

2010 Georgia Code
TITLE 40 - MOTOR VEHICLES AND
TRAFFIC
CHAPTER 3 - CERTIFICATES OF
TITLE, SECURITY INTERESTS, AND
LIENS
ARTICLE 3 - SECURITY INTERESTS IN
AND LIENS ON MOTOR VEHICLES
§ 40-3-54 - Mechanics' liens; how
asserted and foreclosed

O.C.G.A. 40-3-54 (2010)

40-3-54. Mechanics' liens; how asserted and foreclosed

(a) All mechanics of every sort shall have a special lien on any vehicle required to have a certificate of title by Code Section 40-3-20 for work done, or for work done and materials furnished, or for materials furnished in repairing or servicing such vehicle. Perfection of the lien by recording shall be as provided in Code Section 40-3-53. The lien may be asserted by retention of the vehicle, and all contracts for repairs or service to vehicles shall be deemed to incorporate a right of retention by the mechanic to protect this lien until it is paid or satisfied through foreclosure as provided in this Code section. The lien may also be asserted by surrendering the vehicle, giving credit, and foreclosing the lien claim in the manner provided in this Code section. If he surrenders possession of the vehicle to the debtor, the mechanic shall record his claim of lien as provided in Code Section 40-3-53. Such special lien shall be superior to all liens except for taxes and such other liens and security interests of which the mechanic had actual or constructive notice before the work was done or material furnished. The validity of the lien against third parties shall be determined in accordance with this chapter.

(b) If possession is retained or the lien recorded, the owner-debtor may contest the validity of the amount claimed to be due by making written demand upon the lienholder. If upon receipt of such demand the lienholder fails to institute foreclosure proceedings within ten days where possession has been retained, or within 30 days where possession has been surrendered, the lien is forfeited.

(c) The lien shall be foreclosed in the following manner:

(1) A person asserting the lien, either for himself or as a guardian, administrator, executor, or trustee, may move to foreclose it by making an affidavit to a court of competent jurisdiction showing all the facts necessary to constitute a lien under this Code section and the amount claimed to be due;

(2) Upon such affidavit being filed, the clerk or a judge of the court shall serve notice upon the owner, the recorded lienholders and security interest holders, and the lessee, if any, of the vehicle of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists, and that such hearing must be petitioned for within five days after receipt of the notice and that, if no petition for such hearing is filed within the time allowed, the lien will conclusively be deemed a valid one and foreclosure thereof allowed;

(3) If a petition for a hearing is filed within the time allowed, the court shall set a probable cause hearing within ten days of the filing of the petition. If, at the probable cause hearing, the court determines that reasonable cause exists to believe that a valid debt exists, the mechanic shall be given possession of the vehicle or the court shall obtain possession of the vehicle, as ordered by the court. The owner-debtor may retain possession of the vehicle by giving bond and security in the amount determined to be probably due and the costs of the action;

(4) Within five days of the probable cause hearing, a defendant must petition the court for a full hearing on the validity of the debt if a further determination of the validity of the debt is desired. If no such petition is filed, the lien on the amount determined reasonably due shall be conclusively deemed a valid one and foreclosure thereof allowed. If such a petition is filed, the court shall set a full hearing thereon within 30 days of the filing of the petition. Upon the filing of such petition by the defendant, neither the prosecuting mechanic nor the court may sell the vehicle, although possession of the vehicle may be retained;

(5) If, after a full hearing, the court finds that a valid debt exists, then the court shall

authorize foreclosure upon and sale of the vehicle subject to the lien to satisfy the debt if the debt is not otherwise immediately paid;

(6) If the court finds the actions of the mechanic in retaining or seeking possession of the vehicle were not taken in good faith, the court, in its discretion, may award damages to the owner, the lessee, or any person deprived of the rightful use of the vehicle due to the deprivation of the use of the vehicle;

(7) Any proceeding to foreclose a mechanic's lien on a vehicle must be instituted within one year from the time the lien is recorded or is asserted by retention.