**1-PAGE SUMMARY OF MISSISSIPPI’S NEW LIEN LAW EXPANDING LIEN RIGHTS TO MISSISSIPPI SUBCONTRACTORS, MATERIALMEN, ENGINEERS AND SURVEYORS**

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As enacted April 11, 2014:

* The new Mississippi lien law provides lien rights on private jobs that are the equal in scope to the protections subs and materialmen have now on bonded public jobs. Miss. Code Ann. § 85-7-401 et seq.
* Coverage of lien claimants has been conformed to coverage in the Little Miller Act (Sec. 85-7-401).
* Liens are included for licensed contractors, subs and sub-subs; materialmen to the general contractor and to subs of the GC; and registered architects, engineers and surveyors (Secs. §§ 85-7-401, 403).
* Lien claimant must be in substantial compliance with his contract to assert a lien (Sec. 405).
* Claims of lien are to be filed within 90 days of claimant’s last labor, services or materials. (Sec.405).
* The initial suit on a lien is against the contractor or sub the claimant dealt with, defined as a “payment action” (Secs 401, 405(c));
* The claimant’s “payment action” must be made before any “lien action” for foreclosure (Sec 405);
* However, the payment action can be skipped, and a direct lien action allowed against the owner, if the contractor one dealt with has died, gone bankrupt, or asserted a pay when paid clause to avoid payment. (Sec. 405(d)).
* Time limit for suit on a payment action is 180 days from lien filing (Sec 405);
* Liens expire automatically and become void automatically after 180 days if no suit is filed (Sec 421);
* Time limit for a lien action of foreclosure where the debtor has died, gone bankrupt, or is not paying because of a pay when paid clause is also 180 days from lien filing (Sec 405(c));
* A construction lender’s priority over liens is determined at the time that the deed of trust is filed. As long as no construction liens have been filed in the land records at the time that the deed of trust is filed, the deed of trust will maintain priority over any subsequently created or filed liens. This statute expressly revokes the line of cases that puts the lender’s priority at risk every time that the lender makes a construction disbursement. (Sec 405(2)(b)).
* Lien claimants not in privity with the GC on commercial jobs must identify themselves to GC within 30 days of first delivery of labor, services or materials, or if no GC is on the job, to the owner (Sec.407(2));
* Residential owners are entitled to a 10 day pre-lien notice; and if a pre-lien notice has not been made, residential owner can pay the GC and have an absolute defense to further payment for the work paid for (Sec 409).
* Liens on commercial jobs are dissolved if owner or lender can show they paid in reliance on lien waivers collected by the GC or on the GC’s sworn statement that subs or suppliers are paid (Sec 413);
* However, GCs are subject to triple damages for any false affidavits or statements of payment (Sec. 413);
* Liens can be bonded out by an owner or contractor or subcontractor before a foreclosure, closing of a loan, or a sale at 110% of lien amount, so the bond takes the place of the lien (Sec. 415);
* If the GC gives a payment bond covering payment of subs and suppliers, the bond takes the place of any liens (Sec. 431).
* With passage of the construction lien bill, Mississippi finally joins every other state in providing construction lien laws protecting contractors, 1st and 2nd tier Mississippi subcontractors and materialmen, architects, engineers and surveyors.