

House Bill 480 (AS PASSED HOUSE AND SENATE)

By: Representatives Washburn of the 141st, Jones of the 47th, Carpenter of the 4th, Moore of the 95th, Crowe of the 110th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend various titles of the Official Code of Georgia Annotated so as to change certain
2 provisions related to certain professions licensed in this state; to amend Chapter 40 of
3 Title 43 of the Official Code of Georgia Annotated, relating to real estate brokers and
4 salespersons, so as to revise qualifications to become an applicant for a real estate broker's
5 license; to amend Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of
6 Georgia Annotated, relating to mechanics and materialmen liens, so as to provide for the
7 creation, declaration, amendment, notice, and priority of liens for labor, services, or materials
8 performed or furnished by registered interior designers; to provide for definitions; to provide
9 for commencement of actions and limitations on amount of such liens; to provide for rights
10 as to liens of partnerships, corporations, and associations made up of or employing registered
11 interior designers; to provide for related matters; to provide for an effective date and for
12 applicability; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate
16 brokers and salespersons, is amended by revising paragraph (4) of subsection (c) of Code

17 Section 43-40-8, relating to qualifications of licensees, course of study for licensed
18 salespersons, lapse, reinstatement, renewal, continuing education, and standards for courses,
19 as follows:

20 "(4) Have maintained a salesperson's license in active status for at least three of the five
21 years immediately preceding the filing of an application to become a broker or have
22 maintained a broker's license in active status for at least five years to become a broker;"

23 **SECTION 2.**

24 Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,
25 relating to mechanics and materialmen liens, is amended by revising Code
26 Section 44-14-360, relating to definitions, as follows:

27 "44-14-360.

28 As used in this part, the term:

29 (1) 'Business day' means any day that is not a Saturday, Sunday, or legal holiday.

30 (1) 'Contractor' means a contractor having privity of contract with the owner of the real
31 estate.

32 (2) 'Land surveyor' ~~means the same as the definition thereof~~ shall have the same meaning
33 as provided in Code Section 43-15-2.

34 (2.1) 'Lien action' means a lawsuit, proof of claim in a bankruptcy case, or a binding
35 arbitration.

36 (3) 'Materials,' in addition to including those items for which liens are already permitted
37 under this part, means tools, appliances, machinery, or equipment used in making
38 improvements to the real estate, to the extent of the reasonable value or the contracted
39 rental price, whichever is greater, of such tools, appliances, machinery, or equipment.

40 (4) 'Materialmen' means all persons furnishing the materials, tools, appliances,
41 machinery, or equipment included in the definition of materials in paragraph (3) of this
42 Code section.

43 (5) 'Professional engineer' ~~means the same as the definition thereof~~ shall have the same
 44 meaning as provided in Code Section 43-15-2.

45 (6) 'Registered forester' ~~means the same as the definition of such term~~ shall have the
 46 same meaning as provided in Code Section 12-6-41.

47 (7) 'Registered interior designer' shall have the same meaning as provided in Code
 48 Section 43-4-1.

49 ~~(7)~~(8) 'Registered land surveyors' and 'registered professional engineers' means land
 50 surveyors or professional engineers who are registered as land surveyors or professional
 51 engineers under Chapter 15 of Title 43 at the time of performing, rendering, or furnishing
 52 services protected under this part.

53 ~~(8)~~(9) 'Residential property' means single-family and two-family, three-family, and
 54 four-family residential real estate.

55 ~~(9)~~(10) 'Subcontractor' means, but is not limited to, subcontractors having privity of
 56 contract with the contractor."

57 **SECTION 3.**

58 Said part is further amended by revising Code Section 44-14-361, relating to the creation of
 59 liens, property to which lien attaches, and items to be included in lien, as follows:

60 "44-14-361.

61 (a) The following persons shall each have a special lien on the real estate, factories,
 62 railroads, or other property for which they furnish labor, services, or materials:

63 (1) All mechanics of every sort who have taken no personal security for work done and
 64 material furnished in building, repairing, or improving any real estate of their employers;

65 (2) All contractors, all subcontractors and all materialmen furnishing material to
 66 subcontractors, and all laborers furnishing labor to subcontractors, materialmen, and
 67 persons furnishing material for the improvement of real estate;

68 (3) All registered architects furnishing plans, drawings, designs, or other architectural
 69 services on or with respect to any real estate;

- 70 (4) All registered foresters performing or furnishing services on or with respect to any
71 real estate;
- 72 (5) All registered land surveyors and registered professional engineers performing or
73 furnishing services on or with respect to any real estate;
- 74 (6) All contractors, all subcontractors and materialmen furnishing material to
75 subcontractors, and all laborers furnishing labor for subcontractors for building factories,
76 furnishing material for factories, or furnishing machinery for factories;
- 77 (7) All machinists and manufacturers of machinery, including corporations engaged in
78 such business, who may furnish or put up any mill or other machinery in any county or
79 who may repair the same;
- 80 (8) All contractors to build railroads; ~~and~~
- 81 (9) All suppliers furnishing rental tools, appliances, machinery, or equipment for the
82 improvement of real estate; and
- 83 (10) All registered interior designers furnishing plans, drawings, designs, or other
84 interior design services on or with respect to any real estate.
- 85 (b) Each special lien specified in subsection (a) of this Code section may attach to the real
86 estate of the owner for which the labor, services, or materials are furnished if they are
87 furnished at the instance of the owner, contractor, or some other person acting for the
88 owner or contractor and shall include the value of work done and materials furnished in any
89 easement or public right of way adjoining said real estate if the work done or materials
90 furnished in the easement or public right of way is for the benefit of said real estate and is
91 within the scope of the owner's contract for improvements to said real estate.
- 92 (c) Each special lien specified in subsection (a) of this Code section shall include the
93 amount due and owing the lien claimant under the terms of its express or implied contract,
94 subcontract, or purchase order subject to subsection (e) of Code Section 44-14-361.1.
- 95 (d) Each special lien specified in subsection (a) of this Code section shall include interest
96 on the principal amount due in accordance with Code Section 7-4-2 or 7-4-16."

97

SECTION 4.

98 Said part is further amended by revising Code Section 44-14-361.1, relating to how liens
99 declared and created, amendment, record, commencement of action, notice, priorities,
100 parties, and limitation on aggregate amount of liens, as follows:

101 "44-14-361.1.

102 (a) To make good the liens specified in paragraphs (1) through (8) and (10) of
103 subsection (a) of Code Section 44-14-361, they must be created and declared in accordance
104 with the following provisions, and on failure of any of them the lien shall not be effective
105 or enforceable:

106 (1) A substantial compliance by the party claiming the lien with his or her contract for
107 building, repairing, or improving; for architectural services furnished; for registered
108 forester services furnished or performed; for registered land surveying or registered
109 professional engineering services furnished or performed; ~~or~~ for materials or machinery
110 furnished or set up; or for registered interior design services furnished or performed;

111 (2) The filing for record of his or her claim of lien within 90 days after the completion
112 of the work, the furnishing of the architectural services, or the furnishing or performing
113 of such surveying, ~~or engineering services,~~ or interior design services or within 90 days
114 after the material or machinery is furnished in the office of the clerk of the superior court
115 of the county where the property is located. The lien shall include a statement regarding
116 its expiration pursuant to Code Section 44-14-367 and a notice to the owner of the
117 property on which a claim of lien is filed that such owner has the right to contest the lien;
118 the absence of such statement or notice shall invalidate the lien. The claim shall be in
119 substance as follows:

120 'A.B., a mechanic, contractor, subcontractor, materialman, machinist, manufacturer,
121 registered architect, registered forester, registered land surveyor, registered professional
122 engineer, registered interior designer, or other person (as the case may be) claims a lien
123 in the amount of (specify the amount claimed) on the house, factory, mill, machinery,

124 or railroad (as the case may be) and the premises or real estate on which it is erected or
125 built, of C.D. (describing the houses, premises, real estate, or railroad), for satisfaction
126 of a claim which became due on (specify the date the claim was due, which is the same
127 as the last date the labor, services, or materials were supplied to the premises) for
128 building, repairing, improving, or furnishing material (or whatever the claim may be).'

129 No later than two business days after the date the claim of lien is filed of record, the lien
130 claimant shall send a true and accurate copy of the claim of lien by registered or certified
131 mail or statutory overnight delivery to the owner of the property or, if the owner's address
132 cannot be found, the contractor, as the agent of the owner; provided, however, that if the
133 property owner is an entity on file with the Secretary of State's Corporations Division,
134 sending a copy of the claim of lien to the entity's address or the registered agent's address
135 shall satisfy this requirement. In all cases in which a notice of commencement is filed
136 with the clerk of the superior court pursuant to subsection (b) of Code
137 Section 44-14-361.5, a lien claimant shall also send a copy of the claim of lien by
138 registered or certified mail or statutory overnight delivery to the contractor at the address
139 shown on the notice of commencement;

140 (3) The commencement of a lien action for the recovery of the amount of the party's
141 claim within 365 days from the date of filing for record of his or her claim of lien. In
142 addition, within 30 days after commencing such lien action, the party claiming the lien
143 shall file a notice with the clerk of the superior court of the county wherein the subject
144 lien was filed. The notice shall contain a caption referring to the then owner of the
145 property against which the lien was filed and referring to a deed or other recorded
146 instrument in the chain of title of the affected property. The notice shall be executed,
147 under oath, by the party claiming the lien or by such party's attorney of record, but failure
148 to execute the notice under oath shall be an amendable defect which may be cured by the
149 party claiming the lien or by such party's attorney without leave of court at any time
150 before entry of the pretrial order and thereafter by leave of court. An amendment of

151 notice pursuant to this Code section shall relate back to the date of filing of the notice.
152 The notice shall identify the court or arbitration venue wherein the lien action is brought;
153 the style and number, if any, of the lien action, including the names of all parties thereto;
154 the date of the filing of the lien action; and the book and page number of the records of
155 the county wherein the subject lien is recorded in the same manner in which liens
156 specified in Code Section 44-14-361 are filed. The clerk of the superior court shall enter
157 on the subject lien so referred to the book and page on which the notice is recorded and
158 shall index such notice in the name of the then purported owner as shown by the caption
159 contained in such notice. A separate lis pendens notice need not be filed with the
160 commencement of this action; and

161 (4) In the event any contractor or subcontractor procuring material, architect's services,
162 registered forester's services, registered land surveyor's services, registered interior
163 designer's services, or registered professional engineer's services, labor, or supplies for
164 the building, repairing, or improving of any real estate, building, or other structure shall
165 abscond or die or leave the state during the required time period for filing a lien action,
166 so that personal jurisdiction cannot be obtained on the contractor or subcontractor in a
167 lien action for the services, material, labor, or supplies, or if the contractor or
168 subcontractor shall be adjudicated a bankrupt, or if, after the filing of a lien action, no
169 final judgment can be obtained against him or her for the value of such material, services,
170 labor, or supplies because of his or her death, adjudication in bankruptcy, or the contract
171 between the party claiming the lien and the contractor or subcontractor includes a
172 provision preventing payment to the claimant until after the contractor or the
173 subcontractor has received payment, then and in any of these events, the person or
174 persons furnishing material, services, labor, and supplies shall be relieved of the necessity
175 of filing a lien action or obtaining judgment against the contractor or subcontractor as a
176 prerequisite to enforcing a lien against the property improved by the contractor or
177 subcontractor. Subject to Code Section 44-14-361, the person or persons furnishing

178 material, services, labor, and supplies may enforce the lien directly against the property
179 so improved in a lien action against the owner thereof, if filed within the required time
180 period for filing a lien action, with the judgment rendered in any such proceeding to be
181 limited to a judgment in rem against the property improved and to impose no personal
182 liability upon the owner of the property; provided, however, that in such lien action for
183 recovery, the owner of the real estate improved, who has paid the agreed price or any part
184 of same, may set up the payment in any lien action brought and prove by competent and
185 relevant evidence that the payments were applied as provided by law, and no judgment
186 shall be rendered against the property improved. Within 30 days after filing such lien
187 action, the party claiming the lien shall file a notice with the clerk of the superior court
188 of the county wherein the subject lien was filed. The notice shall contain a caption
189 referring to the then owner of the property against which the lien was filed and referring
190 to a deed or other recorded instrument in the chain of title of the affected property. The
191 notice shall be executed, under oath, by the party claiming the lien or by his or her
192 attorney of record. The notice shall identify the court or arbitration venue wherein the
193 lien action is brought; the style and number of the lien action, if any, including the names
194 of all parties thereto; the date of the filing of the lien action; and the book and page
195 number of the records of the county wherein the subject lien is recorded in the same
196 manner in which liens specified in Code Section 44-14-361 are filed. The clerk of the
197 superior court shall enter on the subject lien so referred to the book and page on which
198 the notice is recorded and shall index such notice in the name of the then purported owner
199 as shown by the caption contained in such notice. A separate lis pendens notice need not
200 be filed with the commencement of this action.

201 (a.1) A claim of lien may be amended at any time to reduce the amount claimed, and such
202 amended claim of lien shall relate back to the date of filing for record of the original claim
203 of lien. An amended claim of lien filed for record pursuant to this subsection shall be in
204 substance as follows:

205 'That certain claim of lien filed by A.B. against property of C.D. on (date) and recorded
206 at book (book#), page (page#) in the lien index of (name of county) County is hereby
207 amended by reducing the amount of such claim of lien to (specify reduced amount
208 claimed). The remaining terms of such original claim of lien are hereby incorporated by
209 reference into this amended claim of lien. This amended claim of lien relates back to the
210 date that such original claim of lien was filed for record.'

211 and shall be sent to the owner of the property in the same manner as required for a claim
212 of lien in paragraph (2) of subsection (a) of this Code section.

213 (b) As between themselves, the liens provided for in Code Section 44-14-361 shall rank
214 according to the date filed; but all of the liens mentioned in this Code section for repairs,
215 building, or furnishing materials or services, upon the same property, shall, as to each
216 other, be of the same date when declared and filed for record within 90 days after the work
217 is done or before that time.

218 (c) The liens specified in Code Section 44-14-361 shall be inferior to liens for taxes, to the
219 general and special liens of laborers, to the general lien of landlords of rent when a distress
220 warrant is issued out and levied, to claims for purchase money due persons who have only
221 given bonds for titles, and to other general liens when actual notice of the general lien of
222 landlords and others has been communicated before the work was done or materials or
223 services furnished; but the liens provided for in Code Section 44-14-361 shall be superior
224 to all other liens not excepted by this subsection.

225 (d) In any proceeding brought by any materialman, by any mechanic, by any laborer, by
226 any subcontractor, or by any mechanic of any sort employed by any subcontractor or by
227 any materialmen furnishing material to any subcontractor, or by any laborer furnishing
228 labor to any subcontractor, to enforce such a lien, the contractor having a direct contractual
229 relationship with the subcontractor shall not be a necessary party; but he or she may be
230 made a party. In any proceedings brought by any mechanic employed by any
231 subcontractor, by any materialmen furnishing material to any subcontractor, or by any

232 laborer furnishing labor to any subcontractor, the subcontractor shall not be a necessary
233 party; but he or she may be made a party. The contractor or subcontractor or both may
234 intervene in the proceedings at any time before judgment for the purpose of resisting the
235 establishment of the lien or of asserting against the lienor any claim of the contractor or
236 subcontractor growing out of or related to the transaction upon which the asserted lien is
237 based.

238 (e) In no event shall the aggregate amount of liens set up by Code Section 44-14-361
239 exceed the contract price of the improvements made or services performed.

240 (f) The filing fees for a claim of materialman's or mechanic's lien and any related
241 document created pursuant to this Code section, including but not limited to a notice of
242 commencement of action, shall be the amount set by Code Section 15-6-77 for liens on real
243 estate and personal property."

244 **SECTION 5.**

245 Said part is further amended by revising Code Section 44-14-361.3, relating to preliminary
246 notice of lien, form, notice to contractor, filing, and necessity of preliminary notice, as
247 follows:

248 "44-14-361.3.

249 (a) Prior to filing a claim of lien, a person having a lien under paragraphs (1) through (8)
250 and (10) of subsection (a) of Code Section 44-14-361 may at such person's option file a
251 preliminary notice of lien rights. The preliminary notice of lien rights in order to be
252 effective shall:

253 (1) Be filed with the clerk of superior court of the county in which the real estate is
254 located within 30 days after the date a party delivered any materials or provided any labor
255 or services for which a lien may be claimed;

256 (2) State the name, address, and telephone number of the potential lien claimant;

257 (3) State the name and address of the contractor or other person at whose instance the
 258 labor, services, or materials were furnished;

259 (4) State the name of the owner of the real estate and include a description sufficient to
 260 identify the real estate against which the lien is or may be claimed; and

261 (5) Include a general description of the labor, services, or materials furnished or to be
 262 furnished.

263 (b) A party filing a preliminary notice of lien rights except a contractor shall, within seven
 264 days of filing the notice, send by registered or certified mail or statutory overnight delivery
 265 a copy of the notice to the contractor on the property named in the notice or to the owner
 266 of the property. The lien claimant may rely on the building permit issued on the property
 267 for the name of the contractor.

268 (c) The clerk of each superior court shall maintain within the records of that office a record
 269 separate from all other real estate records in which preliminary notices specified in
 270 subsection (a) of this Code section and affidavits specified in subsection (c) of Code
 271 Section 44-14-361.4 shall be filed. Each such notice and affidavit shall be indexed under
 272 the name of the owner as contained in the preliminary notice. The clerk shall collect a
 273 filing fee of \$5.00 for the filing of each preliminary notice.

274 (d) A person having a lien under paragraphs (1) through (8) and (10) of subsection (a) of
 275 Code Section 44-14-361 may enforce the lien without filing a preliminary notice of lien."

276 **SECTION 6.**

277 Said part is further amended by revising Code Section 44-14-365, relating to rights as to liens
 278 of partnerships, corporations, and associations made up of or employing registered architects,
 279 foresters, land surveyors, or professional engineers, as follows:

280 "44-14-365.

281 If services are performed or furnished with respect to any real estate by any registered
 282 architect, registered forester, registered land surveyor, ~~or~~ registered professional engineer,

283 or registered interior designer who is a member of a partnership or who is an agent or
284 employee of a corporation or an association and the contract for the services is made for
285 or on behalf of the owner with the partnership or corporation or association, the
286 partnership, corporation, or association shall be entitled to all the privileges and benefits
287 of Code Sections 44-14-361 and 44-14-362, just as if the partnership, corporation, or
288 association was a registered architect, a registered forester, ~~a registered professional~~
289 ~~engineer, or a registered land surveyor,~~ a registered professional engineer, or a registered
290 interior designer."

291 **SECTION 7.**

292 This Act shall become effective upon its approval by the Governor or upon its becoming law
293 without such approval and Sections 2 through 8 of this Act shall apply to labor, services, or
294 materials performed or furnished by registered interior designers on or after such date.

295 **SECTION 8.**

296 All laws and parts of laws in conflict with this Act are repealed.