

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 88*
Committee Substitute Favorable 4/11/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H88-CSTG-49 [v.7]

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Short Title: Lien Agents/Technical Corrections.

(Public)

Sponsors:

Referred to:

February 12, 2013

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE LAW PERTAINING TO LIEN
AGENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-11.1 reads as rewritten:

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

(a) With regard to any improvements to real property to which this Article is applicable for which the costs of the undertaking are thirty thousand dollars (\$30,000) or more, either at the time that the original building permit is issued or, in cases in which no building permit is required, at the time the contract for the improvements is entered into with the owner, the owner shall designate a lien agent no later than the time the owner first contracts with any person to improve the real property. Provided, however, that the owner is not required to designate a lien agent for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that is ~~used-occupied~~ by the owner as a ~~residence-residence~~, or for the addition of an accessory building or accessory structure as defined in the current edition of 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(g), 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 or for any purpose other than the receipt of notices to the lien agent required under G.S. 44A-11.2.

...

(d) In the event that the lien agent ~~dies~~-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.



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- (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(f).

...."

SECTION 2. G.S. 44A-11.2 reads as rewritten:

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

(d) 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~~ 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 (g) 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, shall be 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.

(g) 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:

- (7) Utilizing an Internet Web site approved for such use by the designated lien agent to transmit to the designated lien agent, with delivery receipt, all information required to notify the lien agent of its designation pursuant to ~~G.S. 44A-11.1, G.S. 44A-11.1~~ or to provide a notice to the designated lien agent pursuant to this section, ~~or to deliver a copy of a notice of claim of lien upon funds to the designated lien agent pursuant to G.S. 44A-23(a1)(3) or G.S. 44A-23(b)(5) e-section.~~

(h) 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 North Carolina 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 will be deemed to have met the requirement of notice under subsections (m) and (n) of this section on the date of the lien agent's receipt of notice of its designation as lien agent delivered to it by the custom contractor in accordance with this section if, at the time of the lien agent's receipt of the notice, all of the following conditions are met:

- (1) The owner has not previously designated a lien agent for the improvements to which the notice of designation of lien agent relates.
- (2) The custom contractor is authorized to designate the lien agent on behalf of the owner under the written contract between the owner and custom contractor.
- (3) In addition to the information required to be included pursuant to G.S. 44A-11.1(a), the notice of designation of lien agent contains the following information:

- a. the custom contractor's name, mailing address, telephone number, fax number (if available), and electronic mailing address (if available).
- b. the name of the owner with whom the custom contractor has contracted to improve the real property identified in the notice.

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

~~When a lien agent is identified in a contract between an owner and a contractor for improvements to real property consisting of a single family residence, the contractor will be deemed to have met the requirement of notice under subsections (m) and (n) of this section on the date of the lien agent's receipt of the owner's notice of designation of the lien agent. The owner shall provide written notice to the lien agent containing the information pertaining to the contractor required in a notice to lien agent pursuant to subdivisions (1) through (3) of subsection (j) of this section, by any method of delivery authorized in G.S. 44A-11.2(g). The lien agent shall include the contractor'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.~~

~~...."~~

SECTION 3. G.S. 58-26-45(b) reads as rewritten:

"§ 58-26-45. Registration as a lien agent.

~~...~~

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

~~...~~

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

~~(6a) Within three business days of receipt of information relating to a design professional provided by the owner pursuant to G.S. 44A-11.2(i), provide a written notice to the design professional acknowledging receipt of this information by any method of delivery authorized in G.S. 44A-11.2(g).~~

~~...."~~

SECTION 4. G.S. 87-14(a)(3) reads as rewritten:

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

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

~~...~~

(3) Any person, firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, town, or county in North Carolina charged with the duty of issuing building permits pursuant to G.S. 160A-417(a)(1) or G.S. 153A-357(a)(1) for any improvements for which the combined cost is to be thirty thousand dollars (\$30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the applicant uses owner occupies as a residence, or for the addition of an accessory building or accessory structure

as defined in the current edition of the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, shall be required to provide to the building inspector or other authority the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a)."

SECTION 5. G.S. 160A-417(d) reads as rewritten:

"§ 160A-417. Permits.

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

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

...

(d) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the ~~applicant uses~~ owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the current edition of the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued."

SECTION 6. G.S. 153A-357(e) reads as rewritten:

"§ 153A-357. Permits.

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

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

...

(e) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the ~~applicant uses~~ owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the current edition of the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued."

SECTION 7. This act is effective when it becomes law and applies to improvements to real property affected hereby for which the first furnishing of labor or materials at the site of the improvements is on or after that date.