

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1726\*

Short Title: Amend N.C. Lien Law.

(Public)

Sponsors: Representative Kennedy.

Referred to: Courts and Justice.

May 26, 1994

A BILL TO BE ENTITLED  
AN ACT TO AMEND THE GENERAL STATUTES REGARDING LIENS ON REAL  
PROPERTY AND TO AMEND AND MAKE PERMANENT THE LAW  
REGARDING ATTORNEYS' FEES IN ACTIONS RELATING TO LIENS ON  
REAL PROPERTY AND PAYMENT AND PERFORMANCE BONDS, AS  
RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

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 AND ON FUNDS.**

**"PART 1. GENERAL PROVISIONS: LIENS OF MECHANICS, LABORERS  
AND MATERIALMEN DEALING WITH OWNER. PERSONS  
FURNISHING LABOR, SERVICES, OR MATERIALS.**

**"§ 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

1 furnished by architects, engineers, land surveyors and landscape  
2 architects registered under Chapter 83A, 89A or 89C of the General  
3 Statutes.

4 (2) ~~'Improvement' means all or any part of any building, structure,  
5 erection, alteration, demolition, excavation, clearing, grading, filling,  
6 or landscaping, including trees and shrubbery, driveways, and private  
7 roadways, on real property.~~

8 (3) ~~An 'owner' is a person who has an interest in the real property  
9 improved and for whom an improvement is made and who ordered the  
10 improvement to be made. "Owner" includes successors in interest of  
11 the owner and agents of the owner acting within their authority.~~

12 (4) ~~'Real property' means the real estate that is improved, including lands,  
13 leaseholds, tenements and hereditaments, and improvements placed  
14 thereon.~~

15 In this Article:

16 (1) 'Contractor' means a person who contracts with an owner to improve  
17 real property.

18 (2) 'First tier subcontractor' means a person who contracts with a  
19 contractor to improve real property.

20 (3) 'Improve' means to build, effect, alter, repair, or demolish any  
21 improvement upon, connected with, or on or beneath the surface of  
22 any real property, or to excavate, clear, grade, fill or landscape any real  
23 property, or to construct driveways and private roadways, or to furnish  
24 materials, including trees and shrubbery, for any of such purposes, or  
25 to perform any labor upon such improvements, and shall also mean  
26 and include any design or other professional or skilled services  
27 furnished by architects, engineers, land surveyors, and landscape  
28 architects registered under Chapter 83A, 89A or 89C of the General  
29 Statutes, and rental of equipment directly utilized on the real property  
30 in making the improvement.

31 (4) 'Improvement' means all or any part of any building, structure,  
32 erection, alteration, demolition, excavation, clearing, grading, filling,  
33 or landscaping, including trees and shrubbery, driveways, and private  
34 roadways, on real property.

35 (5) 'Lien' means any lien on funds or on real property or claim of a lien on  
36 funds or on real property under this Article and includes any document  
37 filed under G.S. 44A-12 or served under G.S. 44A-19.

38 (6) 'Lien on funds' means any lien or claim of a lien with respect to funds  
39 under this Article and includes any document served under G.S. 44A-  
40 19.

41 (7) 'Lien on real property' means any lien or claim of a lien with respect to  
42 real property under this Article and includes any document filed under  
43 G.S. 44A-12.

- 1           (8) 'Lienor' means a person who has either a lien on real property or a lien  
2 on funds or both under this Article.
- 3           (9) 'Obligor' means an owner, contractor, or subcontractor in any tier who  
4 owes money to another as a result of the other's partial or total  
5 performance of a contract to improve real property.
- 6           (10) 'Owner' means a person who has an interest in the real property and for  
7 whom an improvement is made and who ordered the improvement to  
8 be made. 'Owner' includes successors in interest of the owner and  
9 agents of the owner acting within their authority.
- 10          (11) 'Protected party' means an individual who purchases and takes record  
11 title to a single family dwelling unit, all or a part of which the  
12 individual or an individual to whom the individual is related occupies  
13 or intends to occupy as a residence. An individual is 'related' to an  
14 individual if that individual is (i) the spouse of the individual; (ii) a  
15 brother, brother-in-law, sister, or sister-in-law of the individual; (iii) an  
16 ancestor or descendant of the individual or of the individual's spouse;  
17 or (iv) any other relative by blood, marriage, or adoption of the  
18 individual or the individual's spouse if the relative shares the same  
19 residence with the individual.
- 20          (12) 'Real property' means the real estate that is improved, including lands,  
21 leaseholds, tenements and hereditaments, and improvements placed  
22 thereon.
- 23          (13) 'Second tier subcontractor' means a person who contracts with a first  
24 tier subcontractor to improve real property.
- 25          (14) 'Third tier subcontractor' means a person who contracts with a second  
26 tier subcontractor to improve real property.

27 **"§ 44A-7.1. Waiver, release, or subordination of any lien on real property.**

28       (a) This section applies to any waiver, release, or subordination of any lien on  
29 real property.

30       (b) A waiver of a lien on real property in consideration for the awarding of any  
31 contract for the making of an improvement on real property under this Article is against  
32 public policy and is unenforceable. This section does not prohibit any waiver or release  
33 at any time after the contract by the lienor is made. This section does not prohibit any  
34 subordination at any time.

35       (c) A waiver, release, or subordination of a lien on real property requires no  
36 consideration.

37       (d) Subject to G.S. 44A-18(8), a waiver, release, or subordination of a lien on  
38 real property serves to waive, release, or subordinate the rights of all parties claiming  
39 through the waiving, releasing, or subordinating party.

40 **"§ 44A-7.2. Waiver, release, or subordination of any lien on funds ineffective;**  
41 **compromise or settlement.**

42       A waiver, release, or subordination of a lien on funds prior to receipt of full payment  
43 by the waiving, releasing, or subordinating party is against public policy and is

1 unenforceable. This section shall not prevent parties from resolving by compromise or  
2 settlement the amount of the claim giving rise to a lien on funds.

3 **"§ 44A-7.3. No liens on governmental real property.**

4 Nothing in this Article shall extend a lien on real property to the real property of the  
5 State of North Carolina or of any agencies, municipalities, counties, or other political  
6 subdivisions of the State of North Carolina.

7 **"§ 44A-7.4. Applicability of lien on funds to public contracts.**

8 A lien on funds shall apply to public contracts for the improvement of real property  
9 only as to funds received by a contractor from the public owner. No lien on funds or  
10 liability with respect to a lien on funds may be enforced against the State of North  
11 Carolina or any agencies, municipalities, counties, or other political subdivisions of the  
12 State of North Carolina.

13 **"§ 44A-7.5. Agency.**

14 Any lien or notice that may be filed, recorded, or given pursuant to this Article may  
15 be executed, filed, recorded, or given by the lienor's agent or attorney.

16 **"§ 44A-7.6. Acknowledgment not required.**

17 Any document that may be served, recorded, or filed under this Article need not be  
18 acknowledged.

19 **"PART 1A. LIENS OF PERSONS FURNISHING LABOR, SERVICES, OR**  
20 **MATERIALS DEALING WITH AN OWNER.**

21 **"§ 44A-8. ~~Mechanics', laborers' and materialmen's lien; persons~~ Persons entitled**  
22 **to ~~lien.~~ lien on real property.**

23 Any person who performs or furnishes labor or professional design or surveying services  
24 or furnishes materials improves real property pursuant to a contract, either express or  
25 implied, with the an owner of real property for the making of an improvement thereon to  
26 real property shall, upon complying with the provisions of this Article, Part, have a lien  
27 on such the real property to secure payment of all debts owing for labor done or  
28 professional design or surveying services or material furnished pursuant to such the contract.

29 **"§ 44A-9. ~~Extent of lien.~~ lien on real property.**

30 Liens authorized under the provisions of this Article A lien on real property shall extend  
31 to the improvement and to the lot or tract on which the improvement is situated, to the  
32 extent of the interest of the owner. When the lot or tract on which a building is erected an  
33 improvement is made is not surrounded at the time of making the contract with the  
34 owner by an enclosure separating it from adjoining land of the same owner, the lot or  
35 tract to which any lien on real property extends shall be such area as is reasonably  
36 necessary for the convenient use and occupation of such building, improvement, but in  
37 no case shall the area include a building, structure, or improvement not normally used or  
38 occupied or intended to be used or occupied with the building improvement with respect  
39 to which the lien on real property is claimed.

40 **"§ 44Ai ~~Liens granted by this Article shall relate to and take effect from the time of~~**  
41 **the first furnishing of labor or materials at the site of the improvement**  
42 **by the person claiming the lien.**

43 **"§ 44A-10.1. Priority of contractor's lien on real property.**

1 (a) General Priority. – Except as provided in subsection (b) of this section, the  
2 following rules apply to determining the priority of a contractor's lien on real property:

3 (1) If a contractor's lien on real property is filed while a notice of  
4 commencement is effective as to the improvement in connection with  
5 which the contractor's lien on real property arises, the priority of the  
6 contractor's lien on real property is determined as of the time the notice  
7 of commencement is recorded.

8 (2) If a contractor's lien on real property is filed while there is no effective  
9 notice of commencement as to the improvement in connection with  
10 which the contractor's lien on real property arises, the priority of the  
11 contractor's lien on real property is determined as of the time the  
12 contractor's lien on real property is filed.

13 (b) Priority Against a Subsequent Purchaser That Is a Protected Party. – Whether  
14 or not a notice of commencement has been recorded, in order for a contractor's lien on  
15 real property to have priority over the interest of a subsequent purchaser that is a  
16 protected party or a successor in interest to the subsequent purchaser, the contractor's  
17 lien on real property shall be filed before the document conveying an interest in the real  
18 property to the protected party is recorded.

19 **"§ 44A-10.2. Notice of commencement; recording.**

20 (a) Except as provided in subsection (b) of this section, a notice of  
21 commencement shall be signed by the owner, shall be denominated 'notice of  
22 commencement', and shall state:

23 (1) A description sufficient to identify the real property being or intended  
24 to be improved;

25 (2) The name, address, and interest in the real property of the owner;

26 (3) The name and address of the record owner (if different from the owner  
27 named pursuant to subdivision (2) of this subsection);

28 (4) The name and address of the contractor or contractors; and

29 (5) The duration of the notice of commencement.

30 The following form shall be sufficient:

31  
32 **'NOTICE OF COMMENCEMENT, OWNER RECORDING**

33 'PLEASE TAKE NOTICE that this notice of commencement is recorded pursuant to  
34 G.S. 44A-10.2(a) and (g).

35 1. Description of the real property upon which the improvements are  
36 being or intended to be made (Street address, tax lot and block  
37 number, reference to recorded instrument, or any other description of  
38 the real property is sufficient, whether or not it is specific, if it  
39 reasonably identifies what is described.):

40 .....  
41 .....

42 .....  
43 2. The name, address, and interest in the real property of the owner:

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- .....
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- .....
- 3. The name and address of the record owner (if different from the owner named above):  
.....
- .....
- .....
- 4. The name and address of the contractor or contractors:  
.....
- .....
- .....
- 5. Duration of this notice of commencement (not less than six months or more than three years; if none stated, duration is one year):  
.....
- .....
- .....

.....(Insert name of owner).....  
Owner

By:.....(signature).....'

(b) If there is no effective notice of commencement applicable to an improvement, a lienor who is entitled to file a lien on real property may sign and record a notice of commencement denominated 'notice of commencement, lienor recording', stating:

- (1) A description sufficient to identify the real property being or intended to be improved;
- (2) The name and address of the record owner, against whom the notice of commencement is effective;
- (3) The name and address of the lienor recording the notice of commencement;
- (4) The name and address of the owner or other person with whom the lienor contracted with respect to the improvement;
- (5) The name and address of each contractor and subcontractor (if not the lienor) through which the lienor asserts its lien on real property;
- (6) A brief description of the labor, services, or materials furnished or to be furnished by the lienor for the improvement; and
- (7) The duration of the notice of commencement, which shall be one year.

The following form shall be sufficient:

**'NOTICE OF COMMENCEMENT, LIENOR RECORDING**

1 PLEASE TAKE NOTICE that the lienor is entitled to a lien on real property and  
2 records this notice of commencement pursuant to G.S. 44A-10.2(b) and (g).

3 1. Description of the real property upon which the improvements are  
4 being or intended to be made (Street address, tax lot and block  
5 number, reference to recorded instrument, or other description of the  
6 real property is sufficient, whether or not it is specific, if it reasonably  
7 identifies what is described.):

8 .....  
9 .....

10 .....  
11 2. The name and address of the record owner against whom the notice of  
12 commencement is effective:

13 .....  
14 .....

15 .....  
16 3. The name and address of the lienor recording this notice of  
17 commencement:

18 .....  
19 .....

20 .....  
21 4. The name and address of the owner or other person with whom the  
22 lienor contracted with respect to the improvement:

23 .....  
24 .....

25 .....  
26 5. The name and address of each contractor and subcontractor (if not the  
27 lienor) through which the lienor asserts its lien on real property:

28 .....  
29 .....

30 .....  
31 6. A brief description of the labor, services, or materials furnished or to  
32 be furnished by the lienor for the improvement:

33 .....  
34 .....

35 .....  
36 7. Duration of this notice of commencement: One year.

37 .....  
38 .....(Insert name of lienor).....

39 Lienor

40 .....  
41 By:.....(signature).....'

42 .....  
43 (c) A lienor recording a notice of commencement shall send a copy of the notice  
44 to the record owner no later than the date it is recorded by depositing it in the United

1 States mail, first class postage prepaid, addressed to the owner at the address shown on  
2 the tax records of the county in which the property is located, or by any other method of  
3 effecting its actual delivery. The failure of the lienor to send the notice of  
4 commencement to the record owner shall not impair the effectiveness of the notice.

5 (d) A notice of commencement recorded by an owner may state a duration of any  
6 period not in excess of three years after it is recorded, but if the duration stated is less  
7 than six months, the duration of the notice is six months after it is recorded. If no  
8 duration is stated, the duration of the notice is one year after it is recorded. The duration  
9 of a notice of commencement recorded by a lienor is one year after it is recorded, and  
10 any different duration stated in the notice is not effective.

11 (e) The owner or the lienor who recorded a notice of commencement may extend  
12 its duration by signing and recording, before the notice lapses, a continuation statement  
13 that refers to the location in the record and date of recording of the notice of  
14 commencement and states the date to which duration of the notice is extended, which  
15 date shall be no more than one year from the date of the recording of that continuation  
16 statement. An extended notice of commencement shall be effective as of the time of the  
17 recording of the original notice. Continuation statements for successive terms may be  
18 recorded pursuant to this subsection.

19 (f) The notice of commencement is effective only as to the contractor named in  
20 the notice and those persons claiming through that contractor. In the case of multiple  
21 contracts with an owner for the same improvement, the notice shall be effective only as  
22 to the contractors named in the notice and those persons claiming through them.

23 (g) The notice of commencement shall be recorded in the office of the register of  
24 deeds in each county where the improvement or any part of the improvement is located.  
25 The register of deeds shall index the notice of commencement in the real property  
26 records under the name of the record owner of the real property at the time the notice is  
27 recorded, as grantor, and under the names of the contractor or contractors named in the  
28 notice, as grantee.

29 (h) A notice of commencement shall be recorded prior to the issuance of a permit  
30 as provided by G.S. 153A-357(c) and G.S. 160A-417(c).

31 **"§ 44A-10.3. Termination of notice of commencement; request for notice.**

32 (a) The owner or the lienor who recorded a notice of commencement may  
33 terminate the notice as to all or any identified portion of the real property subject to the  
34 notice of commencement by:

35 (1) Recording, in the office where the notice of commencement was  
36 recorded, a notice of termination denominated 'termination of notice of  
37 commencement' and containing:

38 a. The information required by G.S. 44A-10.2(a) or (b) for a  
39 notice of commencement;

40 b. A reference to the recorded notice of commencement by its  
41 location in the record and a statement of its date of recording;

42 c. A statement of the effective date of the notice of termination,  
43 which may not be earlier than 30 days after the notice of  
44 termination is recorded; and



d. If the notice of termination is intended to apply only to a portion of the real property subject to the notice of commencement, a statement of that fact and a description of the portion of the real property to which the notice of termination applies; and

(2) Sending, at least 21 days before the effective date of the notice of termination, a copy of the notice of termination, showing the date it was recorded, to all persons who have requested that the person recording the notice of commencement notify them of the recording of a notice of termination. The notice of termination shall be sent by depositing it in the United States mail, first class postage prepaid, addressed to the person to be notified, or by any other method effecting its actual delivery. Either (i) a certificate of service and a receipt from the United States Post Office showing the person and address to which the notice was sent and the date of mailing or (ii) a receipt signed by the requestor dated not less than 10 days before the effective date of termination shall be proof that the notice of termination was timely sent. Third parties shall be entitled to rely on such proof unless they have actual knowledge that the notice of termination was not sent.

(b) Any person may request a copy of a notice of termination by recording a request for notice of termination in the office of the register of deeds in each county where the notice of commencement is recorded. The request shall be indexed in the real property records under the name of the record owner as grantor and shall be described as 'Req. for N/T Book ..... Page .....'. The following form shall be sufficient:

**'REQUEST FOR NOTICE OF TERMINATION OF NOTICE OF COMMENCEMENT**

'The undersigned requests a copy of any Notice of Termination recorded with respect to the Notice of Commencement recorded in Book ..... at Page ..... County Registry. The copy of the Notice of Termination shall be sent to the undersigned at the address indicated.

.....  
**NAME OF PARTY REQUESTING COPY**

.....  
**STREET ADDRESS OR POST OFFICE BOX NUMBER**

.....  
**CITY, STATE, AND ZIP CODE'**

"§ 44A-11. Perfecting liens- a lien on real property.

1 Liens granted by this Article shall be Upon filing a lien on real property pursuant to  
2 G.S. 44A-12, the lien on real property is perfected as of the time set forth in G.S. 44A-10  
3 44A-10.1 upon filing of claim of lien pursuant to G.S. 44A-12 and may be enforced  
4 pursuant to G.S. 44A-13.

5 **"§ 44A-12. Filing claim of lien, a lien on real property.**

6 (a) Place of Filing. ~~All claims of A lien against any on~~ real property ~~must shall~~ be  
7 filed in the office of the clerk of superior court in each county ~~wherein where~~ the real  
8 property subject to the ~~claim of lien on real property~~ is located. The clerk of superior  
9 court shall note the ~~claim of lien on real property~~ on the judgment docket and index the  
10 same under the name of the record owner of the real property at the time the ~~claim of~~  
11 ~~lien on real property~~ is filed. ~~An additional copy of the claim of lien may also be filed with~~  
12 ~~any receiver, referee in bankruptcy or assignee for benefit of creditors who obtains legal~~  
13 ~~authority over the real property.~~

14 (b) Time of Filing. ~~Claims of A lien on real property~~ may be filed at any time  
15 after the ~~maturity of the obligation secured thereby contract for the improvement has been~~  
16 ~~made~~ but not later than 120 days after the last furnishing of ~~labor labor, services, or~~  
17 materials at the site of the improvement by ~~or on behalf of~~ the person claiming the ~~lien.~~  
18 ~~lien on real property.~~

19 (c) Contents of ~~Claim of a Lien to Be Filed on Real Property.~~ ~~All claims of A lien~~  
20 ~~must on real property shall~~ be filed using a form substantially as follows:

21  
22 **CLAIM OF LIEN 'LIEN ON REAL PROPERTY**

23 'PLEASE TAKE NOTICE that the lienor, being a contractor as defined by G.S.  
24 44A-7 or a subcontractor asserting rights under G.S. 44A-18, claims a lien on the real  
25 property described below:

26 (1) Name and address of the ~~person claiming the lien: lienor:~~  
27 .....

28 .....  
29 .....

30 (2) Name and address of the record owner of the real property claimed to  
31 be subject to the lien on real property at the time the ~~claim of lien on~~  
32 real property is filed:  
33 .....

34 .....  
35 .....

36 (3) Description of the real property ~~upon which the~~ subject to the lien is  
37 claimed: on real property (Street address, tax lot and block number,  
38 reference to recorded instrument, or any other description of real  
39 property is sufficient, whether or not it is specific, if it reasonably  
40 identifies what is described):  
41 .....

42 .....  
43 .....

(4) Name and address of the ~~person-party~~ with whom the ~~claimant-lienor~~ contracted for the furnishing of ~~labor~~ labor, services, 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 to be performed, services rendered or to be rendered, or materials furnished or to be furnished, and the amount claimed ~~therefor~~ or to be claimed for the labor, services, or materials, with principal and any interest stated separately:

.....  
.....

(7) Is this lien on real property being filed by a subcontractor in order to perfect the contractor's lien on real property, if any, pursuant to the rights of the subcontractor as provided in G.S. 44A-18, or to perfect a lien on real property to the extent of the direct liability of the owner, if any, under G.S. 44A-20(d)? If so, check here [  ].

.....  
.....(Insert name of lienor).....  
~~Lien-Claimant-Lienor~~

By: .....(signature).....

Filed this ..... day of....., 19.....

**CLERK OF SUPERIOR COURT-COURT'**

A general description of the ~~labor performed~~ labor, services, or materials furnished is sufficient. It is not necessary for ~~lien-claimant~~ a lienor to file an itemized list of ~~materials or a detailed statement of labor performed~~ labor, services, or materials.

(d) No Amendment of Claim of Lien-Lien on Real Property; Multiple Filings. – A claim of lien on real property filed under this Article may not be amended. A claim of lien may be cancelled by a claimant or his authorized agent or attorney and a new claim of lien substituted therefor within the time herein provided for original filing. A lienor may file subsequent liens on real property with respect to the same improvement and the same contract. Any subsequent lien on real property shall be treated as a separate filing for purposes of priority and computation of periods of filing and enforcement of a lien on real property.

1 (e) ~~Notice of Assignment of Claim of Lien.~~ Lien on Real Property. – When a ~~claim~~  
2 ~~of lien on real property~~ has been filed, it may be assigned of record by the ~~lien claimant~~  
3 lienor in a writing filed with the clerk of superior court who shall note said ~~the~~  
4 assignment in the margin of the judgment docket containing the claim of lien. lien on real  
5 property. Thereafter the assignee becomes the ~~lien claimant~~ lienor of record. In order for  
6 the assignment to be effective against the owner, the owner shall receive actual notice of  
7 the assignment.

8 (f) ~~Waiver of Right to File or Claim Liens as Consideration for Contract Against~~  
9 ~~Public Policy.~~ — ~~An agreement to waive the right to file or claim a lien granted under~~  
10 ~~this Article, which agreement is in anticipation of and in consideration for the awarding~~  
11 ~~of any contract, either expressed or implied, for the making of an improvement upon~~  
12 ~~real property under this Article is against public policy and is unenforceable. This~~  
13 ~~section does not prohibit subordination or release of a lien granted under this Article.~~

14 **"§ 44A-13. Action to enforce ~~lien.~~ lien on real property.**

15 (a) ~~Where and When Action Instituted.~~ Commenced. – An action to enforce ~~the a~~  
16 ~~lien created by this Article on real property~~ may be ~~instituted~~ commenced in any county ~~in~~  
17 ~~which the lien is filed.~~ where venue is otherwise proper. ~~No such action may be commenced~~  
18 ~~later than 180 days after the last furnishing of labor or materials at the site of the improvement~~  
19 ~~by the person claiming the lien.~~ The action shall be commenced not later than 180 days  
20 from the filing of the lien on real property. The time within which to commence an  
21 action to enforce a lien on real property is not extended by virtue of a voluntary  
22 dismissal without prejudice taken under G.S. 1A-1, Rule 41(a). If the title to the real  
23 property against which the lien on real property is asserted is by law vested in a receiver  
24 or trustee in bankruptcy, is subject to the control of a bankruptcy court, the lien on real  
25 property shall be enforced in accordance with the orders of the court having jurisdiction  
26 over said the real property. property; the filing of a proof of claim in bankruptcy or with  
27 a receiver within the time required by this section satisfies the requirement for the  
28 commencement of a civil action and the filing of a notice of **lis pendens.**

29 (b) ~~Judgment.~~ — ~~Judgment.~~ A judgment enforcing a lien under this Article on real  
30 property may be entered for the principal — ~~amount shown to be due, not exceeding the~~  
31 ~~principal amount stated in the claim of lien enforced thereby.~~ due and shall bear interest as  
32 provided in G.S. 24-5. The judgment shall direct a sale of the real property subject to the  
33 lien thereby enforced. property, shall specify the lien on real property to which the  
34 judgment relates, and shall state the priority date of the lien on real property. To the  
35 extent that a judgment is entered for an amount in excess of the amount stated in the lien  
36 on real property plus interest, the excess shall not be enforced as a lien on real property  
37 but shall be a separate judgment enforceable under G.S. 1-233 and G.S. 1-234.

38 (c) ~~Notice of Action.~~ — ~~Unless the action enforcing the lien created by this Article~~  
39 ~~is instituted in the county in which the lien is filed, in order for the sale under the~~  
40 ~~provisions of G.S. 44A-14(a) to pass all title and interest of the owner to the purchaser~~  
41 ~~good against all claims or interests recorded, filed or arising after the first furnishing of~~  
42 ~~labor or materials at the site of the improvement by the person claiming the lien, a~~ A  
43 notice of lis pendens shall be filed in each county in which the real property subject to  
44 the lien on real property is located — located, except the county in which the action is

1 commenced. The notice of **lis pendens** shall be filed within the time provided in  
2 subsection (a) of this section for the commencement of the action by the lienor. ~~within~~  
3 ~~180 days after the last furnishing of labor or materials at the site of the improvement by~~  
4 ~~the person claiming the lien. It shall not be necessary to file a notice of lis pendens in~~  
5 ~~the county in which the action enforcing the lien is commenced in order for the~~  
6 ~~judgment entered therein and the sale declared thereby to carry with it the priorities set~~  
7 ~~forth in G.S. 44A-14(a). If neither an action nor a notice of lis pendens is filed in each~~  
8 ~~county in which the real property subject to the lien is located within 180 days after the~~  
9 ~~last furnishing of labor or materials at the site of the improvement by the person~~  
10 ~~claiming the lien, as to real property claimed to be subject to the lien in such counties~~  
11 ~~where the action was neither commenced nor a notice of lis pendens filed, the judgment~~  
12 ~~entered in the action enforcing the lien shall not direct a sale of the real property subject~~  
13 ~~to the lien enforced thereby nor be entitled to any priority under the provisions of G.S.~~  
14 ~~44A-14(a), but shall be entitled only to those priorities accorded by law to money~~  
15 ~~judgments.~~

16 **"§ 44A-14. Sale of property in satisfaction of judgment enforcing lien on real**  
17 **property or upon order prior to judgment; distribution of proceeds.**

18 (a) Execution Sale; Effect of Sale. – Except as provided in subsection (b) of this  
19 section, sales under this Article and distribution of proceeds thereof shall be made in  
20 accordance with the execution sale provisions set out in G.S. 1-339.41 through 1-  
21 339.76. The sale of real property to satisfy a lien ~~granted by this Article on real property~~  
22 shall pass all title and interest of the owner to the purchaser, good against all claims or  
23 interests ~~recorded, filed or arising after the first furnishing of labor or materials at the site of~~  
24 ~~the improvement by the person claiming a lien.~~ against which the lien on real property has  
25 priority under G.S. 44A-10.1, 44A-18.1, or 44A-20.1.

26 (b) Sale of Property upon Order Prior to Judgment. – A resident judge of superior  
27 court in the district in which the action to enforce the lien on real property is pending, a  
28 judge regularly holding the superior courts of ~~the said that~~ district, any judge holding a  
29 session of superior court, either civil or criminal, in ~~the said that~~ district, a special judge  
30 of superior court residing in ~~the said that~~ district, or the chief judge of the district court  
31 in which the action to enforce the lien on real property is pending, may, upon notice to  
32 all interested parties and after a hearing thereupon and upon a finding that a sale prior to  
33 judgment is necessary to prevent substantial waste, destruction, depreciation or other  
34 damage to ~~said the~~ real property prior to the final determination of ~~said the~~ action, order  
35 any real property against which a lien ~~under this Article on real property~~ is asserted, sold  
36 in any manner determined by ~~said the~~ judge to be commercially reasonable. The rights  
37 of all parties shall be transferred to the proceeds of the sale. Application for ~~such the~~  
38 order and further proceedings thereon may be heard in or out of session.

39 **"§ 44A-15. Attachment available to ~~lien claimant.~~ lienor.**

40 In addition to other grounds for attachment, in all cases where the owner removes or  
41 attempts or threatens to remove an improvement from real property subject to a lien  
42 ~~under this Article, on real property,~~ without the written permission of the ~~lien claimant~~  
43 lienor or with the intent to deprive the ~~lien claimant-lienor of his lien,~~ the lien on real

1 property, the remedy of attachment of the property subject to the lien on real property  
2 shall be available to the ~~lien claimant-lienor~~ or any other person.

3 **"§ 44A-16. Discharge of record ~~lien.~~ lien on real property.**

4 (a) A lien on real property is discharged by failure to enforce the lien on real  
5 property in accordance with G.S. 44A-13 within the time limitations prescribed in this  
6 Article.

7 (b) Any ~~A~~ lien filed under this Article may be on real property is discharged by any  
8 of the following methods: in whole or, if so provided, in part, and the clerk of superior  
9 court shall cancel the lien of record to the extent discharged upon the request of any  
10 person, when:

11 (1) The ~~lien claimant of record, his agent or attorney, in the presenee of~~  
12 the clerk of superior court may acknowledge the satisfaction of the lien  
13 indebtedness, whereupon the clerk of superior court shall forthwith  
14 make upon the record of such lien an entry of such acknowledgment of  
15 satisfaction, which shall be signed by the lien claimant of record, his  
16 agent or attorney, and witnessed by the clerk of superior court. ~~An~~  
17 instrument requesting that the lien on real property be discharged in  
18 whole or in part, signed by the lienor or the lienor's agent or attorney,  
19 and acknowledged before a person authorized to administer oaths, is  
20 filed with the clerk of superior court;

21 (2) The ~~owner may exhibit an instrument of satisfaction signed and~~  
22 acknowledged by the lien claimant of record which instrument states  
23 that the lien indebtedness has been paid or satisfied, whereupon the  
24 clerk of superior court shall cancel the lien by entry of satisfaction on  
25 the record of such lien. ~~An~~ instrument stating that the indebtedness  
26 secured by the lien on real property has been paid or discharged,  
27 signed by the lienor or the lienor's agent or attorney, and  
28 acknowledged before a person authorized to administer oaths, is filed  
29 with the clerk of superior court;

30 (3) By failure to enforce the lien within the time prescribed in this Article.

31 (4) By filing in the office of the clerk of superior court ~~the~~ The original or a  
32 certified copy of a final judgment or decree of a court of competent  
33 jurisdiction showing that the lienor's action by the claimant to enforce  
34 the lien on real property has been dismissed with prejudice or  
35 otherwise finally determined adversely to the ~~claimant.~~ lienor, is filed  
36 with the clerk of superior court;

37 (5) ~~Whenever a~~ A sum equal to one and one-fourth times the principal  
38 amount ~~of~~ stated in the lien on real property, which shall be applied to  
39 the payment finally determined to be due, ~~or liens claimed~~ is deposited  
40 with the clerk of superior court, to be applied to the payment finally  
41 determined to be due, whereupon the clerk of superior court shall cancel the  
42 lien or liens of record. ~~court;~~ or

43 (6) ~~Whenever a~~ A corporate surety bond, in a sum equal to one and one-  
44 fourth times the principal amount of the stated in the lien on real

1            ~~property or liens claimed and~~ conditioned upon the payment of the  
 2            amount finally determined to be due in satisfaction of ~~said the lien or~~  
 3            ~~liens, on real property,~~ is deposited with the clerk of court, ~~whereupon~~  
 4            ~~the clerk of superior court shall cancel the lien or liens of record.~~ superior  
 5            court.

6            **"PART 2. LIENS OF MECHANICS, LABORERS AND**  
 7            **MATERIALMEN PERSONS FURNISHING LABOR,**  
 8            **SERVICES, OR MATERIALS DEALING WITH**  
 9            **ONE A PERSON OTHER THAN AN OWNER.**

10        ~~"§ 44A—Unless the context otherwise requires in this Article:~~

- 11            (1) ~~'Contractor' means a person who contracts with an owner to improve~~  
 12            ~~real property.~~  
 13            (2) ~~'First tier subcontractor' means a person who contracts with a~~  
 14            ~~contractor to improve real property.~~  
 15            (3) ~~'Obligor' means an owner, contractor or subcontractor in any tier who~~  
 16            ~~owes money to another as a result of the other's partial or total~~  
 17            ~~performance of a contract to improve real property.~~  
 18            (4) ~~'Second tier subcontractor' means a person who contracts with a first~~  
 19            ~~tier subcontractor to improve real property.~~  
 20            (5) ~~'Third tier subcontractor' means a person who contracts with a second~~  
 21            ~~tier subcontractor to improve real property.~~

22        ~~"§ 44A-18. Grant of lien; subrogation; perfection. Subcontractors' liens; perfection;~~  
 23        ~~enforcement.~~

24            ~~Upon compliance with this Article: Subcontractors are entitled to liens provided by this~~  
 25        ~~section, subject to other requirements in this Article:~~

26            (1) First Tier Subcontractors.

27            a. ~~A first tier subcontractor who furnished labor or materials at the~~  
 28            ~~site of the improvement shall be entitled to a lien upon on funds~~  
 29            ~~which that are owed or become owed to the contractor with~~  
 30            ~~whom the first tier subcontractor dealt and which arise out of for~~  
 31            ~~the improvement on which the first tier subcontractor worked or~~  
 32            ~~furnished labor, services, or materials.~~

33            b. A first tier subcontractor, to the extent of that subcontractor's  
 34            lien on funds provided in G.S. 44A-18(1)a., upon compliance  
 35            with subdivision (7) of this section, may perfect and enforce the  
 36            lien on real property of the contractor with whom the  
 37            subcontractor dealt. The first tier subcontractor's lien on real  
 38            property under this sub-subdivision shall not exceed in amount  
 39            the lesser of the lien on funds provided to the first tier  
 40            subcontractor by G.S. 44A-18(1)a. or the amount of the  
 41            contractor's lien on real property provided by G.S. 44A-8.

42            (2) Second Tier Subcontractors.

43            a. ~~A second tier subcontractor who furnished labor or materials at the~~  
 44            ~~site of the improvement shall be entitled to a lien upon on funds~~

1           ~~which that~~ are owed or become owed to the first tier  
2 subcontractor with whom the second tier subcontractor dealt  
3 ~~and which arise out of for~~ the improvement on which the second  
4 tier subcontractor ~~worked or~~ furnished labor, services, or  
5 materials. ~~A second tier subcontractor, to the extent of his lien~~  
6 ~~provided in this subdivision, shall also be entitled to be subrogated to~~  
7 ~~the lien of the first tier subcontractor with whom he dealt provided~~  
8 ~~for in subdivision (1) and shall be entitled to perfect it by notice to~~  
9 ~~the extent of his claim.~~

10           b. A second tier subcontractor, to the extent of that subcontractor's  
11 lien on funds provided in G.S. 44A-18(2)a., upon compliance  
12 with subdivision (6) of this section, may perfect and enforce the  
13 lien on funds under G.S. 44A-18(1)a. of the first tier  
14 subcontractor with whom the second tier subcontractor dealt.  
15 The second tier subcontractor's lien on funds under this sub-  
16 subdivision upon funds that are owed or become owed to the  
17 contractor by the owner shall not exceed in amount the lesser of  
18 (i) the lien on funds provided to the second tier subcontractor by  
19 G.S. 44A-18(2)a.; or (ii) the lien on funds provided to the first  
20 tier subcontractor by G.S. 44A-18(1)a.

21           c. A second tier subcontractor, to the extent of that subcontractor's  
22 lien on funds provided in G.S. 44A-18(2)a., upon compliance  
23 with subdivision (7) of this section, may perfect and enforce the  
24 lien on real property that the first tier subcontractor with whom  
25 the second tier subcontractor dealt may enforce under G.S.  
26 44A-18(1)b. The second tier subcontractor's lien on real  
27 property under this sub-subdivision shall not exceed in amount  
28 the least of (i) the lien on funds provided to the second tier  
29 subcontractor by G.S. 44A-18(2)a.; (ii) the lien on funds  
30 provided to the first tier subcontractor by G.S. 44A-18(1)a.; or  
31 (iii) the amount of the contractor's lien on real property  
32 provided by G.S. 44A-8.

33           (3) Third Tier Subcontractors.

34           a. A third tier subcontractor ~~who furnished labor or materials at the~~  
35 site of the shall be entitled to a lien ~~upon~~ on funds ~~which that~~ are  
36 owed or become owed to the second tier subcontractor with  
37 whom the third tier subcontractor dealt ~~and which arise out of for~~  
38 the improvement on which the third tier subcontractor ~~worked or~~  
39 furnished labor, services, or materials. ~~A third tier subcontractor,~~  
40 to the extent of his lien provided in this subdivision, shall also be  
41 entitled to be subrogated to the lien of the second tier subcontractor  
42 with whom he dealt and to the lien of the first tier subcontractor with  
43 whom the second tier subcontractor dealt to the extent that the  
44 second tier subcontractor is entitled to be subrogated thereto, and in



1            ~~either case shall be entitled to perfect the same by notice to the extent~~  
 2            ~~of his claim.~~

3            b. A third tier subcontractor, to the extent of that subcontractor's  
 4            lien on funds provided in G.S. 44A-18(3)a., upon compliance  
 5            with subdivision (6) of this section, may perfect and enforce the  
 6            lien on funds under G.S. 44A-18(2)a. of the second tier  
 7            subcontractor with whom the third tier subcontractor dealt. The  
 8            third tier subcontractor's lien on funds under this sub-  
 9            subdivision upon funds that are owed or become owed to the  
 10           first tier subcontractor by the contractor shall not exceed in  
 11           amount the lesser of (i) the lien on funds provided to the third  
 12           tier subcontractor by G.S. 44A-18(3)a.; or (ii) the lien on funds  
 13           provided to the second tier subcontractor by G.S. 44A-18(2)a.

14           c. A third tier subcontractor, to the extent of that subcontractor's  
 15           lien on funds provided in G.S. 44A-18(3)a., upon compliance  
 16           with subdivision (6) of this section, may perfect and enforce the  
 17           right of the second tier subcontractor under G.S. 44A-18(2)b. to  
 18           enforce the lien on funds under G.S. 44A-18(1)a. of the first tier  
 19           subcontractor with whom the second tier subcontractor dealt.  
 20           The third tier subcontractor's lien on funds under this sub-  
 21           subdivision upon funds that are owed or become owed to the  
 22           contractor by the owner shall not exceed in amount the least of  
 23           (i) the lien on funds provided to the third tier subcontractor by  
 24           G.S. 44A-18(3)a.; (ii) the lien on funds provided to the second  
 25           tier subcontractor by G.S. 44A-18(2)a.; or (iii) the lien on funds  
 26           provided to the first tier subcontractor by G.S. 44A-18(1)a.

27           d. A third tier subcontractor, to the extent of that subcontractor's  
 28           lien on funds provided in G.S. 44A-18(3)a., upon compliance  
 29           with subdivision (7) of this section, may perfect and enforce the  
 30           lien on real property that the second tier subcontractor with  
 31           whom the third tier subcontractor dealt may enforce under G.S.  
 32           44A-18(2)c. The third tier subcontractor's lien on real property  
 33           under this sub-subdivision shall not exceed in amount the least  
 34           of (i) the lien on funds provided to the third tier subcontractor  
 35           by G.S. 44A-18(3)a.; (ii) the lien on funds provided to the  
 36           second tier subcontractor by G.S. 44A-18(2)a.; (iii) the lien on  
 37           funds provided to the first tier subcontractor by G.S. 44A-  
 38           18(1)a.; or (iv) the amount of the contractor's lien on real  
 39           property provided by G.S. 44A-8.

40           (4) Remote Tier Subcontractors. – Subcontractors more remote than the  
 41           third tier who furnished labor or material at the site of the improvement  
 42           improve real property shall be entitled to a lien upon on funds which  
 43           that are owed or become owed to the person with whom they the  
 44           remote tier subcontractors dealt and which arise out of for the

1 improvement on which ~~they~~ the remote tier subcontractors furnished  
2 ~~labor~~ labor, services, or material, but ~~such~~ the remote tier subcontractor  
3 subcontractors shall not be entitled to subrogation to enforce the rights  
4 liens of other persons.

5 (5) Amounts Secured by Lien on Funds. —The liens—A lien granted on funds  
6 under this section shall secure amounts earned by the lien claimant  
7 lienor as a result of his—having furnished labor—labor, services, or  
8 materials at the site of the improvement under the contract to improve  
9 real property, whether or not such amounts are due and whether or not  
10 performance or delivery is complete—complete when notice is given to  
11 the obligor.

12 (6) Perfection and Enforcement of Lien on Funds. — A lien upon—on funds  
13 granted—under this section is—and all rights to enforce another's lien on  
14 funds are perfected upon the—giving of—notice in writing to the obligor  
15 any obligor against whom the lien is asserted as provided in G.S. 44A-  
16 19 and shall be effective upon the obligor's receipt of the notice. The  
17 subrogation rights of a first, second, or third tier subcontractor to the lien of  
18 the contractor created by Part 1 of Article 2 of this Chapter are perfected as  
19 provided in G.S. 44A-23.—A lien on funds is enforced by a civil action  
20 and is subject to the statute of limitations in G.S. 1-52(2).

21 (7) Perfection and Enforcement of a Lien on Real Property. — To perfect a  
22 lien on real property, the subcontractor shall file in the office of the  
23 clerk of superior court a lien on real property prepared in accordance  
24 with G.S. 44A-12 with a copy of the subcontractor's lien on funds  
25 prepared in accordance with G.S. 44A-19 and a certificate of service  
26 substantially as required by G.S. 44A-19(d). Alternatively, the  
27 subcontractor may combine the lien on real property with the lien on  
28 funds in one form if the form contains the information required in G.S.  
29 44A-12 and G.S. 44A-19 and includes a certificate of service  
30 substantially as required by G.S. 44A-19(d). The lien on real property  
31 under this subdivision may be filed at any time after the  
32 subcontractor's contract for the improvement of real property is made  
33 but not later than 120 days after the last furnishing of labor, services,  
34 or materials at the site of the improvement pursuant to the contractor's  
35 contract. The action to enforce a lien on real property under this  
36 subdivision shall be commenced not later than 180 days from the date  
37 of the filing of the lien on real property by the subcontractor under this  
38 subdivision. If an action is commenced prior to the time of the  
39 maturity of the owner's obligation to pay the contractor, the court,  
40 upon motion and hearing, shall order that the action be stayed until the  
41 maturity of the owner's obligation. The priority of the lien on real  
42 property enforced by the subcontractor is governed by G.S. 44A-18.1.

43 (8) No Prejudice to Subcontractor's Rights After Filing. — Upon the filing  
44 of a lien on real property by a subcontractor, no waiver, release, or

1                    subordination by an obligor nor any payment to an obligor shall be  
 2                    effective to prejudice the filing subcontractor's lien on real property  
 3                    without that subcontractor's written consent.

- 4                    (9) No Prejudice to Subcontractor's Rights After Notice. – Upon receipt  
 5                    by the obligor of notice of a subcontractor's lien on funds, no waiver,  
 6                    release, or subordination by an obligor, nor an payment to an obligor,  
 7                    shall be effective to prejudice the subcontractor's lien on funds.

8                    **"§ 44A-18.1. Priority of a subcontractor's lien on real property by virtue of**  
 9                    **asserting the contractor's lien on real property.**

10                    (a) General Priority. – Except as provided in subsection (b) of this section, the  
 11                    following rules apply to determining the priority of a subcontractor's lien on real  
 12                    property pursuant to G.S. 44A-18:

- 13                    (1) If there is an effective notice of commencement at the time a  
 14                    subcontractor files a lien on real property pursuant to G.S. 44A-18, the  
 15                    lien on real property has priority as of the time of the recording of the  
 16                    notice of commencement.

- 17                    (2) If there is no effective notice of commencement at the time a  
 18                    subcontractor files a lien on real property pursuant to G.S. 44A-18, the  
 19                    lien on real property has priority as of the earliest of the time of filing  
 20                    of (i) a lien on real property by the contractor through whom the  
 21                    subcontractor claims a lien on real property; (ii) a lien on real property  
 22                    by another subcontractor who claims a lien on real property through  
 23                    the same contractor; or (iii) the lien on real property by the  
 24                    subcontractor.

25                    (b) Priority Against a Subsequent Purchaser That is a Protected Party. – Whether  
 26                    or not a notice of commencement has been filed and whether or not any other  
 27                    contractor's or any other subcontractor's lien on real property has been filed under this  
 28                    Article, in order for a subcontractor's lien on real property pursuant to G.S. 44A-18 to  
 29                    have priority over the interest of a subsequent purchaser that is a protected party or a  
 30                    successor in interest to the subsequent purchaser, the subcontractor's lien on real  
 31                    property shall be filed before the document conveying an interest in the real property to  
 32                    the protected party is recorded.

33                    **"§ 44A-19. Notice to obligor.**

34                    (a) Notice of a claim of lien to obligors shall be given by serving a subcontractor's  
 35                    lien on funds which shall set forth:

- 36                    (1) The name and address of the person claiming the ~~lien,~~ lien on  
 37                    funds(lienor);  
 38                    (2) A general description of the real property ~~improved,~~ improved;  
 39                    (3) The name and address of the person with whom the ~~lien-claimant~~ lienor  
 40                    contracted to improve real ~~property,~~ property;  
 41                    (4) The name and address of the owner and each ~~person-contractor or~~  
 42                    subcontractor against or through whom ~~subrogation rights are claimed,~~  
 43                    the lienor makes this claim;

- 1 (5) A general description of the lienor's contract and the person against
- 2 whose interest the lien is claimed, contract; and
- 3 (6) The amount claimed by the ~~lien claimant~~ lienor under ~~his~~ the lienor's
- 4 contract.

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

7

8 **NOTICE OF CLAIM OF LIEN BY**

9 **FIRST, SECOND OR THIRD TIER SUBCONTRACTOR**

10 **'SUBCONTRACTOR'S LIEN ON FUNDS**

11 'PLEASE TAKE NOTICE that the lienor claims a lien on funds owed to the

12 contractor and to each subcontractor against or through whom this claim is made. Upon

13 receipt of this lien on funds you may not make any further payments to any of these

14 parties unless you retain from those payments an amount sufficient to satisfy this lien on

15 funds. Failure to withhold sums as required may result in direct liability to the lienor.

16

17 To:

- 18 1. \_\_\_\_\_, owner of property involved.
- 19 (Name and address)
- 20 2. \_\_\_\_\_, general contractor.
- 21 (Name and address)
- 22 3. \_\_\_\_\_, first tier subcontractor
- 23 (Name and address) against or through
- 24 whom ~~subrogation is claimed,~~
- 25 lienor claims, if any.
- 26 4. \_\_\_\_\_, second tier subcontractor
- 27 (Name and address) against or through whom
- 28 ~~subrogation is claimed,~~
- 29 lienor claims, if any.

30 General description of real property where ~~labor performed~~ performed, services

31 rendered, or material furnished:

32

33

34

35 General description of ~~undersigned lien claimant's~~ lienor's contract including the names of

36 the parties thereto:

37

38

39

40 The amount of lien on funds claimed pursuant to the ~~above~~

41 ~~described~~ lienor's contract: \$.....

42 The ~~undersigned lien claimant~~ lienor gives this ~~notice of claim of lien~~ Subcontractor's

43 Lien on Funds pursuant to North Carolina law and claims all rights ~~of subrogation to~~

1 which ~~he~~ the lienor is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes  
2 of North Carolina. entitled.

3 ~~Dated~~ Dated:.....

4 ..... , Lien Claimant  
5 .....(Insert name of lienor).....  
6 Lienor

8 By: .....(Signature).....

9 .....  
10 .....  
11 (~~Address~~) (Address)'

13 (c) All ~~notices of claims of liens~~ liens on funds given to obligors by subcontractors  
14 more remote than the third tier ~~shall~~ must be given using a form substantially as follows:

15  
16 **NOTICE OF CLAIM OF LIEN BY SUBCONTRACTOR**  
17 **MORE REMOTE THAN THE THIRD TIER**  
18 **'LIEN ON FUNDS BY SUBCONTRACTOR**  
19 **MORE REMOTE THAN THE THIRD TIER**

20 'PLEASE TAKE NOTICE that the lienor claims a lien on funds owed to the  
21 subcontractor with whom the lienor dealt. Upon receipt of this lien on funds you may  
22 not make any further payment to the named subcontractor unless you retain from those  
23 payments an amount sufficient to satisfy this lien on funds. Failure to withhold sums as  
24 required may result in your direct liability to the lienor.

26 To:  
27 , person holding funds against which  
28 (Name and Address) lien on funds is claimed.

30 General description of real property where labor ~~performed~~ performed, services  
31 rendered, or material furnished:

35 General description of ~~undersigned lien claimant's~~ lienor's contract including the names of  
36 the parties thereto:

39 The amount of lien on funds claimed pursuant to the above  
40 described contract: \$ .....

41 The ~~undersigned lien claimant~~ lienor gives this ~~notice of claim of lien~~ Subcontractor's  
42 Lien on Funds pursuant to North Carolina law and claims all rights to which ~~he~~ the  
43 lienor is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North  
44 Carolina. entitled.

1 Dated: .....  
2 ..... , Lien Claimant  
3 .....(Insert name of lienor).....  
4         Lienor        

5  
6 By: .....(Signature).....  
7 .....  
8 .....  
9 (~~Address~~) (Address)'

10  
11 (d) A subcontractor's lien on funds ~~Notices~~ under this section shall be served upon  
12 the obligor in person by any person, or ~~by certified mail~~ mail, or in any other manner  
13 authorized by the North Carolina Rules of Civil Procedure. A copy of the ~~notice~~  
14 subcontractor's lien on funds and a certificate of service shall be attached to any ~~claim~~ of  
15 lien on real property filed pursuant to G.S. 44A-18 or G.S. 44A-20(d). The certificate of  
16 service shall be in a form substantially as follows:

17 'STATE OF NORTH CAROLINA  
18 'COUNTY OF .....

19  
20 'On this ..... day of ....., 19....., I, .....(name), being the ..... (title or  
21 capacity of signor), of ....., lienor, served a copy of the foregoing  
22 Subcontractor's Lien on Funds, upon ..... (name of obligor) by .....  
23 (hand delivery, certified mail, or in any other manner authorized by the North Carolina  
24 Rules of Civil Procedure).

25  
26 .....(signature).....'

27  
28 (e) A subcontractor's lien on funds is not required to be filed in the office of the clerk  
29 of superior court to be effective against the funds.

30 **"§ 44A-20. Duties and liability of obligor.**

31 (a) Upon receipt of the ~~notice~~ lien on funds as provided for in this ~~Article~~ Part,  
32 the obligor shall be under a duty to ~~retain any funds subject to the lien or liens under this~~  
33 ~~Article up to the total amount of such liens as to which notice has withhold from all~~  
34 further payments a sum sufficient to satisfy the lien or liens on funds that have been  
35 received.

36 (b) ~~If, after the receipt of the notice to the obligor, the obligor shall make further~~  
37 ~~payments to a contractor or subcontractor against whose interest the lien or liens are~~  
38 ~~claimed, the lien shall continue upon the funds in the hands of the contractor or~~  
39 ~~subcontractor who received the payment, and in addition the obligor shall be personally~~  
40 ~~liable to the person or persons entitled to liens up to the amount of such wrongful~~  
41 ~~payments, not exceeding the total claims with respect to which the notice was received~~  
42 ~~prior to payment.~~

1     (b1) The obligor shall be directly liable to the person or persons entitled to liens on  
2 funds under this Part up to the amount of funds that the obligor is required to but fails to  
3 withhold under this section.

4     (b2) If, after receipt of the lien on funds, the obligor makes further payment to a  
5 contractor or subcontractor against whose interest the lien or liens on funds are claimed  
6 without complying with subsection (a) of this section, the lien on funds shall continue  
7 upon the funds in the hands of the contractor or subcontractor who received the  
8 payment.

9     (c) ~~If an obligor shall make~~ makes a payment after receipt of ~~notice~~ a lien on funds  
10 ~~and incur personal~~ incurs direct liability therefor, the obligor ~~shall be~~ is entitled to  
11 reimbursement and indemnification from the party receiving ~~such~~ the payment.

12     (d) ~~If the obligor is an owner of the property being improved, the lien claimant~~  
13 ~~shall be~~ lienor is entitled to a lien ~~upon the interest on real property of the obligor in the~~  
14 ~~real property~~ to the extent of the owner's personal direct liability under subsection (b),  
15 ~~which lien shall be enforced only in the manner set forth in G.S. 44A-7 through 44A-16 and~~  
16 ~~which lien shall be entitled to the same priorities and subject to the same filing requirements~~  
17 ~~and periods of limitation applicable to the contractor. The lien is perfected as of the time set~~  
18 ~~forth in G.S. 44A-10 upon filing of claim of lien pursuant to G.S. 44A-12.~~ (b1) of this section.  
19 The lien on real property under this subsection may be filed at any time after the  
20 subcontractor's contract for the improvement of real property is made but not later than  
21 120 days after the last furnishing of labor, services, or materials at the site of the  
22 improvement pursuant to the contractor's contract. The claim of lien on real property  
23 shall be in the form set out in G.S. 44A-12(c) and shall contain, include, in addition, a  
24 copy of the notice-subcontractor's lien on funds given pursuant to G.S. 44A-19 as an  
25 exhibit together with proof a certificate of service substantially in the form specified by  
26 G.S. 44A-19(d) thereof by affidavit, and shall state the grounds the lien claimant has to  
27 believe that the obligor is personally liable for the debt under subsection (b). and shall include  
28 the information for subcontractors required by G.S. 44A-12(c)(7). The action to enforce  
29 a lien on real property under this subsection shall be commenced not later than 180 days  
30 from the date of the filing of the lien on real property by the subcontractor under this  
31 subsection. The priority of a subcontractor's direct lien on real property pursuant to this  
32 section is provided by G.S. 44A-20.1.

33 **"§ 44A-20.1. Priority of a subcontractor's direct liability lien on real property.**

34     The priority of a subcontractor's lien on real property arising pursuant to G.S. 44A-  
35 20(d) shall be governed by G.S. 44A-10.1, and all references in G.S. 44A-10.1 to  
36 'contractor's lien on real property' shall be interpreted to mean 'subcontractor's lien on  
37 real property'.

38 **"§ 44A-21. Pro rata payments.**

39     In the event that the funds in the hands of the obligor and the obligor's personal direct  
40 liability, if any, under the previous section G.S. 44A-20, are less than the principal  
41 amount and interest of valid lien claims liens on funds that have been filed with received  
42 by the obligor under this Article Part, the parties entitled to liens on funds shall share  
43 the funds on a pro rata basis. The principal amount of valid liens shall be paid first,  
44 without interest being considered on the proration. Any remaining funds shall be

1 prorated among the valid lienors on the basis of the remaining outstanding lien balance  
2 due each.

3 **"§ 44A-22. Priority of liens-liens on funds.**

4 Liens on funds perfected under this Article-Part have priority over all other interests  
5 or claims theretofore or thereafter created or suffered in the funds by the person against  
6 whose interest the lien on funds is asserted,-served, including, but not limited to, liens  
7 arising from garnishment, attachment, levy, judgment, assignments, security interests,  
8 and any other type of transfer, whether voluntary or involuntary. Any security interest,  
9 whether or not perfected, granted by the person against whose interest the lien on funds  
10 is served, any lien of a judgment creditor with levy of attachment or garnishment of the  
11 interest of the person against whom the lien on funds is served, and the interest of any  
12 purchaser for value, with or without notice, from the person against whom the lien on  
13 funds is served shall be inferior to the lien on funds to the extent that funds exist in the  
14 hands of the obligor at the time of service of the lien on funds. Any person who  
15 receives payment from an obligor in bad faith with knowledge of a claim of lien on funds  
16 shall take such payment subject to the claim of lien-lien on funds.

17 **"§ 44A-23. Contractor's lien; perfection of subrogation rights of subcontractor.**

18 (a) First tier subcontractor.—A first tier subcontractor, who gives notice as  
19 provided in this Article, may, to the extent of his claim, enforce the lien of the  
20 contractor created by Part 1 of Article 2 of this Chapter. The manner of such  
21 enforcement shall be as provided by G.S. 44A-7 through 44A-16. The lien is perfected  
22 as of the time set forth in G.S. 44A-10 upon filing of claim of lien pursuant to G.S. 44A-  
23 12. Upon the filing of the notice and claim of lien and the commencement of the action,  
24 no action of the contractor shall be effective to prejudice the rights of the subcontractor  
25 without his written consent.

26 (b) Second or third subcontractor.—

27 (1) A second or third tier subcontractor, who gives notice as provided in  
28 this Article, may, to the extent of his claim, enforce the lien of the  
29 contractor created by Part 1 of Article 2 of the Chapter except when:

30 i. The contractor, within 30 days following the date the building  
31 permit is issued for the improvement of the real property  
32 involved, posts on the property in a visible location adjacent to  
33 the posted building permit and files in the office of the Clerk of  
34 Superior Court in each county wherein the real property to be  
35 improved is located, a completed and signed Notice of Contract  
36 form and the second or third tier subcontractor fails to serve  
37 upon the contractor a completed and signed Notice of  
38 Subcontract form by the same means of service as described in  
39 G.S. 44A-19(d); or

40 ii. After the posting and filing of a signed Notice of Contract and  
41 the service of a signed Notice of Subcontract, the contractor  
42 serves upon the second or third tier subcontractor, within five  
43 days following each subsequent payment, by the same means of  
44 service as described in G.S. 44A-19(d), the written notice of



1 payment setting forth the date of payment and the period for  
 2 which payment is made as requested in the Notice of  
 3 Subcontract form set forth herein.

- 4 (2) The form of the Notice of Contract to be so utilized under this section  
 5 shall be substantially as follows and the fee for filing the same with the  
 6 Clerk of Superior Court shall be the same as charged for filing a Claim  
 7 of Lien:  
 8

9 **~~'NOTICE OF CONTRACT~~**

10  
 11 ~~'(1) Name and address of the Contractor:~~

12  
 13 ~~'(2) Name and address of the owner of the real property at the time this Notice of~~  
 14 ~~Contract is recorded:~~

15  
 16 ~~'(3) General description of the real property to be improved (street address, tax~~  
 17 ~~map lot and block number, reference to recorded instrument, or any other description~~  
 18 ~~that reasonably identifies the real property):~~

19  
 20 ~~'(4) Name and address of the person, firm or corporation filing this Notice of~~  
 21 ~~Contract:~~

22  
 23 ~~'Dated:~~

24  
 25 \_\_\_\_\_  
 26 ~~'Contractor~~

27 ~~'Filed this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.~~

28  
 29 \_\_\_\_\_  
 30 ~~Clerk of Superior Court'~~

- 31  
 32 (3) The form of the Notice of Subcontract to be so utilized under this  
 33 section shall be substantially as follows:  
 34

35 **~~'NOTICE OF SUBCONTRACT~~**

36  
 37 ~~'(1) Name and address of the subcontractor:~~

38  
 39 ~~'(2) General description of the real property where the labor was performed or the~~  
 40 ~~material was furnished (street address, tax map lot and block number, reference to~~  
 41 ~~recorded instrument, or any description that reasonably identifies the real property):~~

42  
 43 ~~'(3)~~



1 reimburse the party who suffered loss on such conditions as the court shall determine  
2 are proper.

3 The elements of the offense herein stated are the furnishing of the false written  
4 statement with knowledge that it is false and the subsequent or simultaneous receipt of  
5 payment from an obligor or purchaser, and in any prosecution hereunder it shall not be  
6 necessary for the State to prove that the obligor, purchaser, lender or title insurance  
7 company relied upon the false statement or that any person was injured thereby."

8 Sec. 2. G.S. 153A-357 reads as rewritten:

9 **"§ 153A-357. Permits.**

10 (a) No person may commence or proceed with:

- 11 (1) The construction, reconstruction, alteration, repair, movement to  
12 another site, removal, or demolition of any building;
- 13 (2) The installation, extension, or general repair of any plumbing system;
- 14 (3) The installation, extension, alteration, or general repair of any heating  
15 or cooling equipment system; or
- 16 (4) The installation, extension, alteration, or general repair of any  
17 electrical wiring, devices, appliances, or equipment

18 without first securing from the inspection department with jurisdiction over the site of  
19 the work each permit required by the State Building Code and any other State or local  
20 law or local ordinance or regulation applicable to the work. A permit shall be in writing  
21 and shall contain a provision that the work done shall comply with the State Building  
22 Code and all other applicable State and local laws and local ordinances and regulations.  
23 No permit may be issued unless the plans and specifications are identified by the name  
24 and address of the author thereof; and if the General Statutes of North Carolina require  
25 that plans for certain types of work be prepared only by a registered architect or  
26 registered engineer, no permit may be issued unless the plans and specifications bear the  
27 North Carolina seal of a registered architect or of a registered engineer. If a provision  
28 of the General Statutes of North Carolina or of any ordinance requires that work be  
29 done by a licensed specialty contractor of any kind, no permit for the work may be  
30 issued unless the work is to be performed by such a duly licensed contractor. No permit  
31 issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction,  
32 installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or  
33 less in any single-family residence or farm building unless the work involves: the  
34 addition, repair or replacement of load bearing structures; the addition (excluding  
35 replacement of same size and capacity) or change in the design of plumbing; the  
36 addition, replacement or change in the design of heating, air conditioning, or electrical  
37 wiring, devices, appliances, or equipment; the use of materials not permitted by the  
38 North Carolina Uniform Residential Building Code; or the addition (excluding  
39 replacement of like grade of fire resistance) of roofing. Violation of this section  
40 constitutes a Class 1 misdemeanor.

41 (b) No permit shall be issued pursuant to subsection (a) of this section for any  
42 land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S.  
43 113A-57, unless an erosion control plan has been approved by the Sedimentation  
44 Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government

1 pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site  
2 of the activity.

3 (c) No permit shall be issued pursuant to subsection (a) of this section unless a  
4 copy of the notice of commencement with respect to the work pursuant to G.S. 44A-  
5 10.2, with evidence of its recording by the register of deeds in the county where the  
6 permit is to be issued, is submitted with the application for the permit. A copy of the  
7 notice of commencement and evidence of its recording shall be retained in the file."

8 Sec. 3. G.S. 160A-417 reads as rewritten:

9 "§ 160A-417. Permits.

10 (a) No person shall commence or proceed with:

- 11 (1) The construction, reconstruction, alteration, repair, movement to  
12 another site, removal, or demolition of any building or structure,
- 13 (2) The installation, extension, or general repair of any plumbing system,
- 14 (3) The installation, extension, alteration, or general repair of any heating  
15 or cooling equipment system, or
- 16 (4) The installation, extension, alteration, or general repair of any  
17 electrical wiring, devices, appliances, or equipment,

18 without first securing from the inspection department with jurisdiction over the site of  
19 the work any and all permits required by the State Building Code and any other State or  
20 local laws applicable to the work. A permit shall be in writing and shall contain a  
21 provision that the work done shall comply with the State Building Code and all other  
22 applicable State and local laws. No permits shall be issued unless the plans and  
23 specifications are identified by the name and address of the author thereof, and if the  
24 General Statutes of North Carolina require that plans for certain types of work be  
25 prepared only by a registered architect or registered engineer, no permit shall be issued  
26 unless the plans and specifications bear the North Carolina seal of a registered architect  
27 or of a registered engineer. When any provision of the General Statutes of North  
28 Carolina or of any ordinance requires that work be done by a licensed specialty  
29 contractor of any kind, no permit for the work shall be issued unless the work is to be  
30 performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C  
31 of Chapter 143 shall be required for any construction, installation, repair, replacement,  
32 or alteration costing five thousand dollars (\$5,000) or less in any single family residence  
33 or farm building unless the work involves: the addition, repair or replacement of load  
34 bearing structures; the addition (excluding replacement of same size and capacity) or  
35 change in the design of plumbing; the addition, replacement or change in the design of  
36 heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use  
37 of materials not permitted by the North Carolina Uniform Residential Building Code; or  
38 the addition (excluding replacement of like grade of fire resistance) of roofing.  
39 Violation of this section shall constitute a Class 1 misdemeanor.

40 (b) No permit shall be issued pursuant to subsection (a) of this section for any  
41 land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S.  
42 113A-57, unless an erosion control plan has been approved by the Sedimentation  
43 Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government

1 pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site  
2 of the activity.

3 (c) No permit shall be issued pursuant to subsection (a) of this section unless a  
4 copy of the notice of commencement with respect to the work pursuant to G.S. 44A-  
5 10.2, with evidence of its recording by the register of deeds in the county where the  
6 permit is to be issued, is submitted with the application for the permit. A copy of the  
7 notice of commencement and evidence of its recording shall be retained in the file."

8 Sec. 4. G.S. 44A-35 reads as rewritten:

9 **"§ 44A-35. Attorneys' fees.**

10 In any suit brought or defended under the provisions of Article 2 or Article 3 of this  
11 Chapter, the presiding judge may allow a reasonable attorneys' fee to the attorney  
12 representing the prevailing party. party only where there is privity of contract between  
13 the prevailing party and the losing party. For purposes of this section, a claimant under  
14 a payment bond shall be deemed to be in privity of contract with the surety. This-The  
15 attorneys' fee is to be taxed as part of the court costs and be payable by the losing party  
16 upon a finding that there was an unreasonable refusal by the losing party to fully resolve  
17 the matter which constituted the basis of the suit or the basis of the defense. For  
18 purposes of this section, 'prevailing party' is a party plaintiff or third party plaintiff who  
19 obtains a judgment of at least fifty percent (50%) of the monetary amount sought in a  
20 claim or is a party defendant or third party defendant against whom a claim is asserted  
21 which results in a judgment of less than fifty percent (50%) of the amount sought in the  
22 claim defended. Notwithstanding the foregoing, in the event an offer of judgment is  
23 served in accordance with G.S. 1A-1, Rule 68, a 'prevailing party' is an offeree who  
24 obtains judgment in an amount more favorable than the last offer or is an offeror against  
25 whom judgment is rendered in an amount less favorable than the last offer."

26 Sec. 5. Section 4 of Chapter 1010 of the 1991 Session Laws reads as  
27 rewritten:

28 "Sec. 4. Section 1 of this act is effective upon ratification and applies to actions  
29 filed on or after the date of ratification. Section 2 of this act is effective upon  
30 ratification. Section 3 of this act is effective upon ratification and applies to actions  
31 filed on or after the date of ~~ratification but before July 1, 1994.~~ ratification."

32 Sec. 6. The Revisor of Statutes shall cause to be printed along with this act  
33 all explanatory comments of the drafters of this act as the Revisor may deem  
34 appropriate.

35 Sec. 7. Sections 1, 2, and 3 of this act become effective July 1, 1995, and  
36 apply to liens on real property filed and liens on funds served on and after July 1, 1995.  
37 Claims of lien filed with the clerk of superior court under G.S. 44A-12 prior to July 1,  
38 1995, shall be enforced in accordance with the law in effect at the time of filing.  
39 Notices of claims of lien served under G.S. 44A-19 prior to July 1, 1995, shall be  
40 enforced in accordance with the law in effect at the time of service, including the  
41 applicable provisions of G.S. 44A-23. Sections 4 and 5 of this act become effective  
42 July 1, 1994. The remainder of this act is effective upon ratification.