

Proposed Changes for the 2008
Indexing Standards for Real and Personal Property Records for the State of Georgia
(Indexing Standards) by the GSCCCA, from the 7/12/2006 Version.

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Final, Approved version: 7/7/2008.

Although the Indexing Standards are designed to be as static as possible, their continued updating is required to maintain or improve their effectiveness, and to address changes in legislation. This document lists the changes approved by the GSCCCA Board of Directors from the 7/12/2006 version to be incorporated into the 07/9/2008 version of the Indexing Standards. In their compilation, it has been a goal to minimize changes in the way instruments have previously been indexed. Additionally, these changes are not anticipated to cause a significant increase in the workload of Clerks. Indexing Standards are available at: http://www.gsccca.org/filesandforms/files/standards/GSCCCA_Indexing_Standards.pdf

Comments from Phil Kobierowski are provided in italics and are provided only to explain the purpose of the proposed changes and are not part of the proposed change to be included in the Standards.

The set of changes that follow are grouped into three categories; “Additions”, “Clarifications”, and “Corrections” with the changes of most significance, the “Additions”, provided first.

ADDITIONS: (Significant changes that add to, or change the context or intent of the existing Standards.)

CHANGE 1A: 2008 HB 1132; Act 794. “Uniform Environmental Covenants Act”

To account for the new instruments created by the Act, add the following new instrument types to Appendix C, “Comprehensive Cross Reference to Instrument Types”, which identifies how to index various instruments:

INSTRUMENT	INDEX & TYPE	PARTIES	CODE SECTION
ENVIRONMENTAL COVENANTS (including Amendments)	<i>Deed</i> COVE	Grantor(s): Real Property Owner & Covenant ‘Holder’ Grantee(s): Real Property Owner & Covenant ‘Holder’	44-16-8
ENVIRONMENTAL COVENANTS TERMINATION	<i>Deed</i> CANC	Grantor(s): Real Property Owner & Covenant ‘Holder’ Grantee(s): Real Property Owner & Covenant ‘Holder’	44-16-8

(These are new instruments created by the Bill to be filed with Clerks.)

Adjust row in table 5.3 for “COVE” Instrument Type to account for Environmental Covenants. Change as indicated:

COVE	RESTRICTIVE COVENANTS	DECLARATIONS OF COVENANTS, RESTRICTIVE COVENANTS, <u>ENVIRONMENTAL COVENANTS</u>
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CHANGE 1B: 2008 SB 374; Act 766. (Eff 3/31/09.) Mechanics’ and Materialman’s Liens.

Add the following to Appendix C, “Comprehensive Cross Reference to Instrument Types”:

INSTRUMENT	INDEX & TYPE	PARTIES	CODE SECTION
NOTICE OF CONTEST OF LIEN	<i>Lien</i> NOT	Direct: Property Owner & Contractor Reverse: Lien Claimant	44-14-368

This is a new instrument, created by the Bill, that is to be filed with Clerks. To assist Clerks, a diagram of all the lien law related instruments filed with Clerks, once this Bill is effective, appears as an exhibit at the end of this document.

Add the following to Appendix C

NOTICE OF SUIT FILED (for recovery of a lien)		See NOTICE OF COMMENCEMENT (of recovery action for an existing lien)	44-14-361.1(3)
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This instrument is equivalent to the “Notice of Commencement (of recovery...)” that is already listed in Appendix C; we are adding this additional row to reflect an additional way this document may be titled as referred to in the Bill.

CHANGE 1C: Trustees. Adjust Sections N2.7, N2.16, N2.17, and all related examples throughout the Standards to convey that all Trustees are required names to be indexed whenever presented on an instrument (followed by the word “Trustee”). The Trust or entity represented by the Trustee, if presented, shall also continue to be indexed.

(Previously the Standards only required Trustees to be indexed when the party they represent are not clearly specified on the instrument. Several members of the public have requested Trustees to always be indexed, especially since mortgage securitizations have made it more difficult for indexers to be sure of the proper name of many trusts. This change is not intended to affect any other type of agent beyond Trustees.)

CHANGE 1D: HB 1160. Severance and Conveyance of Development Rights

Add the following to Appendix C

DEVELOPMENT RIGHTS (Severance and conveyance)	<i>Deed</i> NOT	Grantor(s): All Property Owners Grantee(s): All Property Owners	36-66A-2
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(The Bill requires these types of instruments to be filed with Clerks of Superior Court.)

CHANGE 1E: 2008 HB 1018. Cross Referencing / Cross Indexing, Additional \$2 Filing Fee.

This change clarifies terminology in the Standards believed to be consistent with the Bill: “Cross Indexing” shall refer to the referencing of other documents within the index; “Cross Referencing” shall refer to annotations on actual instruments. The change expands the list of required Cross Indexing to include all identified, applicable, legislatively mandated documents that are to be Cross Referenced, or require marginal annotations. Additionally, the previous requirement of only requiring the first two cross indexes for an instrument has been removed; this is based on the assumption that the HB 1018 provides the Clerk with extra filing fees to perform the extra Cross Indexing.

The proposed change is to alter Section 11 of the Standards as indicated

11. CROSS INDEXING REFERENCING (Other Instruments)

11.1 Cross indexing referenc~~ing~~ (aka ‘cross indexing’) is a central key to the usability of an index. ~~The cross references described herein refer to use within an index only.~~ (This document does not address any physical stamping, canceling, nor marginal notations on instruments, nor filing fee requirements.)

Indexing systems are required to present indexers with dedicated fields to enter the index, book, and page values for cross indexing referenc~~ed~~ instruments¹. Cross indexing referenc~~ing~~ that exceeds the amounts specified herein may be performed, at the discretion of the indexer.²

11.2 For all instruments, if the instrument cites specific instructions for the Clerk to cross reference, or cross index, particular other instrument(s), then the indexer should cross index referenc~~ee~~ per the instructions. ~~the first, or first two if more than one is provided, instrument(s) per the instructions.~~ (Such instructions should be clearly visible and near the top of the first page of the instrument.)

11.3 ~~If the instrument being indexed does NOT contain any such specific instruction,~~ The indexer should determine if the instrument being indexed falls into a category of the table below and if so, the indexer should cross index referenc~~ee~~ the ~~first two~~ instruments as specified for the category:

If the Instrument Being Indexed is a:	The following Cross <u>Indexes Referencee</u> should be indexed (if provided) *:
Corrective instrument	Instrument(s) being corrected
Cancellation or Release (including partials and quit claim deeds of release)	Instrument(s) being released
Deed Under Power (foreclosure deed) or Deed in Lieu	Original Security Deed(s)
Assignment	Instrument(s) being assigned, or if not provided, then a previous assignment in the chain of title (if provided).
Affidavit	Deed(s) or other recorded instrument in the chain of title of subject property
Nulla bona	Original lien being returned nulla bona
Notice of suit filed	Subject lien(s) of suit filed e.g. materialman’s lien
<u>Tax Sale Deed by Judicial Foreclosure *</u>	<u>Book and Page per caption on Tax Deed (see O.C.G.A. 48-4-81)</u>
<u>Satisfaction of Bond for Title *</u>	<u>Original Bond for Title (see O.C.G.A. 44-2-7)</u>
<u>Refiled Deed or lien in response to a change in county Line *</u>	<u>Original instrument being refiled (see O.C.G.A. 44-2-13)</u>
<u>Order Vacating Judgment</u>	<u>Any Deed or FiFa being cancelled (see O.C.G.A. 44-14-164)</u>
<u>Non Conforming Lien Removal*</u>	<u>Non-conforming lien(s) specified (see</u>

¹ Use of the dedicated cross index referenc~~ee~~ fields requires the selection of the Index/Type of the referenced instrument: either “Deed”, “Lien”, “Plat” (the value must correspond to the type of index and transmit file that the referenced instrument has or will be transmitted to the GSCCCA), or “UCC” and the book and page value (Filenumber for UCC’s) of the first page of the instrument being referenced.

² When cross indexing referenc~~ing~~, do not index the range of pages of an instrument, just index the first page number.

	<u>O.C.G.A. 44-14-320</u>
<u>Personal Property Lien Extension Affidavits *</u>	<u>Lien specified in Affidavit (see O.C.G.A. 44-14-142)</u>
<u>Settlement or Final Judgment</u>	<u>Lis Pendens of subject suit (see O.C.G.A. 44-14-612)</u>
<u>Notice of Contest of Lien</u>	<u>Subject lien (see O.C.G.A. 44-14-368a)</u>

~~* Indexers should peruse the document to locate the appropriate instruments to cross reference and need only cross reference the first two if more than two exist.~~

* These Instruments are expected to be filed infrequently.

11.4 In all cases, cross ~~indexing referencing~~ using dedicated cross indexing ~~referencing~~ fields need only be indexed if the instrument either:

- A. Specifies or implies that the instrument to cross reference has been filed in a “Deed”, “Lien”, or “Plat” index, in the same county, and the book and page number have been provided, or:
- B. Is a UCC that has been filed in Georgia and its Filenumber is provided, or:
- C. Is a Transfer Tax / PT-61 Form (see section titled Transfer Tax Filings)

When the instrument being referenced does not meet the above criteria then cross ~~index~~ ~~reference~~ information may instead be ~~optionally~~ entered in the General Description field. However, cross index ~~reference~~ information should not be repeated in a General Description field when dedicated cross index ~~reference~~ fields are used and applicable.

CLARIFICATIONS: (These changes improve the understanding of the existing Indexing Standards, while maintaining the intent.)

CHANGE 2A. Clarify the parties in the following rows of Appendix C “Comprehensive Cross Reference to Instrument Types”.

CHANGE 2A-1.

QUIT CLAIM DEED	<i>Deed</i> QCD	Grantor(s): Seller <u>or Party granting property rights</u> Grantee(s): Buyer <u>or party receiving property rights</u>	15-6-61
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This clarification accounts for the fact that the parties on Quit Claim deeds are not always identified as buyers and sellers.

CHANGE 2A-2.

RIGHT OF WAY DEED	<i>Deed</i> RWD	Grantor(s): Seller <u>or Party granting property rights</u> Grantee(s): Buyer <u>or party receiving property rights</u>	15-6-61
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This clarification accounts for the fact that the parties on Right of Way Deeds are not just identified as buyers and sellers.

CHANGE 2A-3. Replace:

UCC2	<i>Deed</i> NOT	Grantor(s): Borrower(s)/Debtor Grantee(s): Lender(s)/Secured Party	11-9-403
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With:

UCC (all UCCs filed in Real Estate Records, except UCC3 Terminations)	<i>Deed</i> NOT	Grantor(s): Owner/Debtor Grantee(s): Lender/Secured Party	11-9-519
UCC 3 that are “Terminations” (filed in Real Estate Records)	<i>Deed</i> CANC	Grantor(s): Lender/Secured Party Grantee(s): Owner/Debtor	11-9-519

To preserve chain of title in the real estate records, cancellations should be indexed as to show rights reverting to the original grantor.

CHANGE 2A-4. Change as indicated:

SECURITY DEED CANCELLATION	<i>Deed</i> CANC	Grantor(s): Lender/Assignee Party Cancelling the Instrument (last assignee) Grantee(s): Borrower	44-14-67 44-14-3
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This change is needed because the lender may not be the party cancelling the SD, especially if it was assigned.

CHANGE 2A-5. Change as indicated:

CANCELLATION OF LIEN	<i>Lien</i> CANC	Direct: Lien Debtor Reverse: Lien Claimant <u>Party Cancelling the lien</u> <u>(last assignee)</u>	15-6-61
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This change is needed because the lender may not be the party cancelling the lien, especially if the lien was assigned.

CHANGE 2A-6. Change as indicated:

BONDS TO DISCHARGE LIEN	<i>Lien</i> REL	Direct: Lien Debtor, Property Owner, Principal, & Bond Agency / Surety Reverse: Lien Claimant	44-14-364
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Bonds are legislatively required to specify owner, but not lien debtor, who may be different entities.

CHANGE 2A-7. Change as indicated:

CONDOMINIUM DECLARATION	<i>Deed</i> CNDO	Grantor(s): Condominium & <u>Declarant</u> Grantee(s): Condominium & <u>Declarant</u>	44-3-74
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Declarant is a necessary party to index to preserve chain of title.

CHANGE 2A-8. Also in Appendix C, for consistency, set all party names to singular (vs plural) and add a general note for the appendix indicating that whenever there are more than 1 of a particular party, to index each.

CHANGE 2A-9. Change as indicated:

NO ADMINISTRATION NECESSARY	<i>Deed</i> EST ORD	Grantor(s): Decedent Grantee(s): Decedent	15-6-61 53-2-40
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SB 508 Section 8 specifies that these orders must be filed upon court's approval of the corresponding 'petition for an order that no administration is necessary'.

CHANGE 2B. Section 5.3, change description of "ASGN / ASSIGNMENT" as indicated: "all ~~ASSIGNMENTS or TRANSFERS~~ of Real Property interest instruments which TRANSFER or ASSIGN rights created by other documents including SECURITY DEED ASSIGNMENT LEASE ASSIGNMENT, OPTION ASSIGNMENT"

(This clarification prevents mistaking a conveyance deed for an assignment.)

CHANGE 2C. Family Trusts.

Section N2.17. Change as indicated:

“If an instrument sets out as a party the name of a trust and the name of the trust refers to an individual or individuals, then the name should be entered:

1. As presented, (using non-human business name rules) and
2. Once as an individual for each individual name presented with the word “TRUST” following the last given name. No comma or other mark shall separate the last given name from the word “TRUST”.

(This prevents the mis-interpreted that trusts are indexed as human names.)

CHANGE 2D. Appendix C, P 133, regarding “Mechanics Liens” and “Materialman’s Liens”

Mechanics liens and Materialman’s lien can be placed on real or personal property, and as such should be indexed as instrument types “ML” or “PPL”. The following change simply clarifies that concept in Appendix C.

Change as indicated:

MATERIALMAN’S LIEN (<u>On Real Property</u>)	<i>Lien ML</i>	Direct: Property Owner Reverse: Materialman / <u>Lien Claimant</u>	44-14-361
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Add:

MATERIALMAN’S LIEN (On Personal Property)	<i>Lien PPL</i>	Direct: Property Owner Reverse: Materialman / Lien Claimant	44-14-361
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Add:

MECHANICS LIEN (On Real Property)	<i>Lien ML</i>	Direct: Property Owner Reverse: Mechanic / Lien Claimant	44-14-361
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(‘Mechanics lien on personal property’ is already appropriately included in Appendix C therefore no addition is needed here.)

CHANGE 2E. Section 10.1. Subdivision and Condominium names on Deeds and Liens.

Add the sentence “The words ‘Subdivision’ or ‘Condominium’ should not be indexed as part of the party”

(This is to stay consistent with other parts of the Standards such as indexing Plats)

CHANGE 2F. Section 10.1. Subdivision and Condominium names on Deeds and Liens.

Change as indicated:

“The set of Subdivision and Condominium fields (Subdivision/Condo, Unit, Block, Lot, and Subdivision Comment fields) are used for subdivision and condominium information. They are to be indexed whenever presented on documents directly related to real property located within a subdivision or condominium within the county that the instrument is filed.”
(These fields should not be used when referring to property in a different county.)

CHANGE 2G. Appendix C, “Comprehensive Cross Reference to Instrument Types”,
Replace:

SATISFACTION	* CANC	* See “DEEDS – Cancellation of Security Deed” or “LIENS – Cancellation of Lien” as appropriate	15-6-61
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With:

SATISFACTION (Full)	* CANC	* See “DEEDS – Cancellation of Security Deed” or “LIENS – Cancellation of Lien” as appropriate	15-6-61
SATISFACTION (Partial)	* REL	* See “DEEDS – Security Deed Partial Release” or “Release (of a Lien)” as appropriate	15-6-61

CHANGE 2H. N 2.11. Use of hyphen, forward slash, and backslash.

Adjust the language for all three special characters such that they should be “replaced with a space when between characters and words, or words and words.”
This is for consistency.

CORRECTIONS: (corrects what was believed to be an oversight or typo in the existing Standards.)

CHANGE 3A. Section 8.1.1 Change: “The names of all parties to an ~~index~~ instrument must be indexed...”
(This fixes a typo.)

End of proposed Changes. Exhibits follow.

EXHIBIT 1.

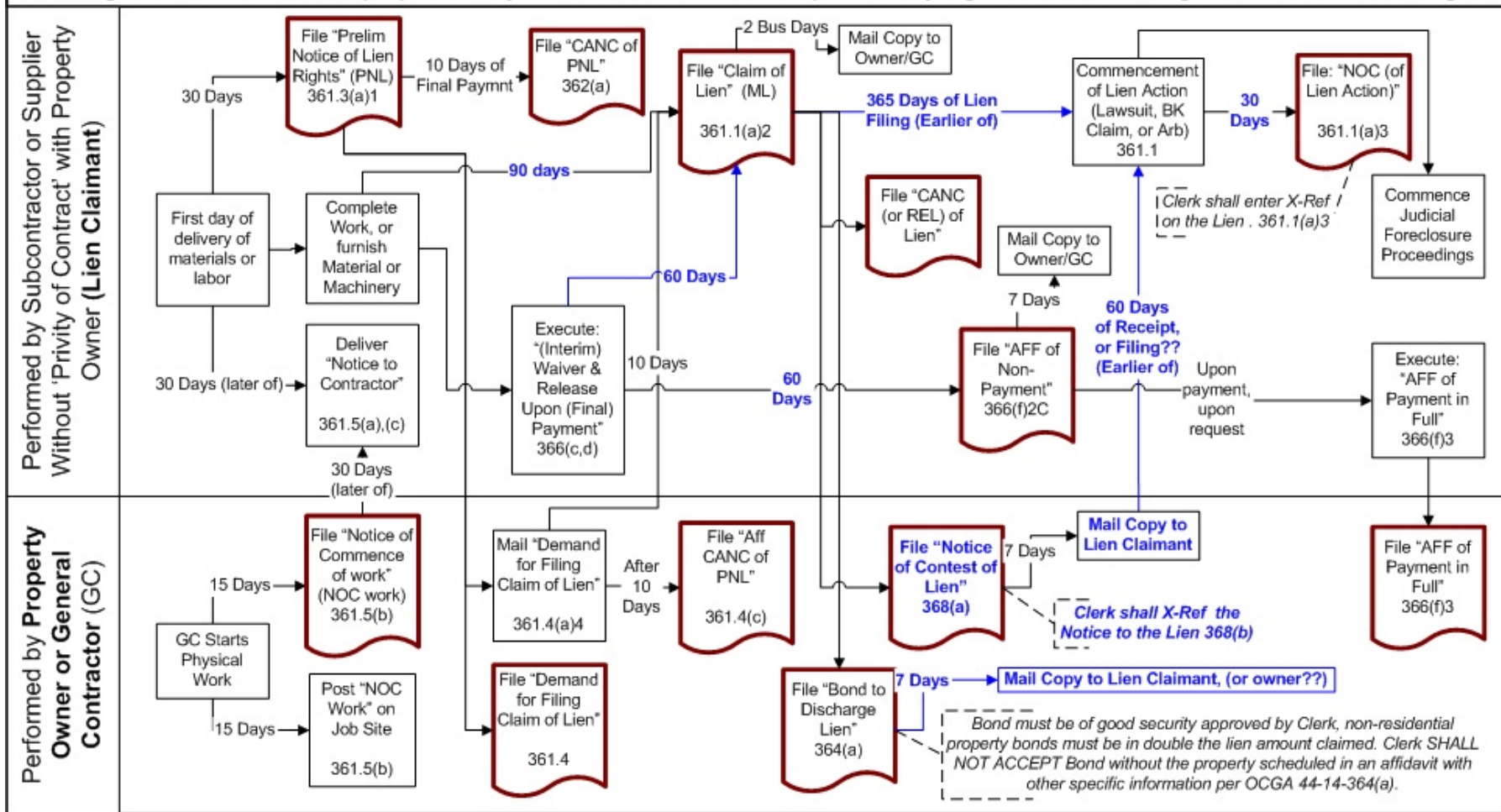
The following diagram may be useful when discussing the Instruments of Proposed Change 1B, 2008 SB 374; Act 766. Eff 3/31/09. Mechanics' and Materialmen's Liens Reform.

The diagram is not a proposed change to the Standards, but is created only as a basis to understand the instruments filed with Clerks so as to apply the Indexing Standards.

Materialmen's Liens and Related Documents (Effective 3/31/2009). Phil Kobierowski, (404) 894-2552. **Incomplete Draft** 5/15/08.

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This diagram is for educational purposes only and should not be relied upon for any legal matters including determination of lien rights.



Notes:

This Symbol indicates a document to be filed with Clerk of Superior Court

This document is not intended to be complete, nor contain all instruments and Clerk requirements. All legal references refer to the Official Code of Georgia Annotated (O.C.G.A.), Section 44-14. This Document has been updated to reflect 2008 SB 374 which becomes effective **March 31, 2009**. Notable changes per 2008 SB 374 are indicated in **Blue**. Filing Fees are determined in OCGA 15-6-77.