

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 1052\*  
Committee Substitute Favorable 6/13/12  
Committee Substitute #2 Favorable 6/20/12

Short Title: Mechanics Liens/Payment Bond Reforms.

(Public)

Sponsors:

Referred to:

May 23, 2012

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS  
3 LIEN, TAX LIEN, AND PAYMENT BOND LAWS, AS RECOMMENDED BY THE  
4 LEGISLATIVE RESEARCH COMMISSION'S MECHANICS LIENS ON REAL  
5 PROPERTY COMMITTEE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 44A-7 reads as rewritten:

8 "**§ 44A-7. Definitions.**

9 Unless the context otherwise ~~requires in this Article;~~requires, the following definitions  
10 apply in this Article:

11 (1) Contractor. – A person who contracts with an owner to improve real  
12 property.

13 (2) First tier subcontractor. – A person who contracts with a contractor to  
14 improve real property.

15 ~~(1)(3)~~ "Improve" means to Improve. – To build, effect, alter, repair, or demolish  
16 any improvement upon, connected with, or on or beneath the surface of any  
17 real property, or to excavate, clear, grade, fill or landscape any real property,  
18 or to construct driveways and private roadways, or to furnish materials,  
19 including trees and shrubbery, for any of such purposes, or to perform any  
20 labor upon such improvements, and shall also mean and include any design  
21 or other professional or skilled services furnished by architects, engineers,  
22 land surveyors and landscape architects registered under Chapter 83A, 89A  
23 or 89C of the General Statutes, and rental of equipment directly utilized on  
24 the real property in making the improvement.

25 ~~(2)(4)~~ "Improvement" means all Improvement. – All or any part of any building,  
26 structure, erection, alteration, demolition, excavation, clearing, grading,  
27 filling, or landscaping, including trees and shrubbery, driveways, and private  
28 roadways, on real property.

29 (5) Obligor. – An owner, contractor, or subcontractor in any tier who owes  
30 money to another as a result of the other's partial or total performance of a  
31 contract to improve real property.

32 ~~(3)(6)~~ An "owner" is a Owner. – A person who has an interest in the real property  
33 improved and for whom an improvement is made and who ordered the  
34 improvement to be made. "Owner" includes successors in interest of the  
35 owner and agents of the owner acting within their authority.



1           (4)(7) "Real property" means the Real property. – The real estate that is improved,  
2           including lands, leaseholds, tenements and hereditaments, and improvements  
3           placed thereon.

4           (8) Second tier subcontractor. – A person who contracts with a first tier  
5           subcontractor to improve real property.

6           (9) Third tier subcontractor. – A person who contracts with a second tier  
7           subcontractor to improve real property."

8           **SECTION 2.** G.S. 44A-11 reads as rewritten:

9           **"§ 44A-11. Perfecting claim of lien on real property.**

10          (a) Perfection. – A claim of lien on real property granted by this Article shall be  
11          perfected as of the time provided in G.S. 44A-10 upon the filing of the claim of lien on real  
12          property under G.S. 44A-12 and may be enforced pursuant to G.S. 44A-13 occurrence of all of  
13          the following:

14               (1) Service of a copy of the claim of lien on real property upon the record owner  
15               of the real property claimed to be subject to the claim of lien, and if the  
16               claim of lien on real property is being asserted pursuant to G.S. 44A-23, also  
17               upon the contractor through which subrogation is being asserted.

18               (2) Filing of the claim of lien on real property under G.S. 44A-12.

19          (b) Method of Service. – Service of the claim of lien on real property pursuant to  
20          subsection (a) of this section shall not require proof of actual receipt by the listed recipient and  
21          shall be complete upon the occurrence of any of the following:

22               (1) Personal delivery of a copy of the claim of lien on real property upon the  
23               recipient.

24               (2) Deposit of a copy of the claim of lien on real property in a postpaid, properly  
25               addressed wrapper in either of the following:

26                   a. A post office or official depository under the exclusive care and  
27                   custody of the United States Postal Service.

28                   b. An authorized depository under the exclusive care and custody of a  
29                   designated delivery service authorized pursuant to 26 U.S.C. §  
30                   7502(f)(2).

31          (c) Service Address. – For purposes of this section, a wrapper addressed to a party  
32          required to be served under subdivision (1) of subsection (a) of this section shall be  
33          conclusively deemed properly addressed if it uses any of the following addresses:

34               (1) The address for the party to be served listed on the permit issued for the  
35               improvement.

36               (2) The address for the party to be served listed with the tax rolls for any county  
37               in North Carolina.

38               (3) The address of the registered agent for the party to be served listed with the  
39               North Carolina Secretary of State's office."

40          **SECTION 3.** G.S. 44A-12 reads as rewritten:

41          **"§ 44A-12. Filing claim of lien on real property.**

42          (a) Place of Filing. – All claims of lien on real property must be filed in the office of the  
43          clerk of superior court in each county where the real property subject to the claim of lien on  
44          real property is located. The clerk of superior court shall note the claim of lien on real property  
45          on the judgment docket and index the same under the name of the record owner of the real  
46          property at the time the claim of lien on real property is filed. An additional copy of the claim  
47          of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee  
48          for benefit of creditors who obtains legal authority over the real property.

49          (b) Time of Filing. – Claims of lien on real property may be filed at any time after the  
50          maturity of the obligation secured thereby but not later than 120 days after the last furnishing of  
51          labor or materials at the site of the improvement by the person claiming the lien.

1 (c) Contents of Claim of Lien on Real Property to Be Filed. – All claims of lien on real  
 2 property must be filed using a form substantially as follows:

3  
 4 CLAIM OF LIEN ON REAL PROPERTY

- 5  
 6 (1) Name and address of the person claiming the claim of lien on real property:  
 7 (2) Name and address of the record owner of the real property claimed to be  
 8 subject to the claim of lien on real property at the time the claim of lien on  
 9 real property is ~~filed~~:filed, and, if the claim of lien on real property is being  
 10 asserted pursuant to G.S. 44A-23, the name of the contractor through which  
 11 subrogation is being asserted:  
 12 (3) Description of the real property upon which the claim of lien on real  
 13 property is claimed: (Street address, tax lot and block number, reference to  
 14 recorded instrument, or any other description of real property is sufficient,  
 15 whether or not it is specific, if it reasonably identifies what is described.)  
 16 (4) Name and address of the person with whom the claimant contracted for the  
 17 furnishing of labor or materials:  
 18 (5) Date upon which labor or materials were first furnished upon said property  
 19 by the claimant:  
 20 (5a) Date upon which labor or materials were last furnished upon said property  
 21 by the claimant:  
 22 (6) General description of the labor performed or materials furnished and the  
 23 amount claimed therefor:  
 24 (7) I hereby certify that I have served the parties listed in paragraph two above  
 25 in accordance with the requirements of G.S. 44A-11.

26 \_\_\_\_\_  
 27 Lien Claimant

28 Filed this \_\_\_\_ day of \_\_\_\_, \_\_\_\_

29 \_\_\_\_\_  
 30 Clerk of Superior Court

31 A general description of the labor performed or materials furnished is sufficient. It is not  
 32 necessary for lien claimant to file an itemized list of materials or a detailed statement of labor  
 33 performed.

34 (d) No Amendment of Claim of Lien on Real Property. – A claim of lien on real  
 35 property may not be amended. A claim of lien on real property may be cancelled by a claimant  
 36 or the claimant's authorized agent or attorney and a new claim of lien on real property  
 37 substituted therefor within the time herein provided for original filing.

38 (e) Notice of Assignment of Claim of Lien on Real Property. – When a claim of lien on  
 39 real property has been filed, it may be assigned of record by the lien claimant in a writing filed  
 40 with the clerk of superior court who shall note the assignment in the margin of the judgment  
 41 docket containing the claim of lien on real property. Thereafter the assignee becomes the lien  
 42 claimant of record.

43 (f) Waiver of Right to File, Serve, or Claim ~~Liens as Consideration for Contract~~  
 44 ~~Against Public Policy. Liens.~~ –

- 45 (1) An agreement to waive the right to file a claim of lien on real property  
 46 granted under this Part, or an agreement to waive the right to serve a notice  
 47 of claim of lien upon funds granted under Part 2 of this Article, which  
 48 agreement is in anticipation of and in consideration for the awarding of any  
 49 contract, either expressed or implied, for the making of an improvement  
 50 upon real property under this Article is against public policy and is

unenforceable. This section does not prohibit subordination or release of a lien granted under this Part or Part 2 of this Article.

(2) Lien waivers denoted as "partial" lien waivers shall not alter or waive the lien claimant's effective date for any lien claim created by this Article. The sole manner of altering or waiving the effective date is by the lien claimant's executing a document expressly denoted as a "final" lien waiver.

(3) Unless expressly stated on the lien waiver form, the lien waiver shall be construed to be conditional upon the lien claimant's actual receipt of the specified funds.

(4) Lien waivers shall be substantially in the forms set forth below. Other forms may be used, but any substantive provisions that represent variations to the statutory forms affecting the lien rights created by this Article shall be unenforceable.

(5) The provisions of this section regarding lien waivers do not apply to lien waivers or subordinations obtained by closing attorneys, lenders, title insurance companies, or those acting on their behalf, as a part of any real estate or financing transactions. Nothing herein shall prevent partial or final lien waivers obtained by closing attorneys, lenders, title insurance companies, or those acting on their behalf, from containing subordination and/or release of lien agreements or from otherwise altering or modifying lien rights if agreed to by the signing parties.

(g) Partial lien waivers shall be in substantially the following form:

PARTIAL LIEN WAIVER

The undersigned lien claimant, in consideration of the sum of \$ (insert amount of payment), hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(insert description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date specified above, nor does it release claims for retention to become due at a later date, nor does it release any other claims expressly identified below:

Claims not released by this waiver:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS WAIVER IS/IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Lien Claimant)

1 By: \_\_\_\_\_

2  
3 (h) Final lien waivers shall be in substantially the following form:

4  
5 FINAL LIEN WAIVER

6  
7 The undersigned lien claimant, in consideration of the final payment in the amount of  
8 \$ \_\_\_\_\_ hereby waives and releases its lien and right to claim a lien for labor, services, or  
9 materials furnished to \_\_\_\_\_ (insert the name of your customer) on the job of  
10 \_\_\_\_\_ (insert the name of the owner) to the following described property:

11  
12 (description of property)

13  
14 This waiver and release does not cover any labor, services, or materials furnished after the  
15 date of this lien waiver. Lien claimant, however, does hereby release any and all claims of lien  
16 for labor, materials, or services provided on or before the date of this waiver, including, but not  
17 exclusively, any amounts that may be deemed retainage. This lien waiver further waives the  
18 effective date of any lien claim created by this Article. The only claims of lien for previously  
19 provided labor, services, or materials which are not hereby released are those claims expressly  
20 identified below:

21  
22 Claims not released by this waiver:

23  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_

27  
28 THIS WAIVER IS/IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE  
29 RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall  
30 be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless  
31 expressly excepted above, this waiver shall likewise apply to any payment bond issued for the  
32 benefit of lien claimant for its labor, materials, or services provided to improve the property.

33  
34 DATED: \_\_\_\_\_

35  
36 \_\_\_\_\_ (Lien Claimant)

37 By: \_\_\_\_\_ "

38 **SECTION 4.** G.S. 44A-13 is amended by adding new subsections to read:  
39 **"§ 44A-13. Action to enforce claim of lien on real property.**

40 ...  
41 (d) Former Owner Not a Necessary Party to Action. – In an action brought under this  
42 section, a former owner of the improved property at the time the lien arose, who holds no  
43 ownership interest in the property at the time the action is commenced, and against whom the  
44 plaintiff seeks no relief, is not a necessary party to the action.

45 (e) Subsequent Purchaser and Lender Not Necessary or Proper Parties to Action Filed  
46 After Claim of Lien is Discharged. – If a claim of lien on real property filed under this Article  
47 is discharged pursuant to G.S. 44A-16(5) or G.S. 44A-16(6) prior to the filing of an action to  
48 enforce the claim of lien under G.S. 44A-13, then neither a subsequent purchaser of the real  
49 property upon which the lien is claimed nor the subsequent purchaser's lender shall be a  
50 necessary or proper party to the action. However, nothing herein precludes the lien claimant

1 from asserting any claims against any party that are separate and distinct from enforcement of  
2 the lien.

3 (f) Subsequent Purchaser and Lender No Longer Necessary or Proper Parties Upon  
4 Discharge of Claim of Lien After Action Is Filed. – If a an action to enforce a lien under  
5 G.S. 44A-13 is commenced before the claim of lien is discharged pursuant to G.S. 44A-16(5)  
6 or G.S. 44A-16(6), a subsequent purchaser of the real property upon which the lien is claimed  
7 and the subsequent purchaser's lender shall cease to be a necessary or proper party to the action,  
8 and any claim for lien enforcement asserted against the subsequent purchaser of the real  
9 property upon which the lien is claimed or the subsequent purchaser's lender shall be dismissed  
10 upon motion of any party upon a showing that the claim of lien was discharged pursuant to  
11 G.S. 44A-16. However, nothing herein precludes the lien claimant from continuing to pursue  
12 any claims against any party that are separate and distinct from enforcement of the lien.

13 (g) Bonds Prohibited From Requiring Subsequent Purchaser or Lender to Remain  
14 Parties to Action After Discharge of Claim of Lien. – The fact that a subsequent purchaser of  
15 the real property upon which the lien is claimed or the subsequent purchaser's lender is not a  
16 party to an action to enforce a claim of lien on real property subsequent to discharge of that  
17 claim of lien by the contractor under G.S. 44A-16 shall not invalidate the claim of lien under  
18 this Chapter nor shall it invalidate any bond filed under G.S. 44A-16 to discharge the claim of  
19 lien. Further, a bond filed under G.S. 44A-16(a)(6) shall not require that a subsequent purchaser  
20 of the real property upon which the lien is claimed or the subsequent purchaser's lender remain  
21 a party to an action to enforce a claim of lien after the claim of lien has been discharged  
22 pursuant to G.S. 44A-16.

23 (h) Definition of "Subsequent Purchaser." – For purposes of this section, a "subsequent  
24 purchaser" means a party whose record interest is protected under G.S. 47-18, including any  
25 beneficiary of a deed of trust or mortgagee of that party, the priority of whose interest is  
26 protected under the provisions of G.S. 47-20, and who was not the owner of the real property at  
27 the time of the improvements giving rise to the lien claim as defined in G.S. 44A-7(3)."

28 **SECTION 5.** G.S. 44A-17 is repealed.

29 **SECTION 6.** G.S. 44A-18 reads as rewritten:

30 **"§ 44A-18. Grant of lien upon funds; subrogation; perfection.**

31 ~~Upon compliance with this Article:~~

32 ~~(1)(a)~~ A first tier subcontractor who furnished labor, materials, or rental equipment at the  
33 site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the  
34 contractor with whom the first tier subcontractor dealt and that arise out of the improvement on  
35 which the first tier subcontractor worked or furnished materials.

36 ~~(2)(b)~~ A second tier subcontractor who furnished labor, materials, or rental equipment at  
37 the site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the first  
38 tier subcontractor with whom the second tier subcontractor dealt and that arise out of the  
39 improvement on which the second tier subcontractor worked or furnished materials. A second  
40 tier subcontractor, to the extent of the second tier subcontractor's lien provided in this  
41 subdivision, shall also be ~~entitled to be~~ subrogated to the lien upon funds of the first tier  
42 subcontractor with whom the second tier contractor dealt provided for in subdivision (1) of this  
43 section and shall ~~be entitled to~~ perfect it by service of the notice of claim of lien upon funds to  
44 the extent of the claim.

45 ~~(3)(c)~~ A third tier subcontractor who furnished labor, materials, or rental equipment at the  
46 site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the second  
47 tier subcontractor with whom the third tier subcontractor dealt and that arise out of the  
48 improvement on which the third tier subcontractor worked or furnished materials. A third tier  
49 subcontractor, to the extent of the third tier subcontractor's lien upon funds provided in this  
50 subdivision, shall also ~~be entitled to be~~ subrogated to the lien upon funds of the second tier  
51 subcontractor with whom the third tier contractor dealt and to the lien upon funds of the first

1 tier subcontractor with whom the second tier subcontractor dealt to the extent that the second  
 2 tier subcontractor is ~~entitled to be~~ subrogated thereto, and in either case shall ~~be entitled to~~  
 3 perfect ~~the same~~ it by service of the notice of claim of lien upon funds to the extent of the claim.

4 ~~(4)(d)~~ Subcontractors more remote than the third tier who furnished labor, materials, or  
 5 rental equipment at the site of the improvement shall ~~be entitled to have~~ a lien upon funds that  
 6 are owed to the person with whom they dealt and that arise out of the improvement on which  
 7 they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not  
 8 be entitled to subrogation to the rights of other persons.

9 ~~(5)(e)~~ The liens upon funds granted under this section shall secure amounts earned by the  
 10 lien claimant as a result of having furnished labor, materials, or rental equipment at the site of  
 11 the improvement under the contract to improve real property, including interest at the legal rate  
 12 provided in G.S. 24-5, whether or not such amounts are due and whether or not performance or  
 13 delivery is complete. In the event insufficient funds are retained to satisfy all lien claimants,  
 14 subcontractor lien claimants may recover the interest due under this subdivision on a pro rata  
 15 basis, but in no event shall interest due under this subdivision increase the liability of the  
 16 obligor under G.S. 44A-20.

17 ~~(6)(f)~~ A lien upon funds granted under this section arises, attaches, and is  
 18 perfected ~~effective~~ immediately upon the first furnishing of labor, materials, or rental equipment  
 19 at the site of the improvement by a subcontractor. Any lien upon funds granted under this  
 20 section is perfected upon the giving of notice of claim of lien upon funds in writing to the  
 21 obligor as provided in G.S. 44A-19 and shall be effective upon the obligor's receipt of the  
 22 notice. The subrogation rights of a first, second, or third tier subcontractor to the claim of lien  
 23 on real property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as  
 24 provided in G.S. 44A-23. G.S. 44A-19.

25 (g) Until a lien claimant gives notice of a claim of lien upon funds in writing to the  
 26 obligor as provided in G.S. 44A-19, any owner, contractor, or subcontractor against whose  
 27 interest the lien upon funds is claimed may make, receive, use, or collect payments thereon and  
 28 may use such proceeds in the ordinary course of its business."

29 **SECTION 7.** G.S. 44A-19 reads as rewritten:

30 **"§ 44A-19. Notice of claim of lien upon funds.**

31 (a) Notice of a claim of lien upon funds shall set forth all of the following information:

- 32 (1) The name and address of the person claiming the lien upon funds.  
 33 (2) A general description of the real property improved.  
 34 (3) The name and address of the person with whom the lien claimant contracted  
 35 to improve real property.  
 36 (4) The name and address of each person against or through whom subrogation  
 37 rights are claimed.  
 38 (5) A general description of the contract and the person against whose interest  
 39 the lien upon funds is claimed.  
 40 (6) The amount of the lien upon funds claimed by the lien claimant under the  
 41 contract.

42 (b) All notices of claims of liens upon funds by first, second, or third tier subcontractors  
 43 must be given using a form substantially as follows:

44 NOTICE OF CLAIM OF LIEN UPON FUNDS BY FIRST, SECOND, OR THIRD TIER  
 45 SUBCONTRACTOR

46 To:

47 1. \_\_\_\_\_, owner of property involved.

48 (Name and address)

49 2. \_\_\_\_\_, ~~general~~ contractor.

50 (Name and address)

51 3. \_\_\_\_\_, first tier subcontractor against or through

1 (Name and address) whom subrogation is claimed, if any.  
2 4. \_\_\_\_\_, second tier subcontractor against or through  
3 (Name and address) whom subrogation is claimed, if any.  
4 General description of real property ~~whereon~~ which labor performed or material furnished:

5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_

8 General description of undersigned lien claimant's contract including the names of the parties  
9 thereto:  
10 \_\_\_\_\_  
11 \_\_\_\_\_

12 The amount of lien upon funds claimed pursuant to the above described contract:  
13 \$ \_\_\_\_\_

14 The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to  
15 North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of  
16 Article 2 of Chapter 44A of the General Statutes of North Carolina.

17 Dated \_\_\_\_\_  
18 \_\_\_\_\_, Lien Claimant  
19 \_\_\_\_\_  
20 (Address)

21 (c) All notices of claims of liens upon funds by subcontractors more remote than the  
22 third tier must be given using a form substantially as follows:

23 NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR MORE REMOTE  
24 THAN THE THIRD TIER

25 To:  
26 \_\_\_\_\_, person holding funds against which lien upon funds is claimed.  
27 (Name and Address)

28 General description of real property ~~whereon~~ which labor performed or material  
29 furnished: \_\_\_\_\_  
30 \_\_\_\_\_  
31 \_\_\_\_\_

32 General description of undersigned lien claimant's contract including the names of the parties  
33 thereto:  
34 \_\_\_\_\_  
35 \_\_\_\_\_

36 The amount of lien upon funds claimed pursuant to the above described contract:  
37 \$ \_\_\_\_\_

38 The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to  
39 North Carolina law and claims all rights to which he or she is entitled under Part 2 of Article 2  
40 of Chapter 44A of the General Statutes of North Carolina.

41 Dated: \_\_\_\_\_  
42 \_\_\_\_\_, Lien Claimant  
43 (Address)

44 (d) Notices of claims of lien upon funds under this section shall be served upon the  
45 obligor by personal delivery or in any manner authorized by Rule 4 of the North Carolina Rules  
46 of Civil Procedure. A copy of the notice of claim of lien upon funds shall be attached to any  
47 claim of lien on real property filed pursuant to ~~G.S. 44A-20(d) or G.S. 44A-23.~~ G.S. 44A-20(d).

48 (e) Notices of claims of lien upon funds shall not be filed with the clerk of superior  
49 court and shall not be indexed, docketed, or recorded in any way as to affect title to any real  
50 property, except a notice of a claim of lien upon funds may be filed with the clerk of superior  
51 court under either of the following circumstances:



- 1 (1) When the notice of claim of lien upon funds is attached to a claim of lien on  
2 real property filed pursuant to ~~G.S. 44A-20(d)~~ or  
3 ~~G.S. 44A-23~~. G.S. 44A-20(d).  
4 (2) When the notice of claim of lien upon funds is filed by the obligor for the  
5 purpose of discharging the claim of lien upon funds in accordance with  
6 G.S. 44A-20(e).  
7 (f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section  
8 is not a violation of G.S. 44A-12.1."

9 **SECTION 8.** G.S. 44A-20 reads as rewritten:

10 **"§ 44A-20. Duties and liability of obligor.**

11 (a) Upon receipt of the notice of claim of lien upon funds provided for in this Article,  
12 the obligor shall be under a duty to retain any funds subject to the lien or liens upon funds  
13 under this Article up to the total amount of such liens upon funds as to which notices of claims  
14 of lien upon funds have been received.

15 (b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the  
16 obligor makes further payments to a contractor or subcontractor against whose interest the lien  
17 or liens upon funds are claimed, the lien upon funds shall continue upon the funds in the hands  
18 of the contractor or subcontractor who received the payment, and in addition the obligor shall  
19 be personally liable to the person or persons entitled to liens upon funds up to the amount of  
20 such wrongful payments, not exceeding the total claims with respect to which the notice of  
21 claim of lien upon funds was received prior to payment.

22 (c) If an obligor makes a payment after receipt of notice of claim of lien on funds and  
23 incurs personal liability under subsection (b) of this section, the obligor shall be entitled to  
24 reimbursement and indemnification from the party receiving such payment.

25 (d) If the obligor is an owner of the property being improved, the lien claimant shall be  
26 entitled to a claim of lien upon real property upon the interest of the obligor in the real property  
27 to the extent of the owner's personal liability under subsection (b) of this section, which claim  
28 of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through  
29 G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and  
30 subject to the same filing requirements and periods of limitation applicable to the contractor.  
31 The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the  
32 filing of the claim of lien on real property pursuant to G.S. 44A-12. A lien waiver signed by the  
33 contractor prior to filing of the claim of lien on real property waives the subcontractor's right to  
34 a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien  
35 on funds under this Article. The claim of lien on real property as provided under this subsection  
36 shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice  
37 of claim of lien upon funds given pursuant to G.S. 44A-19 as an exhibit together with proof of  
38 service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the  
39 obligor is personally liable for the debt under subsection (b) of this section.

40 (e) A notice of claim of lien upon funds under G.S. 44A-19 may be filed by the obligor  
41 with the clerk of superior court in each county where the real property upon which the filed  
42 notice of claim of lien upon funds is located for the purpose of discharging the notice of claim  
43 of lien upon funds by any of the methods described in G.S. 44A-16.

44 (f) A bond deposited under this section to discharge a filed notice of claim of lien upon  
45 funds shall be effective to discharge any claim of lien on real property filed by the same lien  
46 claimant pursuant to subsection (d) of this section or G.S. 44A-23 and shall further be effective  
47 to discharge any notices of claims of lien upon funds served by lower tier subcontractors or any  
48 claims of lien on real property filed by lower tier subcontractors pursuant to subsection (d) of  
49 this section or G.S. 44A-23 claiming through or against the contractor or higher tier  
50 subcontractors up to the amount of the bond."

51 **SECTION 9.** G.S. 44A-23 reads as rewritten:

1 **"§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation rights of**  
2 **subcontractor.**

3 (a) First tier subcontractor. – A first tier ~~subcontractor, who gives notice of claim of lien~~  
4 ~~upon funds as provided in this Article,~~ subcontractor may, to the extent of ~~this its~~ claim, enforce  
5 the claim of lien on real property of the contractor created by Part 1 of this Article. The manner  
6 of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on  
7 real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the claim of lien  
8 on real property pursuant to G.S. 44A-12. When completing the claim of lien on real property  
9 form, the subcontractor may use as the date upon which labor or materials were first or last  
10 furnished on the real property either the date of the first or last furnishing of labor or materials  
11 on the real property by the subcontractor making the claim or the date of the first or last  
12 furnishing of labor or materials on the real property by the contractor through which the claim  
13 of lien on real property is being asserted. Upon the filing of the claim of lien on real ~~property,~~  
14 ~~with the notice of claim of lien upon funds attached,~~ property and the commencement of the  
15 action, no action of the contractor shall be effective to prejudice the rights of the subcontractor  
16 without his written consent. A lien waiver signed by the contractor prior to commencement of  
17 the action waives the subcontractor's right to a claim of lien on real property but does not affect  
18 the subcontractor's rights to a claim of lien on funds under this Article.

19 (b) Second or third subcontractor. –

20 (1) A second or third tier ~~subcontractor, who gives notice of claim of lien upon~~  
21 ~~funds as provided in this Article,~~ subcontractor may, to the extent of his  
22 claim, enforce the claim of lien on real property of the contractor created by  
23 Part 1 of Article 2 of the Chapter except when:

24 a. The owner or contractor, within 30 days following the date the  
25 building permit is issued for the improvement of the real property  
26 involved, involved or within 30 days following the date the  
27 contractor is awarded the contract for the improvement of the real  
28 property involved, whichever is later, posts on the property in a  
29 visible location adjacent to the posted building permit permit, if a  
30 permit is required, and files in the office of the clerk of superior court  
31 in each county wherein the real property to be improved is located, a  
32 completed and signed notice of contract form and the second or third  
33 tier subcontractor fails to serve upon the contractor a completed and  
34 signed notice of subcontract form by the same means of service as  
35 described in G.S. 44A-19(d); or

36 b. After the posting and filing of a signed notice of contract and the  
37 service upon the contractor of a signed notice of subcontract, the  
38 contractor serves upon the second or third tier subcontractor, within  
39 five days following each subsequent payment, by the same means of  
40 service as described in G.S. 44A-19(d), the written notice of payment  
41 setting forth the date of payment and the period for which payment is  
42 made as requested in the notice of subcontract form set forth herein.

43 (2) The form of the notice of contract to be so utilized under this section shall be  
44 substantially as follows and the fee for filing the same with the clerk of  
45 superior court shall be the same as charged for filing a claim of lien on real  
46 property:

47 "NOTICE OF CONTRACT

48 "(1) Name and address of the Contractor:

49 "(2) Name and address of the owner of the real property at the time this Notice of  
50 Contract is recorded:

"(3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):

"(4) Name and address of the person, firm or corporation filing this Notice of Contract:

"Dated: \_\_\_\_\_

\_\_\_\_\_  
"Contractor

"Filed this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Clerk of Superior Court"

(3) The form of the notice of subcontract to be so utilized under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

"(1) Name and address of the subcontractor:

"(2) General description of the real property ~~where-on which~~ the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

"(3)

"(i) General description of the subcontractor's contract, including the names of the parties thereto:

"(ii) General description of the labor and material performed and furnished thereunder:

"(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within five days following, each subsequent payment by the contractor to the first tier subcontractor for labor performed or material furnished at the improved real property within the above descriptions of such in paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the period for which payment is made.

"Dated: \_\_\_\_\_

\_\_\_\_\_  
Subcontractor"

(4) The manner of such enforcement shall be as provided by G.S. 44A-7 through G.S. 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon the filing of a claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real ~~property, with the notice of claim of lien upon funds attached,~~ property and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent."

SECTION 10. G.S. 44A-24 reads as rewritten:

"§ 44A-24. ~~False statement a misdemeanor.~~ False statement a ~~misdemeanor~~, an unfair and deceptive trade practice, and grounds for disciplinary action against a licensed contractor or qualifying party.

If any contractor or other person receiving payment from an obligor for an improvement to real property or from a purchaser for a conveyance of real property with improvements subject to this Article or to Article 3 of this Chapter shall knowingly furnish to such obligor, purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such real property, then such contractor, subcontractor or other person shall be guilty of a Class 1 ~~misdemeanor.~~ misdemeanor and shall be subject to a claim for violation of G.S. 75-1.1 by any obligor, purchaser, lender who obtains a security interest in such property, title insurance company insuring title to such property, or any person who otherwise would be entitled to a

1 claim of lien on real property under this Article and who suffers actual harm as a result of the  
2 misrepresentation. In addition, any person who knowingly signs or directs another person to  
3 sign such a written statement shall be guilty of a Class 1 misdemeanor and subject to a claim  
4 for violation of G.S. 75-1.1. Upon conviction and in the event the court shall grant any  
5 defendant a suspended sentence, the court may in its discretion include as a condition of such  
6 suspension a provision that the defendant shall reimburse the party who suffered loss on such  
7 conditions as the court shall determine are proper.

8 The elements of the offense herein stated are the furnishing of the false written statement  
9 with knowledge that it is false and the subsequent or simultaneous receipt of payment from an  
10 obligor or ~~purchaser, and in any purchaser by the person signing the document, a person~~  
11 directing another to sign the document, or any person or entity for whom the document was  
12 signed. In any criminal prosecution hereunder it shall not be necessary for the State to prove  
13 that the obligor, purchaser, lender or title insurance company relied upon the false statement or  
14 that any person was injured thereby.

15 In addition to the criminal sanctions and civil liabilities created by this section, conduct  
16 constituting the offense herein stated and causing actual harm to any person by any licensed  
17 contractor or qualifying party, as that term is used in Chapter 87 of the General Statutes, shall  
18 constitute deceit and misconduct subject to disciplinary action under Chapter 87 of the General  
19 Statutes, including revocation, suspension, or restriction of a license or the ability to act as a  
20 qualifying party for a license."

21 **SECTION 11.** G.S. 44A-27 reads as rewritten:

22 **"§ 44A-27. Actions on payment bonds; service of notice.**

23 (a) Subject to the provision of subsection (b) hereof, any claimant who has performed  
24 labor or furnished materials in the prosecution of the work required by any contract for which a  
25 payment bond has been given pursuant to the provisions of this Article, and who has not been  
26 paid in full therefor before the expiration of 90 days after the day on which the claimant  
27 performed the last such labor or furnished the last such materials for which he claims payment,  
28 may bring an action on such payment bond in his own name, to recover any amount due him  
29 for such labor or materials and may prosecute such action to final judgment and have execution  
30 on the judgment.

31 (b) Any claimant who has a direct contractual relationship with any subcontractor but  
32 has no contractual relationship, express or implied, with the contractor may bring an action on  
33 the payment bond only if he has given written notice of claim on payment bond to the  
34 contractor within 120 days from the date on which the claimant performed the last of the labor  
35 or furnished the last of the materials for which he claims payment, stating with substantial  
36 accuracy the amount claimed and the name of the person for whom the work was performed or  
37 to whom the material was furnished. The contractor shall furnish a copy of the payment bond  
38 required by this Article within seven calendar days in response to a written request served by  
39 any claimant in accordance with the provisions of G.S. 44A-27(c). Subject to the exception set  
40 forth in subsection (e) of this section, unless the contractor has failed to satisfy its obligation to  
41 timely furnish a copy of the payment bond to a claimant upon proper request by the claimant,  
42 the claim of such a claimant shall not include labor or materials provided more than 75 days  
43 prior to the claimant's service, in accordance with subsections (c) and (d) of this section, of its  
44 written notice of public subcontract to the contractor.

45 (c) The ~~notice~~ notices required by and any requests for copy of payment bond  
46 referenced by subsection (b), (b) of this section, ~~above,~~ shall be served by registered or certified  
47 mail, or by signature confirmation as provided by the United States Postal Service, postage  
48 prepaid, in an envelope addressed to such contractor at any place where his office is regularly  
49 maintained for the transaction of business or to such agent identified in the contractor's project  
50 statement referenced in subdivision (1) of subsection (f) of this section or served in any manner  
51 provided by law for the service of summons.



1 Motor Vehicles that a lien is asserted and sale is proposed and shall remit to  
2 the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles  
3 shall issue notice by ~~registered or~~ certified mail, return receipt requested, to  
4 the person having legal title to the property, if reasonably ascertainable, to  
5 the person with whom the lienor dealt if different, and to each secured party  
6 and other person claiming an interest in the property who is actually known  
7 to the Division or who can be reasonably ascertained. The notice shall state  
8 that a lien has been asserted against specific property and shall identify the  
9 lienor, the date that the lien arose, the general nature of the services  
10 performed and materials used or sold for which the lien is asserted, the  
11 amount of the lien, and that the lienor intends to sell the property in  
12 satisfaction of the lien. The notice shall inform the recipient that the  
13 recipient has the right to a judicial hearing at which time a determination  
14 will be made as to the validity of the lien prior to a sale taking place. The  
15 notice shall further state that the recipient has a period of 10 days from the  
16 date of receipt in which to notify the Division by ~~registered or~~ certified mail,  
17 return receipt requested, that a hearing is desired and that if the recipient  
18 wishes to contest the sale of his property pursuant to such lien, the recipient  
19 should notify the Division that a hearing is desired. The notice shall state the  
20 required information in simplified terms and shall contain a form whereby  
21 the recipient may notify the Division that a hearing is desired by the return  
22 of such form to the Division. The Division shall notify the lienor whether  
23 such notice is timely received by the Division. In lieu of the notice by the  
24 lienor to the Division and the notices issued by the Division described  
25 above, the lienor may issue notice on a form approved by the Division  
26 pursuant to the notice requirements above. If notice is issued by the lienor,  
27 the recipient shall return the form requesting a hearing to the lienor, and not  
28 the Division, within 10 days from the date the recipient receives the notice if  
29 a judicial hearing is requested. If the ~~registered or~~ certified mail notice has  
30 been returned as undeliverable and the notice of a right to a judicial hearing  
31 has been given to the owner of the motor vehicle in accordance with  
32 G.S. 20-28.4, no further notice is required. Failure of the recipient to notify  
33 the Division or lienor, as specified in the notice, within 10 days of the receipt  
34 of such notice that a hearing is desired shall be deemed a waiver of the right  
35 to a hearing prior to the sale of the property against which the lien is  
36 asserted, and the lienor may proceed to enforce the lien by public or private  
37 sale as provided in this section and the Division shall transfer title to the  
38 property pursuant to such sale. If the Division or lienor, as specified in the  
39 notice, is notified within the 10-day period provided above that a hearing is  
40 desired prior to sale, the lien may be enforced by sale as provided in this  
41 section and the Division will transfer title only pursuant to the order of a  
42 court of competent jurisdiction.

43 If the ~~registered or~~ certified mail notice has been returned as  
44 undeliverable, or if the name of the person having legal title to the vehicle  
45 cannot reasonably be ascertained and the fair market value of the vehicle is  
46 less than eight hundred dollars (\$800.00), the lienor may institute a special  
47 proceeding in the county where the vehicle is being held, for authorization to  
48 sell that vehicle. Market value shall be determined by the schedule of values  
49 adopted by the Commissioner under G.S. 105-187.3.

50 In such a proceeding a lienor may include more than one vehicle, but the  
51 proceeds of the sale of each shall be subject only to valid claims against that

1 vehicle, and any excess proceeds of the sale shall be paid immediately to the  
2 Treasurer for disposition pursuant to Chapter 116B of the General Statutes.

3 The application to the clerk in such a special proceeding shall contain the  
4 notice of sale information set out in subsection (f) hereof. If the application  
5 is in proper form the clerk shall enter an order authorizing the sale on a date  
6 not less than 14 days therefrom, and the lienor shall cause the application  
7 and order to be sent immediately by first-class mail pursuant to G.S. 1A-1,  
8 Rule 5, to each person to whom notice was mailed pursuant to this  
9 subsection. Following the authorized sale the lienor shall file with the clerk a  
10 report in the form of an affidavit, stating that the lienor has complied with  
11 the public or private sale provisions of G.S. 44A-4, the name, address, and  
12 bid of the high bidder or person buying at a private sale, and a statement of  
13 the disposition of the sale proceeds. The clerk then shall enter an order  
14 directing the Division to transfer title accordingly.

15 If prior to the sale the owner or legal possessor contests the sale or lien in  
16 a writing filed with the clerk, the proceeding shall be handled in accordance  
17 with G.S. 1-301.2.

- 18 (2) If the property upon which the lien is claimed is other than a motor vehicle  
19 required to be registered, the lienor following the expiration of the 30-day  
20 period provided by subsection (a) shall issue notice to the person having  
21 legal title to the property, if reasonably ascertainable, and to the person with  
22 whom the lienor dealt if different by ~~registered or~~ certified mail, return  
23 receipt requested. Such notice shall state that a lien has been asserted against  
24 specific property and shall identify the lienor, the date that the lien arose, the  
25 general nature of the services performed and materials used or sold for  
26 which the lien is asserted, the amount of the lien, and that the lienor intends  
27 to sell the property in satisfaction of the lien. The notice shall inform the  
28 recipient that the recipient has the right to a judicial hearing at which time a  
29 determination will be made as to the validity of the lien prior to a sale taking  
30 place. The notice shall further state that the recipient has a period of 10 days  
31 from the date of receipt in which to notify the lienor by ~~registered or~~  
32 certified mail, return receipt requested, that a hearing is desired and that if  
33 the recipient wishes to contest the sale of his property pursuant to such lien,  
34 the recipient should notify the lienor that a hearing is desired. The notice  
35 shall state the required information in simplified terms and shall contain a  
36 form whereby the recipient may notify the lienor that a hearing is desired by  
37 the return of such form to the lienor. Failure of the recipient to notify the  
38 lienor within 10 days of the receipt of such notice that a hearing is desired  
39 shall be deemed a waiver of the right to a hearing prior to sale of the  
40 property against which the lien is asserted and the lienor may proceed to  
41 enforce the lien by public or private sale as provided in this section. If the  
42 lienor is notified within the 10-day period provided above that a hearing is  
43 desired prior to sale, the lien may be enforced by sale as provided in this  
44 section only pursuant to the order of a court of competent jurisdiction."

45 **SECTION 12.(b)** G.S. 44A-24.10 reads as rewritten:

46 **"§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending**  
47 **suit within 30 days after service on owner.**

48 If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending  
49 suit to enforce a lien within 30 days after a properly served written demand of the owner,  
50 lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be  
51 by ~~registered or~~ certified mail, return receipt requested, or by personal service. The claimant

1 shall file proof of properly served written demand with the clerk of the superior court. The  
2 provisions of this section shall not extend to any other deadline provided by law for the filing  
3 of any pleadings or for the foreclosure of any lien governed by this Part."

4 **SECTION 12.(c)** G.S. 44A-43 reads as rewritten:

5 "**§ 44A-43. Enforcement of self-service storage facility lien.**

6 ...  
7 (b) Notice and Hearing:

8 (1) If the property upon which the lien is claimed is a motor vehicle, the lienor,  
9 following the expiration of the 15-day period provided by subsection (a),  
10 shall give notice to the Division of Motor Vehicles that a lien is asserted and  
11 that a sale is proposed. The lienor shall remit to the Division a fee of two  
12 dollars (\$2.00); and shall also furnish the Division with the last known  
13 address of the occupant. The Division of Motor Vehicles shall issue notice  
14 by ~~registered or~~ certified mail, return receipt requested to the person having  
15 legal title to the vehicle, if reasonably ascertainable, and to the occupant, if  
16 different, at his last known address. The notice shall:

17 ...

18 c. State that the legal title holder and the occupant have a period of 10  
19 days from the date of receipt of the notice in which to notify the  
20 Division of Motor Vehicles by ~~registered or~~ certified mail, return  
21 receipt requested, that a hearing is desired to contest the sale of the  
22 vehicle pursuant to the lien.

23 The person with legal title or the occupant must, within 10 days of receipt of the notice  
24 from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the  
25 vehicle pursuant to the lien, and that the Division should so notify lienor.

26 Failure of the person with legal title or the occupant to notify the Division that a hearing is  
27 desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against  
28 which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor  
29 may proceed to enforce the lien by a public sale as provided by this section; and the Division  
30 shall transfer title to the property pursuant to such sale.

31 If the Division is notified within the 10-day period provided in this section that a hearing is  
32 desired prior to the sale, the lien may be enforced by a public sale as provided in this section  
33 and the Division will transfer title only pursuant to the order of a court of competent  
34 jurisdiction.

35 ...  
36 (c) Public Sale. –

37 (1) Not less than 20 days prior to sale by public sale the lienor:

38 a. Shall cause notice to be delivered by ~~registered or~~ certified mail to  
39 the person having a security interest in the property if reasonably  
40 ascertainable, and to the occupant at the occupant's last known  
41 address. Notice given pursuant to this subdivision shall be presumed  
42 delivered when it is properly addressed, first-class postage prepaid,  
43 and deposited with the United States Postal Service.

44 ...."

45 **SECTION 13.** Sections 1 through 3 and Sections 5 through 11 of this act become  
46 effective January 1, 2013, and apply to improvements to real property for which the first permit  
47 required to be obtained is obtained on or after that date or, with respect to projects for which no  
48 permit is required, apply to improvement to real property commenced on or after that date.  
49 Sections 4, 12, and 13 of this act are effective when this act becomes law.