

Article 2.

Statutory Liens on Real Property.

Part 1. Liens of Mechanics, Laborers, and Materialmen Dealing with Owner.

**§ 44A-7. Definitions.**

Unless the context otherwise 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.
- (3) 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.
- (4) 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.
- (4a) Inspection department. – Any city or county building inspection department authorized by Chapter 160A or Chapter 153A of the General Statutes.
- (4b) Lien agent. – A title insurance company or title insurance agency designated by an owner pursuant to G.S. 44A-11.1.
- (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.
- (6) 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.
- (6a) Potential lien claimant. – Any person entitled to claim a lien for improvements to real property under this Article who is subject to G.S. 44A-11.1.
- (7) 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. (1969, c. 1112, s. 1; 1975, c. 715, s. 1; 1985, c. 689, s. 13; 1995 (Reg. Sess., 1996), c. 607, s. 1; 2012-158, s. 1; 2012-175, s. 1.)

**§ 44A-8. Mechanics', laborers', and materialmen's lien; persons entitled to claim of lien on real property.**

Any person who performs or furnishes labor or professional design or surveying services or furnishes materials or furnishes rental equipment pursuant to a contract, either express or implied,

with the owner of real property for the making of an improvement thereon shall, upon complying with the provisions of this Article, have a right to file a claim of lien on real property on the real property to secure payment of all debts owing for labor done or professional design or surveying services or material furnished or equipment rented pursuant to the contract. (1969, c. 1112, s. 1; 1975, c. 715, s. 2; 1995 (Reg. Sess., 1996), c. 607, s. 2; 2005-229, s. 1.)

**§ 44A-9. Extent of claim of lien on real property.**

A claim of lien on real property authorized under this Article shall extend to the improvement and to the lot or tract on which the improvement is situated, to the extent of the interest of the owner. When the lot or tract on which a building is erected is not surrounded at the time of making the contract with the owner by an enclosure separating it from adjoining land of the same owner, the lot or tract to which any claim of lien on real property extends shall be the area that is reasonably necessary for the convenient use and occupation of the building, but in no case shall the area include a building, structure, or improvement not normally used or occupied or intended to be used or occupied with the building with respect to which the claim of lien on real property is claimed. (1969, c. 1112, s. 1; 2005-229, s. 1.)

**§ 44A-10. Effective date of claim of lien on real property.**

A claim of lien on real property granted by this Article shall relate to and take effect from the time of the first furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property. (1969, c. 1112, s. 1; 2005-229, s. 1.)

**§ 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 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. (1969, c. 1112, s. 1; 2005-229, s. 1; 2012-175, s. 2.)

**§ 44A-11.1. Lien agent; designation and duties.**

(a) With regard to any improvements to real property to which this Article is applicable for which the costs of the undertaking are thirty thousand dollars (\$30,000) or more, either at the time that the original building permit is issued or, in cases in which no building permit is required, at the time the contract for the improvements is entered into with the owner, the owner shall designate a lien agent no later than the time the owner first contracts with any person to improve the real property. Provided, however, that the owner is not required to designate a lien agent for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that is occupied by the owner as a residence, or for the addition of an accessory building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residence. The owner shall deliver written notice of designation to its designated lien agent by any method authorized in G.S. 44A-11.2(f), and shall include in its notice the street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property for the improvements to which the lien agent has been designated, and the owner's contact information. Designation of a lien agent pursuant to this section does not make the lien agent an agent of the owner for purposes of receiving a Claim of Lien on Real Property, a Notice of Claim of Lien upon Funds, a Notice of Subcontract, or for any purpose other than the receipt of notices to the lien agent required under G.S. 44A-11.2.

(a1) Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the costs of the undertaking are thirty thousand dollars (\$30,000) or more.

(b) The lien agent shall be chosen from among the list of registered lien agents maintained by the Department of Insurance pursuant to G.S. 58-26-45.

(c) Upon receipt of written notification of designation by an owner pursuant to subsection (a) of this section, the lien agent shall have the duties as set forth in G.S. 58-26-45(b).

(d) In the event that the lien agent resigns, is no longer licensed to serve as a lien agent, revokes its consent to serve as lien agent or is removed by the owner, or otherwise becomes unable or unwilling to serve before the completion of all improvements to the real property, the owner shall within three business days of notice of such event do all of the following:

- (1) Designate a successor lien agent and provide written notice of designation to the successor lien agent pursuant to subsection (a) of this section.
- (2) Provide the contact information for the successor lien agent to the inspection department that issued any required building permit and to any persons who requested information from the owner relating to the predecessor lien agent.
- (3) Display the contact information for the successor lien agent on the building permit or attachment thereto posted on the improved property or, if no building permit was required, on a sign complying with G.S. 44A-11.2(e).

(e) Until such time as the owner has fully complied with subsection (d) of this section, notice transmitted to the predecessor lien agent shall be deemed effective notice, notwithstanding the fact that the lien agent may have resigned or otherwise become unable or unwilling to serve.

(f) Any attorney who, in connection with a transaction involving improved real property subject to this section for which the attorney is serving as the closing attorney, contacts the lien agent in writing and requests copies of the notices to lien agent, renewals of notices to lien agent, and cancellations of notices to lien agent received by the lien agent relating to the real property not more than five business days prior to the date of recordation of a deed or deed of trust on the real property, shall be deemed to have fulfilled the attorney's professional obligation as closing attorney to check such notices to lien agent, renewals of notices to lien agent, and cancellations of notices to lien agent and shall have no further duty to request that the lien agent provide information pertaining to notices or cancellations received subsequently by the lien agent. (2012-158, s. 2; 2013-16, s. 1; 2013-117, s. 1; 2014-115, s. 35(a); 2016-59, s. 7; 2017-168, s. 1.)

**§ 44A-11.2. Identification of lien agent; notice to lien agent; effect of notice.**

(a) As used in this section, the term "contact information" means the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1.

(b) Within seven days of receiving a written request by a potential lien claimant by any delivery method specified in subsection (f) of this section, the owner shall provide a notice to the potential lien claimant containing the contact information for the lien agent, by the same delivery method used by the potential lien claimant in making the request.

(b1) A potential lien claimant making a request pursuant to subsection (b) of this section who did not receive the lien agent contact information pursuant to subsection (c) of this section, and who has not furnished labor, materials, rental equipment, or professional design or surveying services at the site of the improvements, or who last furnished labor, materials, rental equipment, or professional design or surveying services at the site of the improvements prior to the posting of the contact information for the lien agent pursuant to subsection (d) or (e) of this section, has no obligation to give notice to the lien agent under this section until the potential lien claimant has received the contact information from the owner.

(c) A contractor or subcontractor for improvements to real property subject to G.S. 44A-11.1 shall, within three business days of contracting with a lower-tier subcontractor who is not required to furnish labor, materials, rental equipment, or professional design or surveying services at the site of the improvements, provide the lower-tier subcontractor with a written notice containing the contact information for the lien agent designated by the owner. This notice shall be given pursuant to subsection (f) of this section or may be given by including the lien agent contact information in a written subcontract entered into by, or a written purchase order issued to, the lower-tier subcontractor entitled to the notice required by this subsection. Any contractor or subcontractor who has previously received notice of the lien agent contact information, whether from the building permit, the inspections office, a notice from the owner, contractor, or subcontractor, or by any other means, and who fails to provide the lien agent contact information to the lower-tier subcontractor in the time required under this subsection, is liable to the lower-tier subcontractor for any actual damages incurred by the lower-tier subcontractor as a result of the failure to give notice.

(d) For any improvement to real property subject to G.S. 44A-11.1, any building permit issued pursuant to G.S. 160A-417(d) or G.S. 153A-357(e) shall be conspicuously and

continuously posted on the property for which the permit is issued until the completion of all construction.

(e) For any improvement to real property subject to G.S. 44A-11.1, a sign disclosing the contact information for the lien agent shall be conspicuously and continuously posted on the property until the completion of all construction if the contact information for the lien agent is not contained in a building permit or attachment thereto posted on the property.

(f) In complying with any requirement for written notice pursuant to this section, the notice shall be addressed to the person required to be provided with the notice and shall be delivered by any of the following methods:

- (1) Certified mail, return receipt requested.
- (2) Signature confirmation as provided by the United States Postal Service.
- (3) Physical delivery and obtaining a delivery receipt from the lien agent.
- (4) Facsimile with a facsimile confirmation.
- (5) Depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2).
- (6) Electronic mail, with delivery receipt.
- (7) Utilizing an Internet Web site approved for such use by the designated lien agent to transmit to the designated lien agent, with delivery receipt, all information required to notify the lien agent of its designation pursuant to G.S. 44A-11.1 or to provide a notice to the designated lien agent pursuant to this section.

As used in this subsection, "delivery receipt" includes an electronic or facsimile confirmation. A return receipt or other receipt showing delivery of the notice to the addressee or written evidence that the notice was delivered by the postal service or other carrier to but not accepted by the addressee is prima facie evidence of receipt.

(g) For purposes of this subsection, "custom contractor" means a contractor duly licensed as a general contractor pursuant to Article 1 of Chapter 87 of the General Statutes who has contracted with an owner who is not an affiliate, relative, or insider of the contractor to build a single-family residence on the owner's property to be occupied by the owner as a residence. A custom contractor shall be deemed to have met the requirement of notice under subsections (l) and (m) of this section on the date of the lien agent's receipt of notice of its designation as lien agent delivered to it by the custom contractor in accordance with this section if, at the time of the lien agent's receipt of the notice, all of the following conditions are met:

- (1) The owner has not previously designated a lien agent for the improvements to which the notice of designation of lien agent relates.
- (2) The custom contractor is authorized to designate the lien agent on behalf of the owner under the written contract between the owner and custom contractor.
- (3) In addition to the information required to be included pursuant to G.S. 44A-11.1(a), the notice of designation of lien agent contains the following information:
  - a. The custom contractor's name, mailing address, telephone number, fax number (if available), and electronic mailing address (if available).
  - b. The name of the owner with whom the custom contractor has contracted to improve the real property identified in the notice.

After receiving a notice of its designation from a custom contractor pursuant to this subsection, the designated lien agent shall include the custom contractor's name and contact information in responding to any request for information pursuant to G.S. 58-26-45(b)(7).

(h) When a lien agent is not identified in a contract for improvements to real property subject to G.S. 44A-11.1 entered into between an owner and a design professional, the design professional shall be deemed to have met the requirement of notice under subsections (l) and (m) of this section on the date of the lien agent's receipt of the owner's designation of the lien agent. The owner shall provide written notice to the lien agent containing the information pertaining to the design professional required in a notice to lien agent pursuant to subdivisions (1) through (3) of subsection (i) of this section, by any method of delivery authorized in subsection (f) of this section. The lien agent shall include the design professional's name and address in its response to any persons requesting information relating to persons who have given notice to the lien agent pursuant to this section. For purposes of this subsection, the term "design professional" means any architects, engineers, land surveyors, and landscape architects registered under Chapter 83A, 89A, or 89C of the General Statutes.

(i) The form of the notice to be given under this section shall be legible, shall include the following information unless designated as "if available," and shall be substantially as follows:

**NOTICE TO LIEN AGENT**

- (1) Potential lien claimant's name, mailing address, telephone number, fax number (if available), and electronic mailing address (if available):
- (2) Name of the party with whom the potential lien claimant has contracted to improve the real property described below:
- (3) A description of the real property sufficient to identify the real property, such as the name of the project, if applicable, the physical address as shown on the building permit or notice received from the owner:
- (4) I give notice of my right subsequently to pursue a claim of lien for improvements to the real property described in this notice.

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

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

(j) The service of the Notice to Lien Agent does not satisfy the service or filing requirements applicable to a Notice of Subcontract under Part 2 of Article 2 of this Chapter, a Notice of Claim of Lien upon Funds under Part 2 of Article 2 of this Chapter, or a Claim of Lien on Real Property under Part 1 or Part 2 of Article 2 of this Chapter. A Notice to Lien Agent shall not be combined with or make reference to a Notice of Subcontract or Notice of Claim of Lien upon Funds as described in this subsection.

(k) The notice to lien agent shall not be filed with the clerk of superior court. An inaccuracy in the description of the improved real property provided in the notice does not bar a person from claiming a lien under this Article or otherwise perfecting or enforcing a claim of lien as provided in this Article, if the improved real property can otherwise reasonably be identified from the information contained in the notice.

(l) Except as otherwise provided in this section, for any improvement to real property subject to G.S. 44A-11.1, a potential lien claimant may perfect a claim of lien on real property only if at least one of the following conditions is met:

- (1) The lien agent identified in accordance with this section has received a Notice to Lien Agent from the potential lien claimant no later than 15 days after the first furnishing of labor or materials by the potential lien claimant.
- (2) Any of the following conditions is met:
  - a. The lien agent identified in accordance with this section has received a Notice to Lien Agent from the potential lien claimant prior to the date of recordation of a conveyance of the property interest in the real property to a bona fide purchaser for value protected under G.S. 47-18 who is not an affiliate, relative, or insider of the owner.
  - b. The potential lien claimant has perfected its claim of lien on real property pursuant to G.S. 44A-11 prior to the recordation of a conveyance of the property interest in the real property to a bona fide purchaser for value protected under G.S. 47-18 who is not an affiliate, relative, or insider of the owner.

As used in this subdivision, the terms "affiliate," "relative," and "insider" have the meanings as set forth in G.S. 39-23.1.

(m) Except as otherwise provided in this section, for any improvement to real property subject to G.S. 44A-11.1, the claim of lien on real property of a potential lien claimant that is not perfected pursuant to G.S. 44A-11 prior to the recordation of any mortgage or deed of trust for the benefit of one who is not an affiliate, relative, or insider of the owner is subordinate to the previously recorded mortgage or deed of trust unless at least one of the following conditions is met:

- (1) The lien agent identified in accordance with this section has received a Notice to Lien Agent from the potential lien claimant no later than 15 days after the first furnishing of labor or materials by the potential lien claimant.
- (2) The lien agent identified in accordance with this section has received a Notice to Lien Agent from the potential lien claimant prior to the date of recordation of the mortgage or deed of trust.

(n) For any improvement to real property subject to G.S. 44A-11.1, a potential lien claimant is not required to comply with this section if the lien agent contact information is neither contained in the building permit or attachment thereto or sign posted on the improved property pursuant to subsection (d) or (e) of this section at the time when the potential lien claimant was furnishing labor, materials, rental equipment, or professional design or surveying services at the site of the improvements, nor timely provided by the owner in response to a written request by the potential lien claimant made pursuant to subsection (b) of this section. The lien rights of a potential lien claimant who is given erroneous information by the owner regarding the identity of the lien agent are not extinguished under subsection (l) of this section nor subordinated under subsection (m) of this section.

(o) Except as provided in subsections (l) and (m) of this section, nothing contained in this section affects a claim of lien upon funds pursuant to G.S. 44A-18.

(p) A potential lien claimant may provide the notice to lien agent required under this section regardless of whether the improvements for which the potential lien claimant is responsible are contracted, started, in process, or completed at the time of submitting the notice.

(q) For any improvement to real property subject to G.S. 44A-11.1, a potential lien claimant may cancel a Notice to Lien Agent by utilizing the Internet Web site approved for such use by the designated lien agent. For any improvement to real property subject to G.S. 44A-11.1

comprising one- or two-family dwellings, a potential lien claimant shall cancel a Notice to Lien Agent by utilizing the Internet Web site approved for such use by the designated lien agent within a reasonable time after the potential lien claimant has confirmed its receipt of final payment for the improvement to which the Notice to Lien Agent relates.

(r) A Notice to Lien Agent not otherwise cancelled or renewed pursuant to this section expires and is discharged five years from its date of delivery to the lien agent.

(s) A Notice to Lien Agent may be renewed prior to its cancellation or automatic expiration for one five-year period by utilizing the Internet Web site approved for such use by the designated lien agent. Such renewal shall extend the date of expiration by five years.

(t) If a Notice to Lien Agent is timely renewed prior to cancellation or expiration pursuant to this section, the renewal shall maintain and relate back to the original delivery date of the Notice to Lien Agent.

(u) Any protections provided to a potential lien claimant under this section as the result of its delivery of a Notice to Lien Agent shall terminate upon the cancellation or automatic expiration of that Notice to Lien Agent pursuant to this section and shall not thereafter be revived or renewed by subsequent delivery of a Notice to Lien Agent by that potential lien claimant.

(v) Cancellation or expiration of a Notice to Lien Agent pursuant to this section has no effect upon the validity of a previously filed claim of lien or upon the priority of lien rights. (2012-158, s. 2; 2013-16, s. 2; 2013-117, s. 2; 2014-115, s. 35(b); 2017-168, s. 2; 2018-142, s. 8(a).)

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

(a) Place of Filing. – All claims of lien on real property must be filed in the office of the clerk of superior court in each county where the real property subject to the claim of lien on real property is located. The clerk of superior court shall note the claim of lien on real property on the judgment docket and index the same under the name of the record owner of the real property at the time the claim of lien on real property is filed. An additional copy of the claim of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee 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 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 \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
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. – 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. (1969, c. 1112, s. 1; 1977, c. 369; 1983, c. 888; 1999-456, s. 59; 2005-229, s. 1; 2012-175, s. 3.)

**§ 44A-12.1. No docketing of lien unless authorized by statute.**

(a) The clerk of superior court shall not index, docket, or record a claim of lien on real property or other document purporting to claim or assert a lien on real property in such a way as to affect the title to any real property unless the document:

- (1) Is offered for filing under this Article or another statute that provides for indexing and docketing of claims of lien on real property; and
- (2) Appears on its face to contain all of the information required by the statute under which it is offered for filing.

(b) The clerk may accept, for filing only, any document that does not meet the criteria established for indexing, docketing, or recording under subsection (a) of this section. If the clerk

does accept this document, the clerk shall inform the person offering the document that it will not be indexed, docketed, or recorded in any way as to affect the title to any real property.

(c) Any person who causes or attempts to cause a claim of lien on real property or other document to be filed, knowing that the filing is not authorized by statute, or with the intent that the filing is made for an improper purpose such as to hinder, harass, or otherwise wrongfully interfere with any person, shall be guilty of a Class I felony.

(d) A claim of lien on real property, a claim of lien on real property with a notice of claim of lien upon funds attached thereto, or other document purporting to claim or assert a lien on real property that is filed by an attorney licensed in the State of North Carolina and that otherwise complies with subsection (a) of this section shall not be rejected by the clerk of superior court for indexing, docketing, recording, or filing. (2001-495, s. 1; 2005-229, s. 1; 2012-150, s. 6.1.)

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

(a) Where and When Action Commenced. – An action to enforce a claim of lien on real property may be commenced in any county where venue is otherwise proper. 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 claim of lien on real property. If the title to the real property against which the claim of lien on real property is asserted is by law vested in a receiver or is subject to the control of the bankruptcy court, the claim of lien on real property shall be enforced in accordance with the orders of the court having jurisdiction over said real property. The filing of a proof of claim with a receiver or in bankruptcy and the filing of a notice of lis pendens in each county where the real property subject to the claim of lien on real property is located within the time required by this section satisfies the requirement for the commencement of a civil action.

(b) Judgment. – A 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.

(c) Notice of Action. – In order for the sale under G.S. 44A-14(a) to 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 the claim of lien on real property, a notice of lis pendens shall be filed in each county in which the real property subject to the claim of lien on real property is located except the county in which the action is commenced. The notice of lis pendens shall be filed within the time provided in subsection (a) of this section for the commencement of the action by the lien claimant. If neither an action nor a notice of lis pendens is filed in accordance with this section, the judgment entered in the action enforcing the claim of lien on real property shall not direct a sale of the real property subject to the claim of lien on real property enforced thereby nor be entitled to any priority under the provisions of G.S. 44A-14(a), but shall be entitled only to those priorities accorded by law to money judgments.

(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). (1969, c. 1112, s. 1; 1977, c. 883; 2005-229, s. 1; 2012-175, s. 4.)

#### **§ 44A-14. Sale of property in satisfaction of judgment enforcing claim of lien on real property 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 1-339.76. The sale of real property to satisfy a claim of lien on real property 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 claim of lien on real property 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 claim of lien on real property 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 claim of lien on real property 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. (1969, c. 1112, s. 1; 2005-229, s. 1.)

**§ 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 claim of lien on real property under this Article, without the written permission of the lien claimant or with the intent to deprive the lien claimant of his or her claim of lien on real property, the remedy of attachment of the property subject to the claim of lien on real property shall be available to the lien claimant or any other person. (1969, c. 1112, s. 1; 2005-229, s. 1.)

**§ 44A-16. Discharge of record claim of lien on real property.**

(a) Any claim of lien on real property filed under this Article may be discharged by any of the following methods:

- (1) The lien claimant of record, the claimant's agent or attorney, in the presence of the clerk of superior court may acknowledge the satisfaction of the claim of lien on real property indebtedness, whereupon the clerk of superior court shall forthwith make upon the record of such claim of lien on real property an entry of such acknowledgment of satisfaction, which shall be signed by the lien claimant of record, the claimant's 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 claim of lien on real property indebtedness has been paid or satisfied, whereupon the clerk of superior court shall cancel the claim of lien on real property by entry of satisfaction on the record of such claim of lien on real property.
- (3) By failure to enforce the claim of lien on real property 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 claim of lien on real property has been dismissed or finally determined adversely to the claimant.
- (5) Whenever a sum equal to the amount of the claim or claims of lien on real property 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 claim or claims of lien on real property or claims of lien on real property of record.
- (6) Whenever a corporate surety bond, in a sum equal to one and one-fourth times the amount of the claim or claims of lien on real property claimed and conditioned upon the payment of the amount finally determined to be due in satisfaction of said claim or claims of lien on real property, is deposited with the clerk of court, whereupon the clerk of superior court shall cancel the claim or claims of lien on real property of record.

(b) The clerk may release funds held on a corporate surety bond upon receipt of one of the following:

- (1) Written agreement of the parties.
- (2) A final judgment of a court of competent jurisdiction.
- (3) A consent order.

(c) For improvements performed in conjunction with a development contract under G.S. 143-128.1C, a claim of lien on real property or a claim of lien on funds served on a private developer may also be discharged by the private developer and the surety on a payment bond issued under G.S. 143-128.1C(g)(1) in accordance with this subsection. The claim of lien may be discharged by the private developer and surety jointly filing with the clerk of superior court of the county where the project is located a copy of the payment bond together with an affidavit executed by the surety stating that, as of the date of the filing of the payment bond with the clerk of superior court, the amount of the penal sum of the payment bond minus any amounts paid in good faith to other claimants on the project and minus the amount of all other claims of lien on real property filed against the property improved by the project exceeds the amount claimed by the lien claim being discharged by at least one hundred twenty-five percent (125%). Notwithstanding any other contractual provision or law, where a claimant's lien claim has been discharged under this subsection, the claimant shall have no less than one year from the date of being served with the payment bond and affidavit to file suit on the payment bond. (1969, c. 1112, s. 1; 1971, c. 766; 2005-229, s. 1; 2011-411, s. 3; 2013-401, s. 6.)

Part 2. Liens of Mechanics, Laborers, and Materialmen Dealing with One Other Than Owner.  
§ 44A-17: Repealed by Session Laws 2012-175, s. 5, effective January 1, 2013.

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

(a) A first tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall 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.

(b) A second tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall 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 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 perfect it by service of the notice of claim of lien upon funds to the extent of the claim.

(c) A third tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall 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 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 subrogated thereto, and in either case shall perfect it by service of the notice of claim of lien upon funds to the extent of the claim.

(d) Subcontractors more remote than the third tier who furnished labor, materials, or rental equipment at the site of the improvement shall 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.

(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.

(f) A lien upon funds granted under this section arises, attaches, and is 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.

(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. (1971, c. 880, s. 1; 1985, c. 702, s. 3; 1995 (Reg. Sess., 1996), c. 607, s. 3; 2005-229, s. 1; 2012-175, s. 6.)

**§ 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. \_\_\_\_\_, 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 on which labor performed or material furnished:

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

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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 on which labor performed or material furnished:

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

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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).

(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).
- (2) When the notice of claim of lien upon funds or a copy thereof 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. (1971, c. 880, s. 1; 1985, c. 702, s. 1; 2005-229, s. 1; 2012-175, s. 7; 2013-16, s. 3.)

#### **§ 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 satisfaction of those requirements set forth in G.S. 44A-11. A lien waiver signed by the contractor prior to a subcontractor's perfecting its claim of lien on real property in accordance with G.S. 44A-11 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. (1971, c. 880, s. 1; 1985, c. 702, s. 2; 2005-229, s. 1; 2012-175, s. 8; 2013-16, s. 4.)

#### **§ 44A-21. Pro rata payments.**

(a) Where the obligor is a contractor or subcontractor and the funds in the hands of the obligor and the obligor's personal liability, if any, under G.S. 44A-20 are less than the amount of valid liens upon funds that have been received by the obligor under this Article, the parties entitled to liens upon funds shall share the funds on a pro rata basis.

(b) Where the obligor is an owner and the funds in the hands of the obligor and the obligor's personal liability, if any, under G.S. 44A-20 are less than the sum of the amount of valid claims of liens upon funds that have been received by the obligor under this Article and the amount of the valid claims of liens on real property upon the owner's property filed by the subcontractors with the clerk of superior court under G.S. 44A-23, the parties entitled to liens upon funds and the parties entitled to subrogation claims of liens on real property upon the owner's property shall share the funds on a pro rata basis. (1971, c. 880, s. 1; 1998-217, s. 4(d); 2005-229, s. 1.)

#### **§ 44A-22. Priority of liens upon funds.**

Liens upon funds perfected under this Article have priority over all other interests or claims theretofore or thereafter created or suffered in the funds by the person against whose interest the lien upon funds is asserted, including, but not limited to, liens arising from garnishment, attachment, levy, judgment, assignments, security interests, and any other type of transfer, whether voluntary or involuntary. Any person who receives payment from an obligor in bad faith with knowledge of a lien upon funds shall take such payment subject to the lien upon funds. (1971, c. 880, s. 1; 2005-229, s. 1.)

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

(a) First tier subcontractor. – A first tier subcontractor may, to the extent of 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 satisfaction of those requirements set forth in G.S. 44A-11.

(a1) No action of the contractor shall be effective to prejudice the rights of a first tier subcontractor without its written consent once the first tier subcontractor has perfected its claim of lien on real property in accordance with G.S. 44A-11.

(b) Second or third tier subcontractor. –

- (1) A second or third tier 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 permit is issued for the improvement of the real property 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 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 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.

(5) No action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without its written consent once the second or third tier subcontractor has perfected its claim of lien on real property in accordance with G.S. 44A-11.

(c) A lien waiver signed by the contractor before the occurrence of all of the actions specified in subsection (a1) and subdivision (5) of subsection (b) of 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).

(d) When completing the claim of lien on real property form to perfect the contractor's claim of lien on real property, a first, second, or third tier subcontractor may use as the date upon which labor or materials were first or last furnished on the real property either any date on or after the date of the first furnishing of labor or materials on the real property, or any date on or before the date of the last furnishing of labor or materials on the real property by the subcontractor making the claim, or any date on or after the date of the first furnishing of labor or materials on the real property, or any date on or before the date of the 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. (1971, c. 880, s. 1; 1985, c. 702, s. 4; 1991 (Reg. Sess., 1992), c. 1010, s. 1; 1993, c. 553, s. 13; 1997-456, s. 27; 1999-456, s. 59; 2005-229, s. 1; 2012-158, s. 6.1; 2012-175, s. 9; 2012-194, s. 65(a), (b); 2013-16, s. 5.)

### Part 3. Criminal Sanctions for Furnishing a False Statement in Connection with Improvement to Real Property.

#### **§ 44A-24. False statement a 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 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. (1971, c. 880, s. 1.1; 1973, c. 991; 1993, c. 539, s. 406; 1994, Ex. Sess., c. 24, s. 14(c); 2012-175, s. 10.)

#### Part 4. Commercial Real Estate Broker Lien Act.

##### **§ 44A-24.1. Short title.**

This Part shall be known and may be cited as the "Commercial Real Estate Broker Lien Act." (2011-165, s. 1.)

##### **§ 44A-24.2. Definitions.**

The following definitions apply in this Part:

- (1) Broker. – A real estate broker licensed pursuant to Chapter 93A of the General Statutes.
- (2) Broker services. – Services for which a license issued by the North Carolina Real Estate Commission is required pursuant to Chapter 93A of the General Statutes.
- (3) Commercial real estate. – Any real property or interest therein, whether freehold or nonfreehold, which at the time the property or interest is made the subject of an agreement for broker services:
  - a. Is lawfully used primarily for sales, office, research, institutional, agricultural, forestry, warehouse, manufacturing, industrial, or mining purposes or for multifamily residential purposes involving five or more dwelling units;
  - b. May lawfully be used for any of the purposes listed in sub-subdivision (3)a. of this section by a zoning ordinance adopted pursuant to the provisions of Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in sub-subdivision (3)a. of this section which is under consideration by the government agency with authority to approve the amendment; or

- c. Is in good faith intended to be immediately used for any of the purposes listed in sub-subdivision (3)a. of this section by the parties to any contract, lease, option, or offer to make any contract, lease, or option.
- (4) Commission. – Any compensation which is due a broker for performance of broker services.
- (5) Lien claimant. – A broker claiming a lien pursuant to this Part.
- (6) Owner. – The owner of record of any interest in commercial real estate. (2011-165, s. 1; 2012-194, s. 15; 2017-211, s. 17.)

**§ 44A-24.3. Commercial real estate lien.**

(a) A broker shall have a lien upon commercial real estate in the amount that the broker is due under a written agreement for broker services signed by the owner or signed by the owner's duly authorized agent, if:

- (1) The broker has performed under the provisions of the agreement;
- (2) The written agreement for broker services clearly sets forth the broker's duties to the owner; and
- (3) The written agreement for broker services sets forth the conditions upon which the compensation shall be earned and the amount of such compensation.

(b) The lien under this section shall be available only to the broker named in the instrument signed by the owner or the owner's duly authorized agent. A lien under this section shall be available only against the commercial real estate which is the subject of the written agreement for broker services.

(c) When payment of commission to a broker is due in installments, a portion of which is due only after the conveyance or transfer of the commercial real estate, any notice of lien for those payments due after the transfer or conveyance may be recorded at any time subsequent to the transfer or conveyance of the commercial real estate and within 90 days of the date on which the payment is due. The notice of lien shall be effective as a lien against the owner's interest in the commercial real estate only to the extent funds are owed to the owner by the transferee, but the lien shall be effective as a lien against the transferee's interest in the commercial real estate. A single claim for lien filed prior to transfer or conveyance of the commercial real estate claiming all commissions due in installments shall also be valid and enforceable as it pertains to payments due after the transfer or conveyance; provided, however, that as payments or partial payments of commission are received, the broker shall provide partial releases for those payments, thereby reducing the amount due the broker under the broker's lien. (2011-165, s. 1.)

**§ 44A-24.4. When lien attaches to commercial real estate.**

A lien authorized by this Part attaches to the commercial real estate only when the lien claimant files a timely notice of the lien conforming to the requirements of G.S. 44A-24.5 and this section in the office of the clerk of superior court. A notice of lien is timely if it is filed after the claimant's performance under the written agreement for broker services and before the conveyance or transfer of the commercial real estate which is the subject of the lien, except that in the case of a lease or transfer of a nonfreehold interest, the notice of a lien shall be filed no later than 90 days following the tenant's possession of the commercial real estate or no later than 60 days following any date or dates set out in the written agreement for broker services for subsequent payment or payments. When a notice of a lien is filed more than 30 days preceding the date for settlement or possession set out in an offer to purchase, sales contract, or lease, which establishes the broker's claim of

performance, the lien shall be available only upon grounds of the owner's breach of the written agreement for broker services. (2011-165, s. 1.)

**§ 44A-24.5. Lien notice; content.**

(a) A lien notice under this Part shall be signed by the lien claimant and shall contain an attestation by the lien claimant that the information contained in the notice is true and accurate to the best of the lien claimant's knowledge and belief.

(b) The lien notice shall include all of the following information:

- (1) The name of the lien claimant.
- (2) The name of the owner.
- (3) A description of the commercial real estate upon which the lien is being claimed.
- (4) The amount for which the lien is claimed and whether the amount is due in installments.
- (5) The claimant's grounds for the lien, including a reference to the written agreement for broker services that is the basis for the lien. (2011-165, s. 1.)

**§ 44A-24.6. When lien claim release or satisfaction to be filed.**

If a claim for a lien has been filed with the clerk of superior court and a condition occurs that would preclude the lien claimant from receiving compensation under the terms of the written agreement for broker services on which the lien is based, the lien claimant shall file and serve the owner of record a written release or satisfaction of the lien promptly, and in no event more than 30 days after the demand. (2011-165, s. 1.)

**§ 44A-24.7. Lien claimant to mail copy of notice of lien to owner by certified mail.**

Any lien claimant who files a lien on commercial real estate pursuant to the provisions of this Part shall mail a copy of the notice of the lien to the owner of the commercial real estate by certified mail, return receipt requested, or shall serve a copy of the notice of the lien in accordance with any of the provisions for service of process set forth in G.S. 1A-1, Rule 4. The lien claimant shall file proof of service with the clerk of the superior court. The lien is void if the lien claimant does not file and serve the lien as provided in this Part. (2011-165, s. 1.)

**§ 44A-24.8. Enforcing lien.**

A lien claimant may bring suit to enforce a lien which attaches pursuant to the provisions of this Part in any court of competent jurisdiction in the county where the commercial real estate is located. The lien claimant shall commence proceedings within 18 months after filing the lien, and failure to commence proceedings within the 18 months shall extinguish the lien. If a claim is based upon an option to purchase the commercial real estate, the lien claimant shall commence proceedings within one year of the option to purchase being exercised. A claim for the same lien extinguished pursuant to this section and G.S. 44A-24.10 may not be asserted in any subsequent proceeding. A lender shall not be made a party to any suit to enforce a lien under this Part unless the lender has willfully caused the nonpayment of the commission giving rise to the lien. (2011-165, s. 1.)

**§ 44A-24.9. Complaint; content; parties' foreclosure action; procedure.**

(a) A complaint filed pursuant to the provisions of this section and G.S. 44A-24.8 shall contain all of the following:

- (1) A statement of the terms of the written agreement for broker services on which the lien is based or a copy of the written contract or agreement.
- (2) The date when the written agreement for broker services was made.
- (3) A description of the services performed.
- (4) The amount due and unpaid.
- (5) A description of the property that is subject to the lien.
- (6) Any other facts necessary for a full understanding of the rights of the parties.

(b) The plaintiff shall file the action against all parties that have an interest of record in the commercial real estate; provided that a lender shall not be made a party to any suit to enforce a lien under this Part unless the lender has willfully caused the nonpayment of the commission giving rise to the lien: a foreclosure action for a lien claimed pursuant to this Part shall be brought pursuant to the provisions of this Article.

(c) Valid prior recorded liens or mortgages shall have priority over a lien under this Part. (2011-165, s. 1.)

**§ 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 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. (2011-165, s. 1; 2012-175, s. 12(b).)

**§ 44A-24.11. Satisfaction or release of lien.**

If a claim for a lien has been filed pursuant to the provisions of this Part with the clerk of superior court and the claim has been paid in full, or if the lien claimant fails to institute a suit to enforce the lien within the time as provided by law, the lien claimant shall acknowledge satisfaction or release of the lien in writing upon written demand of the owner promptly, and in no event more than 30 days after the demand. (2011-165, s. 1.)

**§ 44A-24.12. Cost of proceeding to be paid by nonprevailing party.**

The costs of any proceeding brought to enforce a lien filed pursuant to this Part, including reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one party is responsible for costs, fees, and prejudgment interest, the costs, fees, and prejudgment interest shall be equitably apportioned by the court among the responsible parties. (2011-165, s. 1.)

**§ 44A-24.13. Discharge of lien.**

(a) Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, any claim of lien on commercial real estate filed under this Article may be discharged by any of the following methods:

- (1) The lien claimant of record, the claimant's agent, or attorney, in the presence of the clerk of superior court, may acknowledge the satisfaction of the claim of lien on the commercial real estate indebtedness, whereupon the clerk of superior court shall enter on the record of the claim of lien on the commercial real estate the acknowledgment of satisfaction, which shall be signed by the lien claimant of record, the claimant's 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 claim of lien on the commercial real estate indebtedness has been paid or satisfied, whereupon the clerk of superior court shall cancel the claim of lien on the commercial real estate by entry of satisfaction on the record of the claim of lien on the commercial real estate.
- (3) By failure to enforce the claim of lien on the commercial real estate 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 claim of lien on the commercial real estate has been dismissed or finally determined adversely to the claimant.
- (5) Whenever funds in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate is deposited with the clerk of superior court to be applied to the payment finally determined to be due, whereupon the clerk of superior court shall cancel the claim of lien on the commercial real estate.
- (6) Whenever a corporate surety bond, in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate and conditioned upon the payment of the amount finally determined to be due in satisfaction of the claim of lien on the commercial real estate is deposited with the clerk of superior court, whereupon the clerk of superior court shall cancel the claim of lien on the commercial real estate.
- (7) By failure to file documentation if required pursuant to G.S. 44A-24.6 or G.S. 44A-24.10.

(b) If funds in an amount equal to one hundred twenty-five percent (125%) of the amount that is sufficient to release the claim of lien have been deposited with the clerk of superior court, or a bond in an equal amount has been secured, the lien claimant shall release the claim for the lien on the commercial real estate, and the lien claimant shall have a lien on the funds deposited with the clerk of superior court. (2011-165, s. 1.)

**§ 44A-24.14. Priority of lien under this Part.**

Any claim of lien on real property or claim of lien on funds allowed under Part 1 or Part 2 of this Article shall be deemed superior in all respects to any lien asserted under this Part, regardless of the effective date of the competing liens and shall survive notwithstanding any judgment awarding a lien under this Part. No lien claimant filing a lien pursuant to this Part shall be entitled to participate in any pro rata distributions to claimants proceeding under G.S. 44A-21. (2011-165, s. 1.)