

§ 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.)