

NORTH CAROLINA GENERAL ASSEMBLY  
1969 SESSION

CHAPTER 1112  
SENATE BILL 77

1 AN ACT TO AMEND THE LAWS RELATING TO MECHANICS' AND  
2 MATERIALMEN'S LIENS.

3  
4 The General Assembly of North Carolina do enact:

5  
6 **Section 1.** Chapter 44A of the General Statutes is hereby amended by inserting the  
7 following Article:

8 "Article 2.

9 "Part 1. Statutory Liens on Real Property.

10 "Liens of Mechanics, Laborers and Materialmen Dealing with Owner.

11 **"Sec. 44A-7. Definitions.** Unless the context otherwise requires in this Article:

- 12 (1) 'Improve' means to build, erect, alter, repair, or demolish any improvement  
13 upon, connected with, or on or beneath the surface of any real property, or to  
14 excavate, clear, grade, fill or landscape any real property, or to construct  
15 driveways and private roadways, or to furnish materials, including trees and  
16 shrubbery, for any of such purposes, or to perform any labor upon such  
17 improvements.  
18 (2) 'Improvement' means all or any part of any building, structure, erection,  
19 alteration, demolition, excavation, clearing, grading, filling, or landscaping,  
20 including trees and shrubbery, driveways, and private roadways, on real  
21 property.  
22 (3) 'Real property' means the real estate that is improved, including lands,  
23 leaseholds, tenements and hereditaments, and improvements placed thereon.  
24 (4) An 'owner' is a person who has an interest in the real property improved and  
25 for whom an improvement is made and who ordered the improvement to be  
26 made. 'Owner' includes successors in interest of the owner and agents of the  
27 owner acting within their authority.

28 **"Sec. 44A-8. Mechanics', laborers' and materialmen's lien; persons entitled to lien.** Any  
29 person who performs or furnishes labor or furnishes materials pursuant to a contract, either  
30 express or implied, with the owner of real property, for the making of an improvement thereon  
31 shall, upon complying with the provisions of this Article, have a lien on such real property to  
32 secure payment of all debts owing for labor done or material furnished pursuant to such  
33 contract.

34 **"Sec. 44A-9. Extent of lien.** Liens authorized under the provisions of this Article shall extend  
35 to the improvement and to the lot or tract on which the improvement is situated, to the extent of  
36 the interest of the owner. When the lot or tract on which a building is erected is not surrounded  
37 at the time of making the contract with the owner by an enclosure separating it from adjoining  
38 land of the same owner, the lot or tract to which any lien extends shall be such area as is  
39 reasonably necessary for the convenient use and occupation of such building, but in no case  
40 shall the area include a building, structure, or improvement not normally used or occupied or  
41 intended to be used or occupied with the building with respect to which the lien is claimed.

1 **"Sec. 44A-10. Effective date of liens.** Liens granted by this Article shall relate to and take  
2 effect from the time of the first furnishing of labor or materials at the site of the improvement  
3 by the person claiming the lien.

4 **"Sec. 44A-11. Perfecting liens.** Liens granted by this Article shall be perfected as of the time  
5 set forth in G.S. 44A-10 upon filing of claim of lien pursuant to G.S. 44A-12 and may be  
6 enforced pursuant to G.S. 44A-13.

7 **"Sec. 44A-12. Filing claim of lien.** (a) Place of Filing. All claims of lien against any real  
8 property must be filed in the office of the clerk of superior court in each county wherein the  
9 real property subject to the claim of lien is located. The clerk of superior court shall note the  
10 claim of lien on the judgment docket and index the same under the name of the record owner of  
11 the real property at the time the claim of lien is filed. An additional copy of the claim of lien  
12 may also be filed with any receiver, referee in bankruptcy or assignee for benefit of creditors  
13 who obtains legal authority over the real property.

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

17 "(c) Contents of Claim of Lien to be Filed. All claims of lien must be filed using a form  
18 substantially as follows:

19 CLAIM OF LIEN

20 1. Name and address of the person claiming the lien:

21 2. Name and address of the record owner of the real property claimed to be subject to  
22 the lien at the time the claim of lien is filed:

23 3. Description of the real property upon which the lien is claimed: (Street address, tax  
24 lot and block number, reference to recorded instrument, or any other description of real  
25 property is sufficient, whether or not it is specific, if it reasonably identifies what is  
26 described.)

27 4. Name and address of the person with whom the claimant contracted for the  
28 furnishing of labor or materials:

29 5. Date upon which labor or materials were first furnished upon said property by the  
30 claimant:

31 6. General description of the labor performed or materials furnished and the amount  
32 claimed therefor:

33 \_\_\_\_\_  
34 (Lien Claimant)

35  
36 Filed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

37 \_\_\_\_\_  
38 (Clerk of Superior Court)

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

42 "(d) No Amendment of Claim of Lien. A claim of lien may not be amended. A claim of  
43 lien may be cancelled by a claimant or his authorized agent or attorney and a new claim of lien  
44 substituted therefor within the time herein provided for original filing.

45 "(e) Notice of Assignment of Claim of Lien. When a claim of lien has been filed, it may  
46 be assigned of record by the lien claimant in a writing filed with the clerk of superior court who  
47 shall note said assignment in the margin of the judgment docket containing the claim of lien.  
48 Thereafter the assignee becomes the lien claimant of record.

49 **"Sec. 44A-13. Action to enforce lien.** (a) Where and When Action Instituted. An action to  
50 enforce the lien created by this Article may be instituted in any county in which the lien is filed.  
51 No such action may be commenced later than 180 days after the last furnishing of labor or

materials at the site of the improvement by the person claiming the lien. If the title to the real property against which the lien is asserted is by law vested in a receiver or trustee in bankruptcy, the lien shall be enforced in accordance with the orders of the court having jurisdiction over said real property.

"(b) Judgment. Judgment enforcing a lien under this article may be entered for the principal amount shown to be due, not exceeding the principal amount stated in the claim of lien enforced thereby. The judgment shall direct a sale of the real property subject to the lien thereby enforced.

**"Sec. 44A-14. Sale of property in satisfaction of judgment enforcing lien or upon order prior to judgment; distribution of proceeds.** (a) Execution Sale; Effect of Sale. Except as provided in subsection (b) of this Section, sales under this Article and distribution of proceeds thereof shall be made in accordance with the execution sale provisions set out in G.S. 1-339.41 through G.S. 1-339.76. The sale of real property to satisfy a lien granted by this Article shall pass all title and interest of the owner to the purchaser, good against all claims or interests recorded, filed or arising after the first furnishing of labor or materials at the site of the improvement by the person claiming a lien.

"(b) Sale of Property Upon Order Prior to Judgment. A resident judge of superior court in the district in which the action to enforce the lien is pending, a judge regularly holding the superior courts of the said district, any judge holding a session of superior court, either civil or criminal, in the said district, a special judge of superior court residing in the said district, or the Chief Judge of the District Court in which the action to enforce the lien is pending, may, upon notice to all interested parties and after a hearing thereupon and upon a finding that a sale prior to judgment is necessary to prevent substantial waste, destruction, depreciation or other damage to said real property prior to the final determination of said action, order any real property against which a lien under this Article is asserted, sold in any manner determined by said judge to be commercially reasonable. The rights of all parties shall be transferred to the proceeds of the sale. Application for such order and further proceedings thereon may be heard in or out of session.

**"Sec. 44A-15.** Attachment available to lien claimant. In addition to other grounds for attachment, in all cases where the owner removes or attempts or threatens to remove an improvement from real property subject to a lien under this Article, without the written permission of the lien claimant or with the intent to deprive the lien claimant of his lien, the remedy of attachment of the property subject to the lien shall be available to the lien claimant or any other person.

**"Sec. 44A-16. Discharge of record lien.** Any lien filed under this Article may be discharged by any of the following methods:

- (1) The lien claimant of record, his agent or attorney, in the presence of the clerk of superior court may acknowledge the satisfaction of the lien indebtedness, whereupon the clerk of superior court shall forthwith make upon the record of such lien an entry of such acknowledgment of satisfaction, which shall be signed by the lien claimant of record, his agent or attorney, and witnessed by the clerk of superior court.
- (2) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record which instrument states that the lien indebtedness has been paid or satisfied, whereupon the clerk of superior court shall cancel the lien by entry of satisfaction on the record of such lien.
- (3) By failure to enforce the lien within the time prescribed in this Article.
- (4) By filing in the office of the clerk of superior court the original or certified copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the lien has been dismissed or finally determined adversely to the claimant.

(5) Whenever a sum equal to the amount of the lien or liens claimed is deposited with the clerk of court, to be applied to the payment finally determined to be due, whereupon the clerk of superior court shall cancel the lien or liens of record."

**Sec. 2.** G.S. 44-6 as the same appears in the 1966 Replacement Volume 2A of the General Statutes is hereby amended by inserting in the seventh line thereof after the word "chapter" the words "and in Chapter 44A".

**Sec. 3.** G.S. 44-9 as the same appears in the 1966 Replacement Volume 2A of the General Statutes is hereby amended by inserting in the second line thereof after the word "article" the words "or in Article 2 of Chapter 44A".

**Sec. 4.** The following Sections of the General Statutes are hereby repealed: Chapter 44, G.S. 44-1; Chapter 44, G.S. 44-39; Chapter 44, G.S. 44-40; Chapter 44, G.S. 44-41; Chapter 44, G.S. 44-42; Chapter 44, G.S. 44-43; Chapter 44, G.S. 44-44; Chapter 44, G.S. 44-45; Chapter 44, G.S. 44-46.

**Sec. 4.1.** The provisions of this Act shall not apply to pending litigation.

**Sec. 5.** All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

**Sec. 5.1.** This Act shall be in full force and effect on January 1, 1970.

In the General Assembly read three times and ratified, this the 30th day of June,

1969.