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President's Message

On February 9, Vernon and I were asked by Randy Travis from the Fox 5 news I-team to spend some time with him to discuss some of the problems homeowners are having in dealing with unscrupulous roofers and storm chasers. The interview is supposed to air sometime in March. Mr. Travis mentioned that there has been a rash of complaints coming into him concerning roofing companies that are collecting money up front and never returning to the job leaving the homeowners without the promised roof and empty pockets. He also mentioned some roofing contractors that have the Sheriff's Department looking for them.

We also discussed ways a homeowner could help protect themselves against this type of contractor and by going through the Roofing and Sheet Metal Contractors Association they could locate professional contractors in their respective areas.

Vernon had the opportunity to discuss our licensing program along with our legislative agenda and the reason we have an association and how and why it exists.

Next, let's all get together this year and make this a great Convention and spend time with friends in the Roofing industry. The dates for the convention are July 23-26, 2009 and we will be at the Crowne Plaza Hotel on Hilton Head Island. If there are specific educational topics that you would like to hear please contact Vernon and let him know. Last year's convention was a great time and we are planning to make this year's convention even better. Hope to see you there.

Finally, if you have anything exciting happening within your company or timely information about the roofing industry in general please let us know. We are always looking for good information to put into our newsletter!

Larry Clark

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Legislative Update

GEORGIA CAPITOL REPORT

By Ron D. Fennel, President, Georgia Capitol Associates
16 FEBRUARY 2009

As of this report, we have completed eighteen days of the forty day session of the 2009 Georgia General Assembly. The 180 members of the House of Representatives have introduced 439 bills and 315 resolutions while the 56 state senators have introduced 164 bills and 296 resolutions. Although only a few bills have the potential to affect our members, we remain vigilant as amendments may be attempted on any bill tracking through the process. These are the bills of interest we are currently following:

House Bill 231 by Rep. **Sean Jergusson** (R-Holly Springs)
http://www.legis.ga.gov/legis/2009_10/fulltext/hb231.htm

This bill passed the House last week and allows for interior designers to design structures for non-load-bearing walls without an architect's approval required.

"(5) Non-load-bearing interior construction in existing or planned office structures which were designed by a registered architect, where drawings and specifications are prepared by a Georgia registered interior designer who also submits to the responsible building official a notarized and signed statement on letterhead from a person in a position of authority within the interior design firm certifying that the plans and specifications as submitted are in full compliance with the current building codes and regulations in effect."

House Bill 253 by Rep. **Buddy Carter** (R-Pooler) http://www.legis.ga.gov/legis/2009_10/fulltext/hb253.htm

Representative Carter, in response to a constituent's request, is trying to clarify the lien law to protect consumers. We met with him and legislative counsel last week to help them understand the ramifications of the current language and made suggested changes. We should see a revised draft in the next few days.

"43-41-18. (a) All contractors shall, upon the receipt of payment for work in excess of \$5,000.00 on any real estate, provide the person paying for such work a signed sworn affidavit stating that all subcontractors, all materialmen furnishing material to subcontractors, and all laborers furnishing labor to subcontractors, materialmen, and persons furnishing material for the work done on the real estate have been paid for their services or have agreed to waive such payment.

House Bill 348 by Rep. **Tom Graves** (R-Ranger) and others
http://www.legis.ga.gov/legis/2009_10/fulltext/hb348.htm

This bill proposes a one-time ad valorem tax payment for heavy equipment purchases, rather than the current annual assessment. This bill is not likely to pass during this challenging economic climate.

on a one-time basis during the taxable year in which the heavy-duty equipment motor vehicle is purchased. No ad valorem tax shall be charged on any heavy-duty equipment motor vehicle except during the taxable year in which it is purchased.

House Bill 375 by Rep. **Larry O'Neal** (R-Warner Robins)

http://www.legis.ga.gov/legis/2009_10/fulltext/hb375.htm

To amend Part 2 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, collection, and assessment of sales and use taxes, so as to further define the obligation for the payment of sales and use taxes by contractors furnishing tangible personal property and services; the duties of sellers of tangible property to such contractors; to provide for procedures, conditions, and limitations; to provide an effective date; to repeal conflicting laws; and for other purposes.

House Bill 405 by Rep. **Joe Wilkinson** (R-Sandy Springs) and others

http://www.legis.ga.gov/legis/2009_10/fulltext/hb405.htm

This bill deals with energy-efficient products and their tax credits and transfers.

Such credit shall be transferable by the taxpayer to a taxpayer that is a homebuilder, home remodeler, or manufacturer, seller, or installer of qualified equipment in this state, pursuant to rules and regulations promulgated by the department and designed to simplify and encourage such transfers. Transfer of any credit for less than the full value thereof, except for a reasonable allowance for administrative costs of the transferee, shall be prohibited.

While legislators have adopted a schedule for this session, that may be disrupted if our economic conditions worsen. The adopted schedule has the session meeting on Tuesday, Wednesday and Thursday of each week until March 5 (Day 35), when they will recess until June 22 to complete their work on the FY 2010 budget. Since the new fiscal year begins on July 1, they want to have the latest economic data to project the annual revenues more accurately.

I welcome any member to join me at the capitol for committee meetings, one-on-one legislator conferences or session debate viewing. Just drop me an email or give me a call to schedule your visit.

It is my pleasure to represent your interests!



Ron D. Fennel, President
Georgia Capitol Associates

RSMCA Scholarship Deadline is Extended to March 31

The submission deadline for scholarship applications for the Roofing & Sheet Metal Contractors Association of Georgia, scholarships program has been extended to March 31st.

If you are interested in applying please go to our website www.rsmca.org for complete information and to download an application form.

If you have any questions please contact us at 404-766-1631.

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

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 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:
 - o The forms are now required to be in substantially the statutory form in ALL CAPS, bold, 12 point font.
 - o 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.
 - o 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.
 - o 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.

Lien Law (continued)

o 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.

o First, the Affidavit form must be in ALL CAPS, bold, 12 point font.

o 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.

o Third, there is new statutory language required at the bottom of the statutory Affidavit of Non-Payment forms (although there is no provision that failure to include such language shall invalidate the Affidavit).

o 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. If you would like to discuss the lien law, or have any questions on how the changes to the lien law may affect your business, please feel free to contact David Hendrick or Philip Siegel at 404-522-1410 (drh@hpsf-law.com; pjs@hpsf-law.com).

*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 full copy of the adopted statutory changes, go to http://www.legis.ga.gov/legis/2007_08/versions/sb374_AP_11.htm, or contact us and we will be happy to provide you with a full copy of the new lien law.

[For more information, contact David R. Hendrick, Esq. or Philip J. Siegel, Esq. at Hendrick, Phillips, Salzman & Flatt, P.C., Suite 2500, 230 Peachtree Street, N.W., Atlanta, Georgia 30303, (404) 522-1410, drh@hpsf-law.com and pjs@hpsf-law.com]

Allen Lancaster Elected Senior Vice President of the National Roofing Contractors Association

Rosemont, Ill.—Allen Lancaster, president of Metalcrafts Inc., Savannah, Ga., was elected 2009-10 senior vice president of the [National Roofing Contractors Association](#) (NRCA) during NRCA's 122nd Annual Convention held Feb. 1-5.

On June 1, Lancaster will begin his one-year term as the second highest-ranking officer of one of the oldest construction trade associations in the U.S.

Lancaster served as an NRCA vice president from 2005-07 and was a member of its board of directors from 1995-98, 1999-02, 2003-05 and 2007-09. He also has served as vice president liaison for numerous NRCA committees, including the Community Service and Disaster Relief Committee, Contractor Management Committee, Spanish Language Task Force and Internet/Electronic Communications Committee

New Members

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