

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 887
Judiciary II Committee Substitute Adopted 5/16/05

Short Title: NC Lien Law Revised.

(Public)

Sponsors:

Referred to:

March 23, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE STATUTES THAT ADDRESS STATUTORY LIENS ON
3 REAL PROPERTY.

4 The General Assembly of North Carolina enacts:

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

7 "Article 2.

8 "Statutory Liens on Real Property.

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

10 "§ 44A-7. Definitions.

11 Unless the context otherwise requires in this Article:

- 12 (1) "Improve" means to build, effect, alter, repair, or demolish any
13 improvement upon, connected with, or on or beneath the surface of
14 any real property, or to excavate, clear, grade, fill or landscape any real
15 property, or to construct driveways and private roadways, or to furnish
16 materials, including trees and shrubbery, for any of such purposes, or
17 to perform any labor upon such improvements, and shall also mean
18 and include any design or other professional or skilled services
19 furnished by architects, engineers, land surveyors and landscape
20 architects registered under Chapter 83A, 89A or 89C of the General
21 Statutes, and rental of equipment directly utilized on the real property
22 in making the improvement.
- 23 (2) "Improvement" means all or any part of any building, structure,
24 erection, alteration, demolition, excavation, clearing, grading, filling,
25 or landscaping, including trees and shrubbery, driveways, and private
26 roadways, on real property.
- 27 (3) An "owner" is a person who has an interest in the real property
28 improved and for whom an improvement is made and who ordered the

1 improvement to be made. "Owner" includes successors in interest of
2 the owner and agents of the owner acting within their authority.

- 3 (4) "Real property" means the real estate that is improved, including lands,
4 leaseholds, tenements and hereditaments, and improvements placed
5 thereon.

6 **"§ 44A-8. Mechanics', ~~laborers'-laborers', and materialmen's lien; persons entitled~~
7 to lien-claim of lien on real property.**

8 Any person who performs or furnishes labor or professional design or surveying
9 services or furnishes materials or furnishes rental equipment pursuant to a contract,
10 either express or implied, with the owner of real property for the making of an
11 improvement thereon shall, upon complying with the provisions of this Article, have a
12 right to file a claim of lien on real property on ~~such-the~~ real property to secure payment
13 of all debts owing for labor done or professional design or surveying services or
14 material furnished or equipment rented pursuant to ~~such-the~~ contract.

15 **"§ 44A-9. Extent of ~~lien-claim of lien on real property.~~**

16 ~~Liens-A~~ claim of lien on real property authorized under ~~the provisions of this Article~~
17 shall extend to the improvement and to the lot or tract on which the improvement is
18 situated, to the extent of the interest of the owner. When the lot or tract on which a
19 building is erected is not surrounded at the time of making the contract with the owner
20 by an enclosure separating it from adjoining land of the same owner, the lot or tract to
21 which any claim of lien on real property extends shall be ~~such-the~~ area as-that is
22 reasonably necessary for the convenient use and occupation of ~~such-the~~ building, but in
23 no case shall the area include a building, structure, or improvement not normally used or
24 occupied or intended to be used or occupied with the building with respect to which the
25 claim of lien on real property is claimed.

26 **"§ 44A-10. Effective date of ~~liens-claim of lien on real property.~~**

27 ~~Liens-A~~ claim of lien on real property granted by this Article shall relate to and take
28 effect from the time of the first furnishing of labor or materials at the site of the
29 improvement by the person claiming the ~~lien-claim of lien on real property.~~

30 **"§ 44A-11. Perfecting ~~liens-claim of lien on real property.~~**

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

34 **"§ 44A-12. Filing claim of ~~lien-lien on real property.~~**

35 (a) Place of Filing. – All claims of lien ~~against any-on~~ on real property must be filed
36 in the office of the clerk of superior court in each county ~~wherein-where~~ where the real
37 property subject to the claim of lien on real property is located. The clerk of superior
38 court shall note the claim of lien on real property on the judgment docket and index the
39 same under the name of the record owner of the real property at the time the claim of
40 lien on real property is filed. An additional copy of the claim of lien on real property
41 may also be filed with any receiver, referee in bankruptcy or assignee for benefit of
42 creditors who obtains legal authority over the real property.

43 (b) Time of Filing. – Claims of lien on real property may be filed at any time
44 after the maturity of the obligation secured thereby but not later than 120 days after the

1 last furnishing of labor or materials at the site of the improvement by the person
2 claiming the lien.

3 (c) Contents of Claim of Lien on Real Property to Be Filed. – All claims of lien
4 on real property must be filed using a form substantially as follows:

5
6 CLAIM OF LIEN ON REAL PROPERTY

- 7
- 8 (1) Name and address of the person claiming the ~~lien~~claim of lien on real
9 property:
- 10 (2) Name and address of the record owner of the real property claimed to
11 be subject to the claim of lien on real property at the time the claim of
12 lien on real property is filed:
- 13 (3) Description of the real property upon which the claim of lien on real
14 property is claimed: (Street address, tax lot and block number,
15 reference to recorded instrument, or any other description of real
16 property is sufficient, whether or not it is specific, if it reasonably
17 identifies what is described.)
- 18 (4) Name and address of the person with whom the claimant contracted
19 for the furnishing of labor or materials:
- 20 (5) Date upon which labor or materials were first furnished upon said
21 property by the claimant:
- 22 (5a) Date upon which labor or materials were last furnished upon said
23 property by the claimant:
- 24 (6) General description of the labor performed or materials furnished and
25 the amount claimed therefor:

26
27 _____
Lien Claimant

28 Filed this ____ day of _____, _____

29
30 _____
Clerk of Superior Court

31
32 A general description of the labor performed or materials furnished is sufficient. It is
33 not necessary for lien claimant to file an itemized list of materials or a detailed
34 statement of labor performed.

35 (d) No Amendment of Claim of ~~Lien~~Lien on Real Property. – A claim of lien on
36 real property may not be amended. A claim of lien on real property may be cancelled by
37 a claimant or ~~his~~the claimant's authorized agent or attorney and a new claim of lien on
38 real property substituted therefor within the time herein provided for original filing.

39 (e) Notice of Assignment of Claim of ~~Lien~~Lien on Real Property. – When a
40 claim of lien on real property has been filed, it may be assigned of record by the lien
41 claimant in a writing filed with the clerk of superior court who shall note ~~said~~the
42 assignment in the margin of the judgment docket containing the claim of ~~lien~~lien on
43 real property. Thereafter the assignee becomes the lien claimant of record.

1 (f) Waiver of Right to ~~File~~ File, Serve, or Claim Liens as Consideration for
2 Contract Against Public Policy. – An agreement to waive the right to file a claim of lien
3 on real property granted under this Part, or ~~claim~~ an agreement to waive the right to
4 serve a notice of claim of lien upon funds granted under Part 2 of this Article, which
5 agreement is in anticipation of and in consideration for the awarding of any contract,
6 either expressed or implied, for the making of an improvement upon real property under
7 this Article is against public policy and is unenforceable. This section does not prohibit
8 subordination or release of a lien granted under this Part or Part 2 of this Article.

9 **"§ 44A-12.1. No docketing of lien unless authorized by statute.**

10 (a) The clerk of superior court shall not index, docket, or record a claim of lien
11 on real property or other document purporting to claim or assert a lien on real property
12 in such a way as to affect the title to any real property unless the document:

- 13 (1) Is offered for filing under this Article or another statute that provides
14 for indexing and docketing of claims of lien on real property; and
15 (2) Appears on its face to contain all of the information required by the
16 statute under which it is offered for filing.

17 (b) The clerk may accept, for filing only, any document that does not meet the
18 criteria established for indexing, docketing, or recording under subsection (a) of this
19 section. If the clerk does accept this document, the clerk shall inform the person offering
20 the document that it will not be indexed, docketed, or recorded in any way as to affect
21 the title to any real property.

22 (c) Any person who causes or attempts to cause a claim of lien on real property
23 or other document to be filed, knowing that the filing is not authorized by statute, or
24 with the intent that the filing is made for an improper purpose such as to hinder, harass,
25 or otherwise wrongfully interfere with any person, shall be guilty of a Class 1
26 misdemeanor.

27 (d) A claim of lien on real property, a claim of lien on real property with a notice
28 of claim of lien upon funds attached thereto, or other document purporting to claim or
29 assert a lien on real property that is filed by an attorney licensed in the State of North
30 Carolina and that otherwise complies with subsection (a) of this section shall not be
31 rejected by the clerk of superior court for indexing, docketing, recording, or filing.

32 **"§ 44A-13. Action to enforce ~~lien~~ claim of lien on real property.**

33 (a) ~~Where and When Action Instituted. Commenced.~~ – An action to enforce ~~the a~~
34 claim of lien created by this Article on real property may be ~~instituted~~ commenced in
35 any county ~~in which the lien is filed.~~ where venue is otherwise proper. No such action
36 may be commenced later than 180 days after the last furnishing of labor or materials at
37 the site of the improvement by the person claiming the ~~lien.~~ claim of lien on real
38 property. If the title to the real property against which the claim of lien on real property
39 is asserted is by law vested in a receiver or ~~trustee in bankruptcy,~~ is subject to the
40 control of the bankruptcy court, the claim of lien on real property shall be enforced in
41 accordance with the orders of the court having jurisdiction over said real property. The
42 filing of a proof of claim with a receiver or in bankruptcy and the filing of a notice of lis
43 pendens in each county where the real property subject to the claim of lien on real

1 property is located within the time required by this section satisfies the requirement for
2 the commencement of a civil action.

3 (b) Judgment. — ~~Judgment~~ A judgment enforcing a lien under this Article may be
4 entered for the principal amount shown to be due, not exceeding the principal amount
5 stated in the claim of lien enforced thereby. The judgment shall direct a sale of the real
6 property subject to the lien thereby enforced.

7 (c) Notice of Action. — ~~Unless the action enforcing the lien created by this Article~~
8 ~~is instituted in the county in which the lien is filed, in~~ In order for the sale under the
9 ~~provisions of G.S. 44A-14(a) to pass all title and interest of the owner to the purchaser~~
10 ~~good against all claims or interests recorded, filed or arising after the first furnishing of~~
11 ~~labor or materials at the site of the improvement by the person claiming the lien,~~ claim
12 of lien on real property, a notice of lis pendens shall be filed in each county in which the
13 real property subject to the claim of lien on real property is located except within 180
14 ~~days after the last furnishing of labor or materials at the site of the improvement by the~~
15 ~~person claiming the lien. It shall not be necessary to file a notice of lis pendens in the~~
16 ~~county in which the action enforcing the lien is commenced in order for the judgment~~
17 ~~entered therein and the sale declared thereby to carry with it the priorities set forth in~~
18 ~~G.S. 44A-14(a). If neither an action nor a~~ commenced. The notice of lis pendens is shall
19 be filed in each county in which the real property subject to the lien is located within
20 180 days after the time provided in subsection (a) last furnishing of this section for labor
21 or materials at the site commencement of the action improvement by the person
22 claiming the lien, as to real property claimed to be subject to the lien in such counties
23 where the lien claimant. If neither an action was neither commenced nor a notice of lis
24 pendens filed, is filed in accordance with this section, the judgment entered in the action
25 enforcing the claim of lien on real property shall not direct a sale of the real property
26 subject to the claim of lien on real property enforced thereby nor be entitled to any
27 priority under the provisions of G.S. 44A-14(a), but shall be entitled only to those
28 priorities accorded by law to money judgments.

29 "**§ 44A-14. Sale of property in satisfaction of judgment enforcing claim of lien on**
30 **real property or upon order prior to judgment; distribution of proceeds.**

31 (a) Execution Sale; Effect of Sale. — Except as provided in subsection (b) of this
32 section, sales under this Article and distribution of proceeds thereof shall be made in
33 accordance with the execution sale provisions set out in G.S. 1-339.41 through
34 1-339.76. The sale of real property to satisfy a claim of lien on real property granted by
35 this Article shall pass all title and interest of the owner to the purchaser, good against all
36 claims or interests recorded, filed or arising after the first furnishing of labor or
37 materials at the site of the improvement by the person claiming a lien.

38 (b) Sale of Property upon Order Prior to Judgment. — A resident judge of superior
39 court in the district in which the action to enforce the claim of lien on real property is
40 pending, a judge regularly holding the superior courts of the said district, any judge
41 holding a session of superior court, either civil or criminal, in the said district, a special
42 judge of superior court residing in the said district, or the chief judge of the district court
43 in which the action to enforce the claim of lien on real property is pending, may, upon
44 notice to all interested parties and after a hearing thereupon and upon a finding that a

1 sale prior to judgment is necessary to prevent substantial waste, destruction,
2 depreciation or other damage to said real property prior to the final determination of
3 said action, order any real property against which a claim of lien on real property under
4 this Article is asserted, sold in any manner determined by said judge to be commercially
5 reasonable. The rights of all parties shall be transferred to the proceeds of the sale.
6 Application for such order and further proceedings thereon may be heard in or out of
7 session.

8 **"§ 44A-15. Attachment available to lien claimant.**

9 In addition to other grounds for attachment, in all cases where the owner removes or
10 attempts or threatens to remove an improvement from real property subject to a claim of
11 lien on real property under this Article, without the written permission of the lien
12 claimant or with the intent to deprive the lien claimant of his ~~lien~~, or her claim of lien on
13 real property, the remedy of attachment of the property subject to the claim of lien on
14 real property shall be available to the lien claimant or any other person.

15 **"§ 44A-16. Discharge of record ~~lien~~ claim of lien on real property.**

16 Any claim of lien on real property filed under this Article may be discharged by any
17 of the following methods:

- 18 (1) The lien claimant of record, ~~his~~ the claimant's agent or attorney, in the
19 presence of the clerk of superior court may acknowledge the
20 satisfaction of the claim of lien on real property indebtedness,
21 whereupon the clerk of superior court shall forthwith make upon the
22 record of such claim of lien on real property an entry of such
23 acknowledgment of satisfaction, which shall be signed by the lien
24 claimant of record, ~~his~~ the claimant's agent or attorney, and witnessed
25 by the clerk of superior court.
- 26 (2) The owner may exhibit an instrument of satisfaction signed and
27 acknowledged by the lien claimant of record which instrument states
28 that the claim of lien on real property indebtedness has been paid or
29 satisfied, whereupon the clerk of superior court shall cancel the claim
30 of lien on real property by entry of satisfaction on the record of such
31 ~~lien~~ claim of lien on real property.
- 32 (3) By failure to enforce the claim of lien on real property within the time
33 prescribed in this Article.
- 34 (4) By filing in the office of the clerk of superior court the original or
35 certified copy of a judgment or decree of a court of competent
36 jurisdiction showing that the action by the claimant to enforce the
37 claim of lien on real property has been dismissed or finally determined
38 adversely to the claimant.
- 39 (5) Whenever a sum equal to the amount of the claim or claims of lien ~~or~~
40 ~~liens~~ on real property claimed is deposited with the clerk of court, to
41 be applied to the payment finally determined to be due, whereupon the
42 clerk of superior court shall cancel the claim or claims of lien on real
43 property or liens claims of lien on real property of record.

- 1 (6) Whenever a corporate surety bond, in a sum equal to one and
2 one-fourth times the amount of the ~~lien claim~~ or ~~liens claims of lien on~~
3 real property claimed and conditioned upon the payment of the amount
4 finally determined to be due in satisfaction of said claim or claims of
5 lien or liens, on real property, is deposited with the clerk of court,
6 whereupon the clerk of superior court shall cancel the claim or claims
7 of lien on real property or liens of record.

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

10 **"§ 44A-17. Definitions.**

11 Unless the context otherwise requires in this Article:

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

23 **"§ 44A-18. Grant of ~~lien; lien upon funds; subrogation; perfection.~~**

24 Upon compliance with this Article:

- 25 (1) A first tier subcontractor who furnished labor, materials, or rental
26 equipment at the site of the improvement shall be entitled to a lien
27 upon funds ~~which that~~ are owed to the contractor with whom the first
28 tier subcontractor dealt and ~~which that~~ arise out of the improvement on
29 which the first tier subcontractor worked or furnished materials.
30 (2) A second tier subcontractor who furnished labor, materials, or rental
31 equipment at the site of the improvement shall be entitled to a lien
32 upon funds ~~which that~~ are owed to the first tier subcontractor with
33 whom the second tier subcontractor dealt and ~~which that~~ arise out of
34 the improvement on which the second tier subcontractor worked or
35 furnished materials. A second tier subcontractor, to the extent of ~~his~~
36 the second tier subcontractor's lien provided in this subdivision, shall
37 also be entitled to be subrogated to the lien of the first tier
38 subcontractor with whom ~~he the second tier contractor~~ dealt provided
39 for in subdivision (1) of this section and shall be entitled to perfect it
40 by notice of claim of lien upon funds to the extent of ~~his the~~ claim.
41 (3) A third tier subcontractor who furnished labor, materials, or rental
42 equipment at the site of the improvement shall be entitled to a lien
43 upon funds ~~which that~~ are owed to the second tier subcontractor with
44 whom the third tier subcontractor dealt and ~~which that~~ arise out of the

1 improvement on which the third tier subcontractor worked or furnished
 2 materials. A third tier subcontractor, to the extent of ~~his~~the third tier
 3 subcontractor's lien upon funds provided in this subdivision, shall also
 4 be entitled to be subrogated to the lien upon funds of the second tier
 5 subcontractor with whom ~~he~~the third tier contractor dealt and to the
 6 lien upon funds of the first tier subcontractor with whom the second
 7 tier subcontractor dealt to the extent that the second tier subcontractor
 8 is entitled to be subrogated thereto, and in either case shall be entitled
 9 to perfect the same by notice of claim of lien upon funds to the extent
 10 of ~~his~~the claim.

11 (4) Subcontractors more remote than the third tier who furnished labor,
 12 materials, or rental equipment at the site of the improvement shall be
 13 entitled to a lien upon funds ~~which~~that are owed to the person with
 14 whom they dealt and ~~which~~that arise out of the improvement on
 15 which they furnished labor, materials, or rental equipment, but such
 16 remote tier subcontractor shall not be entitled to subrogation to the
 17 rights of other persons.

18 (5) The liens upon funds granted under this section shall secure amounts
 19 earned by the lien claimant as a result of ~~his~~having furnished labor,
 20 materials, or rental equipment at the site of the improvement under the
 21 contract to improve real property, including interest at the legal rate
 22 provided in G.S. 24-5, whether or not such amounts are due and
 23 whether or not performance or delivery is complete. In the event
 24 insufficient funds are retained to satisfy all lien claimants,
 25 subcontractor lien claimants may recover the interest due under this
 26 subdivision on a pro rata basis, but in no event shall interest due under
 27 this subdivision increase the liability of the obligor under G.S. 44A-20.

28 (6) A lien upon funds granted under this section is perfected upon the
 29 giving of notice of claim of lien upon funds in writing to the obligor as
 30 provided in G.S. 44A-19 and shall be effective upon the obligor's
 31 receipt of the notice. The subrogation rights of a first, second, or third
 32 tier subcontractor to the claim of lien on real property of the contractor
 33 created by Part 1 of Article 2 of this Chapter are perfected as provided
 34 in G.S. 44A-23.

35 **"§ 44A-19. Notice to obligor of claim of lien upon funds.**

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

- 38 (1) The name and address of the person claiming the ~~lien~~lien upon funds.
 39 (2) A general description of the real property ~~improved~~improved.
 40 (3) The name and address of the person with whom the lien claimant
 41 contracted to improve real ~~property~~property.
 42 (4) The name and address of each person against or through whom
 43 subrogation rights are ~~claimed~~claimed.

(5) A general description of the contract and the person against whose interest the lien upon funds is ~~claimed, and~~ claimed.

(6) The amount of the lien upon funds claimed by the lien claimant under his ~~the~~ contract.

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

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

To:

1. _____, owner of property involved. (Name and address)

2. _____, general contractor. (Name and address)

3. _____, first tier subcontractor against or through whom subrogation is claimed, if any. (Name and address)

4. _____, second tier subcontractor against or through whom subrogation is claimed, if any. (Name and address)

General description of real property where labor performed or material furnished:

General description of undersigned lien claimant's contract including the names of the parties thereto: _____

The amount of lien upon funds claimed pursuant to the above described contract:

\$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated _____

_____, Lien Claimant

(Address)

(c) All notices of claims of liens upon funds by subcontractors more remote than the third tier must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR MORE REMOTE THAN THE THIRD TIER

To:

1 _____, person holding funds against which lien upon funds is
2 (Name and Address)
3 claimed.

4 General description of real property where labor performed or material furnished:

5 _____
6 _____
7 _____

8 General description of undersigned lien claimant's contract including the names of the
9 parties thereto: _____

10 _____
11 _____

12 The amount of lien upon funds claimed pursuant to the above described contract:

13 \$ _____

14 The undersigned lien claimant gives this notice of claim of lien upon funds pursuant
15 to North Carolina law and claims all rights to which he or she is entitled under Part 2 of
16 Article 2 of Chapter 44A of the General Statutes of North Carolina.

17 Dated: _____

18 _____, Lien Claimant

19 _____
20 (Address)

21 (d) Notices of claims of lien upon funds under this section shall be served upon
22 the obligor ~~in person by personal delivery or by certified mail~~ in any manner authorized
23 by Rule 4 of the North Carolina Rules of Civil Procedure. A copy of the notice of claim
24 of lien upon funds shall be attached to any claim of lien on real property filed pursuant
25 to ~~G.S. 44A-20(d)~~G.S. 44A-20(d) or G.S. 44A-23.

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

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

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

37 **"§ 44A-20. Duties and liability of obligor.**

38 (a) Upon receipt of the notice of claim of lien upon funds provided for in this
39 ~~Article~~ Article, the obligor shall be under a duty to retain any funds subject to the lien or
40 liens upon funds under this Article up to the total amount of such liens upon funds as to
41 which ~~notice has~~ notices of claims of lien upon funds have been received.

42 (b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the
43 obligor ~~shall make~~ makes further payments to a contractor or subcontractor against
44 whose interest the lien or liens upon funds are claimed, the lien upon funds shall

1 continue upon the funds in the hands of the contractor or subcontractor who received
2 the payment, and in addition the obligor shall be personally liable to the person or
3 persons entitled to liens upon funds up to the amount of such wrongful payments, not
4 exceeding the total claims with respect to which the notice of claim of lien upon funds
5 was received prior to payment.

6 (c) If an obligor ~~shall make~~makes a payment after receipt of notice of claim of
7 lien on funds and ~~incurs~~incurs personal liability ~~therefor~~under subsection (b) of this
8 section, the obligor shall be entitled to reimbursement and indemnification from the
9 party receiving such payment.

10 (d) If the obligor is an owner of the property being improved, the lien claimant
11 shall be entitled to a claim of lien upon real property upon the interest of the obligor in
12 the real property to the extent of the owner's personal liability under ~~subsection (b)~~,
13 subsection (b) of this section, which claim of lien on real property shall be enforced
14 only in the manner set forth in G.S. 44A-7 through G.S. 44A-16 and which claim of lien
15 on real property shall be entitled to the same priorities and subject to the same filing
16 requirements and periods of limitation applicable to the contractor. The claim of lien on
17 real property is perfected as of the time set forth in G.S. 44A-10 upon the filing of the
18 claim of lien on real property pursuant to G.S. 44A-12. The claim of lien on real
19 property shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a
20 copy of the notice of claim of lien upon funds given pursuant to G.S. 44A-19 as an
21 exhibit together with proof of service thereof by affidavit, and shall state the grounds
22 the lien claimant has to believe that the obligor is personally liable for the debt under
23 ~~subsection (b)~~subsection (b) of this section.

24 (e) A notice of claim of lien upon funds under G.S. 44A-19 may be filed by the
25 obligor with the clerk of superior court in each county where the real property upon
26 which the filed notice of claim of lien upon funds is located for the purpose of
27 discharging the notice of claim of lien upon funds by any of the methods described in
28 G.S. 44A-16.

29 (f) A bond deposited under this section to discharge a filed notice of claim of
30 lien upon funds shall be effective to discharge any claim of lien on real property filed by
31 the same lien claimant pursuant to subsection (d) of this section or G.S. 44A-23 and
32 shall further be effective to discharge any notices of claims of lien upon funds served by
33 lower tier subcontractors or any claims of lien on real property filed by lower tier
34 subcontractors pursuant to subsection (d) of this section or G.S. 44A-23 claiming
35 through or against the contractor or higher tier subcontractors up to the amount of the
36 bond.

37 **"§ 44A-21. Pro rata payments.**

38 (a) Where the obligor is a contractor or subcontractor and the funds in the hands
39 of the obligor and the obligor's personal liability, if any, under G.S. 44A-20 are less than
40 the amount of valid liens upon funds that have been received by the obligor under this
41 Article, the parties entitled to liens upon funds shall share the funds on a pro rata basis.

42 ~~In the event that (b)~~ Where the obligor is an owner and the funds in the hands of
43 the obligor and the obligor's personal liability, if any, under G.S. 44A-20 are less than
44 the sum of the amount of valid ~~lien~~ claims of liens upon funds that have been filed with

1 received by the obligor under this Article and the amount of the valid claims of liens on
2 real property upon the owner's property filed by the subcontractors with the clerk of
3 superior court under G.S. 44A-23, the parties entitled to liens upon funds and the parties
4 entitled to subrogation claims of liens on real property upon the owner's property shall
5 share the funds on a pro rata basis.

6 **"§ 44A-22. Priority of liens.liens upon funds.**

7 Liens upon funds perfected under this Article have priority over all other interests or
8 claims theretofore or thereafter created or suffered in the funds by the person against
9 whose interest the lien upon funds is asserted, including, but not limited to, liens arising
10 from garnishment, attachment, levy, judgment, assignments, security interests, and any
11 other type of transfer, whether voluntary or involuntary. Any person who receives
12 payment from an obligor in bad faith with knowledge of a ~~claim of lien~~ lien upon funds shall
13 take such payment subject to the ~~claim of lien~~ lien upon funds.

14 **"§ 44A-23. Contractor's ~~lien; claim of lien on real property;~~ perfection of**
15 **subrogation rights of subcontractor.**

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

26 (b) Second or third subcontractor. –

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

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

42 b. After the posting and filing of a signed ~~Notice of Contract~~ notice
43 of contract and the service upon the contractor of a signed
44 ~~Notice of Subcontract,~~ notice of subcontract, the contractor

1 serves upon the second or third tier subcontractor, within five
2 days following each subsequent payment, by the same means of
3 service as described in G.S. 44A-19(d), the written notice of
4 payment setting forth the date of payment and the period for
5 which payment is made as requested in the ~~Notice of~~
6 ~~Subcontract~~notice of subcontract form set forth herein.

7 (2) The form of the ~~Notice of Contract~~notice of contract to be so utilized
8 under this section shall be substantially as follows and the fee for filing
9 the same with the ~~Clerk of Superior Court~~clerk of superior court shall
10 be the same as charged for filing a ~~Claim~~claim of ~~Lien~~lien on real
11 property:
12

13 "NOTICE OF CONTRACT

- 14
- 15 "(1) Name and address of the Contractor:
- 16 "(2) Name and address of the owner of the real property at the time this
- 17 Notice of Contract is recorded:
- 18 "(3) General description of the real property to be improved (street address,
- 19 tax map lot and block number, reference to recorded instrument, or any
- 20 other description that reasonably identifies the real property):
- 21 "(4) Name and address of the person, firm or corporation filing this Notice
- 22 of Contract:

23 "Dated: _____

24 _____
25 "Contractor

26 "Filed this the _____ day of _____, _____.

27 _____
28 Clerk of Superior Court"

29 (3) The form of the ~~Notice of Subcontract~~notice of subcontract to be so
30 utilized under this section shall be substantially as follows:
31

32 "NOTICE OF SUBCONTRACT

- 33
- 34 "(1) Name and address of the subcontractor:
- 35 "(2) General description of the real property where the labor was performed
- 36 or the material was furnished (street address, tax map lot and block
- 37 number, reference to recorded instrument, or any description that
- 38 reasonably identifies the real property):

39 "(3)
40 "(i) General description of the subcontractor's contract, including
41 the names of the parties thereto:

42 "(ii) General description of the labor and material performed and
43 furnished thereunder:

