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PROPERTY Mortgages, Liens, and Security: Provide for Notice of Lien Rights to Owners of Real Property, Contractors, and Providers of Labor, Services or Materials

Katharyne C. Johnson

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PROPERTY

Mortgages, Liens, and Security: Provide for Notice of Lien Rights to Owners of Real Property, Contractors, and Providers of Labor, Services, or Materials

CODE SECTION:	O.C.G.A. § 44-14-361.5 (new)
BILL NUMBER:	HB 544
ACT NUMBER:	493
SUMMARY:	The Act provides that owners or contractors of real property must provide written notice of the identities of the property owner, the contractor, and any surety or construction lender for a construction project to persons who are not in privity of contract with the project contractor and who provide labor, services, or materials for the improvement of the property. Such written notice must also be filed with the clerk of the superior court of the county in which the project is located. The Act further provides that a person who supplies labor, services, or materials for the improvement of real property must give written notice to the owner and contractor of his name and a description of services which were provided.
EFFECTIVE DATE:	January 1, 1994

History

Suppliers' lien acts in the United States date back to the construction of the White House.[1] Providers of construction materials for the new presidential mansion, concerned that the new nation might be unable to pay its debts, urged Thomas Jefferson to draft legislation providing for a suppliers' lien upon new or improved property, in order to guarantee payment to those materialmen who enriched the property, but were not in privity of contract with the builder.[2]

Modern materialmen still share the same concerns of those who provided the materials to build the White House. Materialmen's liens are of critical importance to those who extend credit to builders for construction projects.[3] Unlike the builders of the 18th century,

1. Telephone Interview with Erv Goodroe, Lobbyist, Construction Suppliers Association (Apr. 21, 1993) [hereinafter Goodroe Interview].
2. *Id.*
3. *Id.*

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however, modern building contractors frequently utilize numerous contractors and subcontractors. Because of the vast numbers of subcontractors and materialmen involved in large commercial building projects, the primary contractor of a project and the provider of materials for that project are frequently strangers.[4] Subcontractors' materialmen often went unpaid without the knowledge of the primary contractor, and late discovery that an unpaid and unknown supplier had a lien upon a building was a far too common occurrence.[5]

HB 544 was proposed in recognition of the concerns of members of Georgia's construction industry. The Act was intended to address the concerns of property owners and contractors, unable to close sales due to a previously undiscovered lien which came to light on the date of closing.[6] The Act was further intended to address the concerns of materialmen, who often did not even know the name of the primary contractor, and who had no recourse other than to file a lien when they were not paid by a subcontractor to whom they had sold materials.[7]

HB 544

HB 544 passed the 1993 General Assembly unamended and with little debate.[8] The Act amends Code section 44-14-361 by adding section 44-14-361.5.[9] This section provides certain steps that must be carried out by an owner of real property who engages a contractor to perform improvements upon his property.[10] The Act provides that within fifteen days after work begins on a project, the property owner or the contractor must file a document called a Notice of Commencement with the clerk of the superior court of the county in which the project is located.[11] The Notice of Commencement shall contain the names and addresses of the contractor and the owner of the property, as well as the name and address of the person who has caused the improvements to be made, if that person is not the owner.[12] The Notice of Commencement shall also provide the location and a legal description of the property being improved.[13] If there is a construction lender, or a surety for performance and payment bonds for the project,

4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. Telephone Interview with Rep. Tommy Chambless, House District No. 163 (Apr. 21, 1993) [hereinafter Chambless Interview]. Rep. Chambless was a sponsor of the bill. *Id.*
9. HB 544, as passed, 1993 Ga. Gen. Assem.
10. *Id.*
11. O.C.G.A. § 44-14-361.5(b) (Supp. 1993).
12. *Id.*
13. *Id.*

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these names and addresses must also be included in the Notice of Commencement.[14]

The Act provides that the clerk of each superior court shall file the Notice of Commencement in an index under the names of the true owner of the property and the contractor.[15] This index is to be separate from the indexes of other real estate records and the index of preliminary notice of lien rights required by Code section 44-14-361.3.[16] The intent of the Act is to notify materialmen and subcontractors of the names of persons responsible for the project.[17] A Notice of Commencement does not constitute a cloud or lien on the title to the property, nor does it affect the priority of loans secured by the property.[18]

The Act further provides that a copy of the Notice of Commencement shall be posted at the project site.[19] Further, the property owner or contractor must provide a copy of the Notice of Commencement to any subcontractor, materialman, or other person, upon written request.[20] Failure by the owner or contractor to provide a copy of the Notice of Commencement to the provider of labor, services, or materials within ten days after a written request relieves that person from obligation to comply with other portions of the Act.[21]

The Act also places new duties upon persons not in privity of contract with the project contractor who provides labor, services, or materials for the improvement of real property.[22] To preserve his right to enforce a lien upon the real property,[23] the Act requires such a provider to give a written Notice to Contractor to both the owner of the property and to the contractor performing the work on the project.[24]

The Act provides that a Notice to Contractor shall include the name, address, and telephone number of the provider of labor, services, or materials.[25] The Notice to Contractor shall also include a description of the labor, service, or materials provided, as well as their contract

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14. *Id.*
15. *Id.* § 44-14-361.5(e) (Supp. 1993).
16. *Id.* § 44-14-361.3 (1992).
17. Goodroe Interview, *supra* note 1.
18. O.C.G.A. § 44-14-361.5(d) (Supp. 1993).
19. *Id.* § 44-14-361.5(b) (Supp. 1993).
20. *Id.*
21. *Id.*
22. *Id.* § 44-14-361.5(c) (Supp. 1993). An example of such persons would be suppliers of building materials such as brick, flooring, or plumbing fixtures. *Id.* The supplier typically sells his materials to a person who has been subcontracted by the primary contractor to install them. *Id.*
23. The creation of a special lien on certain real property by the providers of labor, services, and materials is provided by O.C.G.A. § 44-14-361 (1992).
24. O.C.G.A. § 44-14-361.5(c) (Supp. 1993).
25. *Id.*

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price or anticipated value.[26] The name and address of the person ordering the labor, services or materials, and the name and location of the project, are to be included as well.[27]

A Notice to Contractor must be given within thirty days of either the filing of the Notice of Commencement, or when the provider begins delivery of labor, services, or materials, whichever is later.[28] The Act does not contain a provision requiring that the Notice to Contractor be filed with the clerk of the court. This portion of the Act is intended to provide early notice by potential lienholders to property owners and contractors and to operate in conjunction with the requirements for filing a preliminary or recorded notice of lien as set out in other sections of the Code.[29]

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26. *Id.*
27. *Id.*
28. *Id.* § 44-14-361.5(a) (Supp. 1993).
29. O.C.G.A. § 44-14-361.1 provides that in order to make good a supplier's lien, the party who claims such a lien must file for record his claim of lien within three months after the completion of the work, and notify the owner of the property or the contractor by registered or certified mail. *Id.* § 44-14-361.1 (Supp. 1993). Additionally, O.C.G.A. § 44-14-361.3 provides that a provider of labor, services, or materials may file a preliminary notice of a lien against property within thirty days after delivery of materials or provision of labor or service, although preliminary filing is not required for enforcement. *Id.* § 44-14-361.3 (Supp. 1993).

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