



HOUSE BILL 88: Lien Agents/Technical Corrections

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Rep. Hurley
Analysis of: PCS to Second Edition
H88-CSTG-49

Date: May 29, 2013
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SUMMARY: *The PCS to House Bill 88 makes technical corrections to the laws dealing with lien agents enacted as S.L. 2012-158. The PCS clarifies provisions relating to custom contractors and exempts projects consisting of the addition of an accessory structure or accessory building incidental to an exempt owner-occupied single-family dwelling.*

[As introduced, this bill was identical to S45, as introduced by Sen. Randleman, which was enacted as S.L. 2013-18 on April 3, 2013.]

CURRENT LAW: S.L. 2012-158, effective April 1, 2013, as amended by S.L. 2013-16 (House Bill 180), requires the owner to designate a lien agent for improvements to real property costing \$30,000 or more, except for improvements to a single-family dwelling "that is used by the owner as a residence."¹ Potential lien claimants are required to give notice to the designated lien agent in order to preserve their lien rights. For certain contracts, however, the contractor or design professional is deemed to have met the notice requirements.² In these cases, the owner is required to provide the name of the contractor or design professional to the designated lien agent, and the lien agent is required to provide a written notice to the contractor or design professional acknowledging receipt of this information within three days of receiving it.³ If a contractor contracts with a lower-tier subcontractor who is not required to "furnish labor at the site of the improvements," the contractor must provide the lower-tier sub with the contact information for the designated lien agent.⁴ A building permit for projects subject to G.S. 44A-11.1 must contain the name of the designated lien agent, except for improvements to existing single-family residential dwellings "that the applicant uses as a residence."⁵

BILL ANALYSIS: Section 1 of the PCS clarifies that the exemption for improvements to existing single-family dwellings is for those that are "occupied" rather than "used" by the owner as a residence, and exempts the addition of accessory buildings or structures the use of which is incidental to an exempt residence.

Section 2 of the PCS makes a conforming change to G.S. 44A-11.2(d) by replacing "furnish labor" with "furnish labor, materials, rental equipment, or professional design or surveying services," and deletes a reference in subdivision (g)(7) to a notice requirement that was eliminated in S.L. 2013-16, s. 5. Section 2 also rewrites G.S. 44A-11.2(h) to clarify the circumstances under which a custom contractor building a single-family dwelling will be deemed to have given the required notice to the lien agent.

¹ G.S. 44A-44A-11.1(a).

² G.S. 44A-11.2(h) and (i).

³ G.S. 58-26-45(b)(6) and (6A).

⁴ G.S. 44A-11.2(d).

⁵ G.S. 87-14(a)(3), G.S. 160A-417(d), G.S. 153A-357(e).



House PCS 88

Page 2

Section 3 eliminates the requirement that a lien agent notify a contractor or design professional that the owner has provided its contact information pursuant to G.S. 44A-11.2(h) and (i), because this requirement is not needed in view of the fact that the lien rights of these contractors and design professionals are protected under G.S. 44A-11.2 regardless of whether the lien agent receives this information from the owner.

Sections 4, 5 and 6 make conforming changes to the permitting statutes to clarify that the exemption from the requirement in G.S. 44A-11.1(a) that the owner designate a lien agent applies to single-family dwelling units occupied by the owner (rather than by the applicant) as a residence, and to the addition of an accessory building or accessory structure the use of which is incidental to that residential dwelling unit.

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