

# **FALL SEMINAR 2016**



**OCTOBER 18, 2016**  
**COBB GALLERIA CENTRE**



**FALL 2016 AGENDA October 18, 2016**

- 7:45**                    **Registration Opens**
- 8:20**                    **Welcome Remarks: Amanda Calloway, Esq.**  
                                 **Education Committee Chairperson**
- 8:30-9:30**            **Condemnation and Conservation Easements**  
Christian F. Torgrimson, Esq.  
Pursley Friese Torgrimson
- 9:30-10:30**        **The Basic Steps of Filing and Defending a Materialmen's Lien Claim in the State of Georgia**  
Jere Smith, Esq.  
Ryan S. Robinson, Esq.  
Moore Ingram Johnson & Steele, LLP
- 10:30-11:15**      **The Compliance Continuum: Staying Alive**  
Richard "Dick" Reass  
RynohLive
- 11:15**                **15 Minute Break**
- 11:30-12:30**      **Underwriter Panel Part I**  
Leonard Gray, Esq./ Susan McNamara, Esq.- First American  
Tim Raffa, Esq.- Old Republic  
Dave Swan, Esq.- Chicago Title  
Jeff Samuels, Esq.- Stewart  
TBD- Fidelity  
Gray Olive, Esq. Investors
- 12:30**                **Lunch**
- 1:30-2:30**        **Underwriter Panel Part II**  
Leonard Gray, Esq./ Susan McNamara, Esq.- First American  
Tim Raffa, Esq.- Old Republic  
Dave Swan, Esq.- Chicago Title

Jeff Samuels, Esq.- Stewart  
TBD- Fidelity  
Gray Olive, Esq.- Investors

2:30

*15 Minute Break*

2:45-3:00

*Proposed GA DOR Registry Discussion*

Diane Calloway, Esq.  
Specialized Title  
Calloway & Calloway, P.C.  
Mark Robinson, Esq.  
Old Republic Title

3:00-4:00

*Ethics*

Monica Gilroy, Esq.  
Gilroy Bailey Trumble LLC



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## **SECTION ONE**

### **Condemnation and Conservation** **Easements**

**Christian F. Torgrimson, Esq.**

**Pursley Friese Torgrimson**



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## CHRISTIAN F. TORGRIMSON

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Christian F. Torgrimson helps her business and real estate clients obtain the just compensation guaranteed to them by the Constitution when the government condemns private property. As a founding and managing partner of Pursley Frieese Torgrimson, Christian focuses on helping her clients navigate the complexities of a condemnation, minimizing the impacts caused by a taking and maximizing compensation for her clients.

She has litigated eminent domain proceedings, private property disputes, and other real-estate-related matters for 7 years. Christian represents a wide spectrum of property owners and interests, including large and small businesses, mixed-use and shopping center developers and owners, corporations, hotel operators and owners, c-store and gasoline company tenants, operators and owners, restaurant franchisors and franchisees, as well as individual homeowners. She brings extensive experience to all aspects of eminent domain proceedings brought

by state, county and local governments throughout Georgia, including jury trials, mediations, acquisitions and closings, and special master hearings.

She is the Georgia editor and writes the chapter for the national eminent domain compendium, Law and Procedure of Eminent Domain in the Fifty States, published by the American Bar Association. She is a past chair of the Eminent Domain Section of the State Bar of Georgia, and is a co-chair of the Restaurant, Retail & Hospitality Practice Area Committee of The National Association of Minority & Women Owned Law Firms. A respected national speaker on Georgia eminent domain law, Christian frequently writes and speaks on condemnation issues for various professional organizations, including the American Law Institute.

As an experienced eminent domain attorney, Christian has been selected by her peers for inclusion in Super Lawyers Magazine's Georgia Super Lawyers and Georgia Rising Stars; Georgia Trend's Legal Elite; Atlanta Women's Magazine's Leader in Law and Fulton County Daily Report's On the Rise. Christian has been recognized as one of the Top 100 Lawyers in Georgia and one of the Top 50 Women Lawyers in Georgia by Super Lawyers Magazine.

As a past president of the Georgia Association for Women Lawyers (GAWL), Christian served on GAWL's executive board for more than 10 years. She was instrumental in creating the GAWL Foundation in 2003, serving as its founding president for two years.

Christian earned her law degree from Emory University School of Law, and her bachelor's degree cum laude from the University of South Carolina.

#### REPORTED CASES:

#### CLIENT RESULTS:

#### SPEAKING ENGAGEMENTS:

#### PUBLISHED WORK:

#### MEDIA SPOTLIGHT:

- RCI Realty, LLC v. Department of Transp., 307 Ga. App. 511, 705 S.E.2d 862 (2010)
- Department of Transp. v. Jordan, 300 Ga. App. 104, 684 S.E.2d 141 (2009)
- Torrente v. MARTA, 269 Ga. App. 42, 603 S.E.2d 470 (2004)
- Garden Hills Civic Ass'n v. MARTA, 273 Ga. 280, 539 S.E.2d 811 (2000)

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## PRACTICE AREAS

- Condemnation/ Eminent Domain
- Real Estate Litigation

## ADMISSIONS

- Georgia
- U.S. District Court for the Northern District of Georgia
- U.S. Court of Appeals for the Eleventh Circuit

## EEDUCATION

- J.D., Emory University School of Law, 1997; *member of Emory Moot Court Society*
- B.A., cum laude, University of South Carolina, 1992
- Commercial Real Estate Women (CREW) - Atlanta, Leadership CREW, Class of 2014

## RECOGNITION

- AV Preeminent Peer-Review Rated by Martindale-Hubbell, since 2014
- Super Lawyers Top 100 Lawyers in Georgia (2015, 2014)
- Super Lawyers Top 50 Women Lawyers in Georgia (2015, 2014)
- Georgia Association for Women Lawyers Foundation's 2013 Honorable Debra Bernes Community Volunteer Award
- Super Lawyers Magazine's Georgia Super Lawyers (2015, 2014, 2013)
- Georgia Trend Magazine's Legal Elite (2014, 2010, 2009, 2008)
- Fulton County Daily Report's On the Rise: 12 Lawyers to Watch in Georgia (2009)
- Atlanta Woman Magazine's Leader in Law (2008)
- Supreme Court Justice Robert Benham Community Service Award (2004)

## AFFILIATIONS

### ELEGAL

- American Bar Association
- Atlanta Bar Association
- Georgia Association for Women Lawyers  
President 2008-2009
- Lawyers Club of Atlanta
- State Bar of Georgia

### REAL ESTATE

- Commercial Real Estate Women (CREW) Atlanta
- International Council of Shopping Centers (ICSC)

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**CONSERVATION EASEMENTS and CONDEMNATION –**  
**WHICH ONE WINS?**

**By Christian F. Torgrimson, Esq.**



**Georgia Land Title Association, LLC,**  
**an affiliate of the Southeast Land Title Association**

**Fall CLE Seminar**

**Cobb Galleria Centre**

**October 18, 2016**

*"The 'Conservation Purpose' of this Conservation Easement is to protect, in perpetuity, the ecological and scenic resources, and the conservation interests and values of the Property identified herein..., while permitting compatible uses of the Property that are consistent with the Protected Conservation Values. The Conservation Purposes advanced by this Conservation Easement are:*

*(1) Preservation of the existing Protected Conservation Values of the Property which include natural habitats, forests, wildlife, scenic, agricultural and other ecological values which qualify the Property as a scenic, natural and rural area that has not been subject to significant development and as a significant natural area that provides a 'relatively natural habitat for fish, wildlife, plants or similar ecosystems' as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code...."*

#### **A. Conservation Easements, The Basics:**

Conservation easements intentionally restrict the development and use of land in order to protect the ecological, natural, scenic and conservation interests or values of land. Owners voluntarily grant such easements to governmental entities or qualified, private charitable land trusts in exchange for charitable or tax benefits, monetary payments and/or development related benefits, such as variances and stream buffer credits. In turn, the grantee entities and trusts assume enforcement obligations and sometimes maintenance responsibility of the conservation values on the burdened

property. For governmental entities, acquiring a conservation easement can alleviate requirements or mitigate environmental damage caused by public projects or neglect of public projects.<sup>1</sup>

Conservation easements are granted in perpetuity and typically held in "gross," meaning they are not appurtenant to another, dominant piece of property. At the state level, they are governed by enabling statutes, which allow for certain purposes and enforcement. Public policy is strongly in favor of using conservation easements as land protection tools as evidenced by the increase in the total acreage of protected land across the country, the federal and state tax benefits to owners, and the use of public funds to purchase them.<sup>2</sup> Along with land preservation and conservation values, these easements offer an alternative to government fee acquisition of land or regulations of private land.<sup>3</sup>

Georgia has a Uniform Conservation Easement Act, which provides in part:

(a) Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except that a conservation easement may not be created or expanded by the exercise of the power of eminent domain.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

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<sup>1</sup> See, e.g., City of Atlanta Final Approved Greenway Acquisition Plan dated March 29, 2001.

<sup>2</sup> See Nancy A. McLaughlin, Condemning Conservation Easements: Protecting the Public Interest an Investment, 41 UC Davis Law Review 1897.

<sup>3</sup> Conservation Easements: The Good, the Bad, the Ugly, <http://www.nationalcenter.org/NPA569.html>.

(c) Except as provided in subsection (c) of *Code Section 44-10-4*, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

(e) The ownership or attempted enforcement of rights held by the holder of an easement shall not subject such holder to any liability for any damage or injury that may be suffered by any person on the property or as a result of the condition of such property encumbered by a conservation easement.

(f) No county, municipality, or consolidated government shall hold a conservation easement unless the encumbered real property lies at least partly within the jurisdictional boundaries of such county, municipality, or consolidated government.<sup>4</sup>

The popularity of these easements has grown exponentially in the past two decades<sup>5</sup> and for good reason. Although property owners relinquish certain land uses by granting such easements in perpetuity, the corresponding tax breaks and incentives can add up to real savings through: (1) federal income tax deduction of up to 50% percent of annual income for fifteen years<sup>6</sup>; (2) estate tax incentives that reduce estate value<sup>7</sup>; and (3) state and local tax deductions and/or reduction in value assessments. These incentives not only represent value to the owners, they also result in public investment in land preservation through use of funds to purchase easements, land management, and a reduction in tax revenues.

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<sup>4</sup> OCGA §44-10-3.

<sup>5</sup> *Conservation Easements: The Good, the Bad, the Ugly*, <http://www.nationalcenter.org/NPA569.html>.

<sup>6</sup> See <http://www.landtrustalliance.org/topics/taxes/income-tax-incentives-land-conservation>.

<sup>7</sup> See <http://www.landtrustalliance.org/topics/taxes/estate-tax-incentives-land-conservation>.



Ironically, the same land that can be preserved by one arm of the government through a conservation easement can be damaged by another arm of the government through the power of eminent domain. Broadly speaking, eminent domain is the constitutional power conferred upon federal and state governments to take or acquire private property without consent and devote to a particular public use. This power is limited by the Fifth Amendment in two very important respects: the taking must be for a public use and just compensation must be paid. Eminent domain authority is delegated by constitutional amendments and enacting legislation to specific entities, such as state Departments of Transportation, cities, counties, schools, utilities, railroads, or housing development authorities. The term "condemnation", often used interchangeably with eminent domain, is the formal exercise of or procedure to carry out the power of eminent domain and transfer title from the private property owner to the government.

### **B. Georgia Condemnation Law**

The Georgia Constitution provides that "[p]rivate property shall not be taken, or damaged, for public purposes, without just and adequate compensation being first paid."<sup>8</sup> All private property, all property rights and interests of every type and nature can be condemned so long as just and adequate compensation is first paid by the condemning authority.<sup>9</sup> In other words, if a property right exists, it can be taken, no matter the nature. This includes not only the actual land, but also leasehold values, trade fixtures, buildings and improvements, billboards, access rights, air rights,

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<sup>8</sup> GA. Const. 1983, Art. I, § III, ¶ I.

<sup>9</sup> Woodside v. City of Atlanta, 214 Ga. 75, 103 S.E.2d 108 (1958).

easements, certain contract rights, operating businesses or income streams and business values that are inherent in the property. Land protected by conservation easements are not exempt from condemnation even when the easement is held by a governmental entity. While Georgia's Uniform Conservation Easement Act makes clear that the power of eminent domain cannot be used to establish or expand a conservation easement, it does not carve out any protection of an existing easement when the burdened land is required for another public use.<sup>10</sup>

### **C. Compensation of Ownership Interests Under Georgia Condemnation**

#### **Law**

While all property interests can be condemned, not all ownership interests are entitled to receive the compensation that must be first paid before the property is taken. For example, the holder of a right of first refusal, owners of franchise rights, and beneficiaries of restrictive covenants have no right to be paid for any loss or damage to such interests. Just and adequate compensation under Georgia law begins with the principle that a property owner whose land is taken for a public use must be paid the value of the land or interest that is actually taken.<sup>11</sup> Where the taking is only partial, the owner must be compensated for the value of land taken, plus any reduction in the fair market value of the remainder property, also known as consequential damages caused by the taking.<sup>12</sup> To determine the value of the remainder, any consequential benefits resulting from the taking may be offset against the consequential damages but may not

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<sup>10</sup> O.C.G.A. § 44-10-3(a).

<sup>11</sup> See, e.g., O.C.G.A. §§ 22-2-62, 22-2-63.

<sup>12</sup> Wright v. MARTA, 248 Ga. 372, 283 S.E.2d 466 (1981).

be offset against the value of the property actually taken.<sup>13</sup> A property's value, including consequential damages and benefits, is determined by the fair market value of the property on the date of the taking.<sup>14</sup> Fair market value is defined as "the price a property will bring when it is offered for sale by one who desires, but is not obligated to, sell it, and is bought by one who wishes to buy it, but is not obligated to do so."<sup>15</sup> In the absence of fair market value, a property may be valued for its uniqueness, such as where the condemned property is not of a type generally bought and sold on the open market.<sup>16</sup>

#### **D. Compensation for Condemnation of Conservation Easements**

In general, the holder of an easement is entitled to compensation for the taking or damaging of the easement interest on the burdened land.<sup>17</sup> Likewise, the owner of the burdened land may be entitled to compensation for the additional taking of or damage to the underlying fee. Any value to be paid is measured by the fair market value of the easement before and after the taking, and represents a portion of the total fee value.<sup>18</sup> Conservation easements can pose particular and conflicting challenges for determining just and adequate compensation for the burdened land, the easement and the holder of the easement. On the one hand, the subject land and its uses already are restricted, which can reduce fair market value. On the other hand, the conservation easement attaches an additional, unique value to the land based on its preservation for a specific

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Central Georgia Power Co. v. Stone, 139 Ga. 416, 77 S.E.2d 565 (1913).

<sup>16</sup> Housing Auth. of Atlanta v. Southern Ry. Co., 245 Ga. 229, 264 S.E.2d 174 (1980).

<sup>17</sup> Lee v. City of Atlanta, 219 Ga. App. 264, 464 S.E.2d 879 (1995).

<sup>18</sup> Id.

use. In addition, the land owner may have been paid fair market value in exchange for granting the easement across the land, which in turn may reduce any subsequent compensation for the taking of the land that also impacts a conservation easement. The most common example of this is when a new utility easement is taken on the same land with existing utilities – the value of the new easement can be substantially reduced because the owner has already been paid a portion of the fee value for the existing utilities.

There is no case law directly addressing the condemnation of a conservation easement or how compensation of the various should be handled.<sup>19</sup> Georgia courts adhere to the “common denominator” or the undivided fee rule, in which individual parcels of or interests in land are condemned and valued as one property so long as there is common ownership.<sup>20</sup> This rule is intended to prevent the total value of the various interests from exceeding the total fair market value of the entire property. In addition, Georgia law excludes recovery of consequential damages to an adjacent benefitted property caused by the loss of easement rights on the burdened land.<sup>21</sup> As a result, the holder of an easement can recover the loss of value of the easement on the burdened land. It cannot, however, recover damages that may occur to its property that is benefitted by the easement. For example, the owner of an outparcel, Parcel A, that enjoys access easement rights across Parcel B, can recover the value of its easement that is

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<sup>19</sup> See McLaughlin, *Condemning Conservation Easements*, *supra*, (examinations of arguments in favor of and against compensating a holder of an existing conservation easement that is condemned).

<sup>20</sup> *DOT v. Olshan*, 237 Ga. 213, 227 S.E.2d 349 (1976).

<sup>21</sup> *Georgia Power v. Bray*, 232 Ga. 558, 207 S.E.2d 442 (1974).

taken on Parcel B, but it is barred from recovering damages to its outparcel for the loss of access rights, which could be much greater. Whether this exclusion would be applied in the taking of a conservation easement has not been addressed in Georgia. The statutory provisions for the creation of conservation easements are silent as to compensation when these easements are condemned.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



## **SECTION TWO**

### ***The Basic Steps of Filing and Defending A Materialman's Lien Claim in the State of Georgia***

**Jere C. Smith, Esq.**

**Ryan S. Robinson, Esq.**

**Moore Ingram Johnson & Steele, LLP**

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## JERE C. SMITH, PARTNER



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EDUCATION Florida State University, B.S. 1989  
Mercer University, J.D. 1992

BAR MEMBERSHIPS State of Georgia, 1992

PRACTICE AREAS Business Litigation  
Construction Litigation

Jere Smith was admitted to the Georgia Bar in 1992 after attending Florida State University (B.S. 1989) and Mercer University (J.D. 1992). Jere joined Moore Ingram Johnson & Steele in 1992 and is currently a partner in the firm's Litigation Department. His practice areas include Business and Construction Litigation. He has written and spoken on Materialman's Lien Law for various organizations including the State Bar of Georgia Continuing Education Program. He is an active member of the Cobb County Bar Association (Young Lawyers Section) and the State Bar of Georgia. Jere is also a member of the National Association of Dealer Counsel.

Jere was born in Atlanta on April 23, 1967. He and his wife, Katie, reside in Kennesaw with their daughter, Ellie and son, Charlie. Jere and his wife enjoy reading, traveling, music, golf and all sports.

† Also licensed in TN

\* Also licensed in FL

\*\*\*\* Also licensed in CA

^ Also licensed in TX

• Also licensed in AL

‡ Also licensed in KY

<sup>1</sup> Also licensed in SC

<sup>2</sup> Also licensed in NC



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## RYAN S. ROBINSON



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EDUCATION Kennesaw State University, BBA  
John Marshall Law School, JD

BAR MEMBERSHIPS State of Georgia, 2012

PRACTICE AREAS Commercial and Business Litigation  
Construction Litigation  
Real Estate Litigation

Ryan joined Moore Ingram Johnson & Steele in 2013, as a member of the firm's Litigation Department. His practice areas include Commercial and Business Litigation, Construction Litigation and Real Estate Litigation.

Ryan is a native of Cobb County. After graduating from Lassiter High School, Ryan enlisted in the United States Army as a Field Artillery crewman, and was assigned to a M109A6 Self-Propelled Howitzer battalion. After completing his enlistment, Ryan graduated with a BBA degree in Information Systems Management from Kennesaw State University. He then worked in various analytical and technical support roles for the in-house financing division of an electronics retailer, and later transitioned into similar roles for the in-house financing arm of a major automotive retailer. While enrolled in law school, Ryan oversaw the automotive retailer's in-house Bankruptcy team.

Ryan graduated ranked first in his class from John Marshall Law School in Atlanta, and was admitted to the State Bar of Georgia in October 2012. Most recently, Ryan was an associate attorney with one of the largest Real Estate law firms in the Southeast.

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<sup>2</sup> Also licensed in NC

**THE BASIC STEPS OF FILING  
AND DEFENDING  
A MATERIALMEN'S LIEN CLAIM  
IN THE STATE OF GEORGIA**

**By: Jere C. Smith**

**MOORE INGRAM JOHNSON & STEELE, LLP  
Emerson Overlook  
326 Roswell Street, Suite 100  
Marietta, Georgia 30060**

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# **THE BASIC STEPS OF FILING AND DEFENDING A MATERIALMEN'S LIEN CLAIM IN THE STATE OF GEORGIA**

## **I. Introduction**

A materialmen's lien is a legal document created for the purpose of securing payment to eligible persons who, under contract with the owner of real property or some other person authorized on the owner's behalf, contributed constructed related labor, services, or materials toward the improvement of real property. Materialmen's lien statutes were enacted for the purpose of providing leverage to those persons in the construction contract chain who would otherwise be in a potentially worse position to protect themselves. A materialmen's lien is an extremely powerful tool, and, if properly utilized, can greatly improve a materialmen's chances of recovering past due accounts. It is, therefore, critical that a materialmen's lien claimant fully satisfy all of the statute's conditions for recovery.

Often times, materialmen and their lawyers believe that the law relating to the filing and perfection of materialmen's liens is relatively simple and straightforward. To the contrary, the law and procedural requirements of Georgia's materialmen's lien law command detailed attention and can be extremely dangerous for the unwary claimant.

The substance of this paper will outline the "Basic Steps of Filing And Defending A Materialmen's Lien Claim In the State of Georgia" and will illustrate the traps and pitfalls which must be avoided by all persons involved in the process.

## **II. Persons Entitled To A Claim Of Materialmen's Lien:**

A. O.C.G.A. § 44-14-361(a)(1)-(9) provides that the following persons or entities are entitled to a materialmen's lien on the real estate, factories, railroads, or other properties for which they furnish labor, services, or materials:

1. Mechanics of every sort who have taken no personal security for work done and material furnished;
2. Contractors;
3. Materialmen;
4. Subcontractors;
5. Materialmen furnishing material to subcontractors;
6. Laborers furnishing labor to subcontractors;
7. Registered architects furnishing plans, drawings, designs or other architectural services;
8. Registered foresters;
9. Registered land surveyors;
10. Registered professional engineers;
11. Contractors, subcontractors, and materialmen furnishing material to subcontractors and laborers furnishing labor for subcontractors who build factories, furnish materials for factories, or furnish machinery for factories;
12. Machinists and manufacturers of machinery, including

corporations engaged in such businesses who may furnish or put up or repair any mill or other machinery;

13. Contractors who build railroads; and

14. All suppliers furnishing rental tools, appliances, machinery, or equipment for the improvement of real estate.

B. Because the law relating to the class of persons entitled to a materialmen's lien is strictly construed, it is necessary that further definition be given to those parties:

1. Contractor - A person or entity having a direct contractual relationship with the owner of the real estate. O.C.G.A. § 44-14-360(1).

- The contract to which reference is made between the owner and contractor may be either written, verbal, or implied by conduct.

2. Subcontractor - A person or entity having a direct contractual relationship with the contractor or a party who is in a direct chain of contracts leading to the contractor and who performed services or procured another to perform services in furtherance of the goals of the contracts. O.C.G.A. § 44-14-360 (9).

- A second tier subcontractor (commonly referred to as a sub-subcontractor) with a contract in violation of an anti-

assignment clause contained in a contract between the contractor and the first tier subcontractor is not a subcontractor for materialmen's lien purposes. Benning Construction Co. v. Dykes Paving and Construction Co., Inc., 63 Ga. 16, 426 S.E. 2d 564 (1993).

A. licensed contractor's or subcontractor's failure to procure a license may be an owner's defense to a lien foreclosure action. O.C.G.A. § 43-14-1, Bowers v. Howell, 203 Ga. App. 636, 417 S.E. 2d 392 (1992).

3. Materialman - A person or entity furnishing materials, tools, appliances, machinery, or equipment to the property at the instance of the owner, contractor or authorized subcontractor. O.C.G.A. § 44-14-360 (4).

- Materials may include plumbing, electric fixtures, lumber, bricks, concrete, shingles, nails, etc. D.H. Overmyer Warehouse Company v. W.C. Caye and Company, 116 Ga. App. 128, 157 S.E. 2d 68 (1967) or anything else which is necessary for the completion of the building. Skandia Manufacturing Co. v. Augusta Innkeepers, Ltd., 157 Ga. App. 279, 277 S.E. 2d (1981).



- Georgia law requires that materials become “fixtures” to the real estate in order to become lienable. Id.
- Georgia law also requires that materials and labor must, in order to become lienable, be utilized upon or become incorporated into the property sought to be liened. Taverrite v. Lowe’s of Franklin, Inc., 166 Ga. App. 346, 304 S.E. 2d 78 (1983).
- If materials are delivered by a materialman to a particular job site, a rebuttable presumption is created that the materials were in fact, used on that project. T.D.S.Construction, Inc. v. Burke Co., 206 Ga. App. 223, 425 S.E. 2d 359 (1992).
- If materials are furnished by a materialman to a contractor or subcontractor and delivered to the contractor or subcontractor’s place of business as opposed to the job site, the burden is on the materialmen’s lien claimant to prove that the materials actually became incorporated into the project. Bowen v. Collins, 135 Ga. App. 221, 217 S.E. 2d 193 (1975).

- A supplier to a supplier is not entitled to a lien. Porter Coatings v. Stein Steel and Supply Company, 157 Ga. App. 260, 277 S.E. 2d 272 (1981).
  - A material supplier to an unauthorized second tier subcontractor is also not entitled to a lien. Benning Construction Co. v. Dykes Paving & Construction Co., Inc., 263 Ga. App. 14, 426 S.E. 2d 564 (1993).
4. Lessors and Suppliers of machinery - Lessors and suppliers of machinery, tools, appliances, or equipment are entitled to a lien so long as the real property sought to be liened receives the benefit of the machinery, tools, etc. O.C.G.A. § 44-14-361(a)(9).
  5. Registered architects, land surveyors, foresters, and professional engineers are entitled to a materialmen's lien for the value of their services. O.C.G.A. § 44-14-361 (a)(3). As a caveat, however, the named persons must be registered or licensed at the time of the performance or furnishing of the services. O.C.G.A. § 43-4-1 et seq.

### **III. Property Interests Subject To A Materialmen's Lien**

- A. Legal Interests - All legal interests in real property that can be seized and sold are subject to a materialmen's lien. James G.

Wilson Mfg.Co. V. Mamerlin, Johnson, Dubose Co., 140 Ga. 593, 79 S.E. 465 (1913).

B. Contingent Remainders and Equitable Interests -Contingent remainders are not subject to materialmen's liens.

- A materialmen's lien may attach to an owner's equity of redemption on a piece of property which is subject to a deed to secure debt. West Lumber Co. v. Gignilliat, 77 Ga. App. 336, 48 S.E. 2d 688 (1948).

C. Public Property - A materialmen's lien will not attach to public property. This is true for two reasons. First, the filing of a materialmen's lien against public property is void because it is against public policy. Secondly, even if a materialman was able to file a lien against public property, he would be unable to foreclose upon same because public property cannot be foreclosed under Georgia law.

- If a materialman finds himself unpaid for labor or materials which he provided to a public project, he must be advised to seek remedy under the Federal Miller Act or Georgia's Little Miller Act.

D. Religious and Charitable Organizations:

- A materialmen's lien will attach to property owned by religious and charitable organizations. New Ebenezer Association v. Gress Lumber Co., 89 Ga. 125, 14 S.E. 892 (1892).

5. Condominiums:

- See the Georgia Condominium Act at O.C.G.A. § 44-3-95.

#### **IV. Persons Whose Property Interests Are Subject To A Materialmen's Lien**

In recognition of the fact that a materialmen's lien is filed against the real property in which an owner or lessor maintains a legal interest, this section seeks to identify those persons whose property interests are subject to a lien. Most often in this regard, a lien claimant is confronted with making the distinction between an owner's interest in the real property against that of the relationship which exists between a landlord and a tenant.

Although there exist other persons and entities whose property interests are subject to a materialmen's lien claim, this section will focus only on the interests of the owner and the landlord/tenant.

- A. Owner - So long as labor, services, and materials were furnished at the instance of the owner, contractor, or some other person acting for the owner or contractor, a materialmen's lien may be

filed against the owner's interest in the property.

- Mere ownership by itself does not subject an owner's interest in real property to a materialmen's lien. Even consent to work being performed may not subject an owner's interest to a lien. In order to subject the owner's property interest to a lien, the owner's consent must be to the contract under which the work is performed. Liggett v. Harper, 151 Ga. App. 616, 260 S.E. 2d 735 (1979), Jones v. E.I. Rooks & Son, 78 Ga. App. 790, 52 S.E. 2d 580 (1949).
- Mere knowledge of improvements or acceptance of the work after completion does not alone subject an owner's interest to a lien. Holcombe v. Parker, 99 Ga. App. 616, 109 S.E. 2d 348 (1959).

B. Landlord - The general rule is that work ordered by a tenant upon leased premises does not subject the interest of a landlord to a materialmen's lien. A landlord is not responsible for tenant ordered work or materials unless a contractual relationship (express or implied) exists between the landlord and contractor or materialman.

- Again, mere knowledge by the landlord is not enough. Accurate Construction Co. v. Dobbs Houses, Inc., 154 Ga. App. 605, 269 S.E. 2d 494 (1980).
- Lease provisions authorizing or obligating a tenant to make improvements or repairs do not make the tenant an agent of the landlord or the contractor. The fact that improvements became those of the landlord's upon termination of a tenant's lease does not alone create a basis for the lien. Jones v. E.I. Rooks & Son, 78 Ga. App. 790, 52 S.E. 2d 880 (1949).

## **V. Essential Elements of the Claim of Materialmen's Lien**

### **A. Time within which claim of lien must be filed.**

In Georgia, a lien claimant must file a claim of lien within ninety (90) calendar days from the last date upon which labor, materials, or services were furnished to the subject real property. O.C.G.A. § 44-14-361.1(a)(2). This is perhaps the single most important deadline of which the lien claimant must be aware in order to perfect his lien rights.

It must also be noted that the ninety (90) day period of

limitation is absolute and applies even if the last day for filing falls on a weekend or holiday. When a statutory period expires, the claim of lien cannot be amended under any circumstances.

#### B. Claim of lien

Once a materialmen's lien claimant determines that it is entitled to a materialmen's lien against a piece of real property, a claim of lien must be filed in the real estate office of the clerk of the Superior Court in the county wherein the real property is located.

O.C.G.A. § 44-14-361.1(a)(2) requires that the following information be included in a claim of lien:

1. Full legal name of the person or entity claiming the lien;
2. The full amount of money owed to the lien claimant on the real property that is to be liened;
  - This amount must be limited to the amounts owed to the lien claimant on the specific property and cannot include amounts owed by the debtor for labor, material or services not furnished to the specific property.
  - The amount of a materialmen's lien claim cannot exceed the contract price between the owner and the lien claimant, or with the contractor in the event

a lien claimant is a subcontractor or materialman.

O.C.G.A. § 44-14-361.1(e).

- Effective July 1, 2013, the lien statutes have been amended to make it clear that any statutory lien shall include interest on the principal amount due in accordance with O.C.G.A. §§ 7-4-2 and 7-4-16.
  - The exact legal name of the current owner of the property on which the improvements were made;
  - The exact legal name of the owner can be ascertained from the deed which vests legal title to the owner and which can be found in the office of the clerk of the Superior Court in the county wherein the property lies.
4. The name of the contractor or subcontractor or other person to whom materials were delivered;
- Although the statute does not require this information, inclusion of the information will generally speed the payment of the claim.
5. The date upon which the claim became due and owing;
- Again, a materialmen's claim becomes due on the last day that the labor, materials, or services were



furnished to the real property or on the last day that the performance of the work is completed by the lien claimant. Sears, Roebuck, & Co. v. Superior Rigging & Erecting Co., 120 Ga. App. 412, 170 S.E. 2d 721 (1969).

6. A full legal description of the property;

- The claim of lien requires that the property be sufficiently described to ascertain the property upon which the improvements were made. Again, the vesting deed which is on record with the Superior Court will provide this required information.

**VI. Notice Of A Claim Of Materialmen's Lien**

O.C.G.A. § 44-14-361.1 (a)(2) provides that "no later than two (2) business days after the date the claim of lien is filed of record, the lien claimant shall send a true and correct copy of the claim of lien by registered or certified mail to the owner of the property or, if the owner's address cannot be found, to the contractor as the agent of the owner". A failure to send a copy of the lien by registered or certified mail to the owner of the property or the contractor may invalidate the lien.

## **VII. Proceedings To Perfect A Claim Materialmen's Of Lien**

Once the claim of lien has been properly filed by the lien claimant, perfection of the materialmen's lien may only be accomplished by two individual lawsuits which, dependant upon Georgia's venue statutes, may be brought in one lawsuit.

The first lawsuit must be filed against the person who is primarily liable to the materialman for the debt which serves as the basis of the lien. Bryant v. Jones, 90 Ga. App. 314, 83 S.E. 2d 46 (1954). Typically, the materialmen's lien claimant's first lawsuit is based upon the legal theories of breach of contract or breach of open account and seeks an individual judgment against the actual debtor. The first lawsuit must be filed within three hundred sixty-five (365) days from the last date that the materials were delivered to the subject property. O.C.G.A. § 44-14-361 (a)(3). This three hundred sixty-five (365) day period runs from the date the claim became due and not one year from the date of the filing of the lien.

### **A. Notice of Suit.**

Within thirty (30) days after the time of filing the action against the primary debtor, the materialmen's lien claimant, in order to preserve its lien, must file a document entitled "Notice of Suit" with the clerk of the Superior Court in the county where the lien was

filed. O.C.G.A. § 44-14-361.1(a)(3). The Notice required under O.C.G.A. § 44-14-361.1(a)(3) must be under oath and identify:

1. The court wherein the action against the contractor, subcontractor or owner is being brought;
2. The style and number of that action;
3. The name of all parties to that action;
4. The date the action was filed; and
5. The book and page of number of the deed book wherein the lien was filed.

Please note that the requirement to file the Notice of Suit is mandatory. The failure to file the Notice of Suit in a timely manner will result in the lien being rendered unenforceable.

#### **VIII. Notice of Commencement/Notice To Contractor Requirement**

In 1993, the Georgia General Assembly adopted legislation that dramatically changed the status of materialmen's lien law. The legislation, found at O.C.G.A. §44-14-361.5, was adopted to provide notice to contractors and property owners of all persons and entities who are on a project and who might have future lien claims against the subject real property. Prior to the adoption of this legislation, contractors and property owners voiced concern that liens were being filed by persons whose existence on the project the contractors and property owners were wholly

unaware. In order to curb this practice, the Georgia General Assembly created two distinct types of notice:

1. The Notice of Commencement, to be filed in the court records by the property owner or contractor and posted in a conspicuous place on the job site.
2. The Notice to Contractor, to be forwarded by the materialmen's lien claimant to the owner and contractor at the addresses set forth within the Notice of Commencement.

In order to be fair to all parties involved, the Georgia General Assembly placed the initial burden to notify on the contractors or property owners. This initial burden is satisfied with a Notice of Commencement.

It is important to note, however, that the requirements for a Notice to Contractor are not triggered unless the property owner or contractor has fully complied with the requirements for a Notice of Commencement. If the requirements for a Notice of Commencement are not satisfied, then the property owner and contractor forfeit their rights to receive a Notice to Contractor and standard lien law is followed.

6. To properly create a Notice of Commencement, the property owner or general contractor must satisfy certain requirements.

1. The Notice of Commencement must include the following information:

- (a) Name, address, and telephone number of the contractor;
  - (b) Name and location of the project being constructed and the legal description of the property upon which the improvements are being made;
  - (c) Name and address of the true owner of the property;
  - (d) Name and address of the person other than the property owner at whose instance the improvements are being made, if not the true owner of the property;
  - (e) Name and address of the surety for the performance and payment bonds; and
  - (f) Name and address of the construction lender. O.C.G.A. § 44-14-361.5(b);
2. The property owner or general contractor must file the Notice of Commencement with the clerk of the Superior Court in the county where the property is located within fifteen (15) days after the contractor physically commences work on the project. Id.
3. The general contractor is required to provide a copy of the Notice of Commencement to any subcontractor, materialman, or person who makes a written request within ten (10) days of the receipt of the request.

As mentioned, if the property owner or contractor fails to satisfy any of the above listed requirements for filing a Notice of Commencement, its right to receive a Notice to Contractor is forfeited and standard lien law is followed. It is, therefore, advisable that a potential lien claimant forward all requests for a Notice of Commencement to the general contractor by certified mail, return receipt requested. Thus, if the owner or general contractor fails to forward the requested information within ten (10) days of its receipt thereof, the potential lien claimant has documented the general contractor's failure to comply with the statute and will not be required to forward a Notice To Contractor.

If the Notice of Commencement is filed, posted, and all other requirements are met, the burden to notify shifts to the materialmen's lien claimant. This is accomplished by the Notice to Contractor. Note that the Notice To Contractor is not required of those materialmen who maintain a direct contractual relationship with the general contractor or owner on a given project.

If statutorily required, the materialmen's lien claimant must send a Notice to Contractor to the contractor and the owner of the property within thirty (30) days of first furnishing his materials, labor, or services or within thirty (30) days of the filing of the Notice of Commencement, whichever is later. O.C.G.A § 44-14-361.5.

The failure of a potential lien claimant to fully comply with the Notice to Contractor requirements results in the forfeiture of his right to file a claim of

lien against the subject property for non-payment.

7. The Notice To Contractor must include the following information:

1. Name, address and telephone number of the person providing, labor, services or materials;
2. Name and address of each person at whose instance the labor, services, or materials are being furnished;
3. Name of the project and location of the project set forth in the Notice of Commencement; and
4. Description of the labor, services, or materials being provided and, if known, the contract price or anticipated value of the labor, services, or materials to be provided and the amount claimed to be due, if any.

As noted above, the Notice to Contractor must be forwarded to the property owner and the general contractor. In order to ensure proper notice, it is advisable to send the notice by certified mail, return receipt requested. Unfortunately, the statute is unclear in defining whether such notice is considered "given" when sent or received. Consequently, in order to ensure proper notice, it is advisable for a potential lien claimant to send all notices well within the times of limitation.

#### **IX. Preliminary Notice of Materialmen's Lien**

Materialmen's lien claimants must not confuse the Notice of Commencement and Notice to Contractor provisions with the optional

“Preliminary Notice of Lien” procedure.

Within thirty (30) days after the materialmen’s lien claimant has furnished labor, services, or materials to the real property sought to be liened, it may (but is not required to) file a Preliminary Notice of Lien with the clerk of the Superior Court in the county wherein the property is located. O.C.G.A. § 44-14-361.3(a)(1).

The purpose of filing the Preliminary Notice of Lien is to protect the materialmen’s lien claimant against future contractor’s or owner’s affidavits. Specifically, a contractor’s or owner’s affidavit (discussed below) cannot dissolve a materialmen’s lien if a Preliminary Notice of Lien had previously been filed by the materialmen’s lien claimant. O.C.G.A. § 44-14-361.2(a).

A. If a materialmen’s lien claimant chooses to file a Preliminary Notice of Lien, the following information must be included in that document:

1. The name, address, and telephone number of the potential lien claimant; O.C.G.A. § 44-14-361.3(a)(2).
2. The name and address of the contractor or other person at whose instance the labor, services, or materials were furnished; O.C.G.A. § 44-14-361.3(a)(3).
3. The name of the owner of the real estate, and the description sufficient to describe the real estate against which the lien is



or may be claimed; O.C.G.A. § 44-14-361.3(a)(4).

4. A general description of the labor, services, and materials furnished or to be furnished to the subject property; O.C.G.A. § 44-14-361.3(a)(5).

O.C.G.A. § 44-14-361.3(b) provides that a materialmen's lien claimant who chooses to file a Preliminary Notice of Lien must forward a copy of the notice to the property owner by registered or certified mail within seven (7) days of filing.

B. A Preliminary Notice of Lien may be canceled or dissolved under any of the following conditions:

1. The lien has been waived in writing by the lien claimant; O.C.G.A. § 44-14-361.4(a)(1).
2. Time has expired for filing a claim of lien. O.C.G.A.; § 44-14-361.4 (a)(2).
3. If, on a residential property, defined as one to four family residential real estate, a demand for filing the claim has been sent by registered or certified mail to the potential lien claimant at the address specified in the Preliminary Notice of Lien and at least ten (10) days have elapsed since the date of mailing without the filing of a claim of lien; O.C.G.A. § 44-14-361.4(a)(3).

4. If, on all property, except residential property, a demand for filing a claim of lien has been sent by registered or certified mail to the potential lien claimant at the address specified in the preliminary notice of lien rights and at least ten days have elapsed since the date of mailing without the filing of the claim of lien, the lien claimant forfeits all rights otherwise provided by the Preliminary Notice of Lien. However, the demand for filing of the claim of lien shall not be sent until the contractor's contract is substantially completed or until the potential lien claimant's subcontract has been terminated or the potential lien claimant has abandoned the contract. O.C.G.A. § 44-14-361.4 (a)(4).

Lastly, a lien claimant who has filed a Preliminary Notice of Lien must, upon final payment of his claim, deliver a cancellation of Preliminary Notice of Lien to the owner or cause the notice to be canceled of record within 10 days after the final payment. O.C.G.A. § 44-14-362(a).

## **X. Foreclosure of the Materialmen's Lien**

Prior to actually foreclosing a materialmen's lien against a piece of real property, a materialmen's lien claimant must file two separate types of lawsuits. The first lawsuit is filed by the materialmen's lien claimant against its debtor and must be filed in the County in which the debtor resides. The

first lawsuit must be filed by the materialmen's lien claimant within three hundred sixty-five (365) days from the last date on which the materialmen's lien claimant last provided labor, services, or materials to the real property. Furthermore, within thirty (30) days from the date that the materialmen's lien claimant files its lawsuit, it must file in the Superior Court Real Estate records where the lien is filed a document entitled "Notice of Suit". The Notice of Suit shall contain, among other things, a caption referring to the then owner of the property against whom the lien was filed and referring to a deed or other recorded instrument in the chain of title of the affected property. The notice shall be executed, under oath, by the party claiming the lien or by such party's attorney of record.

Once a materialmen's lien claimant has fully complied with his contract, properly recorded his claim of lien, and concluded an action for recovery of his claim, the materialmen's lien claimant may file a lawsuit to foreclose his materialmen's lien.

An action to foreclose a lien against the owner does not subject the owner to personal liability unless the owner has direct contractual relations with the materialmen's lien claimant. Dodson v. Early, 161 Ga. App. 666, 290 S.E. 2d 105 (1982). A lawsuit to foreclose a materialmen's lien lies only against the property. The lien claimant and the owner of the real estate for whom the labor, services or materials were furnished are

necessary parties to a lien foreclosure action. Subsequent owners of the real property who purchased with notice of an outstanding lien are not necessary parties to an action to foreclose a lien. Trust Company of New Jersey v. Atlanta Aluminum Company, 149. Ga. App. 605, 255 S.E. 2d 82 (1979).

A materialmen's lien foreclosure lawsuit must set forth the following information:

- A. The existence of a contract between the owner and the contractor regarding the erection of improvements upon the owner's property;
- B. The amount to be paid to the contractor pursuant to the owner's contract with the contractor;
- C. The existence of a contract between the lien claimant and the general contractor;
- D. If applicable, a copy of the Notice to Contractor which may have been provided to the owner and the contractor;
- E. The existence of a contract between the claimant and the contractor;
- F. That the amount of the claimed lien comes within all or part of the amount of the contract between the owner and the general contractor;
- G. That a claim of lien has been recorded within three calendar

months of the last furnishing of labor, services or materials;

H. That an action was brought against the contractor within three hundred sixty-five (365) days of the date the claim became due, or such an action was not brought because the lack of jurisdiction over the contractor; and

I. That a Notice of Suit against the contractor that was timely filed.

#### **X. Defending A Materialmen's Lien Claim**

As a consequence of the strict interpretation which has been historically been given by Georgia Courts to materialmen's lien statutes, a materialmen's lien defense lawyer maintains numerous opportunities to successfully defend lien foreclosure lawsuits. The following will show the various ways in which to defend and possibly defeat a materialmen's lien claim.

1. Has the materialmen's lien claimant/Plaintiff satisfied all requirements in order to be declared a materialmen's lien claimant pursuant to Georgia law?
2. Is the materialmen's lien claimant one of those persons or entities entitled to a special lien pursuant to O.C.G.A. § 44-14-361(a)(1)-(9)?
3. Did the materialmen's lien claimant substantially comply with its contract pursuant to O.C.G.A. § 44-14-361.1(a)(1)?
4. Did the materialmen's lien claimant furnish his labor, services, or

materials at the instance of the owner, contractor, or some other person acting for the owner or contractor pursuant to O.C.G.A. § 44-14-361.1(a)?

5. Did the materialmen's lien claimant take personal security from its debtor as set forth in O.C.G.A. § 44-14-361.1 (a)?
6. Has the materialmen's lien claimant satisfied all of the requirements concerning the filing of a materialmen's lien?
7. Did the materialmen's lien claimant file its claim of lien within ninety (90) days from the last date upon which it furnished labor, services, or materials pursuant to O.C.G.A. § 44-14-361.1(a)(2)?
8. Did the materialmen's lien claimant file and have its claim of lien recorded in the office of the clerk of the Superior Court of the county where the property sought to be liened is located?
9. Did the materialmen's lien claimant satisfy all of the requirements contained within the claim of lien?
  - a. Did the materialmen's lien claimant properly identify itself within the body of the lien claim?
  - b. Did the materialmen's lien claimant properly identify the true and correct owner of the property sought to be liened?
  - c. Did the materialmen's lien claimant properly describe the

property sought to be liened?

- d. Did the materialmen's lien claimant properly identify the last date upon which it furnished labor, service, or materials to the property sought to be liened?
- J. Did the materialmen's lien claimant forward a copy of the claim of lien by registered or certified mail to the owner of the property or contractor as agent of the owner pursuant to O.C.G.A. § 44-14-361.1(1)(a)(2)?
- K. Did the materialmen's lien claimant commence an action for the recovery of the amount of its claim of lien within three hundred sixty-five (365) days from the time that the claim became due and owing pursuant to O.C.G.A. 44-14-361.1(a)(3)?
- 12. Did the materialmen's lien claimant properly file and record a Notice of Suit in the office of the clerk of the Superior Court in the county where the property is located within thirty (30) days after filing its lawsuit pursuant to O.C.G.A. § 44-14-361.1(a)(3)?
- 13. Did the materialmen's lien clamant obtain a judgment against its debtor?
- 14. Did the aggregate amount of the lien set up by O.C.G.A. § 44-14-361 exceed the contract price of the improvements made or services performed?
- 15. If the owner or the contractor fully complied with the Notice of

Commencement procedures, did the materialmen's lien claimant satisfy all requirements regarding the Notice to Contractor?

#### **XI. Materialmen's Lien Waivers**

Under Georgia law, a materialmen's lien can be waived in two separate manners. Specifically, a materialmen's lien can be waived by:

a) the materialmen lien claimant's failure to comply with the legal requirements for the creation of the lien; or b) by an agreement which expresses the materialmen's lien claimant's clear and unambiguous intent to do so. O.C.G.A. § 44-14-366.

In Georgia, there are two types of lien waivers, namely a) the Interim Waiver and Release Upon Final Payment (aka "Partial Lien Waiver") and b) Unconditional Release and Waiver Upon Final Payment. (aka "Unconditional Lien Waiver")

The Interim Waiver and Release Upon Final Payment is executed by the lien claimant or potential lien claimant in situations where the lien claimant accepts payment other than final payment.

A. In order to be effective, an Interim Waiver and Release Upon Payment must provide the following information:

1. The name of the contractor or other person at whose instance the labor, services, or materials were furnished;
2. A description of the labor, services or materials which were furnished;



3. The identity and title of the project or building to which the labor or materials were furnished, including the city and county where the project or building is located;
4. The name of the owner of the building or project;
5. A description of the real property on which the project or building is located;
6. The sum of money which the lien claimant waives or releases;
7. The date through which the materialman waives or releases claims of lien.
8. Often times, a materialmen's lien claimant finds itself in a position where it has executed a "partial release" and the check which he receives from its debtor has bounced. In order to protect the materialmen's lien claimant in this position, Georgia law provides that no oral or written statement by a lien claimant purporting to waive, release, impair, or otherwise adversely affect a lien or bond claim is enforceable or creates an estoppel or impairment of a claim of lien unless:
  - a. It is made pursuant to a waiver and release form duly executed by the claimant; and
  - b. The claimant has received payment for the claim.  
Payment of the claim shall be deemed to have occurred upon the earliest of:

- a. Actual receipt of the funds;
- b. Execution by the lien claimant of a separate written acknowledgment of payment in full; or
- c. Sixty (60) days after the date of an execution of a waiver and release, unless prior to the expiration of said thirty day period, the lien claimant files a claim of lien or files in the county in which the property is located an Affidavit of Nonpayment.

The second type of lien wavier to which reference has been made is the Unconditional Waiver and Release Upon Final Payment. Please note that this document must only be used at such time as the materialmen's lien claimant intends to fully release his right to claim a lien upon a particular real property.

In order to be effective, an Unconditional Release Upon Final Payment form must provide the following information:

1. The name of the contractor or other persons at whose instance the labor, services, or materials were furnished;
2. A description of the labor, services, or materials furnished;
3. The identity of the name of the project or building to which the labor, services, or materials were furnished, including its location within a city and county;

4. The name of the owner of the building;
9. A description of the real property on which the building or project is located; and
10. The amount and receipt of the sum of money to which all liens or claims of liens have been waived.

## **XII. Contractor's and Owner's Affidavits**

O.C.G.A. § 44-14-361.2 (a) provides that a materialmen's lien "shall be dissolved" if the owner, purchaser from owner, or lender providing construction or purchase money or any other loan secured by real estate shows that:

1. The lien has been waived in writing by a lien claimant; or
2. They or any of them have obtained the sworn written statement of the contractor or person other than the owner at whose instance the labor, services or materials were furnished, or the owner when conveying title in a bona fide sale or loan transaction, that the agreed price or reasonable value of the labor, service, or materials have been paid or waived in writing by the lien claimant; or
3. When the sworn written statement was obtained or given as a part of a transaction;
4. Involving a conveyance of title of a bona fide sale;
5. Involving a loan in which the real estate is to secure repayment of the loan; or

6. Where final disbursement of the contract price is made by the owner to the contractor and at the time of the settlement of the transaction a valid preliminary notice or claim of lien had not been previously canceled, dissolved, or expired.”

O.C.G.A. § 44-14-361.2 contemplates a single affidavit that the agreed price or reasonable value of all the labor, service, or materials employed in the completed project have been paid and not periodic affidavits showing that the agreed price or reasonable value of some of the labor, services, or materials employed to date in the ongoing project had been paid. C.C. & B. Industries, Inc. v. Stroud, 198 Ga. App. 658, 402 S.E. 2d 527 (1991).

In order for a contractor's affidavit to be valid and thus void a materialmen's lien claim, the contractor's affidavit must comply with all requirements of O.C.G.A. § 44-14-361.2 (a)(2). Balest v. Simmons, 201 Ga. App. 605, 409 S.E. 2d 513 (1991).

A. The foregoing requirements must be met:

1. The contractor's affidavit must be a legal affidavit. For example a contractor's affidavit must be made under oath and must be signed by an individual rather than by a corporation.
2. The contractor's affidavit must swear that the agreed price or reasonable value of the labor, services, or materials has been

paid or waived in writing by the lien claimant. For example, a contractor's affidavit which state that "as far as I know" all bills for labor and materials have been paid is insufficient to dissolve a lien. Saye v. Athens Lumber Company, 94 Ga. App. 118, 93 S.E. 2d 806 (1956).

3. The Contractor's Affidavit must be placed into twelve (12) point font.

### **XIII. Conclusion**

The substance of this paper has only addressed the "Basics of Filing and Defending A Materialmen's Lien Action In The State of Georgia". Please note that Georgia law relating to Materialmen's Lien Law is comprehensive and can, indeed, be quite a maze for unwary lien claimants. Thus, prior to wandering through this maze, it is highly advisable to become familiar with all applicable case law as well as the current trends towards which materialmen's lien law follows.



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## **SECTION THREE**

### ***The Compliance Continuum: Staying Alive***

**Richard “Dick” Reass**

**RhynohLive**

# Speaker

## Richard “Dick” Reass

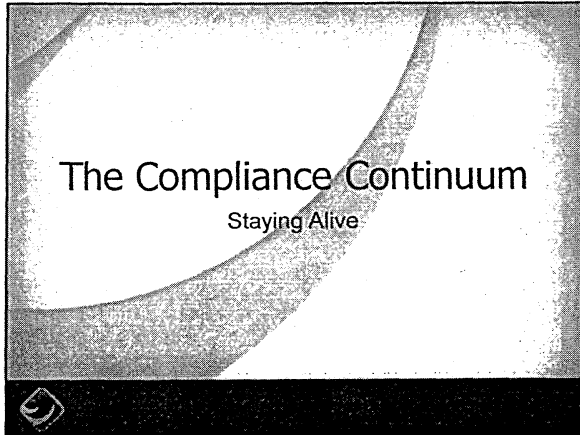
Chief Executive Officer and Founder, RynohLive

Prior to founding Reliant Title in 1998, and RynohLive in 2008, Dick was a career Navy Officer whose service was bookended by combat in Vietnam and Desert Storm. His almost ten years command at sea included three ship commands as well as serving as Commodore of the sixteen ship multinational force during Desert Storm. Dick's final assignment was as director of Management Information Systems in Washington, DC.

As CEO and founder of Segin Software, LLC (dba RynohLive), Dick's passion for process improvement and innovative problem solving was the catalyst for developing RynohLive. Quite frankly, he knew that there had to be a better way to manage the operations of his Title Agency, avoid escrow problems, and better manage the rapid growth of his agency. Dick's vision of process improvement and systems integration led to the step-by-step development of RynohLive for escrow and trust account security and protection.








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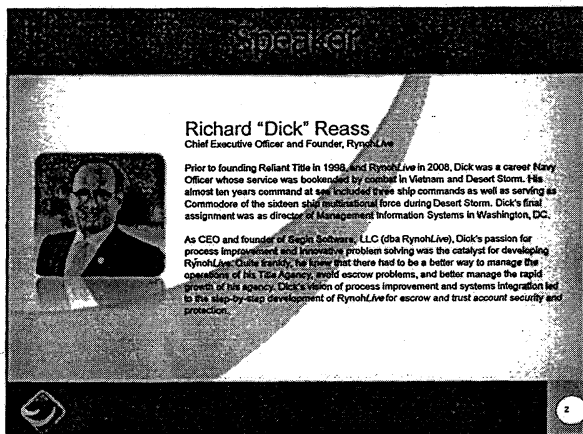
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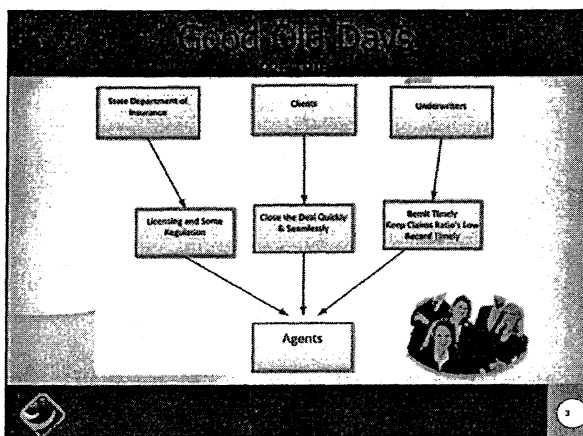
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### Pre-TRID Compliance Journey

#### Agenda

- Pre-TRID environment
  - The "Good old Days"
  - Where we were and what got us here
- TRID 2016
  - Regulatory Oversight
  - What do lenders want?
  - Getting to compliant
- Cyber Security Concerns
- Compliance with Pillars 2 & 3
  - Cyber & Money

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### Pre-TRID Environment

- Economic Meltdown 2008-2009
- Staggering Losses
  - Check Fraud / Wire Fraud / Mortgage Fraud
  - Employee Embezzlement / Defalcation
- "Simultaneous" Failure Two Underwriters 2011
  - Southern Title
  - New Jersey Title
- Regulators Outraged
- Lenders Seeking Protection
- NAIC Initiatives
- Failed Businesses
- Industry Risk

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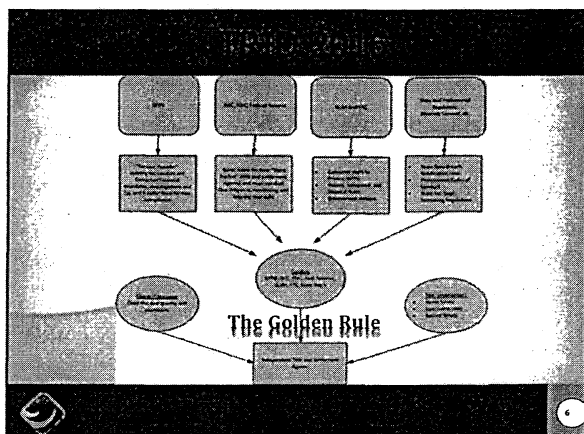
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**The Rule Books**

### Regulatory Oversight

- 1999: Gramm - Leach Bliley Act (FTC)
- 1999: Federal Trade Commission (FTC) – Privacy Rule
- 2003: Federal Trade Commission (FTC) – Safeguard Rule
- 2005: Federal Trade Commission (FTC) – Disposal Rule
- 2011 (formed): Consumer Financial Protection Bureau (CFPB)
- 2013: Office of the Comptroller of the Currency (OCC)
- <http://www.occ.gov/news-issuances/bulletins/2013/bulletin-2013-29.html>
- Third Party Relationship Bulletin (Oct. 2013): "The OCC expects a bank to practice effective risk management regardless of whether the bank practices the activity internally or through a third party."
- 2013: Best Practices (ALTA)

**FFIEC Information Technology Examination Handbook**

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**Federal Trade Commission**

### Gramm - Leach Bliley Act

- Privacy of Consumer Financial Information
- Commission's Privacy Rule, 16 CFR Part 313
  - Provide initial and annual privacy notices to their customers
  - Real Estate Settlement Services, etc. ("FTC regulated entities").
- GLBA Requirements
  - Employee Background Screening
  - Employee sign confidentiality and security agreement
  - Controlled Employee Access to NPPI
  - Computer password activated access & time-out
  - Laptops, PDA, Cellphone, Mobile Devices.....Security & Encrypted Storage
  - Extensive Employee Training
  - Recurring Training on Policies (Legal Requirement)
  - Teleworker Policies
  - Firewall, Anti-virus, Intrusion Detection, Dummy Accounts
  - NPPI Security P&P
  - Data Encryption in Transit
  - Breach Detection and Reporting

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**cfpb** Consumer Financial Protection Bureau

### Regulatory Oversight

**CFPB Bulletin 2012-03**  
 Date: April 13, 2012  
 Subject: Service Providers

The Consumer Financial Protection Bureau ("CFPB") expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm. The CFPB's exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.

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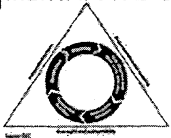
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Office of the Comptroller of the Currency

## Regulatory Oversight



- OCC Bulletin OCC 2013-29
- October 30, 2013
- "Third Party Relationships" Bulletin



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Office of the Comptroller of the Currency

Since October 3, 2015, new mortgage disclosure forms—the Loan Estimate and the Closing Disclosure—have been required for most mortgage loans secured by real property. To comply with the new integrated rules, individual banks and the mortgage industry as a whole have needed to make significant systems and operational changes. The implementation process required extensive coordination with third parties, and there were numerous reports of issues relating to third-party readiness. Many banks also have dedicated substantial resources to understanding the rules, adapting systems, and training personnel. Full implementation of the rules, however, continues to pose operational and compliance risks and challenges. In recognition of the scope and scale of changes needed to achieve effective compliance, the OCC's fiscal year 2017 examination strategies incorporate assessing compliance with the rules as well as banks' compliance management systems and overall compliance efforts.



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Office of the Comptroller of the Currency

- How Many of My Loans are at Risk?
- Avoid CFPB Fines
- TRID Compliance
- Reduce Cost of Compliance
- Simple Solutions
- Protect Client
  - Data
  - Documents
  - Dollars
- Financial Transparency
  - Dodd-Frank Title VII (Wall Street Transparency & Accountability)



Per RMRI



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**Getting to Compliance**

- Self Assessment - Threat Assessment
- Secure email
- Develop all required privacy and data security policies, procedures & plans
  - Information Security Plan
  - Incident Response Plan
  - Disaster Recovery Plan
  - Secure Password Policy
  - Business Continuity
  - Electronic Communications and Internet Use Policy
- Ensure compliance with all service providers
- Implement a sound document destruction policy

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**ALTA BEST PRACTICES Pillar No. 2**

**Title Insurance and Settlement Company**

- Licensing
- Escrow Standards
- Security Standard (Physical, IT & NPPI)
- Settlement Procedures
- Title Policy delivery, charges & remittance
- Insurance (E&O, Cyber, Fidelity & Surety)
- Complaint Resolution

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**ALTA BEST PRACTICES Pillar No. 3**

**"Adopt and maintain appropriate written procedures and controls for Escrow Trust Account allowing for electronic verification of reconciliation."**

- Daily Reconciliation Requirement
  - Positive Pay
  - File Balance documentation
  - Electronic Access for Underwriters

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### ALTA BEST PRACTICES

#### Electronic Verification Systems (EVS)

EVS compare items through electronic means to ensure the validity of the item/document being submitted for review or analysis. Does the underlying data held by the bank and accounting system support the reconciliation results?

*An electronic copy of a reconciliation statement is simply another form of paper that cannot be analyzed for accuracy.*


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### Positive Pay

- Defense Against Check Fraud
- ALTA Requirement
- UCC 3-103(7), 3-406b, 3-406e
  - Reasonable Commercial Standards
  - Ordinary Care
  - Comparative Fault
- Banking Software that matches:
  - Check #
  - Check Date
  - Dollar amount
  - Payee



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### Daily Three-way Reconciliation

- #1 Defense against fraud
- Match bank balances to book balances
- Third-way: individual settlement files (trial)
  - Each settlement file = sub-escrow account
  - Can't take from Jones to pay for Smith
- Business banking regulations different
  - Online posting – "24 hour rule"
  - Transaction notification
- Personal Variance with ALTA Requirements
  - RESPA Violation Potential
  - Two-way reconciliation gives a three-way



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### Daily Reconciliation

- Summary Page
  - Bank Statement
  - Outstanding Deposits
  - Outstanding Check Report
  - Account Adjustments
  - Trial Balance
- Debits & Credits = Bank & Book
- Red Flags
  - Stale Dated Checks
  - Undisbursed Funds
  - Outstanding Deposits
  - Negative File Balances

Be able to present a daily report



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### ANALYSIS PROCEDURES (continued)

- File Balance
- Wiring Instructions
- Check Endorsement
- Good Funds vs. Collected Funds
- Deposit Procedures
- Dealing with IRS liens
- PACER & Patriot Act searches
- SSN verification
- Identity verification
- FIRPTA



Training & Records

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### WIRING PROCEDURES (continued)

- PACER search
- Bring-down (run-up, rundown, title update, etc...)
- Ledger card = file balance = HUD-1
- Handling Escrow Agreements
- Check payees
- Check signing & wiring
- Check reissue
- Stop payment



Training & Records

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### Written Procedures

#### Settlement Software Controls

- Permissions
- Freeze files
- Logins
- Industry standard software



Training & Records

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### Written Procedures

#### Unclaimed Property

- State-dated check follow-up
- Undisbursed funds
- Escrow agreements
- Interpleading funds
- Escheatment (state guidelines)



Training & Records

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### Escheat Sample Internal Presentation

#### Internal Threats

- Funds not clearing in a timely manner
- Wiring Instructions
- Check payee changes
- Negative file balances
- Deposits to incorrect account
- Defalcation / embezzlement



2013 - Daily reconciliation stopped 78% of check fraud

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**External Threats**



- Check fraud
- "Revised" wire instructions
- Malware / Phishing emails
- Thumb drives
- Hacking

*Frank Abagnale*  
What I did in my youth is  
hundred of times easier today.  
Technology breeds crime.

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**Disburse Collected Funds**

- Good Funds ≠ Collected Funds
- Good Funds – settlement definition only
- Banking regulation CC
  - Available Funds or Collected Funds
  - Expedited Funds Availability Act (1987)
  - Collected Funds Irrevocably Credited
- Statute Definition vs. Bank Definition
- Underwriter Guidelines
- Limit Good Funds
  - Illinois & North Dakota (\$50,000)
  - Indiana & Utah (\$10,000), Idaho (\$1,000)

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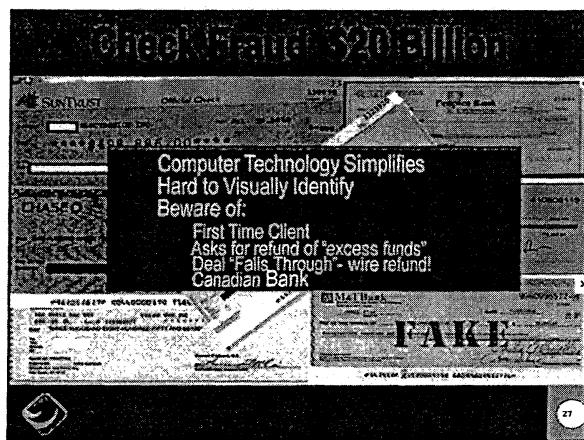
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**Check Fraud \$20 Billion**



**Computer Technology Simplifies  
Hard to Visually Identify**

**Beware of:**

- First Time Client
- Asks for refund of "excess funds"
- Deal "Falls Through" - wire refund!
- Canadian Bank

**FAKE**

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### Escrow Security

- Industry Software
- Settlement Software Administrative Controls
  - Ability to Limit Functions
  - Freeze Files
  - Written Procedures
- Segregation of Duties
- Daily Reconciliation
- Strong Passwords
- Dual Authentication

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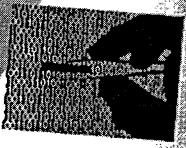

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### Cyber Security

- Secure Email Service
- Biometric Access Device
- Strong Passwords
  - Master Passwords
- Internet Controls
- Firewalls
- Browser's
- Training, Training, Training...

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### Cyber Fraud Prevention

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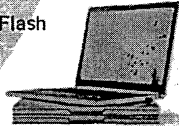
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### Online Banking Requirements

#### NACHA & FBI Guidelines

- Dedicated Standalone Computer
- Banking-only use
- No Java – No Adobe – No Flash
- Malware Protection
- Automatic Updates
- Strong Authentication
- Dual Controls



**"Chrome Book"**  
 <\$200.00  
 Web Based  
 No Hard Drive

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### Control Your Access

- **Browser Selection**
  - Avoid Internet Explorer (personal choice)
  - Speed – Security – Functionality
  - ActiveX for Closing Packages
  - Eliminate Advertising ([www.adblockplus.org](http://www.adblockplus.org))
  - Keep plugins up to date
  - Java – Flash Player – Adobe Reader
- **Firewalls & Routers**
- **Lockdown Computer Internet Access**



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### Who else is boarding your train?



These pictures were taken in 1975, and kept in a folder in my attic for 38 years.  
 In April 2013, I scanned the pictures and emailed them to a friend in Florida.  
 They were 'on the web' 5 days later!

**Latest Scam – "Revised wire instructions"**

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## Secure Email

- Encrypted Email
  - Protects NPPI
  - Sarbanes – Oxley Requirement
  - Lender Requirement
  - "Best Practices"
- Easy Affordable First Step

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## Nothing to be Learned



There is nothing to be learned  
from the second kick of the mule!

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**RynohLive**  
Absolute Financial Protection

Dick Reass, CEO & Founder  
P: 757-333-3760; C: 757-536-1959  
Dick.Reass@rynoh.com  
Website: [www.Rynoh.com](http://www.Rynoh.com)




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## **SECTION FOUR**

### **Underwriter Panel**

**Leonard Gray, Esq.- First American**

**Susan McNamara, Esq.- First American**

**Tim Raffa, Esq.- Old Republic**

**Dave Swan, Esq.- Chicago Title**

**Jeff Samuels, Esq.- Stewart Title**

**Gray Olive, Esq.- Investors Title**

**Leonard R. Gray, Jr.** is an attorney licensed in the State of Georgia and is currently Senior Underwriting Counsel -Commercial in the Atlanta Agency office of First American Title Insurance Company.

Prior to rejoining First American, Mr. Gray served as Georgia State Counsel for Lawyers Title and Commonwealth Land Title Insurance Companies, and also as Commercial Underwriting Counsel for a two large national underwriters, including First American, in their National Commercial Services Divisions since 1998.

Before joining the title insurance industry as counsel, he maintained a real estate closing and transactional practice in Atlanta with two large volume real estate law firms, and has conducted thousands of real estate closings. Mr. Gray graduated from the University of Georgia, School of Law and Georgia State University undergrad.



*First American Title™*



## SUSAN MCNAMARA, ESQUIRE AT YOUR SERVICE

**First American Title is pleased to announce the appointment of Susan McNamara, Esquire, to the position of Georgia Agency Underwriting Counsel.** Susan brings over 15 years of legal and title industry experience to her position and is dedicated to using her expertise and knowledge to provide prompt underwriting guidance to our valued agents. In addition to her underwriting responsibilities, Susan will also provide training for our agents on policy underwriting and production procedures.

Prior to joining First American Title, Susan was a partner in a law firm that handled the negotiation and closing of real estate transactions. Her responsibilities included assisting clients with title and survey review, issuance of title insurance commitments and policies, representing lenders and borrowers in real estate financing and other secured lending transactions, and advising lenders and owners on real property matters such as foreclosure, deed reformation, contracts, leases, and easements. She also gained experience serving as outside claims counsel where she handled title insurance claims, assisted in coverage decisions under title insurance policies, and prosecuted indemnity claims.

Susan graduated from Harding University with a Bachelor of Arts in English and received her Juris Doctor from Mississippi College School of Law. She has the distinction of being named a Mid-South Rising Star in Real Estate (2008-2015) in recognition by her peers of her professional accomplishments and community involvement. Susan is AV® Peer Review Rated by Martindale-Hubbell, which places her at the highest level of legal ability and professional excellence.

Susan's experience as a title agent, transactional attorney and claims counsel gives her a unique combination of skills. As a former transactional lawyer and title agent, she understands the pressures agents are under to serve their clients and get a transaction closed, and claims counsel experience makes her aware of what can go wrong when risk is not properly managed.

The addition of Susan McNamara to our team in Georgia reinforces our commitment to adding the resources necessary to provide our agents with the tools and services necessary for growth and continued success. Her professionalism and extensive industry knowledge will be tremendous assets in strengthening agency relationships throughout Georgia.

Please join First American Title in welcoming Susan McNamara to her new position. She may be reached at 404.836.6325 or [smcnamara@firstam.com](mailto:smcnamara@firstam.com).



**Tim Raffa**

Georgia Underwriting Counsel

*Old Republic National Title  
Insurance Company*

*1125 Sanctuary Parkway, Suite 140  
Alpharetta, GA 30009-7611*

*Phone: 770.475.6199 ext. 15850*

*Email: [traffa@oldrepublictitle.com](mailto:traffa@oldrepublictitle.com)*

**Tim Raffa** has been a member of the Georgia Bar since 1994, and began practicing in the area of Real Estate in 1996. Tim was a Partner at Morris|Hardwick|Schneider until 2006, where he ran several offices in East Cobb, developed the firm's Mentor Program and was on the Board of Directors for the LandCastle Foundation. He has represented individuals, investors, builders, and lenders in a variety of transactions including acquisition & development of property, residential closings, covenants, and restrictions and commercial real estate transactions. He worked for Beazer Homes, Inc., as Area Manager for Homebuilder Title developing and managing title agencies in three states from 2006-2007, before opening his solo practice in 2008. His solo practice focused on real estate transactions, title resolution, landlord tenant, business formation and wills & trusts. Most recently, He was a Senior Attorney at Busch, Slipakoff & Schuh, LLP, where his focus included commercial lending, commercial transactions, title operations, foreclosures, and workouts. He has worked with a multitude of lenders and borrowers from across the state and country in facilitating commercial transactions of all sizes. Tim was integral in establishing the firm's title agencies and operations from the ground up.

Originally from Plantation, Florida, Tim has been a resident of east Cobb County for the last 20 years with his wife, Robin, and three children. He is an active youth basketball coach and a Commissioner for East Marietta Basketball.

Education: JD, Nova Southeastern University, 1993; MA, Sports Management, California University of Pennsylvania, 2010; BS, Social Sciences, University of Central Florida, 1990

Memberships: State Bar of Georgia & Real Property Law Section, State Bar of Georgia

With questions or for an appointment, please contact Tim Raffa, Georgia Underwriting Counsel, at 770.475.6199 ext. 15850 or [traffa@oldrepublictitle.com](mailto:traffa@oldrepublictitle.com).

**DAVID S. SWAN**

Vice-President & Underwriting Counsel  
Chicago Title / Commonwealth Land Title

**EDUCATION**

University of Florida, BSBA Marketing  
University of Florida College of Law, J.D.

**BAR ADMISSIONS**


Florida, Colorado (inactive) and Georgia

**EXPERIENCE**

Mr. Swan was in private practice in Florida for a number of years, specializing in real estate, probate and corporate law. He conducted thousands of closings for numerous lenders, developers and real estate brokers. While in Colorado he was an underwriter for Chicago Title. Upon relocating to Georgia he has been in private practice and underwriting for major title underwriters, including his present position.

**MEMBERSHIPS**

Real Estate Section – Georgia Bar  
Real Estate, Probate & Trust Law Section – The Florida Bar



Jeff Samuels joined Stewart Title Guaranty Company as Underwriting Counsel for Georgia in 2016.

Prior to joining Stewart, Jeff practiced transactional real estate law for fourteen years as a solo practitioner and title insurance agent for The Samuels Firm in Atlanta and Marietta, Georgia. In 1994, he joined Ames & Associates and in 2001, Jeff was a partner with McKee & Samuels, LLC. From 1984 until 1994, Jeff practiced law in New York State.

Jeff holds a BA in government and law from Lafayette College in Pennsylvania (1981), and a Juris Doctor from Emory University School of Law (1984). He is admitted to the bar associations of Georgia, New Jersey and New York.

# Investors Title

Investors Title Insurance Company

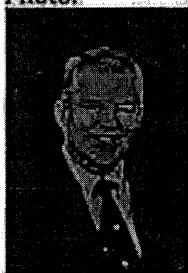
[About Us](#)[Title Insurance](#)[Services](#)[Resources](#)[Careers](#)[Contact Us](#)

## Olive, Gray

[Home](#) [Olive Gray](#)

As underwriting counsel for the Southeast Region, Gray Olive's responsibilities include providing underwriting support to the company's agents and approved attorney network as well as contributing to risk management, business development, and educational initiatives in the Georgia and South Carolina markets. Mr. Olive's professional background includes a four-year active tour in the Air Force as a judge advocate, private practice in Columbia, South Carolina with emphasis on commercial and residential real estate and title insurance. He later operated the Olive Law Firm, LLC where he practiced real estate and probate law and where he maintained a long-standing agent relationship with Investors Title. Drawing from his extensive experience in the industry, he often speaks on topics such as title exams, title insurance, and real estate closings at continuing education events.

**Team Member Title:**  
**Underwriting Counsel**  
**Email Address:**  
[golive@invtitle.com](mailto:golive@invtitle.com)  
**Photo:**



**Department:**  
**Attorneys**  
**View Order:**  
1 000  
**Location:**  
South Carolina Direct  
**Primary Markets:**  
Georgia  
South Carolina  
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## **SECTION FIVE**

### **Proposed GA DOR Registry Discussion**

**Diane Calloway, Esq.**

**Specialized Title**

**Calloway & Calloway, P.C.**

**Mark Robinson, Esq.**

**Old Republic Title**

## **Mark Robinson**

Mark began his career at McCurdy & Candler in Decatur, where he learned the fine arts of title examination and closing loans. Since those early days of dusty deed books in record rooms across the state, Mark has concentrated his practice on commercial and residential real estate and accompanying fields of law, including title examination and closings, leasing, acquisition and development, title insurance, landlord-tenant matters, contracts, foreclosures, and bankruptcies.

Mark is a graduate of Georgia State University, with a BBA in Finance, and he earned his law degree from Emory University School of Law. Mark is member of the Real Property Law Section, is admitted to the Courts of the Northern and Southern Districts of Georgia, and is a member of the Bar of the Supreme Court of the United States.

Currently, Mark serves as Georgia Underwriting Counsel for Old Republic Title Insurance Company.

## FIRM PROFILES

### ***Specialized Title Services, Inc. Atlanta Escrow and Exchange Service, Inc. Calloway & Calloway, P.C.***

In February of 1995, Diane S. Calloway, Esq. and George C. Calloway, Esq. formed the law firm of Calloway & Calloway, P.C. (AV rated in the *Martindale-Hubbell*® *Law Directory*). In 1996, they were joined by member R. Lamar Gazaway, Jr., Esq., who leads their courthouse examination group.

Ms. Calloway's career has included extensive experience in the areas of title law, real estate transactions and tax-deferred exchanges. In recent years, in addition to her role as managing principal, she has devoted an increased amount of her time to civic and professional outreach. Mr. Calloway brings to the firm wide-ranging exposure to complex title insurance and commercial real estate matters throughout Georgia and the United States. His primary focus is the representation of other commercial real estate attorneys and title underwriters with respect to their title insurance and title examination needs.

To serve those needs, the Calloways maintain a corporate title agency, Specialized Title Services, Inc. ("STS"), which can assist in both local projects and multi-site national transactions. Established by Ms. Calloway in 1994, STS is an issuing agent for four major national title underwriters and has grown to be one of the larger commercial title insurance agencies in Georgia. STS is a member of Dixie Land Title Association, Inc. ("DLTA") and the American Land Title Association ("ALTA").

As a supplement to their title activities, the Calloways also offer access to their companion company, Atlanta Escrow and Exchange Service, Inc., ("AEE"), which functions as a qualified intermediary in tax-deferred exchanges. AEE is a member of the Federation of Exchange Accommodators, Inc., which organization, after testing, awarded Ms. Calloway the designation of Certified Exchange Specialist™.

The Calloways and Mr. Gazaway have participated as speakers and authors in the continuing education projects of several professional groups. These include The Institute of Continuing Legal Education's Real Property Law Institute, DLTA's Land Title School, and the International Council of Shopping Centers' Continuing Education Workshop.

Currently President-Elect of DLTA, Ms. Calloway has held a number of positions within that group. Also active in ALTA, she serves as Georgia State Trustee for TIPAC (the Title Industry Political Action Committee), its affiliated PAC. She is a member of CREW (Commercial Real Estate Women) Atlanta, having contributed professional services to that organization's supportive housing initiatives. Ms. Calloway is in her second term as a Board Member and Treasurer of the Fulton Perimeter Community Improvement District, and is the founding President of the Central Perimeter Business Alliance, Inc. She is further honored to be a member of the Advisory Council to Congressman Tom Price, M.D. (Georgia's Sixth District). Ms. Calloway was additionally named in *Atlanta Magazine* as a 2004, 2005 and 2006 Georgia Super Lawyer, and Mr. Calloway was a 2005 designee.

The Calloways and Mr. Gazaway are joined in their practice by attorneys Tina H. Park, Russell A. Gaines, Charles A. Gioino and Triesha A. Tyler, as well as a dedicated and capable staff of paralegals and administrative support personnel.



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## **SECTION SIX**

### **Ethics**

**Monica Gilroy, Esq.**

**Gilroy Bailey Trumble LLC**

HOME PRACTICE AREAS ATTORNEYS OFFICES YOUR CLOSING NEWS WILLS & ESTATES CONTACT

## Attorneys

- Monica K. Gilroy
- Deborah S. Bailey
- Tania T. Trumble
- Kelsea L. S. Laun
- Michael P. Barry
- Ike W. Cobb
- Erin B. Nations

## attorneys

**Monica K. Gilroy**, a founding principal of Gilroy Bailey Trumble, is the firm managing partner and has over 20 years of experience practicing law. She received her Bachelor of Arts in Political Science from the University of Wisconsin and a J.D. from the University of South Carolina School of Law. In addition, Ms. Gilroy attended the Ealing College of Higher Education in a study abroad program. Ms. Gilroy leads the Litigation Department as the focus of her national litigation practice includes all aspects of real estate litigation, including foreclosure and title disputes, broker and agent liability defense, mortgage fraud-related litigation and civil and commercial contract disputes. She also leads the Default Department providing national foreclosure, bankruptcy, loss mitigation and eviction services.



Ms. Gilroy has served as the litigation liaison for leading lending institutions as well as managed their national bankruptcy litigation program. She continues to serve as counsel for many national and local banks, mortgage companies and real estate industry lenders and leaders. She regularly assists closing attorneys, real estate agents, property managers, title companies and brokers when title or other contract issues arise. She practiced for several years in the areas of estate and trust litigation and serves regularly as a Special Master in Fulton County. Ms. Gilroy has extensive lead counsel trial experience and frequently appears in all of the state and federal courts of Georgia, including the state and federal appellate courts.

A long-standing member of the State Bar of Georgia, Ms. Gilroy also enjoys membership with the Lawyers Club of Atlanta, the Georgia Women's Lawyers Association, Georgia Mortgage Bankers Association and the Atlanta Volunteer Lawyers Foundation. Ms. Gilroy is the elected Secretary Treasurer of the Executive Committee of the Real Property Section of the State Bar of Georgia, where she previously served as the Editor of the RPLS Newsletter. She is a contributing writer to Foreclosure Law and Related Remedies: a State-by-State Digest which is published by the American Bar Association. She speaks and teaches on a regular basis at the state and national level to attorneys, real estate professionals, property managers, and real-estate brokers and agents on litigation and real estate related topics. Ms. Gilroy holds an AV-peer review rating with Martindale Hubbell.

Her email address is [mkg@gilroyfirm.com](mailto:mkg@gilroyfirm.com)

**Deborah S. Bailey** is originally from English Harbour, Antigua. She earned a Bachelor of Science degree from the State University of New York at Buffalo in 1989 and received her J.D. from the University Of Miami School Of Law in 1998. She was admitted to the State Bar of Florida in 2000 and the State Bar of Georgia in 2001. She practices residential and commercial real estate law in Gilroy Bailey Trumble's Alpharetta office. She was a member of the University of Miami International and Comparative Law Review and American Bar Association. She is an active member of the Legislative Committee of the Real Property Law Section of the State Bar of Georgia, a former member of the board of directors of The Georgia Real Estate Fraud Prevention and Awareness Coalition (GREFPAC) and a member of the Georgia Residential Closing Attorneys Association (GRECAA). She is a frequent lecturer and educational trainer for attorneys and real estate industry professionals. Deborah is the Managing Partner of the Real Estate and Commercial Closing Division of Gilroy Bailey Trumble



This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears slightly aged or off-white. There is no handwriting or other markings on the page.

## EVENTS WIRELESS\WIRED INTERNET SETUP INSTRUCTIONS

1. Turn on your device and open your web browser. The Events Internet login screen below will appear by default. If you should not get a login page, please verify that your system's network adapter is setup for **DHCP** so that it may access our **EVENTS** network. If your network adapter is setup for a **Static IP** address, please change your adapter to **DHCP** or contact your company's IT Department to do that for you.

Your Username is **dixie** and the Password is **dixie2016**. Both ID and password is in lower caps. The Username and Password will be provided to you either by the Show Manager and/or your CGC Event Coordinator.

A screenshot of a web browser showing the login page for the Cobb Galleria Centre. The page has a grey background. On the left, it says "Welcome to Cobb Galleria Centre" and "Please enter a valid username and password to access the system." On the right, there is a "Login" section with two input fields labeled "Username" and "Password", and a "Login" button below them.

2. As long as you're connected to the **EVENTS** wireless or the wired network, you will not need to login again, but if you leave your device idle/off for an extended period of time then you will be logged off and then you must repeat the previous login step.

3. **Wireless Internet Disclaimer:** Wireless connectivity is part of an emerging technology and is subject to interference and manipulation beyond the Lessor's control. Wireless connectivity is provided on an "as is" and "as available" basis and Lessor does not warrant that this service will be uninterrupted, error free, or free of viruses or other harmful components. Users should be aware that there are security, privacy, and confidentiality risks inherent in wireless communications and technology, and Lessor does not make any assurances or warranties relating to such risks. By using wireless connectivity, users agree that Lessor is not liable for any costs or damages arising from use of this service and Lessor does not control any materials, information, products, or services on the Internet. When connectivity and security are critical, hard-wired connections are available and recommended.



## APPLICATION FOR MEMBERSHIP

☐ **ACTIVE** - Active Members are companies/firms directly and primarily engaged in the real estate title abstract industry, or the real estate title insurance industry, and which have been continuously so engaged for the five (5) years prior to their application for membership. Attorney issuing agents, whether sole practitioners or law firms, may qualify for Active Membership. Annual dues are \$250, which entitles up to three employees to be individual members with full benefits, including a listing in the membership directory, reduced registration rates for all SLTA events, a subscription to our quarterly newsletter, access to the Members Only section of our website and more. Additional employees may be added for \$25 each per year.

☐ **ASSOCIATE** - Applicants not otherwise qualified to become Active Members, but whose primary business activity bears a direct relationship upon qualifying activity as engaged in by Active Members, may qualify as Associate Members. Annual dues are \$200, which entitles up to three employees to be individual members with full benefits, including a listing in the membership directory, reduced registration rates for all SLTA events, a subscription to our quarterly newsletter, access to the Members Only section of our website and more.

1. Company Name: \_\_\_\_\_

2. Company Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

3. Company Website: \_\_\_\_\_

4. Type of Business (primary):

☐ Title Agent - Corporate

☐ Title Agent - Attorney/Law Firm

☐ Closing/Settlement

☐ Title Underwriter

☐ Other: \_\_\_\_\_

5. Classification (check all that apply):

☐ Abstractor

☐ Attorney

☐ Closing/Settlement

☐ Issuing Agent

☐ Underwriter

6. Number of years in the title business: \_\_\_\_\_ Date of Incorporation/Organization: \_\_\_\_\_

7. Is Company a member of the American Land Title Association? ☐ Yes ☐ No

8. Is Company an licensed Title Insurance Agency? (if applicable) ☐ Yes ☐ No

If yes, Company Agency License # \_\_\_\_\_

9. Number of Employees: \_\_\_\_ Number of Licensed Title Insurance Agents (if applicable): \_\_\_\_

10. List all Underwriters for whom Company is an Agent (if applicable):

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11. List all active officers and years of experience in the title business:

a.

b.

c.

12. References: Must include two references who are either members of SLTA or ALTA:

Name

Company

_____	_____
_____	_____

**One primary Individual Member + two more Individual Members are included in the base annual dues rate for the Company.** Additional employees may be added for \$25 per person per year.

Name

Email Address

Bar #/ALDOI # (if applicable)

1.  
(Primary)

2.

3.

(NOTE: For any additional employees to be SLTA members, please submit their name, email address, work phone, and Bar# or ALDOI #, and add an additional \$25 to your payment for each.)

Date of Application: \_\_\_\_\_

Payment for annual dues:

Applicant endorsed and sponsored by:

Online ☐

\_\_\_\_\_  
(Name of Underwriter)

Check ☐

By: \_\_\_\_\_  
(Individual - signature requested)

Active Membership \$250.00  
Associate Membership \$200.00  
(Plus \$ 25 for any individual members over 3)





## ***Fall 2016 SEMINAR***

### ***Evaluation Form***

***In order to improve our seminars and maximize their value to you, we would appreciate your feedback.***

**1. Overall evaluation of the seminar:**

Please circle the number that corresponds with your opinion of each of the following seminar elements:

	Excellent	Very Good	Average	Fair
a. Overall opinion of the seminar	1	2	3	4
b. Organization of the seminar	1	2	3	4
c. Impression of written material	1	2	3	4
d. Quality of Speakers	1	2	3	4
e. Opinion of subject matter	1	2	3	4
f. Overall value of seminar	1	2	3	4
g. Facilities	1	2	3	4

**2. What did you like most about this seminar? Any feedback for improvement?**

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**3. What did you like least about this seminar? Any feedback for improvement?**

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**4. Do you have any topics you would like to see covered in future seminars?**

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**5. Other comments or suggestions:**

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