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Construction Law

Frank O. Brown Jr.

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by Frank O. Brown Jr.*

I. INTRODUCTION

This Article focuses on noteworthy construction law decisions by Georgia appellate courts between June 1, 2008 and May 31, 2009, and significant construction-related Georgia legislation and regulations during the same period.[1]

II. MECHANICS' AND MATERIALMEN'S LIENS

A. *Notice to Contractor*

As a condition to pursuing lien rights, section 44-14-361.5(a) of the Official Code of Georgia Annotated (O.C.G.A.)[2] requires any mechanic or materialman not in privity with the contractor (such as a second-tier subcontractor or supplier to a subcontractor) to notify the contractor and the property owner or its agent that the mechanic or materialman is providing services or materials to the property.[3] That notice, called a "Notice to Contractor," must be in writing, contain specified information, and be given within thirty days from the later of the first delivery of services or materials or the filing of a Notice of Commencement by the contractor, the property owner, or an agent.[4]

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* Shareholder in the firm of Weissman, Nowack, Curry & Wilco, P.C., Atlanta, Georgia. General Counsel, Greater Atlanta Home Builders Association, Inc., The Housing Institute, Inc., and HomeAid Atlanta, Inc. Rhodes College (B.A., 1976); Emory University School of Law (J.D., 1979). Member, State Bar of Georgia.

1. For analysis of Georgia construction law during the prior survey period, see Frank O. Brown Jr., *Construction Law, Annual Survey of Georgia Law*, 60 MERCER L. REV. 59 (2008).

2. O.C.G.A. § 44-14-361.5(a) (2002 & Supp. 2009).

3. *Id.*

4. *Id.*

Significantly, under the express terms of O.C.G.A. § 44-14-361.5(a), the obligation to give a Notice to Contractor applies when a Notice of Commencement has been filed.[5] At issue in *Rey Coliman Contractors, Inc. v. PCL Construction Services, Inc.*[6] was whether that obligation existed if the Notice of Commencement, although filed, was not posted on the project as also required by O.C.G.A. § 44-14-361.5(a).[7] The Georgia Court of Appeals said that the obligation to give the Notice to Contractor still existed because O.C.G.A. § 44-14-361.5(a) did not expressly limit the Notice to Contractor obligation to projects on which a Notice of Commencement had been posted.[8]

Rey Coliman is also an important reminder of two other points. First, mechanics' and materialmen's lien laws are strictly construed in favor of property owners and against lien claimants.[9] Thus, the blanket assertion, frequently seen in motions and even opinions on the subject, that mechanics' and materialmen's lien laws are strictly construed is overly broad. Second, as was the case in *Rey Coliman*, the validity of mechanics and materialmen's liens may be affirmatively challenged by a suit for declaratory judgment.[10]

Under O.C.G.A. § 44-14-361.5(b),[11] a Notice of Commencement must include the "name and address of the true owner of the property" and a "legal description of the property."[12] The Notice of Commencement under review in *Harris Ventures, Inc. v. Mallory & Evans, Inc.*[13] misidentified the true property owner as "EHCA John's Creek, LLC," rather than "EHCA Dunwoody, LLC," and did not include a legal description.[14] The court of appeals held that these errors rendered the Notice of Commencement legally deficient, thereby excusing the subcontractor from giving a Notice to Contractor as a condition to its pursuit of lien rights.[15]

In *Beacon Medical Products, LLC v. Travelers Casualty & Surety Co. of America*,[16] the question was whether a supplier to a subcontractor had to give a Notice to Contractor even though the Notice of Commence-

5. *Id.*
6. 296 Ga. App. 892, 676 S.E.2d 299 (2009).
7. *Id.* at 892, 676 S.E.2d at 299.
8. *Id.* at 896, 676 S.E.2d at 301.
9. *Id.*
10. *Id.* at 892, 676 S.E.2d at 299.
11. O.C.G.A. § 44-14-361.5(b) (2002 & Supp. 2009).
12. *Id.*
13. 291 Ga. App. 843, 662 S.E.2d 874 (2008).
14. *Id.* at 843–44, 662 S.E.2d at 874–75.
15. *Id.* at 845, 662 S.E.2d at 875–76.
16. 292 Ga. App. 617, 665 S.E.2d 710 (2008).

ment had not been filed within the fifteen-day filing period provided by O.C.G.A. § 44-14-361.5(b).[17] In relevant part, this section states that "[n]ot later than [fifteen] days after the contractor physically commences work on the property, a Notice of Commencement shall be filed."[18] The court of appeals held that the supplier was still required to give a Notice to Contractor[19] because O.C.G.A. § 44-14-361.5(a) does not expressly excuse that notice when the Notice of Commencement is filed after the fifteen-day period[20] and because, in this case, the Notice of Commencement was filed almost four months before the supplier began providing materials for the project.[21]

B. Claim of Lien

D.C. Ecker Construction, Inc. v. Ponce Investment, LLC[22] shows that there are limits to the construction of mechanics' and materialmen's liens against the lien claimant. The plaintiff contractor in *D.C. Ecker* sued the property owner to foreclose a mechanics' and materialmen's lien. The owner filed a motion to dismiss (not a motion for summary judgment) because the lien stated that the contractor's claim became due on a date more than three months before the lien was filed, and the lien was filed within three months of the date when the contractor provided services to the owner.[23]

On appeal, the contractor argued that "the trial court should not have construed the lien against it at the motion to dismiss stage."[24] The court of appeals agreed.[25] The court's opinion reflects two principal reasons for its decision. First, "[t]he crucial date in determining the validity of a lien is the date the material or labor is last provided, *not* the date the claim is due."[26] Second, because of the first reason, there was a set of facts that the plaintiff could prove in support of its claim.[27] Consequently, the court held that granting the motion to dismiss was error.[28]

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17. *Id.* at 621, 665 S.E.2d at 713.
18. O.C.G.A. § 44-14-361.5(b).
19. *Beacon Medical*, 292 Ga. App. at 623, 665 S.E.2d at 714–15.
20. *Id.* at 621, 665 S.E.2d at 713.
21. *Id.* at 622, 665 S.E.2d at 714.
22. 294 Ga. App. 833, 670 S.E.2d 526 (2008).
23. *Id.* at 833–34, 670 S.E.2d at 527.
24. *Id.* at 835, 670 S.E.2d at 528.
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*

The frequent use of "due date" language on mechanics' and materialmen's liens arises from the instruction to "specify the date the claim was due" that is part of the statutory lien form in O.C.G.A. § 44-14-361.1 (a)(2).[29] Because *D.C. Ecker* and other Georgia appellate decisions state that the last day of labor or material controls over the due date,[30] it is unfortunate that the statute does not simply use the former terminology. A recent amendment to that code section, which became effective March 31, 2009, provides the following clarifying instruction: "specify the date the claim was due, which is the same as the last date the labor, services, or materials were supplied to the premises."[31]

III. COLLATERAL AGREEMENTS

The Georgia Court of Appeals decision in *Bollers v. Noir Enterprises, Inc.*[32] is a reminder that an ordinary merger clause may be insufficient to eliminate a previously existing collateral agreement and that additional language may be required to accomplish that purpose. The parties, a homebuilder and homeowners, first entered into a written construction management contract relating to the construction of a house. Later, they entered into a written construction contract relating to the same house.[33] The latter construction contract included a standard merger clause stating that it "supersedes any and all previous agreements, either oral or in writing, between the parties with respect to the subject matter of the agreement."[34] It also stated that all changes had to be in writing and signed by the parties to be valid.[35] The builder contended that, in between the written management contract and the written construction contract, the parties had entered into an oral management contract for additional compensation.[36]

On appeal, the court of appeals stated that, although the builder was bound by the merger clause in the written construction contract, an oral agreement between the parties that did not vary the terms of the written construction contract was not necessarily defeated by the merger clause and might be enforceable as a collateral agreement.[37] The court held

29. O.C.G.A. § 44-14-361.1(a)(2) (2002 & Supp. 2009).

30. *See, e.g., D.C. Ecker*, 294 Ga. App. at 835, 670 S.E.2d at 528; Cent. Atlanta Tractor Sales v. Athena Dev., LLC, 289 Ga. App. 355, 358, 657 S.E.2d 290, 293 (2008).

31. 2008 Ga. Laws 1063, 1065 (codified as amended at O.C.G.A. § 44-14-361.1(a)(2) (Supp. 2009)).

32. 297 Ga. App. 435, 677 S.E.2d 338 (2009).

33. *Id.* at 436, 677 S.E.2d at 340.

34. *Id.* (internal quotation marks omitted).

35. *Id.*

36. *Id.* at 439, 677 S.E.2d at 342.

37. *Id.*

that there were jury questions about the existence and terms of the alleged oral management agreement, and therefore, summary judgment on that claim was inappropriate.[38]

IV. DAMAGES LIMITATIONS

In *Precision Planning, Inc. v. Richmark Communities, Inc.*,[39] the Georgia Court of Appeals addressed the enforceability of a provision in a contract between a residential developer and an architect that limited the architect's liability to the developer for the architect's errors or professional negligence to the greater of $50,000 or the architect's fee. The developer had hired the architect to design a retaining wall, which thereafter failed. The architect moved for partial summary judgment to limit its liability to the $50,000 or fee cap. The trial court denied the motion, finding the damages limitation void as against public policy under former O.C.G.A. § 13-8-2,[40] which was in effect when the contract was signed in 2001.[41]

The court of appeals reversed.[42] The court reasoned that "[n]o statute prohibits a professional architect from contracting with a developer to limit the architect's liability to that developer."[43] It rejected the developer's contention that former O.C.G.A. § 13-8-2(b) applied to the damages limitation and stated that the statute applied only to "'an indemnification or hold harmless provision.'"[44]

V. INDEMNITIES

In *Lanier at McEver, L.P. v. Planners & Engineers Collaborative, Inc.*,[45] the developer (Lanier) claimed that an engineering firm (PEC) negligently designed a storm-water drainage system for an apartment complex.[46] The engineering firm moved for partial summary judgment on the claims of the developer based on a damages limitation clause that stated:

> In recognition of the relative risks and benefits of the project both to [Lanier] and [PEC], the risks have been allocated such that [Lanier]

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38. *Id.*
39. 298 Ga. App. 78, 679 S.E.2d 43 (2009).
40. O.C.G.A. § 13-8-2 (1982 & Supp. 2001) (amended 2007).
41. *Precision Planning*, 298 Ga. App. at 78–79, 679 S.E.2d at 45.
42. *Id.* at 78, 679 S.E.2d at 45.
43. *Id.* at 80, 679 S.E.2d at 46.
44. *Id.* (quoting Brainard v. McKinney, 220 Ga. App. 329, 330, 469 S.E.2d 441, 442 (1996)).
45. 284 Ga. 204, 663 S.E.2d 240 (2008).
46. *Id.* at 204, 663 S.E.2d at 241.

> agrees, to the fullest extent permitted by law, to limit the liability of [PEC] and its sub-consultants to [Lanier] and to all construction contractors and subcontractors on the project or any third parties for any and all claims, losses, costs, damages of any nature whatsoever[,] or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of PEC and its subconsultants to all those named shall not exceed PEC's total fee for services rendered on this project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.[47]

The developer contended that the damages limitation was unenforceable because it violated the prohibition in former O.C.G.A. § 13-8-2(b)[48] against provisions indemnifying a party to a construction contract from liability for its sole negligence.[49]

On appeal, the Georgia Supreme Court agreed with the developer, reasoning that the clause impermissibly indemnified the engineering firm for all claims—particularly those by members of the public—above the amount of its fee, even if the engineering firm was solely negligent.[50]

VI. LIQUIDATED DAMAGES

Various forms of liquidated damages clauses appear in construction-related agreements. In *Fuqua Construction Co. v. Pillar Development, Inc.*,[51] which involved a real estate sales contract, the Georgia Court of Appeals focused on two prongs of the Georgia Supreme Court's three-part test governing the enforceability of liquidated damages provisions. This test was announced in *Southeastern Land Fund, Inc. v. Real Estate World, Inc.*[52] One prong is whether the damages caused by the breach were difficult or impossible to accurately estimate.[53] Another prong is whether the stipulated sum was a reasonable pre-estimate of the probable loss.[54]

The liquidated damages provision in *Fuqua Construction* was a standard provision that covered each of the three prongs of the

47. *Id.* at 205, 663 S.E.2d at 241–42 (alterations in original).
48. O.C.G.A. § 13-8-2(b) (1982 & Supp. 2001) (amended 2007).
49. *Lanier*, 284 Ga. at 205, 663 S.E.2d at 242.
50. *Id.* at 208, 663 S.E.2d at 243–44.
51. 293 Ga. App. 462, 667 S.E.2d 633 (2008).
52. 237 Ga. 227, 230, 227 S.E.2d 340, 343 (1976).
53. *Fuqua Constr.*, 293 Ga. App. at 463, 667 S.E.2d at 635.
54. *Id.*

Southeastern test.[55] The buyers argued, however, that there was no evidence the parties had actually considered whether the damages caused by the breach were difficult or impossible to accurately estimate or whether the stipulated sum was a reasonable pre-estimate of the probable loss.[56] They also filed affidavits stating that no such consideration had occurred.[57]

As legal support for the significance of these facts, the buyers relied in part on *Roswell Properties, Inc. v. Salle*,[58] in which the Georgia Court of Appeals noted the absence of evidence that the parties had actually considered the difficulty of determining damages or the probable loss as reasons the liquidated damages provision was unenforceable.[59] The court in *Fuqua Construction* disagreed that no such evidence existed in the record before it.[60] The court cited the terms of the standard liquidated damages provision itself as such evidence.[61] It also noted that the parties were experienced real estate developers and builders[62] and that the liquidated damages were only 2.06% of the transaction price.[63]

In a nutshell, *Fuqua Construction* can be cited for the position that if the parties use boilerplate language covering each prong of the *Southeastern Land Fund* test and the court believes the damages were in fact difficult to estimate and the stipulated sum was a reasonable pre-estimate of those damages, then the court should enforce the liquidated damages provision as a matter of law.[64] The court should enforce the provision even if the parties did not actually consider whether the damages would be estimated without difficulty and did not actually consider the probable loss in the event of a breach.[65]

VII. CONDOMINIUM ASSOCIATION STANDING

In *Phoenix on Peachtree Condominium Ass'n v. Phoenix on Peachtree, LLC*,[66] a condominium association sued the condominium's developer and others, alleging fraud, misrepresentation, and breach of fiduciary

55. *See id.* at 465, 667 S.E.2d at 636–37.
56. *Id.* at 464, 667 S.E.2d at 635.
57. *Id.* at 465–66, 667 S.E.2d at 637.
58. 208 Ga. App. 202, 430 S.E.2d 404 (1993).
59. *Id.* at 206, 430 S.E.2d at 409–10.
60. 293 Ga. App. at 464–65, 667 S.E.2d at 636.
61. *Id.*
62. *Id.* at 464, 667 S.E.2d at 635.
63. *Id.* at 465, 667 S.E.2d at 636.
64. *See id.* at 465–66, 667 S.E.2d at 636–37.
65. *See id.* at 464–65, 667 S.E.2d at 636.
66. 294 Ga. App. 447, 669 S.E.2d 229 (2008).

duty[67] relating to alleged construction defects in the condominium's common areas.[68] The trial court granted summary judgment to the defendants because the association lacked standing[69] based on the following language in the original recorded condominium declaration:

> All owners hereby acknowledge and agree that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the owners which is based on any alleged defect in any unit or the common elements, or any damage allegedly sustained by any owner by reason thereof, but rather, that all such actions shall be instituted by the person(s) owning such units or served by such common elements or allegedly sustained such damage.[70]

On appeal, the association argued that this provision of the original declaration did not apply because it had been removed by amendment after the suit was filed.[71] The Georgia Court of Appeals rejected that argument, noting that standing is determined at the time a suit is filed.[72]

In the alternative, the association argued that the original declaration provision did not apply to the association's claims for fraud, misrepresentation, and breach of fiduciary duty.[73] The court of appeals also rejected this argument, noting that the provision covered all claims based upon defects in the condominium's common areas.[74]

The association's final argument was that summary judgment should not have been granted until the trial court had ruled on the alternative motion to substitute the unit owners as plaintiffs,[75] which had been pending for nearly a year before the trial court granted summary judgment.[76] The court of appeals agreed with this contention and remanded the case to the trial court for consideration of the motion to substitute.[77] It also held that the trial court's order granting summary judgment should be treated as a dismissal because standing does not go to the merits of the case.[78]

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67. *Id.* at 450, 669 S.E.2d at 232.
68. *Id.* at 447, 669 S.E.2d at 230.
69. *Id.*
70. *Id.* at 451, 669 S.E.2d at 232.
71. *Id.* at 450, 669 S.E.2d at 232.
72. *Id.*
73. *Id.*
74. *Id.* at 451, 669 S.E.2d at 232.
75. *Id.*
76. *See id.* at 449–50, 669 S.E.2d at 231.
77. *Id.* at 451, 669 S.E.2d at 232.
78. *Id.* at 451 n.4, 669 S.E.2d at 232 n.4.

VIII. MEASURE OF DAMAGES

The specific issue on which the Georgia Supreme Court granted certiorari in *John Thurmond & Associates, Inc. v. Kennedy*[79] was "whether a plaintiff in a breach of contract and negligent construction case must prove fair market value of the property as a prerequisite to any recovery" against the contractor.[80] The case involved claims by a homeowner against a contractor (JTA) for breach of contract, breach of warranty, and negligent construction relating to the repair of a house that was substantially damaged by fire. The contract price for the repairs was $311,156. At trial, the homeowner sought $751,632 (about two and one-half times the contract price) for the costs of repairing the allegedly faulty construction.[81]

In a somewhat confusing opinion that appears to be aimed at eliminating confusion arising from prior opinions, the supreme court concluded that a plaintiff in a breach of contract and negligent construction case is not necessarily required to prove fair market value of the property as a prerequisite to a recovery against the contractor.[82] The court recognized that when repair costs are disproportionate to the reduction in value of property, proof of reduction in fair market value may be necessary,[83] and the supreme court appears to leave the determination of proportionality up to the trial court.[84]

IX. ARBITRATION

The developer and contractor in *Tillman Park, LLC v. Dabbs-Williams General Contractors, LLC*[85] had executed the 1997 edition of a standard-form American Institute of Architects agreement. The agreement incorporated general conditions that required a decision by the architect as a *condition precedent* to mediation, arbitration, or litigation, unless the architect had failed to render a decision for thirty days after referral of the claim. In the space for identifying the architect on the first page of the agreement, "N/A" had been typed.[86]

After disputes arose, the contractor sued the developer, who in turn counterclaimed against the contractor and filed a motion to compel

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79. 284 Ga. 469, 668 S.E.2d 666 (2008).
80. *Id.* at 469, 668 S.E.2d at 667.
81. *Id.*
82. *See id.* at 474, 668 S.E.2d at 671.
83. *Id.* at 471, 668 S.E.2d at 669.
84. *See id.* at 471 n.3, 668 S.E.2d at 669 n.3.
85. 298 Ga. App. 27, 679 S.E.2d 67 (2009).
86. *Id.* at 28, 679 S.E.2d at 69.

arbitration under the agreement. The contractor opposed that motion, arguing in part that the arbitration clause was unenforceable because submission of the dispute to an architect was a condition precedent to arbitration and no architect had been named in the agreement. The trial court agreed with the contractor and denied the developer's motion to compel arbitration.[87]

The Georgia Court of Appeals reasoned that ambiguity existed because the agreement described various roles for the architect but did not identify one.[88] Because of this ambiguity, the court of appeals said the trial court was permitted to consider parol evidence about the parties' intentions to be bound by the arbitration provision under these circumstances.[89] It remanded the case for the trial court to determine whether the parties intended the arbitration provision to apply despite the absence of an identified architect.[90]

The subcontractor in *Airtab, Inc. v. Limbach Co.*[91] was not pleased with an arbitration award. When the adverse party—the contractor—sought to confirm the award, the subcontractor filed a motion to vacate the award, alleging that the arbitrators had been biased; disregarded the law; overstepped their authority;[92] and had issued an award that was irrational, arbitrary, and capricious.[93] The trial court denied the motion to vacate and confirmed the award.[94]

The court of appeals began by noting that, unless an arbitration award is subject to being vacated under one of the five statutory grounds in O.C.G.A. § 9-9-13(b),[95] the award must be confirmed.[96] The court then stated that none of the three statutory grounds alleged by the subcontractor were supported by the evidence—namely, bias,[97] manifest disregard of the law,[98] and overstepping authority.[99]

Aggressive questioning by one of the members of the arbitration panel was not enough to establish bias.[100] Manifest disregard of the law,

87. *Id.* at 27–28, 679 S.E.2d at 68–69.
88. *Id.* at 32, 679 S.E.2d at 71–72.
89. *Id.*, 679 S.E.2d at 72.
90. *Id.* at 32–33, 679 S.E.2d at 72.
91. 295 Ga. App. 720, 673 S.E.2d 69 (2009).
92. *Id.* at 720, 673 S.E.2d at 71.
93. *Id.* at 722, 673 S.E.2d at 72.
94. *Id.* at 720, 673 S.E.2d at 71.
95. O.C.G.A. § 9-9-13(b) (2007).
96. *Airtab*, 295 Ga. App. at 721, 673 S.E.2d at 71.
97. *Id.*, 673 S.E.2d at 72.
98. *Id.* at 722, 673 S.E.2d at 72.
99. *Id.*
100. *Id.* at 721, 673 S.E.2d at 72.

which requires proof that the arbitration panel knew the applicable law and deliberately ignored it, also was not shown.[101] Manifest disregard of the law is not "the equivalent of" and is a "much narrower standard" than "insufficiency of the evidence or a misapplication of the law to the facts."[102] There was also no evidence that the panel overstepped its authority, which would mean that it had addressed issues not properly before it.[103] Finally, the court rejected the subcontractor's assertion that the allegedly irrational, arbitrary, and capricious nature of the award was a basis for vacating the award.[104] The court equated this assertion to an insufficiency of evidence argument and noted that insufficiency of evidence was not among the five statutory grounds for vacating an arbitration award.[105]

X. MINIMUM RESIDENTIAL WARRANTY

In 2004 the Georgia General Assembly adopted a comprehensive residential and general contractor licensing law, which, after several delays, became effective on July 1, 2008.[106] The new law includes a minimum mandatory warranty requirement in O.C.G.A. § 43-41-7,[107] which states:

> A licensed residential contractor and any affiliated entities shall offer a written warranty in connection with each contract to construct, or superintend or manage the construction of, any single family residence where the total value of the work or activity or the compensation to be received by the contractor for such activity or work exceeds $2,500.00. The residential contractor division shall establish the minimum requirements of such warranty.[108]

In 2005 the residential contractor division adopted a very general regulation establishing the minimum requirements of this warranty.[109] But as of August 4, 2008, new and more detailed warranty minimum requirements apply.[110] The new regulation clarifies the meaning of "single family residence" as used in O.C.G.A. § 43-41-7 by defining it as

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101. *Id.* at 722, 673 S.E.2d at 72.
102. *Id.* (internal quotation marks omitted) (quoting Johnson Real Estate Invs. v. Aqua Indus., 282 Ga. App. 638, 640, 639 S.E.2d 589, 593 (2006)).
103. *Id.*
104. *Id.* at 722–23, 673 S.E.2d at 73.
105. *Id.* at 722, 673 S.E.2d at 72–73.
106. 2004 Ga. Laws 786 (codified as amended at O.C.G.A. §§ 43-41-1 to -17 (2008)).
107. O.C.G.A. § 43-41-7 (2008).
108. *Id.*
109. *See* GA. COMP. R. & REGS. § 553-7-.01 (2006) (repealed 2008).
110. *See* GA. COMP. R. & REGS. § 553-7-.01 (2008).

"a 'one or two family residence' as defined in the current edition of the state minimum standard International Residential Code (IRC)."[111] Under the new regulation, the warranty must at least *describe* the following:

> (a) Covered work and activities;
> (b) Covered exclusions;
> (c) Standards for evaluating work and activities, which standards shall be those set forth in the current edition of the Residential Construction Performance Guidelines as published by the National Association of Home Builders;
> (d) The term of the warranty, including commencement date(s) or event(s);
> (e) Claim procedures;
> (f) Contractor response options (such as repair, replace or compensate); [and]
> (g) Assignable manufacturer warranties.[112]

The new regulation focuses more on disclosure than on content. Under the regulation, a contractor can still decide what is covered and what is excluded.[113] While the standards for evaluating the work have been clarified (that is, the Residential Construction Performance Guidelines as published by the National Association of Home Builders), those standards apply only to covered work that is not excluded.[114]

The new regulation also requires the contractor to attach "a complete copy of the written warranty (or an identical blank standard form of it)" to the underlying contract or otherwise make it available for review prior to the execution of the underlying contract.[115]

The regulation itself does not address the consequences of a residential contractor's failure to comply with this regulation or create a comprehensive default warranty in the event of noncompliance.[116]

XI. CONTRACTOR INACTIVE STATUS LICENSES

According to a new regulation, a contractor that is inactive (by choice or reality) can now get an inactive contractor's license,[117] which partially excuses the contractor from educational requirements and fees

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111. *Id.* § 553-7-.01(1)(b).
112. *Id.* § 553-7-.01(3)(a)–(g).
113. *See id.* § 553-7-.01(3)(a)–(b).
114. *See id.* § 553-7-.01(3)(a)–(c).
115. *Id.* § 553-7-.01(4).
116. *See id.* § 553-7-.01.
117. GA. COMP. R. & REGS. § 553-10-.01 (2008).

during the period of inactivity.[118] The application for the inactive license must be submitted prior to the revocation of the contractor's license for non-renewal and must include specific information set forth in the subject regulations.[119] Significantly, a contractor with an inactive license is not permitted to engage in contracting.[120] To do so would be a violation of the contractor licensing law.[121] If a contractor with an inactive license wishes to return to active status, the contractor must submit specified information to the contractor licensing board.[122] When a contractor has continuously been on inactive status for more than five years, the licensing board may require that the contractor pass an exam before obtaining an active license.[123]

XII. CONCLUSION

The period covered by this Article, June 1, 2008 to May 31, 2009, has been a relatively calm time for Georgia construction law. With contractor licensing having become effective on July 1, 2008, and the revisions to Georgia's mechanics' and materialmen's lien laws having become effective on March 31, 2009, new Georgia appellate cases applying those laws should start appearing next year.

118. *Id.* § 553-10-.01(1)(c)–(d).
119. *Id.* § 553-10-.01(1)(a).
120. *Id.* § 553-10-.01(1)(b).
121. *See id.* § 553-10-.01(2).
122. *Id.* § 553-10-.01(3)(a)–(d).
123. *Id.* § 553-10-.01(4).

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