it is carried out today. In fulfillment of this charge, a Senate Bill 374 was introduced in the Senate, and worked its way through the General Assembly in substantially the recommended form. The bill "as passed" was recently signed into law by the Governor.

Many changes, some fairly significant, were adopted, including a number of "traps for the unwary." However, these revisions will not go into effect until March 31, 2009. Nevertheless, because there are significant and substantive changes, everyone in the construction industry, from owners and contractors to subcontractors and vendors, will need to understand these new requirements in order to effectively protect their property from liens or enforce their lien rights going forward. All affected parties must keep in mind in their contracting and contract administration activities that until March 31, 2009, all must abide by the old (i.e. current) procedures and use the old forms, and then upon the stroke of midnight on March 30, 2009, all must transition overnight fully to the significantly new and different forms and procedures. Failure to use the new forms and formats and abide by the new procedures will be fatal to enforcement and protection of lien and bond rights and remedies.

The following are a few of the more substantive revisions to the Georgia Lien Law*:

- **Time for Filing a Lien**: A lien now must be filed within 90 days - not "three months" as currently provided - after the completion of the work or services performed on, or the labor or material was furnished to, a project. Many people believed this to be the current rule while it was not, but this should make it easier to remember when a lien needs to be filed.
- **New Lien Language**: The statutory lien form has been modified, and claims of lien filed after March 30, 2009, will now include the phrase "which is the same as the last date the labor, services, or materials were supplied to the premises", referring to and further explaining the phrase "claim became due." Additionally, any such lien shall 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 filing of the claim of lien if no notice of commencement of lien action is filed in that time period."** And, the lien needs to include on its face a specific notice to the owner that the owner has the right to contest the lien. Failure to include either the language or the notice shall invalidate the lien and prevent it from being filed!
- **Lien Filing Procedure Changes**: The lien claimant, after March 30, 2009, must "no later than two business days after the date the claim of lien is filed" (in contrast to the current more ambiguous "at the time" of filing) send by registered or certified mail or statutory overnight delivery (e.g. "Federal Express") a copy of the lien to, depending upon the circumstances, the owner and/or the contractor.
- **Time for Filing Suit (or "lien action") on the Lien**: A lien claimant must file a "lien action" against the entity with whom it contracted for the recovery of the amount due within 365 days from the date the party filed its claim of lien. The term "lien action" is a newly defined term, and includes commencement of a lawsuit (currently the only option), arbitration, or filing of a proof of claim in a bankruptcy. This change actually modified two existing rules. First, switching the timeframe from months to days makes

the method for counting the time - days instead of months - in which a lien action must be filed consistent with the method for counting the time for filing a new lien. Second, and perhaps more importantly, the changes provide a lien claimant as much as an extra three months in which to file its suit to perfect its lien rights, as the timing for the suit now runs from the date of the filing of the lien, and **not** from the last date work was performed or materials supplied on the project (date the "claim became due").

- **Notice to Contractor Procedure Changed:** For the lower tier contractors and suppliers required to send a "notice to contractor" to the contractor filing the "notice of commencement" in order to preserve their lien rights, it is now specifically directed that the notice not merely be "given", but that it "shall be sent by registered or certified mail or statutory overnight delivery" to the owner and the contractor.
- **New Language for the Interim Waiver and Release Upon Payment and the Waiver and Release Upon Final Payment:** Both of the statutorily prescribed "waiver" of lien and bond rights forms (the "Interim" and "Final" forms) and procedures were changed in several significant ways:
 - The forms are now required to be in substantially the statutory form in ALL CAPS, bold, 12 point font.
 - The forms now expressly include a release of all rights against any "labor and/or material bond," together with "lien" rights, through the date of the waiver.
 - Regarding the interim lien waiver form, the 'conclusive' presumption of payment (satisfying the "condition" to give effect to the waiver) will not occur until 60 days after the waiver form is executed and submitted - rather than the 30 days currently specified.
 - Regarding the form of waiver upon final payment, the form has been changed to clearly make it "conditional" in the same manner as the interim waiver form - rather than the "unconditional" language in the current form giving effect to the waiver immediately upon execution and irrespective of the actual receipt of payment. Again, the presumption of payment occurs only after the expiration of 60 days, as with the interim waiver form.
 - There is new mandatory statutory "Notice" language required at the bottom of the statutory waiver forms.
- **Affidavits of Non-Payment:** While not utilized as often as it should be, the rules relative to the Affidavit of Non-Payment have been changed in four significant ways after March 30, 2009, as well.
 - First, the Affidavit form must be in ALL CAPS, bold, 12 point font.
 - Second, the Affidavit must be filed if a contractor is not paid within 60 days of the date that the waiver form is executed. The 60 days (as opposed to the prior version of 30 days) should make it possible for more payments to be received, and fewer affidavits to be filed. Note, however, that the rule remains that if the claimant does not file an Affidavit of Non-Payment prior to the expiration of 60 days, then the claimant shall be deemed to have been paid and its lien rights will be jeopardized.
 - Third, there is new statutory language required at the bottom of the statutory Affidavit of Non-

Lien Law Changes (continued)

Payment forms (although there is no provision that failure to include such language shall invalidate the Affidavit).

- Fourth, copies of the Affidavit must be sent by registered or certified mail or statutory overnight delivery to the owner (and contractor where a notice of commencement has been filed) within seven days of filing of the Affidavit.
- **Notice of Contest of Lien**: In response to a need to more fully protect residential property owners, the legislature specifically sought a manner in which to address and remove clearly invalid liens for both residential and commercial properties. To accomplish this the amended statute entirely rewrites the current method specified for removing invalid liens from the property, and replaces it with an entirely new process to accelerate a challenge to the validity of a lien claim. Essentially, in a process modeled after a similar procedure employed in Florida, an owner, or contractor for a project, may shorten the time for enforcing a lien that has been filed by filing a Notice of Contest of Lien in the superior court in the same manner as a claimant would file a lien. The Notice of Contest of Lien allows an owner or contractor to contest a clearly invalid lien (for example, the lien claimant liened the wrong property or no work was actually performed by the lien claimant) by forcing the lienor to file suit in a shortened period of time. This rule gives the owner (or contractor) the ability to quickly address unenforceable liens rather than waiting more than a year to invalidate such a lien.
- **Lien Discharge Bonds**: The requirements for the filing and recording of "lien discharge" bonds, which if properly done transfer a specific lien claim from the improved real property to the bond, have been changed to require that a notice be given by the party filing the bond together with a copy of the bond to either the lien claimant or the property owner.

Because the law has been changed so significantly*, it is important that each of the changes, including those above, be discussed with your attorney so that your business is prepared to incorporate these changes into its daily practice, including the proper revised forms for lien claims, waivers forms and affidavits.

*This article is only intended to highlight some of the more important changes which will most likely impact a lien claimant's business. For a full copy of the adopted statutory changes, go to http://www.legis.ga.gov/legis/2007_08/versions/sb374_AP_11.htm, or contact David Hendrick and he will be happy to provide you with a full copy of the new lien law.

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Innovative Roofing Group Inc.'s Female Superintendent wins NRCA's Best of the Best



We've heard the expression "It's a man's world." However, just in time for Women's History Month, Atlanta's own Teri Stallion made history with the National Roofing Contractors Association as the first female superintendent to win the prestigious national roofing industry award, Best of the Best.

It was a great honor for Innovative Roofing Group, Inc. and Teri Stallion to be recognized through this award, which was open for the first time to nominees at the superintendent level. The Roofing Industry Alliance for Progress sponsors the roofing industry's Most Valuable Player Awards Program, recognizing outstanding roofing employees who exemplify traits that inspire others: community service, attracting new workers, helping re-

tain existing workers, contributions to a team effort, and outstanding on-the-job performance.

IRG is proud to note that Teri Stallion soared in all categories and was chosen last fall as one of eight winners in the MVP category, going on to win the top national honor, Best of the Best, on February 22 in Las Vegas. Professional Roofing and OMG Inc. co-sponsored this elite prize, which includes a feature article in *Professional Roofing* magazine.

Innovative Roofing Group, Inc. specializes in commercial/industrial roofing systems, which primarily utilize Built-Up, Thermoplastic (TPO), EPDM, Modified Bitumen and metal roof systems. Their project experience involves retail development, office buildings, hotels, condominiums, distribution centers, restaurants and municipal buildings throughout the Southeast.

Big Thanks to Our Convention Sponsors!!

We would like to extend a special thanks to the Associate Members who are sponsoring events at our upcoming Convention scheduled for July 23-27 at Hilton Head Island Beach Resort:

American Professional Risk Services, Inc.—Friday Evening Dinner
Commercial Roofing Specialties—Opening Breakfast

The Quarles Agency—Gold Sponsor
Compton Sales, Inc.—Bronze
McElroy Metal, Inc.—Bronze

There is still time to sign up for sponsorship opportunities. If you are interested please give us a call at 404-766-1632.

Membership Profile



C & W Roofing Company, Inc. was founded by Garner Clark and Ray Wyatt in 1967. After a short time Mr. Wyatt decided to pursue another line of work. Since the name C & W Roofing was already established the name of the company remained.

We started by doing shingle work with a 1951 Chevy Pick Up, a ladder and several roofing hatchets. C & W Roofing Company, Inc. was incorporated in December of 1971 and at this time started to phase out the shingle work and concentrate on the commercial side of the roofing industry. Heely Brown Company gave us our first line of credit. I believe it was about \$500. Back then that was a lot of credit.

Garner served as president of the Master Roofers Association from 1984 – 1985. C & W Roofing Company, Inc. has been a member of Roofing and Sheet Metal Association since 1968.

We owe a lot of our success to the relationships we established with our suppliers and manufactures such as Heely Brown, CRS, JGA, Tamko, Johns Manville, Firestone and GAF. With their continued support and help we strive to achieve the highest standards in the roofing industry.

Our relationship with our fellow roofing contractors through the roofing association has also been a huge influence in our business. Garner decided to retire in 2005 and sold the company to Larry Clark his brother and his son, Willie Clark who have been a part of the company for many years. This year we are celebrating 40 years in business and are excited about following our past reputation into the next 40 years.

Prices of Building Materials Rise with Oil Prices

The wholesale cost of building materials for new home construction increased 3.4 percent overall in April compared with a year earlier, according to the *News-Leader*.

Prices have increased for materials such as steel, aluminum, concrete and copper, and prices for oil-related materials, such as asphalt have shown the biggest percentage increase as a result of rising oil prices. In April, asphalt prices had increased almost 26 percent compared with a year ago and diesel fuel prices had jumped about 66 percent.

And though the prices of materials such as lumber and drywall have decreased, transportation costs are eating up those price drops.

"Lumber is actually less than it has been for years, but you're not seeing all of that because transportation is so much more," says Tom Sutherland of Sutherland Lumber Co., Kansas City, Mo. "Everything has a freight surcharge on it. That's probably affecting our cost as much as anything.

"I don't think we've begun to see the inflation we're going to see if oil continues to go up," he continues. "A lot of these manufacturers have been eating the costs, and that's not going to last forever."

In the meantime, some home builders are trying to alleviate the pressure by using more local materials, building smaller houses and using less expensive materials.

Legislative Report (May/June 2008)

The 2008 Georgia General Assembly addressed many important issues before adjourning on April 5. Legislators focused their attention on water, education, transportation, taxes and trauma care.

Tax Reform

The much-publicized tax reform proposal of House Speaker **Glenn Richardson** (R-Hiram) was relegated to a scaled-down version which simply removed the car tag tax on personal vehicles and then failed on the final day to receive a floor vote in the Senate. Animosity between Richardson and Lieutenant Governor **Casey Cagle** (R-Gainesville) about this failure has spilled over after the session and into the politics of the race for governor in 2010. Stay tuned!

Legislation impacting the subcontractor community was thankfully more limited. A few bills of interest to us were considered by lawmakers.

Immigration

House Bill 978 attempted to confiscate vehicles by drivers who are not legal residents, but it was vetoed by the governor on the final day possible.

Lien Law Reform

Our industry's primary focus this session was the change to Georgia's lien laws. We worked to assure no harm came to the subcontractor community and that we protected our lien rights under the law. **Senate Bill 374** clarifies notification timelines, amends the waiver release form, adds disclosure details about owners of property and provides a method for expediting resolution of a claim of lien. Signed by the governor on March 14, Act Number 766 goes into effect March 31, 2009. Read it here: http://www.legis.ga.gov/legis/2007_08/fulltext/sb374.htm.

ASA, IEC, AECA, RSMCA and other industry groups were well-represented on the Senate Advisory Committee and each participated in the discussions leading up to the final version passed by the legislature.

Senate Bill 407 proposed to revise definitions for certain utility contractors, specifically horizontal or vertical drilling or boring of ground-water or well-water systems. This bill remained in subcommittee and died for the session. http://www.legis.ga.gov/legis/2007_08/fulltext/sb407.htm

Senate Bill 452 by Senator **Jeff Mullis** proposed to allow Georgia residents who hold a valid contractors license in another state to be exempt from Georgia's examination requirement. This bill remained in committee and died. http://www.legis.ga.gov/legis/2007_08/fulltext/sb452.htm.

Senate Bill 464 by Senator **Cecil Staton** (R-Macon) proposed for contractors who have been in business as a corporate entity at the same location for five consecutive years, despite any corporate name changes, to be exempt from the examination requirements under the Contractor Licensing law. This bill died in committee. http://www.legis.ga.gov/legis/2007_08/fulltext/sb464.htm.

Health Savings Accounts

Senate Bill 383 creates Georgia's Affordable High-Deductible Health Savings Accounts, dubbed the "Insuring Georgia's Families Act". This consumer-friendly bill became effective upon the governor's signature on May 7, 2008. http://www.legis.ga.gov/legis/2007_08/fulltext/sb383.htm.

Ron D. Fennel, President
Georgia Capitol Associates

Roofing workers cause accidental fire at Universal Studios



Roofing workers installing asphalt shingles on the roof of a movie set building façade accidentally ignited a fire that destroyed part of the back lot of Universal Studios in California. The workers, who were using a blowtorch early Sunday to heat asphalt shingles to apply to the roof, finished at about 3 a.m. and stood watch for an hour. At about 4 a.m., the workers went on break and the fire was reported by a security guard at 4:43 a.m.

The fire started on a streetscape of New York brownstone façades and destroyed the King Kong attraction; the courthouse square from the movie "Back to the Future"; a streetscape featured in the "Spider-Man" and "Transformers" movies; and a building housing 40,000 to 50,000 videos though it was reported there are duplicates of everything that was lost.

Low water pressure appeared to hamper efforts to put out the fire, which burned for more than 12 hours. The park opened Monday, and visitors were able to see the remains of the fire.

NRCA University offers Certified Roofing Torch Applicator (CERTA) programs designed to address the concerns of building owners, roofing contractors, the insurance industry, fire and code authorities, roofing material manufacturers, equipment manufacturers and fuel suppliers. The programs provide the latest best practices and new industry requirements for the safe use of roofing torches.

NRCA and CNA Insurance Cos. recently revised the NRCA/MRCA CERTA program safety practices to reflect current roofing products available and application procedures for torch-applied roofing materials. In April, NRCA released the revised NRCA/MRCA CERTA Safety Practices for Roofing Torch Use, which can be found on NRCA's Web site.

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