

By: Representative Zuber

To: Judiciary A

HOUSE BILL NO. 886

1 AN ACT TO AMEND SECTION 85-7-405, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE THAT A LIS PENDENS NOTICE OF A LIEN SHALL BE FILED  
3 WITHIN THIRTY DAYS AFTER THE COMMENCEMENT OF THE ACTION; TO BRING  
4 FORWARD SECTIONS 85-7-419 AND 85-7-433, MISSISSIPPI CODE OF 1972,  
5 WHICH RELATE TO LIENS ON REAL ESTATE OR OTHER PROPERTY, FOR  
6 PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 85-7-405, Mississippi Code of 1972, is  
9 amended as follows:

10 85-7-405. (1) To make good a lien created in Section  
11 85-7-403(1), it must be created and declared in accordance with  
12 the following provisions, and on failure of any of them, the lien  
13 shall not be effective or enforceable:

14 (a) A substantial compliance by the party claiming the  
15 lien with the party's contract, subcontract or purchase order for  
16 work performed or labor, services or material provided in the  
17 building, repairing, or improving of real estate; for  
18 architectural services furnished; for registered land surveying or  
19 registered professional engineering services furnished or  
20 performed; or for materials or machinery furnished;



21 (b) The filing for record of the claim of lien in the  
22 office of the clerk of the chancery court of the county where the  
23 property is located within ninety (90) days after the claimant's  
24 last work performed, labor, services or materials provided, the  
25 furnishing of architectural services, or the furnishing or  
26 performing of surveying or engineering services. The lien shall  
27 include a statement regarding its expiration pursuant to Section  
28 85-7-421(1) and a notice to the owner of the property on which a  
29 claim of lien is filed that the owner has the right to contest the  
30 lien; the absence of the statement or notice shall invalidate the  
31 lien. The claim shall be in substance as follows:

32 "A.B., a mechanic, contractor, subcontractor, materialman,  
33 machinist, manufacturer, registered architect, registered  
34 forester, registered land surveyor, registered professional  
35 engineer, or other person (as the case may be) claims a lien in  
36 the amount of (specify the amount claimed) on the building,  
37 structure, house, factory, mill, machinery, or railroad (as the  
38 case may be) and the premises or real estate on which it is  
39 erected or built, of C.D. (describing the houses, premises, real  
40 estate, or railroad), for satisfaction of a claim which became due  
41 on (specify the date the claim was due \* \* \*) for work performed  
42 or labor, services provided (or whatever the claim may be).

43 THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY  
44 (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A



45 PAYMENT ACTION IS NOT FILED BY THE CLAIMANT WITHIN THAT TIME  
46 PERIOD.

47 NOTICE TO OWNER OF PROPERTY: You have the right to contest  
48 this claim of lien pursuant to Mississippi law."

49 No later than two (2) business days after the claim of lien  
50 is filed of record, the lien claimant shall send a true and  
51 accurate copy of the claim of lien by registered or certified mail  
52 or statutory overnight delivery to the owner of the property or,  
53 if the owner's address cannot be found, the contractor, as the  
54 agent of the owner; if the property owner is an entity on file  
55 with the Secretary of State's office, sending a copy of the claim  
56 of lien to the entity's address or the registered agent's address  
57 shall satisfy this requirement. If the lien claimant is not the  
58 contractor, he shall also send a copy of the claim of lien within  
59 two (2) business days by registered or certified mail or statutory  
60 overnight delivery to the contractor or to the contractor's  
61 registered agent \* \* \*;

62 (c) (i) A payment action for the recovery of the  
63 amount of the lien claimant's claim against the party he  
64 contracted with shall be commenced in county, circuit or chancery  
65 court within \* \* \* thirty (30) days \* \* \* after the date of filing  
66 for record of the lien claimant's claim of lien. A lis pendens  
67 notice shall be filed with the commencement of the action with a  
68 copy to the owner and contractor;



69 (ii) The payment action shall be commenced by  
70 summons and complaint. The defendants shall be summoned, as in  
71 other actions at law, to appear and defend the action; and in case  
72 any necessary party defendant shall be a nonresident of or absent  
73 from the state, or cannot be found, he may be made a party by  
74 publication, as in cases of nonresident or absent defendants in  
75 chancery, requiring him to appear on a day to be therein named;  
76 and in default of appearance, the same proceedings shall be had as  
77 if the defendant had been duly summoned and made default;

78 (iii) Nothing in this paragraph (c) shall  
79 prejudice the parties' contractual rights to arbitration, as  
80 applicable;

81 (iv) The failure to file the lis pendens notice,  
82 within the time set forth in subsection (c)(i) of this section,  
83 shall invalidate the lien claimant's claim of lien;

84 (d) (i) The commencement of a payment action under  
85 paragraph (c) is not required if the owner has not made payment to  
86 the contractor and the lien claimant cannot secure a final  
87 judgment against the party with whom the lien claimant contracted  
88 because:

- 89 1. The party has been adjudicated a bankrupt;  
90 2. If an individual, the party is deceased;

91 or



92                   3. Payment is not due to the lien claimant  
93 under the applicable contract agreement until after payment is  
94 received by the party with whom the lien claimant contracted.

95                   (ii) If \* \* \* subparagraph (i) of this \* \* \*  
96 paragraph (d) applies, the person or persons furnishing labor,  
97 services or materials may enforce the lien directly against the  
98 property in a lien action against the owner if it is filed within  
99 the required time for filing a payment action, with the judgment  
100 rendered in the proceeding to be limited to a judgment in rem  
101 against the property improved and to impose no personal liability  
102 upon the owner of the property. A lis pendens notice shall be  
103 filed with the commencement of this lien action with a copy to the  
104 owner and the contractor.

105                   (iii) Nothing in this paragraph (d) shall impact  
106 or negate the rights and defenses available pursuant to Section  
107 85-7-413 or 85-7-419 \* \* \*;

108                   (e) A claim of lien may be amended at any time to  
109 increase or reduce the amount claimed, and the amended claim of  
110 lien shall relate back to the date of filing for record of the  
111 original claim of lien. An amended claim of lien filed for record  
112 pursuant to this subsection shall be sent to the owner of the  
113 property in the same manner as required for a claim of lien  
114 in \* \* \* paragraph (b) of this subsection and shall be in  
115 substance as follows:



116 "That certain claim of lien filed by A.B. against property of  
117 C.D. on (date) and recorded at book (book#), page (page#) in the  
118 lien index of (name of county) County is hereby amended by  
119 increasing/reducing (cross out one) the amount of the claim of  
120 lien to (specify reduced amount claimed). The remaining terms of  
121 the original claim of lien are hereby incorporated by reference  
122 into this amended claim of lien. This amended claim of lien  
123 relates back to the date that the original claim of lien was filed  
124 for record."

125 (2) (a) The liens specified in Section 85-7-403  
126 ("construction liens") shall be inferior to liens for taxes, but  
127 construction liens shall be superior in priority to all other  
128 liens except as specified in \* \* \* paragraphs (b) and (c) of this  
129 subsection.

130 (b) Except as provided in \* \* \* paragraph (c) of this  
131 subsection, a construction lien shall have priority over all other  
132 liens, deeds of trust, mortgages or encumbrances filed after the  
133 date and time of the filing of the notice of lien in the office of  
134 the chancery clerk of the county in which the land is located.  
135 All liens, deeds of trust, mortgages and encumbrances filed before  
136 the date and time of the filing of the notice of construction lien  
137 shall have priority over the construction lien, whether the work  
138 secured by the lien was performed before or after the filing of  
139 the lien, deed of trust, mortgage or other encumbrance. This  
140 priority will extend to amendments or restatements and assignments



141 of the lien, deed of trust, mortgage and other encumbrance. The  
142 priorities in this subsection are determined by the date and time  
143 of filing and without regard to the actual knowledge of the  
144 parties of unrecorded liens. Enforcement of a construction lien  
145 shall not affect any prior deeds of trust or other liens, and a  
146 purchaser, in connection with the enforcement of a construction  
147 lien, shall take the property subject to any prior liens, deeds of  
148 trust, mortgages or encumbrances of which the purchaser has actual  
149 or constructive notice on the date of the purchase. Foreclosure  
150 of any prior deeds of trust or other liens shall terminate and  
151 extinguish the subordinate construction lien or other interest as  
152 to the land and the buildings and improvements thereon, whether or  
153 not at the time of the foreclosure the construction lien or  
154 interest has been perfected in accordance with the provisions of  
155 this article, and the subordinate lienholder shall have the rights  
156 in any excess proceeds received by the foreclosing lienholder as  
157 provided by law.

158 (c) A deed of trust, mortgage, assignment of leases and  
159 rents, fixture filing or other security agreement affecting real  
160 property is a construction mortgage to the extent it secures a  
161 loan or loans for the purpose of financing the repair or  
162 construction of an improvement on the real property, which may  
163 include the acquisition cost of the real property. A construction  
164 lien is subordinate to a construction mortgage if the construction  
165 mortgage is filed in the land records before a notice of a claim



166 of lien is filed pursuant to \* \* \* this section and the lender,  
167 secured party, mortgagee, beneficiary or holder of the  
168 construction mortgage obtained either: (i) an affidavit or sworn  
169 statement from the owner to the effect that no work has been  
170 performed on, or materials delivered to, the real property; or  
171 (ii) an affidavit or sworn statement from the contractor, or owner  
172 if there is no contractor, as provided in Section 85-7-413(1) (b)  
173 regarding payment for work, materials or services provided. A  
174 construction mortgage has this priority for all loan advances  
175 secured thereby regardless of whether the advances are made before  
176 or after the filing of a notice of a construction lien, and this  
177 priority will extend to amendments, restatements and refinancings  
178 of the construction mortgage.

179 (3) (a) Following compliance with the requirements of  
180 subsection (1) of this section, in any proceeding against the  
181 owner to enforce a lien created by Section 85-7-403 against the  
182 property, the party having a direct contractual relationship with  
183 the lien claimant shall not be a necessary party, but may be made  
184 a party. The design professional, contractor or subcontractor, or  
185 all of them, may intervene in the proceedings at any time before  
186 judgment for the purpose of resisting the establishment of the  
187 lien or of asserting against the lien claimant any claim of the  
188 contractor or subcontractor growing out of or related to the  
189 contract, subcontract or purchase order upon which the asserted  
190 lien is based.





191 (b) Any party to an action against the owner to enforce  
192 a lien against the property, by appropriate plea, may put in issue  
193 the fact of indebtedness or the existence of the lien, or both,  
194 and may interpose any other defense or join any counterclaim  
195 applicable to the action; and if the court by its finding, or the  
196 jury by their verdict, as the case may be, ascertain that the  
197 plaintiff has a lien as claimed, judgment shall be entered for the  
198 amount secured thereby, plus interest and costs, against the party  
199 liable for the same.

200 (c) The court, in its discretion, may award reasonable  
201 costs, interest and attorney's fees to the prevailing party in an  
202 action against the owner to enforce a lien against the property.

203 (d) All liens arising under Section 85-7-403 shall have  
204 an equal priority, and be first paid out of the proceeds of the  
205 sale of the property, or money collected from the owner; and if  
206 the proceeds and money are insufficient to satisfy the liens in  
207 full, the proceeds and money shall be distributed pro rata among  
208 the claimants thereof or as otherwise ordered by the court.

209 (4) In no event shall the aggregate amount of liens created  
210 by Section 85-7-403 exceed the contract price as determined by the  
211 terms of the contract or other agreement between the owner and  
212 contractor for the improvements made or services performed.

213 (5) (a) If payments have been made in reliance upon either  
214 lien waivers issued by lien claimants pursuant to Section  
215 85-7-413(1) (a) or sworn written statements of the contractor



216 pursuant to Section 85-7-413(1) (b), the aggregate amount of liens  
217 created by Section 85-7-403 in favor of subcontractors and  
218 materialmen who are not in privity of contract with the owner  
219 shall not exceed the unpaid balance of the contract price under  
220 the terms of the contract or agreement between the owner and the  
221 contractor at the time the first notice of lien is filed pursuant  
222 to this section.

223 (b) If payments have been made in reliance upon either  
224 lien waivers issued by lien claimants pursuant to Section  
225 85-7-413(1) (a) or sworn written statements of the contractor  
226 pursuant to Section 85-7-413(1) (b), the aggregate amount of liens  
227 created by Section 85-7-403 in favor of design professionals who  
228 are not in privity of contract with the owner shall not exceed the  
229 unpaid balance of the contract price under the terms of the  
230 contract or agreement between the owner and the design  
231 professional who is in privity of contract with the owner at the  
232 time the first notice of lien is filed pursuant to this section.

233 **SECTION 2.** Section 85-7-419, Mississippi Code of 1972, is  
234 brought forward as follows:

235 85-7-419. (1) A right to claim a lien or to claim upon a  
236 bond may not be waived in advance of furnishing of labor, services  
237 or materials. Any purported waiver or release of lien, bond claim  
238 or this article executed or made in advance of furnishing labor,  
239 services or materials is null, void and unenforceable.



240 (2) When a claimant is requested to execute a waiver and  
241 release in exchange for or in order to induce payment other than  
242 final payment, the waiver and release shall substantially follow  
243 the Interim Waiver and Release upon Payment form set forth in  
244 Section 85-7-433(1). The failure to correctly complete any of the  
245 blank spaces in the referenced form does not invalidate the form  
246 if the subject matter of the release reasonably may be determined.

247 (3) When a claimant is requested to execute a waiver and  
248 release in exchange for or in order to induce making of final  
249 payment, the waiver and release shall substantially follow the  
250 Waiver and Release upon Final Payment form set forth in Section  
251 85-7-433(2). The failure to correctly complete any of the blank  
252 spaces in the referenced form does not invalidate the form if the  
253 subject matter of the release reasonably may be determined.

254 (4) Nothing contained in this section shall affect:

255 (a) The enforceability of any subordination of lien  
256 rights by a potential lien claimant to the rights of any other  
257 party which may have or acquire an interest in all or any part of  
258 the real estate or other property for which the potential lien  
259 claimant has furnished labor, services or material, even though  
260 the subordination is entered into in advance of furnishing labor,  
261 services or material, and even though the claimant has not  
262 actually received payment in full for its claim;

263 (b) The enforceability of any waiver of lien rights  
264 given in connection with the settlement of a bona fide dispute



265 concerning the amount due the lien claimant for labor, services or  
266 material which have already been furnished; or

267 (c) The validity of a cancellation or release of a  
268 recorded claim of lien.

269 (5) (a) When a waiver and release provided for in this  
270 section is executed by the claimant, it shall be binding against  
271 the claimant for all purposes, subject only to payment in full of  
272 the amount set forth in the waiver and release.

273 (b) Amounts shall conclusively be deemed paid in full  
274 upon the earliest to occur of:

275 (i) Actual receipt of funds;

276 (ii) Execution by the claimant of a separate  
277 written acknowledgment of payment in full; or

278 (iii) Sixty (60) days after the date of the  
279 execution of the waiver and release, unless before the expiration  
280 of the sixty-day period the claimant files in the county in which  
281 the property is located an affidavit of nonpayment, using  
282 substantially the affidavit of nonpayment form set forth in  
283 Section 85-7-433(3), and sends a true and accurate copy of the  
284 affidavit of nonpayment to the owner of the property in the manner  
285 provided in Section 85-7-405 for sending a notice of a claim of  
286 lien to the owner.

287 (c) A claimant who is paid, in full, the amount set  
288 forth in the waiver and release form after filing an affidavit of  
289 nonpayment shall upon request execute in recordable form an



290 affidavit swearing that payment in full has been received. Upon  
291 recordation thereof in the county in which the affidavit of  
292 nonpayment was recorded, the affidavit of nonpayment to which it  
293 relates shall be deemed void.

294 (d) Nothing in this section shall shorten the time  
295 within which to file a claim of lien.

296 (e) Except as provided in Section 85-7-413, a waiver  
297 and release provided in accordance with this section shall be  
298 suspended upon the filing of an affidavit of nonpayment until  
299 payment in full has been received. However, an affidavit of  
300 nonpayment shall not affect dissolution of the claimant's lien or  
301 the availability or enforceability of any owner's defenses  
302 pursuant to Section 85-7-413, if applicable.

303 (f) The claimant may rely upon the information  
304 contained in the waiver and release form when completing for  
305 filing the affidavit of nonpayment.

306 **SECTION 3.** Section 85-7-433, Mississippi Code of 1972, is  
307 brought forward as follows:

308 85-7-433. (1) The following form is the Interim Waiver and  
309 Release Upon Payment form referred to in Section 85-7-419:

310 INTERIM WAIVER AND RELEASE UPON PAYMENT

311 STATE OF MISSISSIPPI

312 COUNTY OF \_\_\_\_\_

313 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED

314 BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE



315 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN  
316 AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED  
317 IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY  
318 \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS  
319 FOLLOWS:

320 (DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE  
321 BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT  
322 DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

323 UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE MECHANIC  
324 AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS  
325 OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY  
326 RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF  
327 \_\_\_\_\_ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE  
328 MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON  
329 ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE  
330 UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING  
331 OR PREMISES.

332 \_\_\_\_\_

333 SIGNATURE

334 BY: \_\_\_\_\_

335 (PRINT NAME)

336 ITS: \_\_\_\_\_

337 (PRINT TITLE)

338 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_\_ DAY OF

339 \_\_\_\_\_, 20\_\_.



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NOTARY PUBLIC

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

(2) The following form is the Waiver and Release Upon Final Payment form referred to in Section 85-7-419:

WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF MISSISSIPPI  
COUNTY OF \_\_\_\_\_

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:



363 (DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE  
364 BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT  
365 DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

366 UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE MECHANIC  
367 AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS  
368 OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY  
369 RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR  
370 OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON  
371 ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

372 \_\_\_\_\_

373 SIGNATURE

374 BY: \_\_\_\_\_

375 (PRINT NAME)

376 ITS: \_\_\_\_\_

377 (PRINT TITLE)

378 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF  
379 \_\_\_\_\_, 20\_\_.

380 \_\_\_\_\_

381 NOTARY PUBLIC

382 NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL  
383 BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED  
384 ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY  
385 (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN  
386 AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION  
387 OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE





388 LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM  
389 UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION  
390 85-7-419, MISSISSIPPI CODE OF 1972.

391 \_\_\_\_\_

392 SIGNATURE

393 BY: \_\_\_\_\_

394 (PRINT NAME)

395 ITS: \_\_\_\_\_

396 (PRINT TITLE)

397 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF  
398 \_\_\_\_\_, 20\_\_.

399 \_\_\_\_\_

400 NOTARY PUBLIC

401 (3) The following form is the Affidavit of Nonpayment  
402 referred to in Section 85-7-419:

403 AFFIDAVIT OF NONPAYMENT

404 STATE OF MISSISSIPPI

405 COUNTY OF \_\_\_\_\_

406 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED  
407 BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE  
408 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN  
409 AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED  
410 IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY  
411 \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS  
412 FOLLOWS:



413 (DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE  
414 BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT  
415 DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

416 PURSUANT TO SECTION 85-7-419, THE UNDERSIGNED EXECUTED A LIEN  
417 WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED \_\_\_\_\_,  
418 \_\_\_\_\_. THE AMOUNT SET FORTH IN THE WAIVER AND RELEASE (\$\_\_\_\_\_) )  
419 HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF THE  
420 NONPAYMENT.

421 THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE  
422 UNDERSIGNED.

423 \_\_\_\_\_

SIGNATURE

424 BY: \_\_\_\_\_

(PRINT NAME)

425 ITS: \_\_\_\_\_

(PRINT TITLE)

426 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_\_ DAY OF  
427 \_\_\_\_\_, 20\_\_\_\_.

428 \_\_\_\_\_

NOTARY PUBLIC

429 WITHIN TWO (2) DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT,  
430 THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY REGISTERED  
431 OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF  
432 THE PROPERTY. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON  
433 FILE WITH THE SECRETARY OF STATE'S OFFICE, SENDING A COPY OF THE



438 AFFIDAVIT TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S  
439 ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED  
440 SUFFICIENT.

441 (4) The following form is the Notice of Contest of Lien form  
442 referred to in Section 85-7-423:

443 NOTICE OF CONTEST OF LIEN

444 STATE OF MISSISSIPPI

445 COUNTY OF \_\_\_\_\_

446 TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

447 YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF  
448 LIEN FILED BY YOU ON \_\_\_\_\_ 20\_\_\_\_, AND RECORDED IN \_\_\_\_\_

449 BOOK \_\_\_\_\_, PAGE \_\_\_\_\_ OF THE PUBLIC RECORDS OF

450 \_\_\_\_\_ COUNTY, MISSISSIPPI, AGAINST PROPERTY OWNED BY

451 \_\_\_\_\_, AND THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A

452 PAYMENT ACTION TO ENFORCE YOUR LIEN IS LIMITED TO NINETY (90) DAYS

453 FROM RECEIPT OF THIS NOTICE. THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,

454 20\_\_\_\_.

455 THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO

456 NOT: (1) COMMENCE A PAYMENT ACTION FOR RECOVERY OF THE AMOUNT OF

457 THE LIEN CLAIM PURSUANT TO SECTION 85-7-405, MISSISSIPPI CODE OF

458 1972, WITHIN NINETY (90) DAYS FROM RECEIPT OF THIS NOTICE; AND (2)

459 FILE A LIS PENDENS NOTICE OF THE PAYMENT ACTION WITH THE CHANCERY

460 CLERK UPON COMMENCEMENT OF THE PAYMENT ACTION WITH A COPY TO THE

461 LIEN CLAIMANT, OWNER AND CONTRACTOR.

462 \_\_\_\_\_



463 SIGNATURE  
464 BY: \_\_\_\_\_  
465 (PRINT NAME)  
466 ITS: \_\_\_\_\_  
467 (PRINT TITLE)

468 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF  
469 \_\_\_\_\_, 20\_\_.  
470 \_\_\_\_\_

471 NOTARY PUBLIC

472 (5) The following form is the Pre-Lien Notice form referred  
473 to in Section 85-7-409(3):

474 PRE-LIEN NOTICE TO OWNER  
475 TO: [NAME AND ADDRESS OF OWNER]

476 TAKE NOTICE THAT THE UNDERSIGNED IS A PERSON HAVING A RIGHT  
477 TO A LIEN PURSUANT TO SECTION 85-7-403, MISSISSIPPI CODE OF 1972,  
478 WHO DOES NOT HAVE A DIRECT CONTRACT WITH THE OWNER, HAS PROVIDED  
479 LABOR, SERVICES OR MATERIALS FOR THE IMPROVEMENT OF PROPERTY  
480 COMMONLY KNOWN AS \_\_\_\_\_  
481 ("THE PROPERTY"), FOR THE SUM OF \$ \_\_\_\_\_ FOR WHICH THE  
482 UNDERSIGNED HAS NOT BEEN PAID, AND INTENDS TO FILE A CLAIM OF  
483 SPECIAL LIEN ON THE SUBJECT PROPERTY IN TEN (10) OR MORE DAYS FROM  
484 THE DATE HEREOF.

485 SO NOTIFIED, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.  
486 LIEN CLAIMANT: \_\_\_\_\_  
487 (PRINT NAME)



488 BY: \_\_\_\_\_

489 (SIGNATURE)

490 ITS: \_\_\_\_\_

491 (PRINT TITLE)

492 **SECTION 4.** This act shall take effect and be in force  
493 retroactively, from the date of the original passage of this  
494 title.

