

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

SESSION LAW 2005-229  
SENATE BILL 887

AN ACT TO REVISE THE STATUTES THAT ADDRESS STATUTORY LIENS ON  
REAL PROPERTY.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 2 of Chapter 44A of the General Statutes reads as  
rewritten:

"Article 2.

"Statutory Liens on Real Property.

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

**"§ 44A-7. Definitions.**

Unless the context otherwise requires in this Article:

- (1) "Improve" means to build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapter 83A, 89A or 89C of the General Statutes, and rental of equipment directly utilized on the real property in making the improvement.
- (2) "Improvement" means 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.
- (3) An "owner" is a person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.
- (4) "Real property" means the real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

**"§ 44A-8. Mechanics', ~~laborers'~~laborers', and materialmen's lien; persons entitled to lien-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 such~~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 such~~the~~ contract.

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

Liens~~A claim of lien on real property~~ authorized under ~~the provisions of 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 ~~such-the area as-that is~~ reasonably necessary for the convenient use and occupation of ~~such-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.

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

~~Liens-~~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 lien-claim of lien on real property.

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

~~Liens-~~A claim of lien on real property granted by this Article shall be perfected as of the time ~~set forth~~ provided in G.S. 44A-10 upon the filing of the claim of lien on real property pursuant to under G.S. 44A-12 and may be enforced pursuant to G.S. 44A-13.

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

(a) Place of Filing. – All claims of lien ~~against any-on~~ on real property must be filed in the office of the clerk of superior court in each county ~~wherein-where~~ 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 ~~lien-~~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:
- (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:

\_\_\_\_\_  
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.~~ 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 ~~his~~ 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.~~ 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 ~~said~~ the assignment in the margin of the judgment docket containing the claim of ~~lien.~~ lien on real property. Thereafter the assignee becomes the lien claimant of record.

(f) ~~Waiver of Right to File.~~ 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 claim 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.

**"§ 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 1 misdemeanor.

(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.

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

(a) ~~Where and When Action Instituted.~~ Commenced. – An action to enforce ~~the a~~ claim of lien created by this Article on real property may be ~~instituted~~ commenced in any county ~~in which the lien is filed.~~ 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 ~~lien.~~ 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 ~~trustee in bankruptcy,~~ 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. — ~~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. — ~~Unless the action enforcing the lien created by this Article is instituted in the county in which the lien is filed, in~~ In order for the sale under the provisions of 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 lien, 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 within 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien. It shall not be necessary to file a notice of lis pendens in the county in which the action enforcing the lien is commenced in order for the judgment entered therein and the sale declared thereby to carry with it the priorities set forth in G.S. 44A-14(a). ~~If neither an action nor a commenced.~~ The notice of lis pendens ~~is shall~~ be filed in each county in which the real property subject to the lien is located within 180 days after the time provided in subsection (a) last furnishing of this section for labor or materials at the site commencement of the action improvement by the person claiming the lien, as to real property claimed to be subject to the lien in such counties where the lien claimant. If neither an action was ~~neither commenced nor a notice of lis pendens filed,~~ 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.

**"§ 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.

**"§ 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 ~~lien~~, 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.

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

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, ~~his~~ 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, ~~his~~ 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 ~~lien~~-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 ~~or liens~~ 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 ~~liens~~-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 ~~lien~~-claim or ~~liens~~-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 ~~or liens~~, 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 or ~~liens~~ of record.

"Part 2. Liens of Mechanics, ~~Laborers~~-Laborers, and Materialmen Dealing with One Other Than Owner.

**"§ 44A-17. Definitions.**

Unless the context otherwise requires in this Article:

- (1) "Contractor" means a person who contracts with an owner to improve real property.
- (2) "First tier subcontractor" means a person who contracts with a contractor to improve real property.
- (3) "Obligor" means 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.
- (4) "Second tier subcontractor" means a person who contracts with a first tier subcontractor to improve real property.

- (5) "Third tier subcontractor" means a person who contracts with a second tier subcontractor to improve real property.

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

Upon compliance with this Article:

- (1) A first tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds ~~which that~~ are owed to the contractor with whom the first tier subcontractor dealt and ~~which that~~ arise out of the improvement on which the first tier subcontractor worked or furnished materials.
- (2) A second tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds ~~which that~~ are owed to the first tier subcontractor with whom the second tier subcontractor dealt and ~~which that~~ arise out of the improvement on which the second tier subcontractor worked or furnished materials. A second tier subcontractor, to the extent of ~~his~~ the second tier subcontractor's lien provided in this subdivision, shall also be entitled to be subrogated to the lien of the first tier subcontractor with whom ~~he the second tier contractor~~ dealt provided for in subdivision (1) of this section and shall be entitled to perfect it by notice of claim of lien upon funds to the extent of ~~his the~~ claim.
- (3) A third tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds ~~which that~~ are owed to the second tier subcontractor with whom the third tier subcontractor dealt and ~~which that~~ arise out of the improvement on which the third tier subcontractor worked or furnished materials. A third tier subcontractor, to the extent of ~~his the third tier subcontractor's~~ lien upon funds provided in this subdivision, shall also be entitled to be subrogated to the lien upon funds of the second tier subcontractor with whom ~~he the third tier contractor~~ dealt and to the lien upon funds of the first tier subcontractor with whom the second tier subcontractor dealt to the extent that the second tier subcontractor is entitled to be subrogated thereto, and in either case shall be entitled to perfect the same by notice of claim of lien upon funds to the extent of ~~his the~~ claim.
- (4) Subcontractors more remote than the third tier who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds ~~which that~~ are owed to the person with whom they dealt and ~~which that~~ arise out of the improvement on which they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not be entitled to subrogation to the rights of other persons.
- (5) The liens upon funds granted under this section shall secure amounts earned by the lien claimant as a result of ~~his~~ having furnished labor, materials, or rental equipment at the site of the improvement under the contract to improve real property, including interest at the legal rate provided in G.S. 24-5, whether or not such amounts are due and whether or not performance or delivery is complete. In the event insufficient funds are retained to satisfy all lien claimants, subcontractor lien claimants may recover the interest due under this subdivision on a pro rata basis, but in no event shall interest due under this subdivision increase the liability of the obligor under G.S. 44A-20.
- (6) A lien upon funds granted under this section is perfected upon the giving of notice of claim of lien upon funds in writing to the obligor as provided in G.S. 44A-19 and shall be effective upon the obligor's receipt of the notice. The subrogation rights of a first, second, or third

tier subcontractor to the claim of lien on real property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as provided in G.S. 44A-23.

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

(a) Notice of a claim of lien upon funds shall set ~~forth~~forth all of the following information:

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

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

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

To:

- 1. \_\_\_\_\_, owner of property involved.  
(Name and address)
- 2. \_\_\_\_\_, general contractor.  
(Name and address)
- 3. \_\_\_\_\_, first tier subcontractor against or through  
(Name and address) whom subrogation is claimed, if any.
- 4. \_\_\_\_\_, second tier subcontractor against or through  
(Name and address) whom subrogation is claimed, if any.

General description of real property where 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  
(Name and Address)  
claimed.

General description of real property where 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 ~~in person~~ by personal delivery or by certified mail 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)~~ G.S. 44A-20(d) or G.S. 44A-23.

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

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

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

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

(a) Upon receipt of the notice of claim of lien upon funds provided for in this ~~Article~~ 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 ~~notice has~~ 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 ~~shall make~~ 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 ~~shall make~~ makes a payment after receipt of notice of claim of lien on funds and ~~incurs~~ incurs personal liability ~~therefor~~ 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), subsection (b) of this section~~, which claim of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through ~~G.S.~~ 44A-16 and which claim of lien on real property shall be entitled to the same priorities and subject to the same filing requirements and periods of limitation applicable to the contractor. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the filing of the claim of lien on real property pursuant to G.S. 44A-12. The claim of lien on real property 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), 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.

**"§ 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.

~~In the event that (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 ~~lien~~ claims of liens upon funds that have been ~~filed with~~ 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.

**"§ 44A-22. Priority of ~~liens~~ 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 ~~claim of lien upon funds~~ shall take such payment subject to the ~~claim of lien~~ lien upon funds.

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

(a) First tier subcontractor. – A first tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article, may, to the extent of ~~his~~ this claim, enforce the claim of lien on real property of the contractor created by Part 1 of ~~Article 2 of this Chapter, this Article~~. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on real property is perfected as of the

time set forth in G.S. 44A-10 upon filing of the claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real property, with the notice and of claim of lien upon funds attached, and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent.

(b) Second or third subcontractor. –

(1) A second or third tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article, 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 contractor, within 30 days following the date the building permit is issued for the improvement of the real property involved, posts on the property in a visible location adjacent to the posted building permit and files in the office of the ~~Clerk of Superior Court~~ clerk of superior court in each county wherein the real property to be improved is located, a completed and signed ~~Notice of Contract~~ notice of contract form and the second or third tier subcontractor fails to serve upon the contractor a completed and signed ~~Notice of Subcontract~~ 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~~ notice of contract and the service upon the contractor of a signed ~~Notice of Subcontract~~ 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~~ notice of subcontract form set forth herein.

(2) The form of the ~~Notice of Contract~~ 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~~ clerk of superior court shall be the same as charged for filing a ~~Claim~~ claim of Lien: 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~~ notice of subcontract to be so utilized under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

- "(1) Name and address of the subcontractor:
- "(2) General description of the real property where 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~~claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real property, with the notice and of claim of lien upon funds attached, and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent."

**SECTION 2.** This act becomes effective October 1, 2005, and applies to claims of lien on real property filed and notices of claims of lien upon funds served on or after that date.

In the General Assembly read three times and ratified this the 18<sup>th</sup> day of July, 2005.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 4:14 p.m. this 27<sup>th</sup> day of July, 2005