

**ALABAMA LIEN LAW PRIMER**

**HOW TO PERFECT MECHANIC'S AND MATERIALMAN'S LIENS IN ALABAMA**

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Lien: A qualified property right that a creditor has in or over specific property of his debtor, as security for the debt or charge, e.g., a mortgage, a security interest in a car, a materialman's lien.

Materialman's Lien: A generic name for a statutory lien on real property in favor of a supplier who has furnished materials for construction or improvements on the same real property.

I. Materialman's Lien – Two types available to the supplier where the materials **are to be incorporated into a particular project**. There are no lien rights if you cannot determine where the materials are going to be used (See "Project Information Sheet attached as Exhibit "A").

1. **"Full Price" Lien** – Available only (1) if the supplier has a direct contract with the Owner, **or** (2) if the supplier sent a notice to the Owner before supplying materials to the property. The lien is to the full extent of the "owner's interest in the Property" Ala. Code § 35-11-210 (1975).
  - You only need to issue a Full Price Lien Notice to the Owner if the supplier does not have a direct contract with the Owner (in words, if the supplier is a subcontractor, it will need to issue a Full Price Lien Notice; otherwise, the supplier should issue an Unpaid Balance Lien Notice which is discussed below).
  - It is important to have the correct name, address, and legal entity of the Owner so that this notice can be properly completed and delivered.
2. **"Unpaid Balance" Lien** – Available if the supplier has a direct contract with Owner. Also available where there is no contract between the Owner and the supplier, and no notice has been sent to the Owner. This lien only exists if the Owner owed the supplier money at the time the Owner received notice from the supplier of its intent to claim a Lien. Ala. Code § 35-11-218 (1975).
  - The purpose of the notice to the Owner is to protect the Owner from the possibility of paying twice for the same work.
  - If the Owner does not owe the supplier any money on the date that the notice is given, then the supplier does not have a lien.

### 3. Procedure for Perfecting Lien Rights

#### a. Full Purchase Price

(i) If no direct contract with the Owner, send a notice to the Owner advising that you are about to supply materials to the property and if not paid by the Contractor, the supplier will look to the property to get paid (See Full Price Lien Notice attached as **Exhibit "B"**).

- **BEWARE** – This Notice should be sent before delivering the material, or the Full Purchase Lien may be jeopardized.

(ii) File a Verified Statement of Lien with the Probate Court in the County in which the property is located, within four (4) months of the last date materials were delivered to the property. Ala. Code § 35-11-215 (1975) (See Verified Statement of Lien attached as **Exhibit "C"**).

- **BEWARE** – You must keep track of when materials were shipped to the Property, and not let the four (4) month window for filing the Verified Statement of Lien pass. Furthermore, coming back to the site to do warranty work or to replace defective items will not extend the time to file a lien.

#### b. Unpaid Balance Lien

(i) This is the lien form that the supplier will use most of the time.

(ii) Deliver Notice to the Owner advising of nonpayment for work performed, or materials supplied, to the property. Ala. Code § 35-11-218 (1975) (See Unpaid Balance Lien Notice attached as **Exhibit "D"**).

- Where there is no contract with the Owner and/or no prior notice of lien rights, it is imperative that the supplier do this immediately, because it fixes its rights as to whether it will have any lien. If the Owner pays the contractor before this is filed, the supplier will have no rights.

(iii) File Verified Statement of Lien in the Probate Court in which the property is located, within four (4) months of the date of last materials supplied (See Verified Statement of Lien attached as **Exhibit "C"**).

- (iv) **File suit in the County in which the property is located, within six (6) months of the date the debt became due. Ala. Code § 35-11-221 (1975).**

II. Importance of Proper Information on Customer in Establishing a New Account.

1. Nothing is more helpful in collecting a debt or enforcing a lien than knowing “who” “what” “when” and “where.” This information is included in the Credit Application & Agreement, but only if it is filled out correctly.

A. **“What”** is the legal entity with whom you have contractual rights.

- a trade name is **not a person or legal entity** against which we can enforce a contract, demand payment, or file a lien.

- it has to be a person, or a legal entity

- Proprietorship / Person
- Corporation
- Partnership
- LLC
- LLP

C. **“When”** was the legal entity set up and when does it change?

- Confirm that the legal entity has been duly set up and registered with the Secretary of State.
- Execute a new Credit Application and contract whenever there is any change in ownership, name, or legal entity. Otherwise, there may not be an enforceable contract.
- Change in ownership or corporate status means, for purposes of collecting a debt, that the supplier has a new customer.

D. **“Where”** was the entity incorporated or set up, and what is the correct billing address for the entity.

2. Small outfits may not have legal entity information readily available.

- You can look up any corporation, LLC or LLP using the Alabama Secretary of State website: <http://www.sos.state.al.us>
- You can determine whether they are active, and who the officers/incorporators are.
-

III. Methods of Insuring that the Supplier Will Get Paid for the Supplies It Sells:

**1. Selling to credit-worthy customers**

- A “Sale” is not a sale until money is collected (until then it is a gift).
- Established businesses.
- Good references.
- Cash flow appropriate to the credit they are provided.
- Knowing exactly who and where the customer is.

**2. Personal Guaranty**

- This is a contract between the supplier and a third party that says that the third party will pay if the customer cannot or will not.
- Advantage: This procedure may allow you to sell to a customer who otherwise has questionable credit.
- Disadvantage: Worthless if the third party is insolvent, which is often the case where an owner, partner, or officer of a closely held company or partnership is the guarantor.

**3. Litigation**

- Last resort indicating that the account has been poorly monitored and there will be no profit on the account.
- File suit based on lien rights, contract, and other theories.

IV. Supplier’s Lien Laws State by State

The following is a very brief description of key time-frames for notice and filing of liens in a number of Southeastern states, as might be applicable to the supplier in certain circumstances.

State	Pre-lien notice to owner	Lien	Lawsuit
Alabama	Before work begins for “full price.” “Notice of Intent” as soon as possible and at least a number of days before filing lien for “unpaid balance”	4 months from last furnishing	6 months after debt due
Georgia	To owner and general contractor within 30 days of Notice of Commencement or providing material, whichever is later.	90 days from completion of work	1 year
Louisiana	Not required.	30 days from notice of termination of work or, if no notice of contract filed, the later of 60 days from filing of notice of termination of work or from completion of work	365 days from filing of lien

Mississippi	No statutory right to lien for supplier w/o direct contract with Owner. "Stop-Notice" should be sent to Owner as soon as possible where contact is with general contractor. No "Stop-Notice" rights if a remote supplier.	N/A	N/A
Tennessee	Notice of non-payment within 90 days of the last day of each month within which materials furnished to owner and general contractor.	Lien and Sworn Statement within 90 days of completion of project.	90 days from filing of Lien and sworn statement

# **EXHIBIT A**

**PROJECT INFORMATION**

New or Existing Account \_\_\_\_\_

Customer Name \_\_\_\_\_

Billing Address \_\_\_\_\_

Separate BILL TO for Job YES \_\_\_\_\_ NO \_\_\_\_\_

**Ship to Name & Address** \_\_\_\_\_

**Of Job Site** \_\_\_\_\_

Phone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Project Manager or \_\_\_\_\_

Superintendent Name \_\_\_\_\_ Phone # \_\_\_\_\_

Inside Salesman \_\_\_\_\_

Is Job Fully or Partially Tax Exempt YES \_\_\_ NO \_\_\_ Tax Exempt ID \_\_\_\_\_

\*If Tax Exempt, Please Attach A Copy of Certificate

Tax Jurisdiction of Ship To Location State \_\_\_\_\_ % County \_\_\_\_\_ % City \_\_\_\_\_

%

P. O. Required YES \_\_\_ NO \_\_\_ Purchase Order# \_\_\_\_\_

\$ Amount of Job \_\_\_\_\_ Ship Date of First Order \_\_\_\_\_

Length of Job \_\_\_\_\_ Terms \_\_\_\_\_

Price Matrix \_\_\_\_\_

**Property Owner Name** \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_

**General Contractor** \_\_\_\_\_

Contact \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_

**Bonding Company** \_\_\_\_\_

Is Job Bonded? YES \_\_\_ NO \_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Bond Number \_\_\_\_\_

# **EXHIBIT B**

**Date**

**SENT VIA CERTIFIED AND REGULAR MAIL**

Address  
Address  
Address

RE: FULL PRICE LIEN NOTICE

To, Owner or Proprietor:

Take notice, that the undersigned, [NAME OF SUPPLIER] ("Supplier"), is about to furnish [NAME OF CONTRACTOR OR SUBCONTRACTOR PURCHASING MATERIALS FROM YOU], your contractor or subcontractor, with certain materials for the construction, or for the repairing, altering or beautifying of a building or buildings, or improvement or improvements, on the following described property:

[LEGAL DESCRIPTION OF PROPERTY IF AVAILABLE AND/OR GENERAL DESCRIPTION OF PROPERTY INCLUDING NAME OF PROJECT, LOT NUMBER AND STREET ADDRESS].

and there will become due to the Supplier on account thereof the price of said material, for the payment of which the Supplier will claim a lien. Labor will also be supplied. The price for these materials and labor is estimated to be \$ [INSERT AMOUNT]. This notice of a "full price" lien is given pursuant to Code of Alabama (1975) § 35-11-210.

Sincerely,

[NAME OF SUPPLIER'S EMPLOYEE]  
For [NAME OF SUPPLIER]

# **EXHIBIT C**

**VERIFIED STATEMENT OF LIEN**

STATE OF ALABAMA            )  
COUNTY OF \_\_\_\_\_)

[NAME OF SUPPLIER] ("Supplier") files this statement in writing, verified by the oath of [NAME OF SUPPLIER'S EMPLOYEE WITH PERSONAL KNOWLEDGE OF FACTS], who has personal knowledge of the facts herein set forth below:

That Supplier claims a lien upon the following property, situated in [NAME OF COUNTY] County, City of [NAME], State of Alabama, to wit:

[LEGAL DESCRIPTION OF PROPERTY (IF AVAILABLE) AND/OR  
GENERAL DESCRIPTION OR PROPERTY INCLUDING NAME OF  
PROJECT, LOT NUMBER AND STREET ADDRESS]

This lien is claimed, separately, severally, and jointly, as to both the buildings and improvements thereon, and the said land.

That said lien is claimed to secure an indebtedness of [DOLLAR AMOUNT OF UNPAID BALANCE] with interest from the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for [DESCRIPTION OF MATERIALS] provided to [NAME OF DEBTOR, I.E., CONTRACTOR OR SUBCONTRACTOR].

The name of the owner or proprietor of the said property is [NAME OF OWNER OR PROPRIETOR].

/s/ [NAME OF SUPPLIER'S EMPLOYEE]  
CLAIMANT'S NAME, as authorized agent for [NAME  
OF SUPPLIER]

Before me, [NAME OF NOTARY], a Notary Public in and for the county of [NAME OF COUNTY], State of Alabama, personally appeared [NAME OF SUPPLIER'S EMPLOYEE], who being duly sworn, doth depose and say: That he (OR SHE) 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.

/S/ [NAME OF SUPPLIER'S EMPLOYEE]  
Affiant

Subscribed and sworn to before me on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by said affiant.

\_\_\_\_\_  
Notary Public

# **EXHIBIT D**

**Date**

**SENT VIA CERTIFIED AND REGULAR MAIL**

Address  
Address  
Address

RE: UNPAID BALANCE LIEN NOTICE

To, Owner or Proprietor:

The undersigned [NAME OF SUPPLIER] ("Supplier") claims a lien on the land, building and improvements located at:

[LEGAL DESCRIPTION OF PROPERTY IF AVAILABLE  
AND/OR GENERAL DESCRIPTION OF PROPERTY  
INCLUDING NAME OF PROJECT, LOT NUMBER AND  
STREET ADDRESS].

in the amount of [DOLLAR AMOUNT OF UNPAID BALANCE].

This amount represents the balance due from [NAME OF DEBTOR, I.E., CONTRACTOR OR SUBCONTRACTOR], the contractor or subcontractor on the above-referenced project, for [DESCRIPTION OF LABOR OR MATERIALS] that went into, and were actually used, in said building or improvements.

We have also attached a copy [OR COPIES] of the invoice(s) for these materials. This notice of an "unpaid balance" lien is given pursuant to Code of Alabama (1975), §§ 35-11-210, 35-11-218.

Sincerely,

[NAME OF SUPPLIER'S EMPLOYEE]  
For [NAME OF SUPPLIER]