

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-175
HOUSE BILL 1052

AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS LIEN AND PAYMENT BOND LAWS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S MECHANICS LIENS ON REAL PROPERTY COMMITTEE.

The General Assembly of North Carolina enacts:

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

"§ 44A-7. Definitions.

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

- (1) Contractor. – A person who contracts with an owner to improve real property.
- (2) First tier subcontractor. – A person who contracts with a contractor to improve real property.
- ~~(1)~~(3) ~~"Improve" means to~~ Improve. – To build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapter 83A, 89A or 89C of the General Statutes, and rental of equipment directly utilized on the real property in making the improvement.
- ~~(2)~~(4) ~~"Improvement" means all~~ Improvement. – All or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways, on real property.
- (5) Obligor. – An owner, contractor, or subcontractor in any tier who owes money to another as a result of the other's partial or total performance of a contract to improve real property.
- ~~(3)~~(6) ~~An "owner" is a~~ Owner. – A person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.
- ~~(4)~~(7) ~~"Real property" means the~~ Real property. – The real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.
- (8) Second tier subcontractor. – A person who contracts with a first tier subcontractor to improve real property.
- (9) Third tier subcontractor. – A person who contracts with a second tier subcontractor to improve real property."

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

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

(a) Perfection. – A claim of lien on real property granted by this Article shall be perfected as of the time provided in G.S. 44A-10 upon the ~~filing of the claim of lien on real~~



~~property under G.S. 44A-12 and may be enforced pursuant to G.S. 44A-13-occurrence of all of the following:~~

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. G.S. 44A-12(c) reads as rewritten:

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

...
(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:

I hereby certify that I have served the parties listed in (2) above in accordance with the requirements of G.S. 44A-11.

Lien Claimant

Filed this ____ day of ____, ____

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."

SECTION 4. G.S. 44A-13 is amended by adding new subsections 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.

(e) Subsequent Purchaser and Lender Not Necessary or Proper Parties to Action Filed After Claim of Lien Is Discharged. – If a claim of lien on real property filed under this Article is discharged pursuant to G.S. 44A-16(a)(5) or G.S. 44A-16(a)(6) prior to the filing of an action to enforce the claim of lien under this section, then neither a subsequent purchaser of the real property upon which the lien is claimed nor the subsequent purchaser's lender shall be a necessary or proper party to the action. However, nothing herein precludes the lien claimant from asserting any claims against any party that are separate and distinct from enforcement of the lien.

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

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

(h) Definition of "Subsequent Purchaser." – For purposes of this section, a "subsequent purchaser" means a party whose record interest is protected under G.S. 47-18, including any beneficiary of a deed of trust or mortgagee of that party, the priority of whose interest is protected under the provisions of G.S. 47-20, and who was not the owner of the real property at the time of the improvements giving rise to the lien claim as defined in G.S. 44A-7(6)."

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 tier subcontractor, to the extent of the second tier subcontractor's lien provided in this subdivision, shall also be ~~entitled to be~~ subrogated to the lien upon funds of the first tier

subcontractor with whom the second tier contractor dealt provided for in subdivision (1) of this section and shall ~~be entitled to~~ perfect it by service of the notice of claim of lien upon funds to the extent of the claim.

~~(3)(c)~~ A third 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 second tier subcontractor with whom the third tier subcontractor dealt and that arise out of the improvement on which the third tier subcontractor worked or furnished materials. A third tier subcontractor, to the extent of the third tier subcontractor's lien upon funds provided in this subdivision, shall also ~~be entitled to~~ be subrogated to the lien upon funds of the second tier subcontractor with whom the third tier contractor dealt and to the lien upon funds of the first tier subcontractor with whom the second tier subcontractor dealt to the extent that the second tier subcontractor is ~~entitled to be~~ subrogated thereto, and in either case shall ~~be entitled to perfect the same~~ it by service of the notice of claim of lien upon funds to the extent of the claim.

~~(4)(d)~~ Subcontractors more remote than the third tier 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 person with whom they dealt and that arise out of the improvement on which they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not be entitled to subrogation to the rights of other persons.

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

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

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

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

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

- (a) Notice of a claim of lien upon funds shall set forth all of the following information:
- (1) The name and address of the person claiming the lien upon funds.
 - (2) A general description of the real property improved.
 - (3) The name and address of the person with whom the lien claimant contracted to improve real property.
 - (4) The name and address of each person against or through whom subrogation rights are claimed.
 - (5) A general description of the contract and the person against whose interest the lien upon funds is claimed.
 - (6) The amount of the lien upon funds claimed by the lien claimant under the contract.

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

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

To:

1. _____, owner of property involved.

(Name and address)

2. _____, ~~general~~ contractor.

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

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

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

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

Dated _____

_____, Lien Claimant

(Address)

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

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

To:

_____, person holding funds against which lien upon funds is claimed.
(Name and Address)

General description of real property whereon which labor performed or material furnished:

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

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

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

Dated: _____

_____, Lien Claimant
(Address)

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

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

- (1) When the notice of claim of lien upon funds is attached to a claim of lien on real property filed pursuant to ~~G.S. 44A-20(d) or~~ G.S. 44A-23. G.S. 44A-20(d).
- (2) When the notice of claim of lien upon funds is filed by the obligor for the purpose of discharging the claim of lien upon funds in accordance with G.S. 44A-20(e).

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

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

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

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

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

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

(d) If the obligor is an owner of the property being improved, the lien claimant shall be entitled to a claim of lien upon real property upon the interest of the obligor in the real property to the extent of the owner's personal liability under subsection (b) of this section, which claim of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and subject to the same filing requirements and periods of limitation applicable to the contractor. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the filing of the claim of lien on real property pursuant to G.S. 44A-12. A lien waiver signed by the contractor prior to the commencement of an action to enforce a perfected claim of lien on real property granted under G.S. 44A-23 waives the subcontractor's right to enforce the contractor's claim of lien on real property, but does not affect the subcontractor's right to a claim of lien on funds or the subcontractor's right to a claim of lien on real property allowed under this subsection. The claim of lien on real property as provided under this subsection shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice of claim of lien upon funds given pursuant to G.S. 44A-19 as an exhibit together with proof of service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the obligor is personally liable for the debt under subsection (b) of this section.

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

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

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

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

(a) ~~First tier subcontractor. – A first tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article,~~ subcontractor may, to the extent of ~~this its~~ claim, enforce the claim of lien on real property of the contractor created by Part 1 of this Article. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the claim of lien on real property pursuant to G.S. 44A-12. When completing the claim of lien on real property form, the subcontractor may use as the date upon which labor or materials were first or last furnished on the real property either the date of the first or last furnishing of labor or materials on the real property by the subcontractor making the claim or the date of the first or last furnishing of labor or materials on the real property by the contractor through which the claim

of lien on real property is being asserted. 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 subcontractor without his written consent.

(b) Second or third tier subcontractor. –

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

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

b. After the posting and filing of a signed notice of contract and the 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-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.

(c) A lien waiver signed by the contractor prior to the commencement of an action to enforce a perfected claim of lien on real property granted under this section waives the subcontractor's right to enforce the contractor's claim of lien on real property, but does not affect the subcontractor's right to a claim of lien on funds or the subcontractor's right to a claim of lien on real property allowed under G.S. 44A-20(d)."

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

"§ 44A-24. False statement a ~~misdemeanor~~ misdemeanor 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. Upon conviction and in the event the court shall grant any defendant a suspended sentence, the court may in its discretion include as a condition of such suspension a provision that the defendant shall reimburse the party who suffered loss on such conditions as the court shall determine are proper.

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

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

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

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

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

(b) Any claimant who has a direct contractual relationship with any subcontractor but has no contractual relationship, express or implied, with the contractor may bring an action on

the payment bond only if he has given written notice of claim on payment bond to the contractor within 120 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. The contractor shall furnish a copy of the payment bond required by this Article within seven calendar days in response to a written request served by any claimant in accordance with the provisions of subsection (c) of this section. Subject to the exception set forth in subsection (e) of this section, unless the contractor has failed to satisfy its obligation to timely furnish a copy of the payment bond to a claimant upon proper request by the claimant, the claim of such a claimant shall not include labor or materials provided more than 75 days prior to the claimant's service, in accordance with subsections (c) and (d) of this section, of its written notice of public subcontract to the contractor.

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

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

"NOTICE OF PUBLIC SUBCONTRACT

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

Dated: _____

Subcontractor"

(e) Notwithstanding subsections (b), (c), and (d) of this section, the obligation to provide a notice of public subcontract shall not apply to claims of twenty thousand dollars (\$20,000) or less and, for any claim exceeding twenty thousand dollars (\$20,000), shall apply only to that portion of the claim in excess of twenty thousand dollars (\$20,000).

(f) In connection with any construction contract for which a bond is required by G.S. 44A-26(a), all of the following shall apply:

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

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

SECTION 12.(a) G.S. 44A-4(b) reads as rewritten:

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

...
(b) Notice and Hearings. –

- (1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles shall issue notice by ~~registered or~~ certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by ~~registered or~~ certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. If the ~~registered or~~ certified mail notice has been returned as undeliverable and the notice of a right to a judicial hearing has been given to the owner of the motor vehicle in accordance with G.S. 20-28.4, no further notice is required. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the ~~registered or~~ certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars (\$800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to

sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

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

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

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

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

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

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

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

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

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

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

- ...
- c. State that the legal title holder and the occupant have a period of 10 days from the date of receipt of the notice in which to notify the 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 13. 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. Sections 4, 12, and 13 of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2012.

s/ Neal Hunt
Presiding Officer of the Senate

s/ Paul Stam
Presiding Officer of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:48 p.m. this 12th day of July, 2012