

Basics of Alabama Lien Law

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Agenda

- Types of liens.
- Enforcing liens.



Extent of Lien

- Full-price lien for materials.
- Unpaid-balance lien.
- Tenant lien.



Full-Price Lien

- Ala. Code § 35-11-210.
- Lien for full amount of materials regardless of whether value of materials exceeds unpaid balance due by owner to general contractor.
- To defeat, owner must object to services or materials.

Form of Notice to Owner

Take notice, that the undersigned is about to furnish _____, your contractor or subcontractor, certain material for the construction, or for the repairing, altering, or beautifying of a building or buildings, or improvement or improvements, on the following described property:

and there will become due to the undersigned on account thereof the price of the material, for the payment of which the undersigned will claim a lien.



Unpaid Balance Lien

- Ala. Code § 35-11-210.
- Otherwise lien limited to unpaid balance due contractor by owner.



Tenant Lien

- Ala. Code § 35-11-212.
- Has limited practical application
- When contractor contracts with tenant (instead of landlord), lien applies to leasehold interest or to improvements if improvements can be removed without damage.
- *Matador Holdings, Inc. v. HOPO Realty Investments, LLC*, 77 So.3d 139 (Ala. 2011); *Lloyd v. Stewart*, 60 So.2d 911 (Ala. 1952); cf. *Kirkpatrick Concrete Company, Inc. v. Birmingham Realty Co., Inc.*, 598 So.2d 796 (Ala. 1992)

Verified Statement Required

- Ala. Code § 35-11-213: Statement must contain—
 1. Amount of lien claim, after credits applied.
 2. Description of property.
 3. Owner's name.
- Ala. Code § 35-11-218: All claimants not in privity with owner must provide written notice to owner of lien claim before filing verified statement of lien.

Time for Filing Verified Statement

- Ala. Code § 35-11-215.
- **Contractor** in privity with owner must file within **6 months** after last item of work or last item of material furnished.
- **Subcontractors** or **materialmen** must file within 4 months.
- **Journeyman** and day laborers must file within 30 days.

Time for Filing Verified Statement

Classification	Must File Within
Contractor (in privity with owner)	6 months
Subcontractors Materialmen	4 months
Journeyman Day Laborers	30 days

Ala. Code § 35-11-215.



Statute of Limitations

- Ala. Code § 35-11-221.
- 6 months after maturity of entire indebtedness.



Alternative Avenues for Payment

- Surety bonds:
 - Performance bonds.
 - Payment bonds.
- Federal Miller Act (40 U.S.C. § 3131).
- Alabama “Little Miller Act” (Ala. Code § 39-1-1).
- Prompt Payment to Contractors and Subcontractors Act (Ala. Code § 8-29-1).

Surety Bonds

- Usually requirement for general contractor (GC) as part of contract.
- Generally, guarantees performance by principal (usually GC).

Surety Bond \neq Insurance Policy

- Surety bonds cover economic damages from breach of contract; insurance policies don't.
- Surety has indemnification rights against principal; insurance carrier can assert subrogation rights against insured.



Performance Bond

- Inure to benefit of owner.
- Surety will not assume GC's role OR pay claims asserted by owner unless—
 - GC defaults and
 - GC refuses to remedy default.
 - If dispute arises of whether there is default, surety will typically tender their defense to GC.

Payment Bonds

- Inure to benefit of “downstream” parties: subcontractors, laborers, suppliers, etc.
- Guarantees all payments due for services or materials furnished for project.
- Benefits owner because owner doesn't have to worry about liens being filed against property.

Federal Miller Act

- When contract exceeds \$100,000, contractor must post performance and payments bond.
- Surety must be on U.S. Treasury list of qualified sureties.
- Civil action to enforce claim with 90 days.
- Second-tier subcontractor must provide notice to prime contractor within 90 days.
- Statute of limitations: 1 year.

Alabama “Little Miller Act”

- When contract exceeds \$50,000, contractor must have—
 - Performance bond (100% of prime contract amount).
 - Payment bond (50% of prime contract amount).
- No distinction between first- and second-tier subcontractors or suppliers. Applies to “any person.”

Alabama “Little Miller Act” (cont.)

- Notice requirement: 45 days.
- If surety fails to pay within 45 days, claimant can recover attorney fee and interest on unpaid principal.
- Special procedures for making and accepting offers of judgment during litigation.
 - If last offer is rejected and offeree obtains less-favorable judgment, offeree must pay offeror’s attorney fees and litigation costs.

Alabama “Little Miller Act” (cont.)

- Statute of limitations: 1 year.



Prompt Payment Act

- Owner required to pay—
 - According to contract terms.
 - If no terms, within 30 days after notice.
- Contractor has to pay—
 - According to contract terms.
 - If no terms, within 7 days after notice.
- Interest at 12% a year.
- Possible attorney fee.

Retainage

- Retainage on private projects capped at 10% of estimated amount of properly performed work until work is 50% complete.
- After 50% complete, no additional retainage.
- “Downstream” retainage may not exceed “upstream” retainage.

Right to Retain Payments

- Applies when “bona fide dispute” exists over claimant’s right to receive payment.
- Withholding party must provide written notice of dispute within 5 days of request for payment.



Exempt Parties

- Residential homebuilders.
- Improvements to residential property consisting of 16 or fewer residential units.
- Contractors, subcontractors, and sub-subcontractors when contract is worth \$10,000 or less.
- Contracts with state or local governments.

Questions?

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