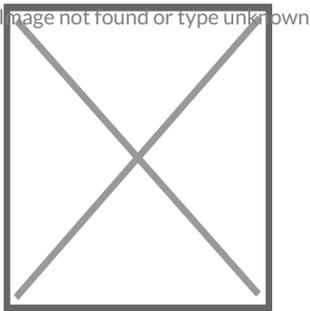


Subcontractors and Suppliers Should Exercise Their Lien Rights to Ensure Payment on a Construction Project



By Margaret W. S. Puccini, Bouhan Falligant

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During the real estate recession and even now, many subcontractors and suppliers have learned what happens when a general contractor shuts the doors, goes bankrupt, or uses an owner's funds for something other than payment to the subcontractors and suppliers who worked on a project.

While an unpaid subcontractor or supplier has a claim against the general contractor, this is often a remedy without meaning. But subcontractors and suppliers do have a remedy under Georgia's Mechanics' and Materialmen's Lien Statutes to collect money owed to them for improvements to property. Without a lien, a subcontractor or supplier will almost never have the ability to collect directly from the property owner, unless there is a direct contractual relationship with that owner.

A lien is a statutory right to make a claim against real property to secure payment for labor, materials or services provided to improve that property. In Georgia, it is the only way to recover monies from parties, such as the landowner, with whom a subcontractor or supplier has no contract.

Lien rights are in addition to contractual rights. This means that an owner who has not properly protected his interest may be required to pay the supplier of the labor and materials, even if the owner has already paid the general contractor for the same labor and materials. So, an owner may have to pay twice for the same labor and materials.

A subcontractor or supplier seeking to perfect and enforce a lien must be sure that all the requirements of Georgia law are met because if the lien is not properly filed, it will be declared invalid. The requirements to declare, create and prosecute a lien are extensive and very detailed, but in general, the subcontractor or supplier must: substantially comply with his contract; file the Claim of Lien with the language required by the lien statutes in the Superior Court of the appropriate County within 90 days after the completion of the work; send a copy of the Lien to the owner by certified or overnight mail no later than two business days after the Lien is filed; commence a lawsuit against the general contractor or the party who requested the labor or materials within 365 days of filing the Lien; and record a Notice of Filing Action on the Lien within 30 days after the lawsuit is filed.

If a sub-subcontractor or supplier seeks to file a lien against property where there is no contract with either the owner or the general contractor, he may need additional notices if the owner or general contractor has filed and recorded a Notice of Commencement. Sub-subcontractors or suppliers should check the job site to determine whether the owner or general contractor has posted a Notice of Commencement.

The Notice of Commencement requires sub-subcontractors and suppliers to provide notice of the provision of labor and/or materials to the project to retain lien rights in the event of non-payment. The sub-subcontractor or supplier must send a Notice to Contractor (which meets the statutory requirements) by certified or overnight mail to the owner and the general contractor within 30 days of the first provision of labor or materials to the project. Otherwise, the sub-subcontractor or supplier will not be able to file a lien on the property for non-payment.

Georgia's lien statutes are very complex and contain many pitfalls for the unwary lien claimant. Those who are unfamiliar with the specific requirements of the statutes should seek the assistance of an attorney to ensure that alien is properly declared and filed. The legal fees associated with preparing and filing the lien, which is usually nominal, are dollars well spent.

Attorney Margaret W. S. Puccini is a partner at Bouhan Falligant whose practice focuses on construction law, bankruptcy and creditors' rights, and banks and financial institutions. She can be reached at 912-644-5746 or mpuccini@bouhan.com.

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