

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 42  
Judiciary II Committee Substitute Adopted 3/28/11  
House Committee Substitute Favorable 6/20/12

Short Title: Mech. Liens/Pvt Lien Agent.

(Public)

Sponsors:

Referred to:

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PERSONS FURNISHING LABOR OR MATERIALS IN CONNECTION WITH CERTAIN IMPROVEMENTS TO REAL PROPERTY TO GIVE WRITTEN NOTICE TO THE DESIGNATED LIEN AGENT OF THE OWNER OF THE IMPROVED REAL PROPERTY TO PRESERVE THEIR LIEN RIGHTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 44A-7 is amended by adding new subdivisions to read:

"§ 44A-7. Definitions.

Unless the context otherwise requires in this Article:

...

(2a) Lien agent. – A title insurance company or title insurance agency designated by an owner pursuant to G.S. 44A-11.1.

...

(4a) Inspection department. – Any city or county building inspection department authorized by Chapter 160A or Chapter 153A of the General Statutes.

...

(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."

**SECTION 2.** Article 2 of Chapter 44A of the General Statutes is amended by adding new sections to read:

**"§ 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 at the time that the original building permit is issued is thirty thousand dollars \$30,000 or more, the owner shall designate a lien agent no later than the time the owner first contracts with any person for an improvement to the real property. 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. 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 Notice of Claim of Lien upon Funds or for any purpose other than the receipt of notices to the lien agent required under G.S. 44A-11.2.

(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. 58-26-41.



1       (c) Upon receipt of written notification of designation by an owner pursuant to  
2 subsection (a) of this section, the lien agent shall have the duties as set forth in  
3 G.S. 58-26-41(b).

4       (d) In the event that the lien agent revokes its consent to serve as lien agent or is  
5 removed by the owner, or otherwise becomes unable or unwilling to serve before the  
6 completion of all improvements to the real property, the owner shall within three business days  
7 of notice of such event do all of the following:

8           (1) Designate a successor lien agent and provide written notice of designation to  
9 the successor lien agent pursuant to subsection (a) of this section.

10          (2) Provide the contact information for the successor lien agent to the inspection  
11 department that issued any required building permit and to any persons who  
12 requested information relating to the predecessor lien agent.

13          (3) Display the contact information for the successor lien agent on the building  
14 permit or attachment thereto posted on the improved property or, if no  
15 building permit was required, on a sign complying with G.S. 44A-11.2(e).

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

20       (f) Any attorney who, in connection with a transaction involving improved real  
21 property subject to this section for which the attorney is serving as the closing attorney,  
22 contacts the lien agent and requests copies of the notices received by the lien agent relating to  
23 the real property not more than five business days prior to the date of recordation of a deed or  
24 deed of trust on the real property, shall be deemed to have fulfilled the attorney's professional  
25 obligation as closing attorney to check such notices to lien agent and shall have no further duty  
26 to request that the lien agent provide information pertaining to notices received subsequently by  
27 the lien agent.

28 **"§ 44A-11.2. Identification of lien agent; notice to lien agent; effect of notice.**

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

32       (b) Within seven days of receiving a written request by a potential lien claimant by any  
33 delivery method specified in subsection (f) of this section, the owner shall provide a notice to  
34 the potential lien claimant containing the contact information for the lien agent, by the same  
35 delivery method used by the potential lien claimant in making the request. A potential lien  
36 claimant making a request pursuant to this subsection who has not furnished labor at the site of  
37 the improvements, or who did so prior to the posting of the contact information for the lien  
38 agent pursuant to subsection (d) or (e) of this section, shall have no obligation to give notice to  
39 the lien agent under this section until the potential lien claimant has received the contact  
40 information from the owner.

41       (c) A contractor or subcontractor for improvements to real property subject to  
42 G.S. 44A-11.1 shall, within three business days of contracting with a lower-tier subcontractor  
43 who is not required to furnish labor at the site of the improvements, provide the lower-tier  
44 subcontractor with a written notice containing the contact information for the lien agent  
45 designated by the owner. Noncompliance with the notice requirements of this subsection shall  
46 constitute an unfair trade practice subjecting the noncomplying contractor or subcontractor to a  
47 claim for violation of G.S. 75-1.1 by any lower-tier subcontractor entitled to the notice who  
48 suffers actual harm as a result of the noncompliance.

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

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

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

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

- 10 (1) Certified mail, return receipt requested.
- 11 (2) Signature confirmation as provided by the United States Postal Service.
- 12 (3) Physical delivery and obtaining a delivery receipt from the lien agent.
- 13 (4) Facsimile with a facsimile confirmation.
- 14 (5) Depositing with a designated delivery service authorized pursuant to 26  
15 U.S.C. § 7502(f)(2).
- 16 (6) Electronic mail.

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

21 (g) When a lien agent is identified in a contract for improvements to real property  
22 consisting of a single-family residence entered into between an owner and a contractor for the  
23 improvements to the property, the contractor will be deemed to have met the requirement of  
24 notice under subsections (k) and (l) of this section on the date of the lien agent's receipt of the  
25 owner's notice of designation. The owner shall provide written notice to the lien agent  
26 containing the information pertaining to the contractor required in a notice to lien agent  
27 pursuant to subdivisions (1) through (4) of subsection (h) of this section, by any method of  
28 delivery authorized in G.S. 44A-11.2(f). The lien agent shall include the contractor in its  
29 response to any persons requesting information relating to persons who have given notice to the  
30 lien agent pursuant to this section.

31 (h) The form of the notice to be given under this section shall be substantially as  
32 follows:

"NOTICE TO LIEN AGENT

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

44  
45  
46 Dated: \_\_\_\_\_

47  
48  
49 \_\_\_\_\_  
Potential Lien Claimant"

1        (i) The service of the Notice to Lien Agent does not satisfy the service or filing  
2 requirements applicable to a Notice of Claim of Lien upon Funds under Part 2 of Article 2 of  
3 this Chapter.

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

9        (k) Except as otherwise provided in this section, a potential lien claimant may perfect a  
10 claim of lien on real property only if any of the following conditions is met:

11            (1) The lien agent identified in accordance with this section has received notice  
12 from the potential lien claimant no later than 15 days after the first  
13 furnishing of labor or materials by the potential lien claimant.

14            (2) Any of the following conditions is met:

15                    a. The lien agent identified in accordance with this section has  
16 received notice from the potential lien claimant prior to the  
17 date of recordation of a conveyance of the property interest in  
18 the real property to a bona fide purchaser for value protected  
19 under G.S. 47-18 who is not an affiliate, relative, or insider of  
20 the owner.

21                    b. The potential lien claimant has filed a claim of lien pursuant  
22 to G.S. 44A-12 prior to the recordation of a conveyance of  
23 the property interest in the real property to a bona fide  
24 purchaser for value protected under G.S. 47-18 who is not an  
25 affiliate, relative, or insider of the owner.

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

28        (l) Except as otherwise provided in this section, the claim of lien on real property of a  
29 potential lien claimant that is not filed prior to the recordation of any mortgage or deed of trust  
30 shall be subordinate to the previously recorded mortgage or deed of trust unless any of the  
31 following conditions is met:

32            (1) The lien agent identified in accordance with this section has received notice  
33 from the potential lien claimant within 15 days after the first furnishing of  
34 labor or materials by the potential lien claimant.

35            (2) The lien agent identified in accordance with this section has received notice  
36 from the potential lien claimant prior to the date of recordation of the  
37 mortgage or deed of trust for the benefit of one who is not an affiliate,  
38 relative, or insider of the owner.

39        (m) With regard to an improvement to real property subject to G.S. 44A-11.1, a  
40 potential lien claimant shall not be required to comply with this section if the lien agent contact  
41 information is neither contained in the building permit or attachment thereto or sign posted on  
42 the improved property pursuant to subsection (d) or (e) of this section at the time when the  
43 potential lien claimant was furnishing labor at the site of the improvements, nor timely  
44 provided by the owner in response to a written request by the potential lien claimant made  
45 pursuant to subsection (b) of this section. The lien rights of a potential lien claimant who is  
46 given erroneous information by the owner regarding the identity of the lien agent will not be  
47 extinguished under subsection (k) of this section nor subordinated under subsection (l) of this  
48 section.

49        (n) Except as provided in subsections (k) and (l) of this section, nothing contained in  
50 this section shall affect a claim of lien upon funds pursuant to G.S. 44A-18.

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

5       **SECTION 3.** Article 26 of Chapter 58 of the General Statutes is amended by  
6 adding a new section to read:

7 **"§ 58-26-41. Registration as a lien agent.**

8       (a) A title insurance company or title insurance agency authorized to do business in this  
9 State that consents to serve as a lien agent pursuant to G.S. 44A-11.1 shall register with the  
10 Department by providing the following information:

11           (1) Name of the title insurance company or title insurance agency consenting to  
12 serve as a lien agent pursuant to G.S. 44A-11.1.

13           (2) Physical and mailing address, facsimile number and electronic mail address  
14 to which notices may be delivered to the lien agent pursuant to  
15 G.S. 44A-11.2.

16           (3) Telephone number of the lien agent.

17       (b) Upon receipt of the notice of designation by the owner pursuant to G.S. 44A-11.1, a  
18 lien agent shall have the duty to do all of the following:

19           (1) Provide written notice acknowledging its designation as a lien agent to the  
20 owner within three business days of receipt of the owner's written notice of  
21 designation, by the same method of delivery used by the owner in delivering  
22 the notice of designation to the lien agent.

23           (2) Receive notices to lien agent delivered by potential lien claimants.

24           (3) Maintain a record of the date and time of delivery and the information  
25 contained in each notice to lien agent received.

26           (4) Within three business days of receipt of a notice to lien agent by a potential  
27 lien claimant relating to improvements to real property for which the lien  
28 agent has been designated as the lien agent, provide written notice  
29 confirming receipt of the notice to the person providing such notice, by the  
30 same method used by the potential lien claimant in delivering the notice to  
31 lien agent.

32           (5) Within three business days of receipt of any notice to lien agent by a  
33 potential lien claimant relating to improved real property for which the lien  
34 agent has not been designated as the lien agent, provide written notice to the  
35 potential lien claimant that it is not the designated lien agent for the  
36 improved property, by the same method used by the potential lien claimant  
37 in delivering the notice to lien agent.

38           (6) Within three business days of receipt of information relating to the  
39 contractor provided by the owner pursuant to G.S. 44A-11.2(g), provide a  
40 written notice to the contractor acknowledging receipt of this information,  
41 by any method of delivery authorized in G.S. 44A-11.2(f).

42           (7) Provide written notice of the potential lien claimants having delivered notice  
43 to lien agent pursuant to G.S. 44A-11.2, including the information relating to  
44 any contractor identified by the owner pursuant to G.S. 44A-11.2(g), within  
45 one business day of receiving a request from any of the following persons or  
46 their authorized agents:

47           a. An owner of the improved property.

48           b. A title insurance company issuing a policy of title insurance on the  
49 improved property.

50           c. A contracted purchaser of the improved property.

51           d. A potential lien claimant.

1           e. A closing attorney, lender, or settlement agent as defined in  
2           G.S. 45A-3(15) involved in a transaction involving the improved  
3           property.

4           In responding to a request pursuant to this subdivision, the lien agent shall  
5           include the information provided by each potential lien claimant pursuant to  
6           G.S. 44A-11.2(h)(1) and G.S. 44A-11.2(h)(2) and, if specifically requested,  
7           a copy of each notice to lien claimant received by the lien agent.

8           (8) Transfer all notices received and other documentation thereof to any  
9           successor lien agent designated by the owner upon termination under  
10           subsection (d) of this section.

11           (c) A registered lien agent may revoke its consent and be removed from the list of lien  
12           agents by providing written notification of its revocation of consent to the Department of  
13           Insurance and to all owners by whom the lien agent has been designated pursuant to  
14           G.S. 44A-11.1 at least 30 days in advance of the effective date of its revocation of consent.

15           (d) For services rendered pursuant to each designation as a lien agent for improvements  
16           to real property comprising one- or two-family dwellings, a lien agent may collect a fee of not  
17           more than twenty-five dollars (\$25.00) from the owner. For services rendered pursuant to each  
18           designation as a lien agent for all other improvements to real property, the lien agent may  
19           collect a fee not to exceed fifty dollars (\$50.00) from the owner.

20           (e) The Department shall publish on its Web site a current list of lien agents registered  
21           pursuant to this section."

22           **SECTION 4.** G.S. 87-14(a) is amended by adding a new subdivision to read:

23           **"§ 87-14. Regulations as to issue of building permits.**

24           (a) Any person, firm, or corporation, upon making application to the building inspector  
25 or such other authority of any incorporated city, town, or county in North Carolina charged  
26 with the duty of issuing building or other permits for the construction of any building, highway,  
27 sewer, grading, or any improvement or structure where the cost thereof is to be thirty thousand  
28 dollars (\$30,000) or more, shall, before being entitled to the issuance of a permit, satisfy the  
29 following:

30           ...

31           (3) Any person, firm, or corporation, upon making application to the building  
32           inspector or such other authority of any incorporated city, town, or county in  
33           North Carolina charged with the duty of issuing building permits pursuant to  
34           G.S. 160A-417(a)(1) or G.S. 153A-357(a)(1) for any improvements for  
35           which the combined cost is to be thirty thousand dollars (\$30,000) or more,  
36           shall be required to provide to the building inspector or other authority the  
37           name, physical and mailing address, telephone number, facsimile number,  
38           and electronic mail address of the lien agent designated by the owner  
39           pursuant to G.S. 44A-11.1(a)."

40           **SECTION 5.** G.S. 160A-417 is amended by adding a new subsection to read:

41           **"§ 160A-417. Permits.**

42           (a) No person shall commence or proceed with any of the following without first  
43 securing from the inspection department with jurisdiction over the site of the work any and all  
44 permits required by the State Building Code and any other State or local laws applicable to the  
45 work:

46           (1) The construction, reconstruction, alteration, repair, movement to another  
47 site, removal, or demolition of any building or structure.

48           ...

49           (d) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this  
50           section where the cost of the work is thirty thousand dollars (\$30,000) or more unless the name,  
51           physical and mailing address, telephone number, facsimile number, and electronic mail address

1 of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set  
2 forth in the permit or in an attachment thereto. The building permit may contain the lien agent's  
3 electronic mail address. The lien agent information for each permit issued pursuant to this  
4 subsection shall be maintained by the inspection department in the same manner and in the  
5 same location in which it maintains its record of building permits issued."

6 **SECTION 6.** G.S. 153A-357 is amended by adding a new subsection to read:

7 **"§ 153A-357. Permits.**

8 (a) No person may commence or proceed with any of the following without first  
9 securing from the inspection department with jurisdiction over the site of the work each permit  
10 required by the State Building Code and any other State or local law or local ordinance or  
11 regulation applicable to the work:

12 (1) The construction, reconstruction, alteration, repair, movement to another  
13 site, removal, or demolition of any building.

14 ...

15 (e) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this  
16 section where the cost of the work is thirty thousand dollars (\$30,000) or more unless the name,  
17 physical and mailing address, telephone number, facsimile number, and electronic mail address  
18 of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set  
19 forth in the permit or in an attachment thereto. The building permit may contain the lien agent's  
20 electronic mail address. The lien agent information for each permit issued pursuant to this  
21 subsection shall be maintained by the inspection department in the same manner and in the  
22 same location in which it maintains its record of building permits issued."

23 **SECTION 7.** This act becomes effective April 1, 2013, and applies to  
24 improvements to real property affected hereby for which the first furnishing of labor or  
25 materials at the site of the improvements is on or after that date.