

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 909

Short Title: Fraudulent Filing of Real Property Lien.

(Public)

Sponsors: Senators Rand; and Cunningham.

Referred to: Judiciary I.

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CLERK OF SUPERIOR COURT TO REFUSE TO FILE FRAUDULENT CLAIMS OF LIENS RELATING TO IMPROVEMENTS TO REAL PROPERTY AND TO PROVIDE A MEANS TO CORRECT CLAIMS OF LIENS ON REAL PROPERTY THAT HAD BEEN FRAUDULENTLY FILED.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 44A-12(d) reads as rewritten:

"(d) No Amendment of Claim of Lien. – A Subject to G.S. 44A-12.1, a claim of lien may not be amended. A claim of lien may be cancelled by a claimant or his authorized agent or attorney and a new claim of lien substituted therefor within the time herein provided for original filing."

**SECTION 2.** G.S. 44A-12 is amended by adding a new subsection to read:

"(g) Refusal to File Claim of Lien. – The clerk of superior court shall refuse to file any claim of lien presented for filing in the office of the clerk of superior court that the clerk of superior court determines is not created pursuant to this Article or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person."

**SECTION 3.** Part 1 of Article 2 of Chapter 44A of the General Statutes is amended by adding a new section to read:

**§ 44A-12.1. Fraudulent filing of claim of lien.**

(a) A person may file in the office of the clerk of superior court a correction statement with respect to a claim of lien indexed there under the person's name if the person believes that the claim of lien was filed for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person. A correction statement must satisfy all of the following:

- (1) Identify the claim of lien to which it relates by the file number assigned to it.
- (2) Indicate that it is a correction statement.

1           (3) Provide the basis for the person's belief that the filing is for an  
2           improper purpose, such as to hinder, harass, or otherwise wrongfully  
3           interfere with any person.

4           (b) A correction statement under this section shall include a written certification,  
5           under oath, by the person that the contents of the correction statement are true and  
6           accurate to the best of the person's knowledge.

7           (c) The filing of a correction statement under subsection (a) of this section does  
8           not affect the effectiveness of an initial filing of a claim of lien under G.S. 44A-12.

9           (d) In the case of a correction statement alleging that a previously filed claim of  
10          lien was wrongfully filed and that it should have been refused under G.S. 44A-12(g),  
11          the clerk of superior court shall, without undue delay, determine whether the contested  
12          claim of lien was wrongfully filed and should have been refused. In order to determine  
13          whether the claim of lien was wrongfully filed, the clerk of superior court may require  
14          the person filing the correction statement and the party claiming the lien to provide any  
15          additional relevant information requested by the clerk of superior court, including an  
16          original or a copy of any contract that is related to the claim of lien. If the clerk of  
17          superior court finds that the claim of lien was wrongfully filed and should have been  
18          refused under G.S. 44A-12(g), the clerk of superior court shall cancel the claim of lien.

19          (e) If the clerk of superior court refuses to accept a claim of lien for filing under  
20          G.S. 44A-12(g) or cancels a wrongfully filed claim of lien pursuant to subsection (d) of  
21          this section, the party claiming the lien may file an appeal in superior court within 30  
22          days after the refusal or cancellation. Filing a petition requesting to be allowed to file  
23          the claim of lien commences the appeal. The petition shall be filed in the court and with  
24          the clerk of superior court and shall have the claim of lien attached to it. Upon the  
25          commencement of an appeal, it shall be set for hearing at the earliest possible time and  
26          shall take precedence over all matters except older matters of the same character. The  
27          appeal to the superior court shall be determined upon such further notice and  
28          opportunity to be heard, if any, as the court deems appropriate under the circumstances.  
29          The court shall permit the joinder of any interested party that would be allowed under  
30          the Rules of Civil Procedure. Upon consideration of the petition and other appropriate  
31          pleadings, the court may order the clerk of superior court to file the claim of lien or take  
32          other action the court considers appropriate, including the entry of orders affirming,  
33          reversing, or otherwise modifying the decision of the clerk of superior court. The court  
34          may order any other relief, including equitable relief, as may be appropriate. The court's  
35          final decision may be appealed as in other civil proceedings.

36          (f) It shall be unlawful for any person, firm, or corporation to present a claim of  
37          lien for filing under the provisions of this Article with knowledge that the claim of lien  
38          is not related to a valid contract or with the intention that the claim of lien be filed for an  
39          improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any  
40          person. A violation of this subsection shall be a Class 2 misdemeanor."

41                 **SECTION 4.** This act becomes effective October 1, 2001, and applies to any  
42                 claim of lien filed on or after that date.