Chapter 44A.

Statutory Liens and Charges.

Article 1.

Possessory Liens on Personal Property.

§ 44A-1. Definitions.

As used in this Article:

(1) "Legal possessor" means
  a. Any person entrusted with possession of personal property by an owner thereof, or
  b. Any person in possession of personal property and entitled thereto by operation of law.

(2) "Lienor" means any person entitled to a lien under this Article.

(2a) "Motor Vehicle" has the meaning provided in G.S. 20-4.01.

(3) "Owner" means
  a. Any person having legal title to the property, or
  b. A lessee of the person having legal title, or
  c. A debtor entrusted with possession of the property by a secured party, or
  d. A secured party entitled to possession, or
  e. Any person entrusted with possession of the property by his employer or principal who is an owner under any of the above.

(4) "Secured party" means a person holding a security interest.

(5) "Security interest" means any interest in personal property which interest is subject to the provisions of Article 9 of the Uniform Commercial Code, or any other interest intended to create security in real or personal property.

(6) "Vessel" has the meaning provided in G.S. 75A-2. (1967, c. 1029, s. 1; 1991, c. 731, s. 1.)

§ 44A-2. Persons entitled to lien on personal property.

(a) Any person who tows, alters, repairs, stores, services, treats, or improves personal property other than a motor vehicle or an aircraft in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property has a lien upon the property. The amount of the lien shall be the lesser of

(1) The reasonable charges for the services and materials; or

(2) The contract price; or

(3) One hundred dollars ($100.00) if the lienor has dealt with a legal possessor who is not an owner.

This lien shall have priority over perfected and unperfected security interests.

(b) Any person engaged in the business of operating a hotel, motel, or boardinghouse has a lien upon all baggage, vehicles and other personal property brought upon his premises by a guest or boarder who is an owner thereof to the extent of reasonable charges for the room, accommodations and other items or services furnished at the request of the guest or boarder. This lien shall not have priority over any security interest in the property which is perfected at the time the guest or boarder brings the property to said hotel, motel or boardinghouse.

(c) Any person engaged in the business of boarding animals has a lien on the animals boarded for reasonable charges for such boarding which are contracted for with an owner or legal

possessor of the animal. This lien shall have priority over perfected and unperfected security interests.

(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of the person's business pursuant to an express or implied contract with an owner or legal possessor of the motor vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5.

(e) Any lessor of nonresidential demised premises has a lien on all furniture, furnishings, trade fixtures, equipment and other personal property to which the tenant has legal title and which remains on the demised premises if (i) the tenant has vacated the premises for 21 or more days after the paid rental period has expired, and (ii) the lessor has a lawful claim for damages against the tenant. If the tenant has vacated the premises for 21 or more days after the expiration of the paid rental period, or if the lessor has received a judgment for possession of the premises which is executable and the tenant has vacated the premises, then all property remaining on the premises may be removed and placed in storage. If the total value of all property remaining on the premises is less than one hundred dollars ($100.00), then it shall be deemed abandoned five days after the tenant has vacated the premises, and the lessor may remove it and may donate it to any charitable institution or organization. Provided, the lessor shall not have a lien if there is an agreement between the lessor or his agent and the tenant that the lessor shall not have a lien. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of sale. The lien created by this subsection shall be enforced by sale at public sale pursuant to the provisions of G.S. 44A-4(e). This lien shall not have priority over any security interest in the property which is perfected at the time the lessor acquires this lien.

(e1) This Article shall not apply to liens created by storage of personal property at a self-service storage facility.

(e2) Any lessor of a space for a manufactured home as defined in G.S. 143-143.9(6) has a lien on all furniture, furnishings, and other personal property including the manufactured home titled in the name of the tenant if (i) the manufactured home remains on the demised premises 21 days after the lessor is placed in lawful possession by writ of possession and (ii) the lessor has a lawful claim for damages against the tenant. If the lessor has received a judgment for possession of the premises which has been executed, then all property remaining on the premises may be removed and placed in storage. Prior to the expiration of the 21-day period, the landlord shall release possession of the personal property and manufactured home to the tenant during regular business hours or at a time mutually agreed upon. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of the sale. The lien created by this subsection shall be enforced by public sale under G.S. 44A-4(e). The landlord may begin the advertisement for sale process immediately upon execution of the writ of possession by the sheriff, but may not conduct the sale until the lien has

attached. This lien shall not have any priority over any security interest in the property that is perfected at the time the lessor acquires this lien. The lessor shall not have a lien under this subsection if there is an agreement between the lessor or the lessor's agent and the tenant that the lessor shall not have a lien.

(f) Any person who improves any textile goods in the ordinary course of his business pursuant to an express or implied contract with the owner or legal possessor of such goods shall have a lien upon all goods of such owner or possessor in his possession for improvement. The amount of such lien shall be for the entire unpaid contracted charges owed such person for improvement of said goods including any amount owed for improvement of goods, the possession of which may have been relinquished, and such lien shall have priority over perfected and unperfected security interests. "Goods" as used herein includes any textile goods, yarns or products of natural or man-made fibers or combination thereof. "Improve" as used herein shall be construed to include processing, fabricating or treating by throwing, spinning, knitting, dyeing, finishing, fabricating or otherwise.

(g) Any person who fabricates, casts, or otherwise makes a mold or who uses a mold to manufacture, assemble, or otherwise make a product pursuant to an express or implied contract with the owner of such mold shall have a lien upon the mold. For a lien to arise under this subsection, there must exist written evidence that the parties understood that a lien could be applied against the mold, with the evidence being in the form either of a written contract or a separate written statement provided by the potential holder of the lien under this subsection to the owner of the mold prior to the fabrication or use of the mold. The written contract or separate written statement must describe generally the amount of the potential lien as set forth in this subsection. The amount of the lien under this subsection shall equal the total of (i) any unpaid contracted charges due from the owner of the mold for making the mold, plus (ii) any unpaid contracted charges for all products made with the mold. The lien under this subsection shall not have priority over any security interest in the mold which is perfected at the time the person acquires this lien. As used in this subsection, the word "mold" shall include a mold, die, form, or pattern.

(h) Any landlord of nonresidential property, including any storage or self-storage space, in which potentially confidential materials, as that term is defined in G.S. 42-14.4(a), remain after the landlord has obtained possession of the property must provide notice to the North Carolina State Bar and comply with the provisions of G.S. 42-14.4, if the landlord has actual knowledge that the former tenant is an attorney. Potentially confidential materials shall not be the subject of a lien under the provisions of this Article. (1967, c. 1029, s. 1; 1971, cc. 261, 403; c. 544, s. 1; c. 1197; 1973, c. 1298, s. 1; 1975, c. 461; 1981, c. 566, s. 2; c. 682, s. 9; 1981 (Reg. Sess., 1982), c. 1275, s. 2; 1995, c. 460, s. 9; c. 480, s. 1; 1995 (Reg. Sess., 1996), c. 744, s. 1; 1998-182, s. 14; 1999-278, s. 5; 2006-222, s. 1.2; 2012-76, s. 2.)

§ 44A-3. When lien arises and terminates.

Liens conferred under this Article arise only when the lienor acquires possession of the property and terminate and become unenforceable when the lienor voluntarily relinquishes the possession of the property upon which a lien might be claimed, or when an owner, his agent, a legal possessor or any other person having a security or other interest in the property tenders prior to sale the amount secured by the lien plus reasonable storage, boarding and other expenses incurred by the lienor. The reacquisition of possession of property voluntarily relinquished shall not reinstate the lien. Liens conferred under this Article do not terminate when the lienor involuntarily relinquishes the possession of the property. (1967, c. 1029, s. 1; 1991, c. 344, s. 3, c. 731, s. 2.)

§ 44A-4. Enforcement of lien by sale.

(a) Enforcement by Sale. – If the charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 30 days or, in the case of towing and storage charges on a motor vehicle, 10 days following the maturity of the obligation to pay any such charges, the lienor may enforce the lien by public or private sale as provided in this section. The lienor may bring an action on the debt in any court of competent jurisdiction at any time following maturity of the obligation. Failure of the lienor to bring such action within a 180-day period following the commencement of storage shall constitute a waiver of any right to collect storage charges which accrue after such period. Provided that when property is placed in storage pursuant to an express contract of storage, the lien shall continue and the lienor may bring an action to collect storage charges and enforce his lien at any time within 120 days following default on the obligation to pay storage charges.

The owner or person with whom the lienor dealt may at any time following the maturity of the obligation bring an action in any court of competent jurisdiction as by law provided. If in any such action the owner or other party requests immediate possession of the property and pays the amount of the lien asserted into the clerk of the court in which such action is pending, the clerk shall issue an order to the lienor to relinquish possession of the property to the owner or other party. The request for immediate possession may be made in the complaint, which shall also set forth the amount of the asserted lien and the portion thereof which is not in dispute, if any. If within three days after service of the summons and complaint, as the number of days is computed in G.S. 1A-1, Rule 6, the lienor does not file a contrary statement of the amount of the lien at the time of the filing of the complaint, the amount set forth in the complaint shall be deemed to be the amount of the asserted lien. The clerk may at any time disburse to the lienor that portion of the cash bond, which the plaintiff says in his complaint is not in dispute, upon application of the lienor. The magistrate or judge shall direct appropriate disbursement of the disputed or undisbursed portion of the bond in the judgment of the court. In the event an action by the owner pursuant to this section is heard in district or superior court, the substantially prevailing party in such court may be awarded a reasonable attorney's fee in the discretion of the judge.

(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 sixteen dollars and seventy-five cents ($16.75). The Division of Motor Vehicles shall issue notice by certified mail, return receipt requested, or certified mail with electronic tracking 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 certified mail, return receipt requested, or certified mail with electronic tracking 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 and payment of the fee 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 by certified mail, return receipt requested, or certified mail with electronic tracking to the person having legal title to the property, which is deemed to have the same effect as if the notice was sent by the Division. 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 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 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 not include more than ten vehicles, 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 certified mail, return receipt requested, or certified mail with electronic tracking. 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 certified mail, return receipt requested, or certified mail with electronic tracking 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.

(c) Private Sale. – Sale by private sale may be made in any manner that is commercially reasonable. If the property upon which the lien is claimed is a motor vehicle, the sale may not be made until notice is given to the Commissioner of Motor Vehicles pursuant to G.S. 20-114(c). Not less than 30 days prior to the date of the proposed private sale, the lienor shall cause notice to be mailed, as provided in subsection (f) hereof, 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 or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained. Notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (f) hereof. The

lienor shall not purchase, directly or indirectly, the property at private sale and such a sale to the lienor shall be voidable.

(d) Request for Public Sale. – If an owner, the person with whom the lienor dealt, any secured party, or other person claiming an interest in the property notifies the lienor prior to the date upon or after which the sale by private sale is proposed to be made, that public sale is requested, sale by private sale shall not be made. After request for public sale is received, notice of public sale must be given as if no notice of sale by private sale had been given.

(e) Public Sale. –

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

a. Shall notify the Commissioner of Motor Vehicles as provided in G.S. 20-114(c) if the property upon which the lien is claimed is a motor vehicle; and

a1. Shall cause notice to be mailed 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 or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (f) hereof; and

b. Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held;

and shall publish notice of sale once a week for two consecutive weeks in a newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale. The notice of sale need not be published if the vehicle has a market value of less than three thousand five hundred dollars ($3,500), as determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

(2) A public sale must be held on a day other than Sunday and between the hours of 10:00 A.M. and 4:00 P.M.:

a. In any county where any part of the contract giving rise to the lien was performed, or

b. In the county where the obligation secured by the lien was contracted for.

(3) A lienor may purchase at public sale.

(f) Notice of Sale. – The notice of sale shall include:

(1) The name and address of the lienor;

(2) The name of the person having legal title to the property if such person can be reasonably ascertained and the name of the person with whom the lienor dealt;

(3) A description of the property;

(4) The amount due for which the lien is claimed;

(5) The place of the sale;

(6) If a private sale the date upon or after which the sale is proposed to be made, or if a public sale the date and hour when the sale is to be held.

(g) Damages for Noncompliance. – If the lienor fails to comply substantially with any of the provisions of this section, the lienor shall be liable to the person having legal title to the property or any other party injured by such noncompliance in the sum of one hundred dollars

($100.00), together with a reasonable attorney's fee as awarded by the court. Damages provided by this section shall be in addition to actual damages to which any party is otherwise entitled. (1967, c. 1029, s. 1; 1975, c. 438, s. 1; c. 716, s. 5; 1977, c. 74, s. 4; c. 793, s. 1; 1981, c. 690, s. 26; 1983, c. 44, ss. 1, 2; 1985, c. 655, ss. 4, 5; 1989, c. 770, s. 10; 1991, c. 344, s. 1; c. 731, s. 3; 1995 (Reg. Sess., 1996), c. 635, ss. 2-4; 1998-182, s. 15; 1999-216, s. 10; 1999-460, s. 7; 2004-128, s. 5; 2012-175, s. 12(a); 2015-241, s. 29.30(r); 2019-243, s. 17(a); 2024-30, s. 11.)

§ 44A-5. Proceeds of sale.

The proceeds of the sale shall be applied as follows:

(1) Payment of reasonable expenses incurred in connection with the sale. Expenses of sale include but are not limited to reasonable storage and boarding expenses after giving notice of sale.

(2) Payment of the obligation secured by the lien.

(3) Any surplus shall be paid to the person entitled thereto; but when such person cannot be found, the surplus shall be paid to the clerk of superior court of the county in which the sale took place, to be held by the clerk for the person entitled thereto. (1967, c. 1029, s. 1; 1971, c. 544, s. 2.)

§ 44A-6. Title of purchaser.

A purchaser for value at a properly conducted sale, and a purchaser for value without constructive notice of a defect in the sale, whether or not the purchaser is the lienor or an agent of the lienor, acquires title to the property free of any interests over which the lienor was entitled to priority. (1967, c. 1029, s. 1; 1995, c. 480, s. 2.)

§ 44A-6.1. Action to regain possession of a motor vehicle or vessel.

(a) When the lienor involuntarily relinquishes possession of the property and the property upon which the lien is claimed is a motor vehicle or vessel, the lienor may institute an action to regain possession of the motor vehicle or vessel in small claims court any time following the lienor's involuntary loss of possession and following maturity of the obligation to pay charges. The lienor shall serve a copy of the summons and the complaint pursuant to G.S. 1A-1, Rule 4, on each secured party claiming an interest in the vehicle or vessel. For purposes of this section, involuntary relinquishment of possession includes only those situations where the owner or other party takes possession of the motor vehicle or vessel without the lienor's permission or without judicial process. If in the court action the owner or other party retains possession of the motor vehicle or vessel, the owner or other party shall pay the amount of the lien asserted as bond into the clerk of the court in which the action is pending.

If within three days after service of the summons and complaint, as the number of days is computed in G.S. 1A-1, Rule 6, neither the defendant nor a secured party claiming an interest in the vehicle or vessel files a contrary statement of the amount of the lien at the time of the filing of the complaint, the amount set forth in the complaint shall be deemed to be the amount of the asserted lien. The clerk may at any time disburse to the lienor that portion of the cash bond which is not in dispute, upon application of the lienor. The magistrate shall:

(1) Direct appropriate disbursement of the disputed or undisbursed portion of the bond; and

(2) Direct appropriate possession of the motor vehicle or vessel if, in the judgment of the court, the plaintiff has a valid right to a lien.

(b) Either party to an action pursuant to subsection (a) of this section may appeal to district court for a trial de novo. (1991, c. 344, s. 2, c. 731, s. 4.)

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 forty thousand dollars ($40,000) 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; 2023-108, s. 2(h).)

§ 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 email 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. 160D-1110(g) 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) Email, with delivery receipt.
(7) Utilizing a website 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 email 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 email 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 website 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 website 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 website 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); 2022-62, s. 5; 2025-25, s. 29(1), (5).)

§ 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 or 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:

_____

_____

_____

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 on 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).

(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 Chapter 160D 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; 2022-62, s. 6.)

§ 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.)

Article 3.

Model Payment and Performance Bond.

§ 44A-25. Definitions.

Unless the context otherwise requires in this Article:

(1) "Claimant" includes any individual, firm, partnership, association or corporation entitled to maintain an action on a bond described in this Article and shall include the "contracting body" in a suit to enforce the performance bond.
(2) "Construction contract" means any contract for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement, including highways.
(3) "Contracting body" means any department, agency, or political subdivision of the State of North Carolina which has authority to enter into construction contracts.
(4) "Contractor" means any person who has entered into a construction contract with a contracting body.
(5) "Labor or materials" shall include all materials furnished or labor performed in the prosecution of the work called for by the construction contract regardless of whether or not the labor or materials enter into or become a component part of the public improvement, and further shall include gas, power, light, heat, oil, gasoline, telephone services and rental of equipment or the reasonable value of the use of equipment directly utilized in the performance of the work called for in the construction contract.
(6) "Subcontractor" means any person who has contracted to furnish labor or materials to, or who has performed labor for, a contractor or another subcontractor in connection with a construction contract. (1973, c. 1194, s. 1.)

§ 44A-26. Bonds required.

(a) When the total amount of construction contracts awarded for any one project exceeds three hundred thousand dollars ($300,000), a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor or construction manager at risk with a contract more than fifty thousand dollars ($50,000); provided that, for State departments, State agencies, and The University of North Carolina and its constituent institutions, a performance and payment bond is required in accordance with this subsection if the total amount of construction contracts awarded for any one project exceeds five hundred thousand dollars ($500,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

(1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body that is constructing the project.
(2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor, or construction manager at risk is liable.

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become

effective upon the awarding of the construction contract. (1973, c. 1194, s. 1; 1983, c. 818; 1987 (Reg. Sess., 1988), c. 1108, s. 10; 1995, c. 367, s. 3; 2001-496, s. 7; 2010-148, s. 1.)

§ 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, in response to a written request served by any claimant in accordance with the provisions of subsection (c) of this section, send a copy of the payment bond required by this Article to the claimant making the request within seven calendar days after receipt of such request. 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) of this section, shall be served by 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. (1973, c. 1194, s. 1; 1987, c. 569; 2001-177, s. 1; 2001-487, s. 100; 2012-175, s. 11; 2013-16, s. 6.)

§ 44A-28. Actions on payment bonds; venue and limitations.

(a) Every action on a payment bond as provided in G.S. 44A-27 shall be brought in a court of appropriate jurisdiction in a county where the construction contract or any part thereof is to be or has been performed.

(b) No action on a payment bond shall be commenced after the expiration of the longer period of one year from the day on which the last of the labor was performed or material was furnished by the claimant, or one year from the day on which final settlement was made with the contractor. (1973, c. 1194, s. 1.)

§ 44A-29. Limitation of liability of a surety.

No surety shall be liable under a payment bond for a total amount greater than the face amount of the payment bond. A judgment against any surety may be reduced or set aside upon motion by the surety and a showing that the total amount of claims paid and judgments previously rendered under such payment bond, together with the amount of the judgment to be reduced or set aside, exceeds the face amount of the bond. (1973, c. 1194, s. 1.)

§ 44A-30. Variance of liability; contents of bond.

(a) No act of or agreement between a contracting body, a contractor or a surety shall reduce the period of time for giving notice under G.S. 44A-27(b) or commencing action under G.S. 44A-28(b) or otherwise reduce or limit the liability of the contractor or surety as prescribed in this Article.

(b) Every bond given by a contractor to a contracting body pursuant to this Article shall be conclusively presumed to have been given in accordance herewith, whether or not such bond be so drawn as to conform to this Article. This Article shall be conclusively presumed to have been written into every bond given pursuant thereto. (1973, c. 1194, s. 1.)

§ 44A-31. Certified copy of bond and contract.

(a) Any person entitled to bring an action or any defendant in an action on a payment bond shall have a right to require the contracting body to certify and furnish a copy of the payment bond and of the construction contract covered by the bond. It shall be the duty of such contracting body to give any such person a certified copy of the payment bond and the construction contract upon not less than 10 days' notice and request. The contracting body may require a reasonable payment for the actual cost of furnishing the certified copy.

(b) A copy of any payment bond and of the construction contract covered by the bond certified by the contracting body shall constitute prima facie evidence of the contents, execution and delivery of such bond and construction contract. (1973, c. 1194, s. 1.)

§ 44A-32. Designation of official; violation a misdemeanor.

Each contracting body shall designate an official thereof to require the bonds described by this Article. If the official so designated shall fail to require said bond, he shall be guilty of a Class 1 misdemeanor. (1973, c. 1194, s. 1; 1993, c. 539, s. 407; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 44A-33. Form.

(a) A performance bond form containing the following provisions shall comply with this Article: the date the bond is executed; the name of the principal; the name of the surety; the name of the contracting body; the amount of the bond; the contract number; and the following conditions:

"KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL AND SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

"THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract with the Contracting Body, numbered as shown above and hereto attached:

"NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

"IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party

being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body."

Appropriate places for execution by the surety and principal shall be provided.

(b) A payment bond form containing the following provisions shall comply with this Article: the date the bond is executed; the name of the principal; the name of the surety; the name of the contracting body; the contract number; and the following conditions:

"KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

"THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract with the Contracting Body, numbered as shown above and hereto attached;

"NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

"IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body."

Appropriate places for execution by the surety and principal shall be provided. (1973, c. 1194, s. 1.)

§ 44A-34. Construction of Article.

The addition of this Article shall not be construed as making the provisions of Articles 1 and 2 of Chapter 44A of the General Statutes apply to public bodies or public buildings. (1973, c. 1194, s. 3.)

§ 44A-35. Attorneys' fees.

(a) In any suit brought or defended under the provisions of Article 2 or Article 3 of this Chapter, the presiding judge or arbitrator may allow a reasonable attorneys' fee to the attorney representing the prevailing party. This attorneys' fee is to be taxed as part of the court costs with the final judgment or arbitration award.

(b) The court or arbitrator shall determine the prevailing party based on the principal amount in controversy between the parties as of the commencement of the trial, arbitration, or hearing resulting in a judgment or arbitration award, considering all relevant facts and circumstances.

(c) If a party serves (i) an offer of judgment in accordance with G.S. 1A-1, Rule 68, or (ii) a written settlement offer, so that the offer is received at least 30 days before the commencement of the trial, arbitration, or hearing resulting in a judgment or award resolving all matters in controversy between the parties, the last offer shall be deemed to be that party's monetary position for purposes of determining the amount in controversy.

(d) In determining the amount of reasonable attorneys' fees and expenses under this section, the court or arbitrator may consider all relevant facts and circumstances, including, without limitation, the following:

(1) The amount in controversy and the results obtained.
(2) The reasonableness of the time and labor expended, and the billing rates charged, by the attorneys.
(3) The novelty and difficulty of the questions raised in the action.
(4) The skill required to perform properly the legal services rendered.
(5) The relative economic circumstances of the parties.
(6) Settlement offers made prior to the commencement of the trial, arbitration, or hearing.
(7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil Procedure and whether judgment finally obtained was more favorable than such offers.
(8) Whether a party unjustly exercised superior economic bargaining power in the conduct of the action or withheld payment of undisputed amounts.
(9) The timing of settlement offers.
(10) The extent to which the party seeking attorneys' fees prevailed in the action.
(11) The amount of attorneys' fees awarded in similar cases.

(e) A party may submit evidence relating to an award of attorneys' fees by affidavit or declaration. The court or arbitrator may admit other evidence, including, without limitation, live or deposition testimony. A party may submit expert testimony to support an award, but the court or arbitrator shall not require expert testimony.

(f) For purposes of this section, "prevailing party" is the party whose monetary position at the commencement of the trial, arbitration, or hearing is closest to the amount of the judgment or arbitration award. The court or arbitrator shall determine the prevailing party based upon the principal amount in controversy between the parties as of the commencement of the trial, arbitration, or hearing resulting in a judgment or arbitration award, considering all relevant facts and circumstances. (1991 (Reg. Sess., 1992), c. 1010, s. 3; 1993 (Reg. Sess., 1994), c. 763, s. 1; 2022-1, s. 4(a).)

§§ 44A-36 through 44A-39. Reserved for future codification purposes.

Article 4.

Self-Service Storage Facilities.

§ 44A-40. Definitions.

As used in this Article, the following definitions apply:

(1) Email. – An electronic message or an executable program or computer file that contains an image of a message that is transmitted between two or more computers or electronic terminals. The term includes electronic messages that are transmitted within or between computer networks.
(1a) Independent bidder. – A person that is not related to the lienor, within the meaning of G.S. 25-9-102(a)(62).
(1b) Last known address. – The mailing address or email address provided by the occupant in the latest rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.

(2) Lienor. – A person entitled to a lien under this Article.
(3) Occupant. – A person, or a person's sublessee, successor, or assign, entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.
(4) Owner. – Consists of the following:
  a. The owner, operator, lessor, or sublessor of a self-service storage facility.
  b. The agent of a person described in sub-subdivision a. of this subdivision.
  c. A person authorized by a person described in sub-subdivision a. of this subdivision to manage the facility or to receive rent from an occupant under a rental agreement.
(5) Personal property. – Movable property not affixed to land. The term includes, but is not limited to, goods, merchandise, household items, and watercraft.
(6) Rental agreement. – An agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of a self-service storage facility.
(7) Self-service storage facility. – Real property designed and used for the purpose of renting or leasing individual storage space to occupants that are to have access for the purpose of storing and removing personal property. No occupant shall use a self-service storage facility for residential purposes. A self-service storage facility is not subject to Article 7 of Chapter 25 of the General Statutes. If, however, an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to Article 7 of Chapter 25 of the General Statutes and this Article does not apply.
(8) Verified email. – Email that is transmitted to an email address that the sender has verified by any reasonable means as being a working email address. (1981 (Reg. Sess., 1982), c. 1275, s. 1; 2013-239, s. 1; 2025-25, ss. 29(1), 151.)

§ 44A-41. Self-service storage facility owner entitled to lien.

The owner of a self-service storage facility has a lien upon all personal property stored at the facility for rent, expenses necessary for the preservation of the personal property, and expenses reasonably incurred in the sale or other disposition of the personal property pursuant to this Article. This lien shall not have priority over any security interest which is perfected at the time the occupant stores the property at the self-service storage facility. For purposes of this Article, to identify an existing security interest in stored property, the owner shall conduct an online search for Uniform Commercial Code financing statements filed with the Office of the Secretary of State in the name of the occupant. (1981 (Reg. Sess., 1982), c. 1275, s. 1; 2009-201, s. 1.)

§ 44A-42. When self-service storage facility lien arises and terminates.

The lien conferred under this Article arises only when the owner acquires possession of the property stored in the self-service storage facility; and it shall terminate when the owner relinquishes possession of the property upon which the lien might be claimed, or when the occupant or any other person having a security or other interest in the property tenders prior to sale the amount of the rent, plus the expenses incurred by the owner for the preservation of the property.

The reacquisition of possession of the property stored in the self-service storage facility, which was relinquished, shall not reinstate the lien. (1981 (Reg. Sess., 1982), c. 1275, s. 1.)

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

(a) If the rent and other charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 15 days following the maturity of the obligation to pay rent, the owner may enforce the lien by a public sale or other disposition of the property as provided in this section. The owner may bring an action to collect rent and other charges in any court of competent jurisdiction at any time following the maturity of the obligation to pay the rent.

The occupant or any other person having a security or other interest in the property stored in the self-service storage facility may bring an action to request the immediate possession of the property, at any time following the assertion of the lien by the owner. Before such possession is granted, the occupant or the person with a security or other interest in the property shall pay the amount of the lien asserted to the clerk of court in which the action is pending, or post a bond for double the amount. The clerk shall then issue an order to the owner to relinquish possession of the property to the occupant or other party.

(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 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:

a. State: (i) that a lien is being asserted against the specific vehicle by the lienor or owner of the self-service storage facility, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the vehicle in satisfaction of the lien;

b. Inform the person having legal title and the occupant of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place; and

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 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.

(1a) If the property upon which the lien is claimed is a motor vehicle, watercraft, or trailer, and rent and other charges related to the property remain unpaid or unsatisfied for 60 days following the maturity of the obligation to pay rent, the lienor may have the property towed. If a motor vehicle is towed as authorized in this subdivision, the lienor shall not be liable for the motor vehicle or any damages to the motor vehicle once the tower takes possession of the property.

(2) If the property upon which the lien is claimed is other than a motor vehicle, watercraft, or trailer, the lienor following the expiration of the 15-day period provided by subsection (a) shall issue notice to the person having a security or other interest in the property, if reasonably ascertainable, and to the occupant, if different, at his 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, or when it is sent by verified email to the occupant's last known address, if the occupant has made an election in the rental agreement to receive notice by email.

The notice shall:

a. State: (i) that a lien is being asserted against the specific property by the lienor, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the property in satisfaction of the lien;

b. Provide a brief and general description of the personal property subject to the lien. The description shall be reasonably adequate to permit the person notified to identify it, except that any container including, but not limited to, a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents;

c. Inform the person with a security or other interest in the property and occupant, if different, of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place;

d. State that the person with a security or other interest in the property or the occupant, if different, has a period of 10 days from the date of the mailing of the notice to notify the lienor by registered, or certified mail, return receipt requested, that a hearing is desired, and that if the legal title holder or occupant wishes to contest the sale of his property pursuant to the lien he should notify the lienor that a hearing is desired.

The person with a security or other interest in the property or the occupant must, within 10 days from the date of the mailing of the notice from the lienor, notify the lienor of his desire for a hearing, and state whether or not he wishes to contest the sale of the property pursuant to the lien.

Failure of the person with a security or other interest in the property, or the occupant to notify the lienor 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. Upon such failure the lienor may proceed to

enforce the lien by a public sale as provided by this section. Upon the expiration of the 10-day notice, the occupant's tenancy shall be terminated, and the lienor may move the occupant's property to another place of safekeeping.

If the lienor is notified, within the 10-day period as provided by 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 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 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 by certified mail or by verified email if the occupant has made an election in the rental agreement to receive notice by email. Notice given by certified mail 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. Notice given by verified email pursuant to this subdivision shall be presumed delivered when it is transmitted.

b. Repealed by Session Laws 2009-201, s. 1, effective October 1, 2009.

(1a) Not less than five days prior to sale by public sale, the lienor shall publish notice of sale either (i) in a newspaper of general circulation in the county where the sale is to be held or (ii) in any other commercially reasonable manner. The manner of advertisement shall be deemed commercially reasonable if at least three independent bidders attend the sale at the time and place advertised and the sale is otherwise consistent with the definition set out in G.S. 25-9-627.

(2) Repealed by Session Laws 2013-239, s. 2, effective October 1, 2013.

(2a) The sale shall be conducted in a commercially reasonable manner, as defined in G.S. 25-9-627, including offering property to an audience of bidders through an online, publicly accessible auction website. If the sale is a live auction conducted at the facility, the nearest suitable place where the property is held or stored, or in the county where the obligation secured by the lien was contracted for, the sale must be held on a day other than Sunday and between the hours of 9:00 A.M. and 4:00 P.M. A lienor may purchase at public sale.

(3) Repealed by Session Laws 2013-239, s. 2, effective October 1, 2013.

(d) Repealed by Session Laws 2013-239, s. 2, effective October 1, 2013. (1981 (Reg. Sess., 1982), c. 1275, s. 1; 2006-264, s. 38.5; 2009-201, s. 1; 2012-175, s. 12(c); 2013-239, s. 2; 2025-25, s. 29(1), (5).)

§ 44A-44. Right of redemption; good faith purchaser's right; disposition of proceeds; lienor's liability.

(a) Before the sale authorized by G.S. 44A-43, or other disposition of the property, the occupant may pay the amount necessary to satisfy the lien plus the reasonable expenses incurred by the owner for the preservation of the property and thereby redeem the property. Upon receipt of such payment, the owner shall return the personal property to the occupant; and thereafter shall have no further claim against such personal property on account of the lien which was asserted. The partial payment of rent or other charges shall not satisfy the lien or stop or delay the owner's

right to sell the occupant's property unless the owner agrees to satisfaction or a stop or delay in a writing signed by the owner.

(b) A purchaser in good faith, and without knowledge of any defect in the sale of the personal property sold to satisfy a lien provided for in this Article takes the property free of any rights of persons against whom the lien was valid.

(c) Proceeds of a sale under this section shall be applied as follows:

(1) Payment of reasonable expenses incurred in connection with the sale;

(2) Payment of the obligation secured by any security interest that was perfected at the time the occupant stored the property at the self-service storage facility;

(3) Payment of the obligation secured by the self-service storage facility lien;

(4) Any balance shall be paid to the occupant or other person lawfully entitled thereto; but if such person cannot be found, the balance shall be paid to the clerk of superior court of the county in which the sale took place, to be held by the clerk for the person entitled thereto.

(d) If the lienor fails to comply substantially with any of the provisions of this section, he shall be liable to the occupant or any other party injured by such noncompliance in the sum of one hundred dollars ($100.00), together with reasonable attorney's fees as awarded by the court. Damages provided by this section shall be in addition to actual damages to which any party is otherwise entitled. (1981 (Reg. Sess., 1982), c. 1275, s. 1; 2009-201, s. 1.)

§ 44A-44.1. Possession vested in occupant.

Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in a storage space at a self-service storage facility shall remain vested in the occupant until the property is sold as provided in this Article or otherwise disposed of. The owner of a self-service storage facility is a commercial landlord who rents space. Unless the rental agreement specifically provides otherwise, while the personal property remains on the owner's premises, the owner is liable for damage caused by the intentional acts or negligence of the owner or the owner's employees. (2009-201, s. 1.)

§ 44A-45. Article is supplemental to lien created by contract.

Nothing in this Article shall be construed as in any manner impairing or affecting the right of parties to create liens by contract or agreement. (1981 (Reg. Sess., 1982), c. 1275, s. 1.)

§ 44A-46. Application.

All rental agreements entered into before September 1, 1982, and not extended or renewed after that date, and the rights and duties and interests flowing from them, shall remain valid, and may be enforced or terminated in accordance with their terms or as permitted by any other law of this State. (1981 (Reg. Sess., 1982), c. 1275, s. 1.)

§ 44A-47: Reserved for future codification purposes.

§ 44A-48: Reserved for future codification purposes.

§ 44A-49: Reserved for future codification purposes.

Article 5.

Aircraft Labor and Storage Liens.

§ 44A-50. Definitions.

As used in this Article, the following terms mean:

(1) Aircraft. – As the term is defined in G.S. 63-1(3), or any engine, part, component, or accessory, whether affixed to or separate from the aircraft.

(2) Lienor. – A person entitled to a lien under this Article.

(3) Owner. – As the term is defined in G.S. 44A-1(3) for an aircraft, or any person authorized by an owner, as defined in G.S. 44A-1(3), to perform, contract, or arrange for the provision of labor, skill, materials, or storage with respect to any aircraft.

(4) Person. – Any individual, corporation, association, partnership, whether limited or general, limited liability company, or other entity. (2006-222, s. 1.1.)

§ 44A-55. Persons entitled to a lien on an aircraft.

Any person who has expended labor, skill, or materials on an aircraft or has furnished storage for an aircraft at the request of its owner has a perfected lien on the aircraft beginning on the date the expenditure of labor, skill, or materials or the storage commenced, for the contract price for the expenditure of labor, skill, or materials or for the storage, or, in the absence of a contract price, for the reasonable worth of the expenditure of labor, skill, or materials, or of the storage. The lien under this section survives even if the possession of the aircraft is surrendered by the lienor. (2006-222, s. 1.1.)

§ 44A-60. Notice of lien on an aircraft.

(a) The lien under G.S. 44A-55 expires 120 days after the date the lienor voluntarily surrenders possession of the aircraft, unless the lienor, prior to the expiration of the 120-day period, files a notice of lien in the office of the clerk of court of the county in which the labor, skill, or materials were expended on the aircraft, or the storage was furnished for the aircraft.

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

(1) The name of the lienor.

(2) The name of the registered owner of the aircraft, if known.

(3) The name of the person with whom the lienor entered into a contract for labor, skill, or materials on the aircraft, or storage of the aircraft.

(4) A description of the aircraft sufficient for identification.

(5) The amount for which the lien is claimed.

(6) The dates upon which the expenditure of labor, skill, materials, or storage was commenced and completed, or, if not completed, the date through which the claimed amount is calculated.

(c) The notice of lien shall be sworn to or affirmed, and subscribed by the lienor, or by someone on the lienor's behalf having personal knowledge of the facts.

(d) The notice of lien shall be in substantially the following form:

"NOTICE OF LIEN ON AIRCRAFT

[Lienor] Lienor, v. [Owner] Owner

Notice is hereby given that [Lienor](name) claims a lien upon _____ [aircraft](describe the aircraft) for labor, skill, or materials expended on, and for storage furnished for, this aircraft; that the name of the registered owner or reputed owner, if the aircraft is not

registered or the registered owner is not known, is [Owner](name), that the labor, skill, or materials were expended on the aircraft commencing the ____ day of _____, and storage was furnished on the aircraft commencing the ____ day of _____, and the labor, skill, materials, and storage furnished by the lienor [was completed] [is ongoing] on the ____ day of _____; that 120 days have not elapsed since the aircraft was released by the lienor; that the amount the lienor demands for the labor, skill, materials, and storage furnished, as of the date hereof is $_____ (amount); that no part thereof has been paid except $_____ (amount); and that there is now due and remaining unpaid, after deducting all credits and offsets, the sum of $_____ (amount), in which amount [Lienor](name) claims a lien upon the aircraft.

(Signed) _____ (Lienor)
Address of Lienor _____

State of North Carolina
County of _____

Sworn to (or affirmed) and subscribed before me this day by [name of principal].
Date:_____ [Official Signature of Notary]
_____ [Notary's printed or typed name], Notary Public
_____ My Commission Expires:[Date]
[Official Seal]" (2006-222, s. 1.1.)

§ 44A-65. Notice of lien filed by the clerk of court.

Upon presentation of a notice of lien pursuant to this Article, the clerk of court shall file the notice of lien and shall index the notice of lien in a record maintained by the clerk for that purpose. (2006-222, s. 1.1.)

§ 44A-70. Priority of a lien on an aircraft.

The lien under this Article shall have priority over perfected and unperfected security interests. (2006-222, s. 1.1.)

§ 44A-75. Termination of a lien on an aircraft.

(a) Termination by Payment of Amount Owed. – Any lien under this Article shall be terminated upon receipt by the lienor of the full amount owed for the labor, skill, or materials on the aircraft, and for storage of the aircraft, which amount shall not be limited to any amount shown on the notice of lien filed under G.S. 44A-60, if a notice of lien has been filed by the lienor. Upon receipt of the amount owed, the lienor or the lienor's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lienor, and shall, within 20 days following a request in writing by the aircraft owner, file with the clerk of court a notice of satisfaction of lien, if a notice of lien has been filed by the lienor. A notice of satisfaction of lien shall state that the amount owed for the lienor's expenditure of labor, skill, or materials on the aircraft, and for the storage of the aircraft, has been paid and the lien against the aircraft has been terminated. The notice of satisfaction of lien shall be sworn to or affirmed, and subscribed by the lienor or by someone on the lienor's behalf having personal knowledge of the facts. Upon the filing of a notice of satisfaction of lien, the clerk of court shall make an entry of acknowledgment of satisfaction in the index.

(b) Termination by Deposit of Surety Bond. – Any lien under this Article shall be terminated by the clerk of court whenever a surety bond in a sum equal to one and one-fourth times the amount of the lien claimed against the aircraft and conditioned upon the payment of the amount finally determined to be due in satisfaction of the lien is deposited with the clerk of court. When a deposit that satisfies this subsection is made, the lienor or the lienor's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lienor. (2006-222, s. 1.1; 2013-17, s. 1.)

§ 44A-80. Fees.

The clerk of court shall collect fees for filing, copying, and certifying any document under this Article as set forth in G.S. 7A-308. (2006-222, s. 1.1.)

§ 44A-85. Enforcement of lien by sale.

A lien filed under this Article may be enforced in accordance with G.S. 44A-4, and the proceeds of sale shall be applied as set forth in G.S. 44A-5, except that the three-day time period set forth in G.S. 44A-4(a) for the lienor to file a contrary statement of the amount of the lien at the time of the filing of a complaint by the owner shall be extended to 30 days. An owner may seek immediate possession of an aircraft in accordance with G.S. 44A-4. (2006-222, s. 1.1.)

§ 44A-90. Title of purchaser.

(a) A purchaser for value at a properly conducted sale under this Article, and a purchaser for value without constructive notice of a defect in the sale, whether or not the purchaser is the lienor or an agent of the lienor, acquires title to the property free of any interests over which the lienor was entitled to priority.

(b) Upon the completion of a sale conducted under this Article, the lienor or a person acting on behalf of the lienor, who conducted the sale shall furnish to the purchaser for value a bill of sale for the aircraft signed by the person who conducted the sale that includes a statement that the sale was conducted in accordance with this Article. (2006-222, s. 1.1.)