ALABAMA LIEN LAW CHECKLIST

This paper presents general information regarding the law of mechanic's liens in Alabama. It should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult your lawyer concerning your specific situation and any specific legal questions you may have. Use of these materials shall not create an attorney-client relationship, express or implied, between the authors and any user hereof.

Step One: Determining Whether Lien Rights are Available

Mechanic's liens attach to privately owned property. They are not available for publicly owned property in Alabama, but projects by industrial development boards and some other entities which might, at first, seem to be public bodies are subject to liens. Liens are available to persons or firms which provides an "improvement" to the property, including contractors, subcontractors, vendors, laborers and architects. Under certain circumstances, Liens are not available to surveyors. Liens are not available to suppliers of materials to other suppliers.

Step Two: Gathering Information and Documents Needed to File Lien

1. The amount owed.
2. Owed by whom (legal name).
3. Date of last delivery of materials or date of last work performed by claimant.

4. All unpaid invoices or payment requests.
5. Legal name and mailing address of all owners (or lessees) of land and building upon which work was performed.
6. Correct address or legal description of property subject to lien.
7. Legal name and mailing address of all construction lenders, mortgagees, subsequent purchasers, other lienors, etc. who possess a property interest in the land and buildings.

Step Three: Time Limitations Notice and Filing Requirements

A. Original Contractors: Persons having a direct contractual relationship with the owner or lessee of the property, such as general contractors, equipment vendors and material suppliers selling directly to the owner, need not give notice before filing a verified statement of lien in the Office of Probate Judge. Such persons are entitled to a full price lien if the verified statement of the lien is filed within six months of the date of the last item of work or the last delivery of material. [See below]. A full price lien is a lien to the extent of the full amount of the claimant's contract with the owner or lessee of the property.

B. Persons Having No Contract With Owner: Persons not having a direct contractual relationship within the owner must notify the owner, lessee and construction lender in writing of their intent to claim a lien before filing a verified statement of lien. Alabama law provides for two types of notice by persons or firms not having contracts with the owner or lesee.

1. Full price Advance Notice: Material men may preserve their right to a full price lien by giving written notice, before furnishing or delivering any material to the project, that material will be furnished to the contractor or subcontractor and that a lien is claimed for the full price thereof. The

notice should include a listing of the material, the price of the material, and any credit terms included in the contract between the purchaser and seller of the material. [Exhibit A]. If the owner objects to the full price lien notice before the materials are actually delivered to the project, such persons are not entitled to a full price lien and must provide an unpaid balance lien notice prior to filing the verified statement of lien.

2. Unpaid Balance Notice: Subcontractors, and materialmen not obtaining full price lien rights, may obtain unpaid balance lien rights by giving a written notice to the owner, lessee and construction lender before filing a verified statement of lien and within four months of the date materials were last provided or work last performed on the project. The unpaid balance notice must state the amount of the lien, the work performed and the person from whom the money is owed [Exhibit B]. An unpaid balance lien is a lien to the extent of the "unpaid balance" of contract funds due from the owner to the original contractor at the time written notice is received by the owner.

C. Filing the Verified Statements of Lien: Full price lien claimants must file a verified statement of lien within six months after the last item of work has been performed or the last item of material has been furnished. Laborers must file within 30 days, and all other unpaid balance lien claimants must file within 4 months.

The verified statement of lien must be filed in the Office of Probate Judge for the county or counties where the property is situated. It must contain the correct legal names of the claimant and owner of the property. It must contain an accurate and complete description of the property, according to the rules set forth in Exhibit C. In addition, it must state the amount of the debt and must describe the services rendered or material deliverd. [Exhibit D.]

Step Four: Filing the Release of Lien

In the event of voluntary settlement of the disputed amounts, it is vitally important for the lien claimant to file a release of lien with the Office of Probate Judge for each county where the lien was filed [Exhibit E]. Failure to file the release of lien upon settlement of the claim could expose the lien claimant to liability for damages.

Step Five: Filing Suit to Enforce the Lien

A lawsuit to enforce the lien must be filed within six months after maturity of the debt secured by the lien. Depending upon the facts and advice of its attorney, the claimant may wish to join other lienors, mortgage holders and other parties in the lawsuit. A lis pendens should be filed of record in the Probate Court after the lawsuit is initiated.

The following statement is required by Rule 7.2 of the Alabama State Bar Association Rules of Professional Conduct: No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

Exhibit A

[Notice to owner to be mailed prior to furnishing any materials to owner's contractor or subcontractor.]

VIA CERTIFIED MAIL

To: [*Owner or Proprietor of the Property; Construction Lender*]

TAKE NOTICE, the undersigned is about to furnish [*name of contractor or subcontractor*], your contractor or subcontractor, certain material for the construction, repair or improvement or improvements, on the following described property:

[*Describe the construction project and location*]

and there will become due to the undersigned on account thereof the price of said material, for the payment of which the undersigned will claim a lien. A listing of the material, prices for the material, and credit terms follows:

[*Describe material, prices of the material, and credit terms*]

This notice is given pursuant to Section 35-11-210 of the Code of Alabama of 1975.

Sincerely,

[*Name and address of Lien Claimant*]

EXHIBIT B

[*Notice to owner, with copies to contractor and, if applicable, subcontractor.*]

To: [*Owner or Proprietor (Lessee) of Property: Construction Lender*]

Re: Materialman's Lien - [*Identify the construction project, the contractor and, if applicable, the subcontractor*]

Dear: _____

This is to notify you, as owner(s) of and construction lenders for the improvements and property known as_____, said property being the site of construction and improvements by the above named general contractor [*and subcontractor*], that [*insert name and address of Lien Claimant*], claims a lien on such buildings, improvements and lands, and on an amount after all just credits of $_____, with interest thereon from [*Note 1 below*], 20__. This amount is owing from [*identify contractor or subcontractor to whom the materials were furnished or for whom the work was performed*] for [*identify the materials furnished or the work performed*] in connection with the construction and improvements.

We request your immediate attention to full satisfaction of the amount due and payable to us as stated above.

Sincerely,

[*Name and address of Lien Claimant*]

cc: [*Contractor; Subcontractor*]

[*Note 1: Insert the date on which the amount claimed became due and payable.*]

EXHIBIT C

PROPERTY TO WHICH LIEN ATTACHES

PROPERTY LOCATED IN CITY OR TOWN

The materialman's lien may be asserted against the owner's interest in the buildings or improvements for which the material is furnished and on the land on which they are situated, to the extent in area of the entire lot or parcel of land.

(1) Where applicable, a description by house number, name of street, and name of city or town is sufficient.

(2) If the buildings or improvements consist of two or more buildings situated on the same lot or contiguous or adjacent lots, or situated on separate parcels of land but operated as an entire plant or concern and erected under one general contract, one lien may be filed against all the construction, improvements and land. Alternatively, separate liens may be filed against the separate parcels and improvements. If the land is located in two or more counties, a separate lien must be filed in each county in which the lien is desired.

PROPERTY LOCATED OUTSIDE CITY OR TOWN

The lien may be asserted against the buildings and improvements and land on which they are situated plus one acre. The one acre, if included, must be adjacent to the land on which the improvements are situated and must be described so specifically that there is no doubt which acre is intended. A description of the one acre as "surrounding and contiguous" to the improvement on which the lien is claimed has been held to be sufficient. If the improvement is located in two or more counties, a separate lien must be filed in each county in which the improvement is located.

EXHIBIT D

STATEMENT OF LIEN

STATE OF ALABAMA)
_____ COUNTY)

[*Lien Claimant*] files this statement in writing, verified by the oath of _____, its _____ [*title*], who has personal knowledge of the facts herein set forth:

That said [*Lien Claimant*] claims a lien upon the following property, situated in_____ County, Alabama, to wit:

[*Description of Property, per Exhibit C*]

This lien is claimed, separately and severally, as to both the buildings and improvements thereon to the extent of the entire lot or parcel, which is contained within a city or town. If said buildings or improvements are not within a city or town, this lien is claimed, separately and severally, as to the buildings and improvements located on the above-described real property, plus one acre of land surrounding and contiguous thereto. [This lien is also claimed as to any amounts owing from the owner or proprietor of the said property to the said contractor or subcontractor.]

That said lien is claimed to secure an indebtedness, after all just credits have been given, of $_____ with interest from ____ day of _____, 20___, for

[*Describe materials furnished, work performed, etc.*]

The Name of the owner or proprietor of the said property is [*Correct legal name of Owner*].

[*LIEN CLAIMANT*]

By: _____
Its: _____

STATE OF_____)
_____COUNTY)

Before me, _____ a notary public in and for the county of _____ State of _____ personally appeared _____, who, being duly sworn, doth depose and say: That he has personal knowledge of the facts set forth in the foregoing statement of lien, and that the same are true and correct to the best of his knowledge and belief.

_____
Affiant

Subscribed and sworn to before me on this the _____ day of _____20___, by said affiant.

_____
Notary Public

[NOTARIAL SEAL]

EXHIBIT E

RELEASE OF LIEN

STATE OF ALABAMA)
_____ COUNTY)

KNOW ALL MEN BY THESE PRESENTS, that _____ being the owner of that certain lien evidenced by notice recorded in Book____, at Page ____, in the Office of the Judge of Probate of _____ County, Alabama, does hereby acknowledge payment of the indebtedness secured by said lien and does further hereby release, discharge and satisfy said lien of record.

IN WITNESS WHEREOF, _____ has caused this instrument to be executed in its name and its corporate seal to be hereunto affixed and attested, this____ day of _____, 20___.

[*Lien Claimant*]

By _____
Title_____

STATE OF_____)

_____COUNTY)

I, the undersigned, a notary public in and for said County in said State, hereby certify that _____, whose name as _____[*Title*]_____of _____[*Lien Claimant*]_____, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this____day of _____, 20____.

_____
Notary Public

[NOTARIAL SEAL] My Commission Expires: _____