

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 88*
Committee Substitute Favorable 4/11/13

Short Title: Lien Agents/Technical Corrections.

(Public)

Sponsors:

Referred to:

February 12, 2013

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

4 The General Assembly of North Carolina enacts:

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

6 "**§ 44A-11.1. Lien agent; designation and duties.**

7 (a) With regard to any improvements to real property to which this Article is applicable
8 for which the costs of the undertaking are thirty thousand dollars (\$30,000) or more, either at
9 the time that the original building permit is issued or, in cases in which no building permit is
10 required, at the time the contract for the improvements is entered into with the owner, the
11 owner shall designate a lien agent no later than the time the owner first contracts with any
12 person to improve the real property. Provided, however, that the owner is not required to
13 designate a lien agent for improvements to an existing single-family residential dwelling unit as
14 defined in G.S. 87-15.5(7) that is ~~used~~ occupied by the owner as a residence. The owner shall
15 deliver written notice of designation to its designated lien agent by any method authorized in
16 G.S. 44A-11.2(g), and shall include in its notice the street address, tax map lot and block
17 number, reference to recorded instrument, or any other description that reasonably identifies the
18 real property for the improvements to which the lien agent has been designated, and the owner's
19 contact information. Designation of a lien agent pursuant to this section does not make the lien
20 agent an agent of the owner for purposes of receiving a Claim of Lien on Real Property, a
21 Notice of Claim of Lien upon Funds or for any purpose other than the receipt of notices to the
22 lien agent required under G.S. 44A-11.2.

23 ...

24 (d) In the event that the lien agent ~~dies~~, resigns, is no longer licensed to serve as a lien
25 agent, revokes its consent to serve as lien agent or is removed by the owner, or otherwise
26 becomes unable or unwilling to serve before the completion of all improvements to the real
27 property, the owner shall within three business days of notice of such event do all of the
28 following:

- 29 (1) Designate a successor lien agent and provide written notice of designation to
30 the successor lien agent pursuant to subsection (a) of this section.
31 (2) Provide the contact information for the successor lien agent to the inspection
32 department that issued any required building permit and to any persons who
33 requested information from the owner relating to the predecessor lien agent.
34 (3) Display the contact information for the successor lien agent on the building
35 permit or attachment thereto posted on the improved property or, if no
36 building permit was required, on a sign complying with G.S. 44A-11.2(f).



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1 "

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

3 "**§ 44A-11.2. Identification of lien agent; notice to lien agent; effect of notice.**

4 ...

5 (d) A contractor or subcontractor for improvements to real property subject to
6 G.S. 44A-11.1 shall, within three business days of contracting with a lower-tier subcontractor
7 who is not required to furnish ~~labor~~ labor, materials, rental equipment, or professional design or
8 surveying services at the site of the improvements, provide the lower-tier subcontractor with a
9 written notice containing the contact information for the lien agent designated by the owner.
10 This notice shall be given pursuant to subsection (g) of this section or may be given by
11 including the lien agent contact information in a written subcontract entered into by, or a
12 written purchase order issued to, the lower-tier subcontractor entitled to the notice required by
13 this subsection. Any contractor or subcontractor who has previously received notice of the lien
14 agent contact information, whether from the building permit, the inspections office, a notice
15 from the owner, contractor, or subcontractor, or by any other means, and who fails to provide
16 the lien agent contact information to the lower-tier subcontractor in the time required under this
17 subsection, shall be liable to the lower-tier subcontractor for any actual damages incurred by
18 the lower-tier subcontractor as a result of the failure to give notice.

19 ...

20 (g) In complying with any requirement for written notice pursuant to this section, the
21 notice shall be addressed to the person required to be provided with the notice and shall be
22 delivered by any of the following methods:

23 ...

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

31 "

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

33 "**§ 58-26-45. Registration as a lien agent.**

34 ...

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

37 ...

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

42 ~~(6a) Within three business days of receipt of information relating to a design~~
43 ~~professional provided by the owner pursuant to G.S. 44A-11.2(i), provide a~~
44 ~~written notice to the design professional acknowledging receipt of this~~
45 ~~information by any method of delivery authorized in G.S. 44A-11.2(g).~~

46 "

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

48 "**§ 87-14. Regulations as to issue of building permits.**

49 (a) Any person, firm, or corporation, upon making application to the building inspector
50 or such other authority of any incorporated city, town, or county in North Carolina charged
51 with the duty of issuing building or other permits for the construction of any building, highway,

1 sewer, grading, or any improvement or structure where the cost thereof is to be thirty thousand
2 dollars (\$30,000) or more, shall, before being entitled to the issuance of a permit, satisfy the
3 following:

- 4 ...
- 5 (3) Any person, firm, or corporation, upon making application to the building
6 inspector or such other authority of any incorporated city, town, or county in
7 North Carolina charged with the duty of issuing building permits pursuant to
8 G.S. 160A-417(a)(1) or G.S. 153A-357(a)(1) for any improvements for
9 which the combined cost is to be thirty thousand dollars (\$30,000) or more,
10 other than improvements to an existing single-family residential dwelling
11 unit as defined in G.S. 87-15.5(7) that the ~~applicant uses~~owner occupies as a
12 residence, shall be required to provide to the building inspector or other
13 authority the name, physical and mailing address, telephone number,
14 facsimile number, and electronic mail address of the lien agent designated by
15 the owner pursuant to G.S. 44A-11.1(a)."

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

17 **"§ 160A-417. Permits.**

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

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

24 ...

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

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

36 **"§ 153A-357. Permits.**

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

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

43 ...

44 (e) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this
45 section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than for
46 improvements to an existing single-family residential dwelling unit as defined in
47 G.S. 87-15.5(7) that the ~~applicant uses~~owner occupies as a residence, unless the name, physical
48 and mailing address, telephone number, facsimile number, and electronic mail address of the
49 lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in
50 the permit or in an attachment thereto. The building permit may contain the lien agent's
51 electronic mail address. The lien agent information for each permit issued pursuant to this

1 subsection shall be maintained by the inspection department in the same manner and in the
2 same location in which it maintains its record of building permits issued."

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