

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

FILED SENATE  
May 22, 2012  
S.B. 864  
PRINCIPAL CLERK

S

D

SENATE DRS15206-TGz-13S (03/16)

Short Title: Mechanics Liens/Payment Bond Reforms. (Public)

Sponsors: Senator Brunstetter.

Referred to:

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.

4 The General Assembly of North Carolina enacts:

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

6 "§ 44A-7. Definitions.

7 Unless the context otherwise ~~requires in this Article~~ requires, the following definitions  
8 apply in this Article:

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

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

13 ~~(1)(3)~~ "Improve" means to Improve. – To build, effect, alter, repair, or demolish  
14 any improvement upon, connected with, or on or beneath the surface of any  
15 real property, or to excavate, clear, grade, fill or landscape any real property,  
16 or to construct driveways and private roadways, or to furnish materials,  
17 including trees and shrubbery, for any of such purposes, or to perform any  
18 labor upon such improvements, and shall also mean and include any design  
19 or other professional or skilled services furnished by architects, engineers,  
20 land surveyors and landscape architects registered under Chapter 83A, 89A  
21 or 89C of the General Statutes, off-site design, fabrication, and related labor  
22 and materials in connection with noncommodity prefabricated materials,  
23 products systems, or equipment customized for the use and benefit of  
24 improving particular real property, whether delivered to the real property or  
25 not, and rental of equipment directly utilized on the real property in making  
26 the improvement.

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

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

34 ~~(3)(6)~~ An "owner" is a Owner. – A person who has an interest in the real property  
35 improved and for whom an improvement is made and who ordered the



\* D R S 1 5 2 0 6 - T G Z - 1 3 S \*

1 improvement to be made. "Owner" includes successors in interest of the  
2 owner and agents of the owner acting within their authority.

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

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

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

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

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

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

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

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

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

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

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

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

30 b. An authorized depository under the exclusive care and custody of a  
31 designated delivery service authorized pursuant to 26 U.S.C. §  
32 7502(f)(2).

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

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

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

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

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

43 **"§ 44A-12. Filing claim of lien on real property.**

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

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

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

CLAIM OF LIEN ON REAL PROPERTY

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

\_\_\_\_\_  
Lien Claimant

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

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

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

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

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

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

- (1) An agreement to waive the right to file a claim of lien on real property granted under this Part, or an agreement to waive the right to serve a notice of claim of lien upon funds granted under Part 2 of this Article, which agreement is in anticipation of and in consideration for the awarding of any

contract, either expressed or implied, for the making of an improvement 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.

(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)

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

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

FINAL LIEN WAIVER

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

(description of property)

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

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

SECTION 4. G.S. 44A-13 is amended by adding a new subsection to read:

"§ 44A-13. Action to enforce claim of lien on real property.

...

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

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

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

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

Upon compliance with this Article:

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

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

1 tier subcontractor, to the extent of the second tier subcontractor's lien provided in this  
2 subdivision, shall also be ~~entitled to be~~ subrogated to the lien upon funds of the first tier  
3 subcontractor with whom the second tier contractor dealt provided for in subdivision (1) of this  
4 section and shall ~~be entitled to~~ perfect it by service of the notice of claim of lien upon funds to  
5 the extent of the claim.

6 ~~(3)(c)~~ A third tier subcontractor who furnished labor, materials, or rental equipment at the  
7 site of the improvement shall ~~be entitled to~~ have a lien upon funds that are owed to the second  
8 tier subcontractor with whom the third tier subcontractor dealt and that arise out of the  
9 improvement on which the third tier subcontractor worked or furnished materials. A third tier  
10 subcontractor, to the extent of the third tier subcontractor's lien upon funds provided in this  
11 subdivision, shall also ~~be entitled to~~ be subrogated to the lien upon funds of the second tier  
12 subcontractor with whom the third tier contractor dealt and to the lien upon funds of the first  
13 tier subcontractor with whom the second tier subcontractor dealt to the extent that the second  
14 tier subcontractor is ~~entitled to be~~ subrogated thereto, and in either case shall ~~be entitled to~~  
15 perfect ~~the same it~~ by service of the notice of claim of lien upon funds to the extent of the  
16 claim.

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

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

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

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

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

43 **"§ 44A-19. Notice of claim of lien upon funds.**

- 44 (a) Notice of a claim of lien upon funds shall set forth all of the following information:
- 45 (1) The name and address of the person claiming the lien upon funds.
  - 46 (2) A general description of the real property improved.
  - 47 (3) The name and address of the person with whom the lien claimant contracted  
48 to improve real property.
  - 49 (4) The name and address of each person against or through whom subrogation  
50 rights are claimed.

- 1 (5) A general description of the contract and the person against whose interest
- 2 the lien upon funds is claimed.
- 3 (6) The amount of the lien upon funds claimed by the lien claimant under the
- 4 contract.

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

7 NOTICE OF CLAIM OF LIEN UPON FUNDS BY FIRST, SECOND, OR THIRD TIER  
8 SUBCONTRACTOR

9 To:

- 10 1. \_\_\_\_\_, owner of property involved.
- 11 (Name and address)
- 12 2. \_\_\_\_\_, ~~general~~ contractor.
- 13 (Name and address)
- 14 3. \_\_\_\_\_, first tier subcontractor against or through
- 15 (Name and address) whom subrogation is claimed, if any.
- 16 4. \_\_\_\_\_, second tier subcontractor against or through
- 17 (Name and address) whom subrogation is claimed, if any.

18 General description of real property ~~where~~ on which labor performed or material furnished:

19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_

22 General description of undersigned lien claimant's contract including the names of the parties  
23 thereto:

24 \_\_\_\_\_  
25 \_\_\_\_\_

26 The amount of lien upon funds claimed pursuant to the above described contract:

27 \$ \_\_\_\_\_

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

31 Dated \_\_\_\_\_

32 \_\_\_\_\_, Lien Claimant

33 \_\_\_\_\_  
34 (Address)

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

37 NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR MORE REMOTE  
38 THAN THE THIRD TIER

39 To:

- 40 \_\_\_\_\_, person holding funds against which lien upon funds is claimed.
- 41 (Name and Address)

42 General description of real property ~~where~~ on which labor performed or material  
43 furnished: \_\_\_\_\_

44 \_\_\_\_\_  
45 \_\_\_\_\_

46 General description of undersigned lien claimant's contract including the names of the parties  
47 thereto:

48 \_\_\_\_\_  
49 \_\_\_\_\_

50 The amount of lien upon funds claimed pursuant to the above described contract:

51 \$ \_\_\_\_\_

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

4 Dated: \_\_\_\_\_

5 \_\_\_\_\_, Lien Claimant  
6 (Address)

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

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

15 (1) When the notice of claim of lien upon funds is attached to a claim of lien on  
16 real property filed pursuant to ~~G.S. 44A-20(d) or~~  
17 G.S. 44A-23. G.S. 44A-20(d).

18 (2) When the notice of claim of lien upon funds is filed by the obligor for the  
19 purpose of discharging the claim of lien upon funds in accordance with  
20 G.S. 44A-20(e).

21 (f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section  
22 is not a violation of G.S. 44A-12.1."

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

24 **"§ 44A-20. Duties and liability of obligor.**

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

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

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

39 (d) If the obligor is an owner of the property being improved, the lien claimant shall be  
40 entitled to a claim of lien upon real property upon the interest of the obligor in the real property  
41 to the extent of the owner's personal liability under subsection (b) of this section, which claim  
42 of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through  
43 G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and  
44 subject to the same filing requirements and periods of limitation applicable to the contractor.  
45 The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the  
46 filing of the claim of lien on real property pursuant to G.S. 44A-12. A lien waiver signed by the  
47 contractor prior to filing of the claim of lien on real property waives the subcontractor's right to  
48 a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien  
49 on funds under this Article. The claim of lien on real property as provided under this subsection  
50 shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice  
51 of claim of lien upon funds given pursuant to G.S. 44A-19 as an exhibit together with proof of



1 service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the  
2 obligor is personally liable for the debt under subsection (b) of this section.

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

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

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

15 **"§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation rights of  
16 subcontractor.**

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

33 (b) Second or third subcontractor. –

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

38 a. The ~~owner or contractor,~~ within 30 days following the date the  
39 ~~building permit is issued for the improvement of the real property  
40 involved, involved or within 30 days following the date the  
41 contractor is awarded the contract for the improvement of the real  
42 property involved, whichever is later,~~ posts on the property in a  
43 visible location adjacent to the posted ~~building permit permit, if a  
44 permit is required,~~ and files in the office of the clerk of superior court  
45 in each county wherein the real property to be improved is located, a  
46 completed and signed notice of contract form and the second or third  
47 tier subcontractor fails to serve upon the contractor a completed and  
48 signed notice of subcontract form by the same means of service as  
49 described in G.S. 44A-19(d); or

50 b. After the posting and filing of a signed notice of contract and the  
51 service upon the contractor of a signed notice of subcontract, the

contractor serves upon the second or third tier subcontractor, within five days following each subsequent payment, by the same means of service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the notice of subcontract form set forth herein.

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

"NOTICE OF CONTRACT

"(1) Name and address of the Contractor:

"(2) Name and address of the owner of the real property at the time this Notice of 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-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:

1 **"§ 44A-24. False statement a ~~misdemeanor~~, misdemeanor, an unfair and deceptive trade**  
2 **practice, and grounds for disciplinary action against a licensed contractor or**  
3 **qualifying party.**

4 If any contractor or other person receiving payment from an obligor for an improvement to  
5 real property or from a purchaser for a conveyance of real property with improvements subject  
6 to this Article or to Article 3 of this Chapter shall knowingly furnish to such obligor, purchaser,  
7 or to a lender who obtains a security interest in said real property, or to a title insurance  
8 company insuring title to such real property, a false written statement of the sums due or  
9 claimed to be due for labor or material furnished at the site of improvements to such real  
10 property, then such contractor, subcontractor or other person shall be guilty of a Class 1  
11 ~~misdemeanor~~, misdemeanor and shall be subject to a claim for violation of G.S. 75-1.1 by any  
12 obligor, purchaser, lender who obtains a security interest in such property, title insurance  
13 company insuring title to such property, or any person who otherwise would be entitled to a  
14 claim of lien on real property under this Article and who suffers actual harm as a result of the  
15 misrepresentation. In addition, any person who knowingly signs or directs another person to  
16 sign such a written statement shall be guilty of a Class 1 misdemeanor and subject to a claim  
17 for violation of G.S. 75-1.1. Upon conviction and in the event the court shall grant any  
18 defendant a suspended sentence, the court may in its discretion include as a condition of such  
19 suspension a provision that the defendant shall reimburse the party who suffered loss on such  
20 conditions as the court shall determine are proper.

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

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

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

35 **"§ 44A-27. Actions on payment bonds; service of notice.**

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

44 (b) Any claimant who has a direct contractual relationship with any subcontractor but  
45 has no contractual relationship, express or implied, with the contractor may bring an action on  
46 the payment bond only if he has given written notice of claim on payment bond to the  
47 contractor within 120 days from the date on which the claimant performed the last of the labor  
48 or furnished the last of the materials for which he claims payment, stating with substantial  
49 accuracy the amount claimed and the name of the person for whom the work was performed or  
50 to whom the material was furnished. The contractor shall furnish a copy of the payment bond  
51 required by this Article within seven calendar days in response to a written request served by

1 any claimant in accordance with the provisions of G.S. 44A-27(c). Subject to the exception set  
 2 forth in subsection (e) of this section, unless the contractor has failed to satisfy its obligation to  
 3 timely furnish a copy of the payment bond to a claimant upon proper request by the claimant,  
 4 the claim of such a claimant shall be limited to the labor or materials provided within 60 days  
 5 prior to the claimant's service, in accordance with subsections (c) and (d) of this section, of its  
 6 written notice of public subcontract to the contractor.

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

14 (d) The form of the notice of public subcontract to be served pursuant to subsection (b)  
 15 of this section shall be substantially as follows:

16 "NOTICE OF PUBLIC SUBCONTRACT

- 17
- 18 (1) Name and address of the subcontractor giving notice of public subcontract:  
 19 (2) General description of the real property on which the labor was performed or  
 20 the material was furnished (street address, tax map lot and block number,  
 21 reference to recorded instrument, or any description that reasonably  
 22 identifies the real property):  
 23 (3) General description of the subcontractor's contract, including the names and  
 24 addresses of the parties thereto:  
 25 (4) General description of the labor and material performed and furnished  
 26 thereunder:

27

28 Dated: \_\_\_\_\_

29 \_\_\_\_\_  
 30 Subcontractor"

31 (e) Notwithstanding subsections (b), (c), and (d) of this section, the obligation to  
 32 provide a notice of public subcontract shall not apply to claims of ten thousand dollars  
 33 (\$10,000.00) or less and, for any claim exceeding ten thousand dollars (\$10,000.00), shall  
 34 apply only to that portion of the claim in excess of ten thousand dollars (\$10,000.00).

35 (f) In connection with any construction contract for which a bond is required by  
 36 G.S. 44A-26(a):

- 37 (1) The contractor shall provide to each subcontractor that it engages to perform  
 38 labor or furnish materials in the performance of the construction contract a  
 39 contractor's project statement containing all of the following information:  
 40 a. The name of the project.  
 41 b. The physical address of the project.  
 42 c. The name of the contracting body.  
 43 d. The name of the contractor.  
 44 e. The name, phone number, and mailing address of an agent authorized  
 45 by the contractor to accept service of the requests for payment bond,  
 46 the notice of public subcontract, and the notice of claim on payment  
 47 bond referenced in subsection (b) of this section.  
 48 f. The name and address of the principal place of business of the surety  
 49 issuing the payment bond required by G.S. 44A-26(a) for the  
 50 construction contract.

1           (2)    Each subcontractor shall provide each subcontractor that it engages to  
2                    perform labor or furnish materials in the performance of the construction  
3                    contract a copy of the contractor's project statement.

4           (3)    No agreement entered into between a contractor and a subcontractor or  
5                    between a subcontractor and its subcontractor shall be enforceable against  
6                    the lower tier party until the contractor's project statement has been provided  
7                    to the lower tier party."

8           **SECTION 12.** G.S. 105-362(b) reads as rewritten:

9    **"§ 105-362. Discharge of lien on real property.**

10    ...

11    (b)    Release of Separate Parcels from Tax Lien. –

12    ...

13           (2)    When real property listed as one parcel is divided, a part thereof ~~may~~shall  
14                    be released as provided in subdivision (b)(1), above, after the assessed  
15                    valuation of the part to be released has been determined and certified to the  
16                    tax collector by the ~~tax supervisor~~county assessor and payment of all  
17                    past-due taxes on the parent parcel, the taxes on the part to be released, plus  
18                    any penalties, interest, and costs allowed by law have been fully paid. The  
19                    county assessor shall have 10 business days from receipt of a written request  
20                    for valuation under this subdivision to provide the valuation; provided,  
21                    however, this subdivision shall not apply upon a showing of good cause by  
22                    the tax collector based on the tax payment history of the owner of the parent  
23                    parcel."

24    **SECTION 13.1.** G.S. 44A-4(b) reads as rewritten:

25    **"§ 44A-4. Enforcement of lien by sale.**

26    ...

27    (b)    Notice and Hearings. –

28           (1)    If the property upon which the lien is claimed is a motor vehicle that is  
29                    required to be registered, the lienor following the expiration of the relevant  
30                    time period provided by subsection (a) shall give notice to the Division of  
31                    Motor Vehicles that a lien is asserted and sale is proposed and shall remit to  
32                    the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles  
33                    shall issue notice by ~~registered or~~ certified mail, return receipt requested, to  
34                    the person having legal title to the property, if reasonably ascertainable, to  
35                    the person with whom the lienor dealt if different, and to each secured party  
36                    and other person claiming an interest in the property who is actually known  
37                    to the Division or who can be reasonably ascertained. The notice shall state  
38                    that a lien has been asserted against specific property and shall identify the  
39                    lienor, the date that the lien arose, the general nature of the services  
40                    performed and materials used or sold for which the lien is asserted, the  
41                    amount of the lien, and that the lienor intends to sell the property in  
42                    satisfaction of the lien. The notice shall inform the recipient that the  
43                    recipient has the right to a judicial hearing at which time a determination  
44                    will be made as to the validity of the lien prior to a sale taking place. The  
45                    notice shall further state that the recipient has a period of 10 days from the  
46                    date of receipt in which to notify the Division by ~~registered or~~ certified mail,  
47                    return receipt requested, that a hearing is desired and that if the recipient  
48                    wishes to contest the sale of his property pursuant to such lien, the recipient  
49                    should notify the Division that a hearing is desired. The notice shall state the  
50                    required information in simplified terms and shall contain a form whereby  
51                    the recipient may notify the Division that a hearing is desired by the return

1 of such form to the Division. The Division shall notify the lienor whether  
2 such notice is timely received by the Division. In lieu of the notice by the  
3 lienor to the Division and the notices issued by the Division described  
4 above, the lienor may issue notice on a form approved by the Division  
5 pursuant to the notice requirements above. If notice is issued by the lienor,  
6 the recipient shall return the form requesting a hearing to the lienor, and not  
7 the Division, within 10 days from the date the recipient receives the notice if  
8 a judicial hearing is requested. If the ~~registered or~~ certified mail notice has  
9 been returned as undeliverable and the notice of a right to a judicial hearing  
10 has been given to the owner of the motor vehicle in accordance with  
11 G.S. 20-28.4, no further notice is required. Failure of the recipient to notify  
12 the Division or lienor, as specified in the notice, within 10 days of the receipt  
13 of such notice that a hearing is desired shall be deemed a waiver of the right  
14 to a hearing prior to the sale of the property against which the lien is  
15 asserted, and the lienor may proceed to enforce the lien by public or private  
16 sale as provided in this section and the Division shall transfer title to the  
17 property pursuant to such sale. If the Division or lienor, as specified in the  
18 notice, is notified within the 10-day period provided above that a hearing is  
19 desired prior to sale, the lien may be enforced by sale as provided in this  
20 section and the Division will transfer title only pursuant to the order of a  
21 court of competent jurisdiction.

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

29 In such a proceeding a lienor may include more than one vehicle, but the  
30 proceeds of the sale of each shall be subject only to valid claims against that  
31 vehicle, and any excess proceeds of the sale shall be paid immediately to the  
32 Treasurer for disposition pursuant to Chapter 116B of the General Statutes.

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

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

- 48 (2) If the property upon which the lien is claimed is other than a motor vehicle  
49 required to be registered, the lienor following the expiration of the 30-day  
50 period provided by subsection (a) shall issue notice to the person having  
51 legal title to the property, if reasonably ascertainable, and to the person with

1 whom the lienor dealt if different by ~~registered or~~ certified mail, return  
2 receipt requested. Such notice shall state that a lien has been asserted against  
3 specific property and shall identify the lienor, the date that the lien arose, the  
4 general nature of the services performed and materials used or sold for  
5 which the lien is asserted, the amount of the lien, and that the lienor intends  
6 to sell the property in satisfaction of the lien. The notice shall inform the  
7 recipient that the recipient has the right to a judicial hearing at which time a  
8 determination will be made as to the validity of the lien prior to a sale taking  
9 place. The notice shall further state that the recipient has a period of 10 days  
10 from the date of receipt in which to notify the lienor by ~~registered or~~  
11 certified mail, return receipt requested, that a hearing is desired and that if  
12 the recipient wishes to contest the sale of his property pursuant to such lien,  
13 the recipient should notify the lienor that a hearing is desired. The notice  
14 shall state the required information in simplified terms and shall contain a  
15 form whereby the recipient may notify the lienor that a hearing is desired by  
16 the return of such form to the lienor. Failure of the recipient to notify the  
17 lienor within 10 days of the receipt of such notice that a hearing is desired  
18 shall be deemed a waiver of the right to a hearing prior to sale of the  
19 property against which the lien is asserted and the lienor may proceed to  
20 enforce the lien by public or private sale as provided in this section. If the  
21 lienor is notified within the 10-day period provided above that a hearing is  
22 desired prior to sale, the lien may be enforced by sale as provided in this  
23 section only pursuant to the order of a court of competent jurisdiction."

24 **SECTION 13.2.** G.S. 44A-24.10 reads as rewritten:

25 **"§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending**  
26 **suit within 30 days after service on owner.**

27 If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending  
28 suit to enforce a lien within 30 days after a properly served written demand of the owner,  
29 lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be  
30 by ~~registered or~~ certified mail, return receipt requested, or by personal service. The claimant  
31 shall file proof of properly served written demand with the clerk of the superior court. The  
32 provisions of this section shall not extend to any other deadline provided by law for the filing  
33 of any pleadings or for the foreclosure of any lien governed by this Part."

34 **SECTION 13.3.** G.S. 44A-43 reads as rewritten:

35 **"§ 44A-43. Enforcement of self-service storage facility lien.**

36 ...

37 (b) Notice and Hearing:

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

47 ...

48 c. State that the legal title holder and the occupant have a period of 10  
49 days from the date of receipt of the notice in which to notify the  
50 Division of Motor Vehicles by ~~registered or~~ certified mail, return

receipt requested, that a hearing is desired to contest the sale of the vehicle pursuant to the lien.

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

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

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

...  
(c) Public Sale. –

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

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

...."

**SECTION 14.** Sections 1 through 3 and Sections 5 through 11 of this act become effective January 1, 2013, and apply to improvements to real property for which the first permit required to be obtained is obtained on or after that date or, with respect to projects for which no permit is required, apply to improvement to real property commenced on or after that date. Section 12 of this act is effective when it becomes law and applies to taxes imposed for taxable years beginning on or after July 1, 2012. Sections 4, 13, and 14 of this act are effective when it becomes law.