**Ask Simon Bloom**

**Q: Are there any proactive measures I can take to prevent subcontractors from being able to file a lien in the event of a payment dispute? (or the flip side, if I am a subcontractor or materialman, what can I do need to know protect my lien rights?)**

Georgia law gives subcontractors, laborers and other materialmen the right to file a lien on property upon which they performed work but were not paid. This right is statutory and an owner/general contractor cannot force a subcontractor or materialman to waive this right in advance of performing the work and being paid for it. It is easy for a materialman to encumber a piece of property with a lien, and can be a large headache for an owner to remove it. Often, the situation is exacerbated when (1) the lienor is a downstream supplier of a subcontractor that the owner/general contractor has already paid; (2) the lien is filed within the statutorily-allowed period, but the builder has already sold the house to a buyer (leaving the buyer with a lien, and looking to the builder to resolve it); or (3) the lien is filed shortly before the builder is set to close on the sale to a buyer, and now has a cloud on the property’s title.

Luckily, Georgia law also provides a simple procedure for owners and general contractors to make it more difficult for downstream subs to file a lien on property. This process, known as a “Notice of Commencement,” requires an owner to file basic information regarding the project and the project site. By completing a few simple steps, owners and general contractors enjoy added benefits that put the onus on the downstream sub to comply with additional steps before liening a property. This process is not intended to impede the lien right of downstream subs, but instead is intended to require both sides to identify themselves and other relevant parties involved.

There is no required form for a Notice of Commencement. It is simply a document which includes (1) the name, address, and phone number of the general contractor, (2) the name and location of the project and the legal description of the property, (3) the name and address of the true property owner, (4) the name and address of the person seeking the work, if different than the true property owner, (5) the name and address of the surety for any performance and payment bond, and (6) the name and address of any construction lender. The owner/general contractor must file the Notice of Commencement in the Superior Court of the county where the project is located and posted on the job site as soon as possible. The Notice of Commencement is not effective until these steps are complete. Afterwards, the owner/general contractor must provide a copy of the Notice to any subcontractor who asks for one.

Once the Notice of Commencement is filed and posted on the job site, any subcontractor who fails to provide the owner/general contractor with a responsive “Notice to Contractor” is barred from later asserting a lien. A Notice to Contractor is basic information about the subcontractor including (1) their name, address, and telephone number, (2) the name and address of each person at whose instance their work is being performed, (3) the name and location of the project, and (4) a description of their work and its contract or anticipated price. A subcontractor must provide this responsive Notice to the owner/general contractor within 30 days of the filing of the Notice of Commencement or 30 days after they begin work or deliver materials, whichever is later.

Assuming a proper Notice of Commencement, a subcontractor who does not comply with the Notice to Contractor requirements loses his right to claim a lien against the property. Therefore, owners and contractors should always complete the Notice of Commencement process to identify themselves in order to avoid any unwanted surprises. The added benefit is a potential defense to a lien in the event one is filed by a sub who does not comply with the Notice to Contractor requirement. On the other hand, a subcontractor, vendor, laborer or materialman should always request a copy of the Notice of Commencement from the owner/general contractor upon commencement of work at a property to ensure that the proper Notice to Contractor is given to protect its lien rights.