

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1052*
PROPOSED COMMITTEE SUBSTITUTE H1052-PCS80392-TG-45

Short Title: Mechanics Liens/Payment Bond Reforms.

(Public)

Sponsors:

Referred to:

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS LIEN, TAX LIEN, AND PAYMENT BOND LAWS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S MECHANICS LIENS ON REAL PROPERTY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-7 reads as rewritten:

"§ 44A-7. Definitions.

Unless the context otherwise ~~requires in this Article~~ requires, the following definitions apply in this Article:

(1) Contractor. – A person who contracts with an owner to improve real property.

(2) First tier subcontractor. – A person who contracts with a contractor to improve real property.

~~(1)(3)~~ "Improve" means to Improve. – 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 furnished by architects, engineers, land surveyors and landscape architects registered under Chapter 83A, 89A or 89C of the General Statutes, and rental of equipment directly utilized on the real property in making the improvement.

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

(5) Obligor. – An owner, contractor, or subcontractor in any tier who owes money to another as a result of the other's partial or total performance of a contract to improve real property.

~~(3)(6)~~ An "owner" is a Owner. – A person who has an interest in the real property improved and for whom an improvement is made and who ordered the



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

3 ~~(4)(7)~~ "Real property" means the Real property. – The real estate that is improved,
4 including lands, leaseholds, tenements and hereditaments, and improvements
5 placed thereon.

6 (8) Second tier subcontractor. – A person who contracts with a first tier
7 subcontractor to improve real property.

8 (9) Third tier subcontractor. – A person who contracts with a second tier
9 subcontractor to improve real property."

10 **SECTION 2.** G.S. 44A-11 reads as rewritten:

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

12 (a) Perfection. – A claim of lien on real property granted by this Article shall be
13 perfected as of the time provided in G.S. 44A-10 upon the ~~filing of the claim of lien on real~~
14 ~~property under G.S. 44A-12 and may be enforced pursuant to G.S. 44A-13~~ occurrence of all of
15 the following:

16 (1) Service of a copy of the claim of lien on real property upon the record owner
17 of the real property claimed to be subject to the claim of lien, and if the
18 claim of lien on real property is being asserted pursuant to G.S. 44A-23, also
19 upon the contractor through which subrogation is being asserted.

20 (2) Filing of the claim of lien on real property under G.S. 44A-12.

21 (b) Method of Service. – Service of the claim of lien on real property pursuant to
22 subsection (a) of this section shall not require proof of actual receipt by the listed recipient and
23 shall be complete upon the occurrence of any of the following:

24 (1) Personal delivery of a copy of the claim of lien on real property upon the
25 recipient.

26 (2) Deposit of a copy of the claim of lien on real property in a postpaid, properly
27 addressed wrapper in either of the following:

28 a. A post office or official depository under the exclusive care and
29 custody of the United States Postal Service.

30 b. An authorized depository under the exclusive care and custody of a
31 designated delivery service authorized pursuant to 26 U.S.C. §
32 7502(f)(2).

33 (c) Service Address. – For purposes of this section, a wrapper addressed to a party
34 required to be served under subdivision (1) of subsection (a) of this section shall be
35 conclusively deemed properly addressed if it uses any of the following addresses:

36 (1) The address for the party to be served listed on the permit issued for the
37 improvement.

38 (2) The address for the party to be served listed with the tax rolls for any county
39 in North Carolina.

40 (3) The address of the registered agent for the party to be served listed with the
41 North Carolina Secretary of State's office."

42 **SECTION 3.** G.S. 44A-12 reads as rewritten:

43 **"§ 44A-12. Filing claim of lien on real property.**

44 (a) Place of Filing. – All claims of lien on real property must be filed in the office of the
45 clerk of superior court in each county where the real property subject to the claim of lien on
46 real property is located. The clerk of superior court shall note the claim of lien on real property
47 on the judgment docket and index the same under the name of the record owner of the real
48 property at the time the claim of lien on real property is filed. An additional copy of the claim
49 of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee
50 for benefit of creditors who obtains legal authority over the real property.

(b) Time of Filing. – Claims of lien on real property may be filed at any time after the maturity of the obligation secured thereby but not later than 120 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien.

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

CLAIM OF LIEN ON REAL PROPERTY

- (1) Name and address of the person claiming the claim of lien on real property:
- (2) Name and address of the record owner of the real property claimed to be subject to the claim of lien on real property at the time the claim of lien on real property is ~~filed~~ filed, and, if the claim of lien on real property is being asserted pursuant to G.S. 44A-23, the name of the contractor through which subrogation is being asserted:
- (3) Description of the real property upon which the claim of lien on real property is claimed: (Street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)
- (4) Name and address of the person with whom the claimant contracted for the furnishing of labor 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 materials furnished and the amount claimed therefor:
- (7) I hereby certify that I have served the parties listed in paragraph two above in accordance with the requirements of G.S. 44A-11.

Lien Claimant

Filed this ____ day of ____, ____

Clerk of Superior Court

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

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

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

(f) ~~Waiver of Right to File, Serve, or Claim Liens as Consideration for Contract Against Public Policy. Liens. –~~

- (1) An agreement to waive the right to file a claim of lien on real property granted under this Part, or an agreement to waive the right to serve a notice of claim of lien upon funds granted under Part 2 of this Article, which agreement is in anticipation of and in consideration for the awarding of any

contract, either expressed or implied, for the making of an improvement upon real property under this Article is against public policy and is unenforceable. This section does not prohibit subordination or release of a lien granted under this Part or Part 2 of this Article.

(2) Lien waivers denoted as "partial" lien waivers shall not alter or waive the lien claimant's effective date for any lien claim created by this Article. The sole manner of altering or waiving the effective date is by the lien claimant's executing a document expressly denoted as a "final" lien waiver.

(3) Unless expressly stated on the lien waiver form, the lien waiver shall be construed to be conditional upon the lien claimant's actual receipt of the specified funds.

(4) Lien waivers shall be substantially in the forms set forth below. Other forms may be used, but any substantive provisions that represent variations to the statutory forms affecting the lien rights created by this Article shall be unenforceable.

(5) The provisions of this section regarding lien waivers do not apply to lien waivers or subordinations obtained by closing attorneys, lenders, title insurance companies, or those acting on their behalf, as a part of any real estate or financing transactions. Nothing herein shall prevent partial or final lien waivers obtained by closing attorneys, lenders, title insurance companies, or those acting on their behalf, from containing subordination and/or release of lien agreements or from otherwise altering or modifying lien rights if agreed to by the signing parties.

(g) Partial lien waivers shall be in substantially the following form:

PARTIAL LIEN WAIVER

The undersigned lien claimant, in consideration of the sum of \$ _____ (insert amount of payment), hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through _____ (insert date) to _____ (insert the name of your customer) on the job of _____ (insert the name of the owner) to the following property:

(insert description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date specified above, nor does it release claims for retention to become due at a later date, nor does it release any other claims expressly identified below:

Claims not released by this waiver:

THIS WAIVER IS/IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED: _____

_____ (Lien Claimant)

By: _____

(h) Final lien waivers shall be in substantially the following form:

FINAL LIEN WAIVER

The undersigned lien claimant, in consideration of the final payment in the amount of \$ _____ hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to _____ (insert the name of your customer) on the job of _____ (insert the name of the owner) to the following described property:

(description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date of this lien waiver. Lien claimant, however, does hereby release any and all claims of lien for labor, materials, or services provided on or before the date of this waiver, including, but not exclusively, any amounts that may be deemed retainage. This lien waiver further waives the effective date of any lien claim created by this Article. The only claims of lien for previously provided labor, services, or materials which are not hereby released are those claims expressly identified below:

Claims not released by this waiver:

THIS WAIVER IS/IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED: _____

_____ (Lien Claimant)

By: _____".

SECTION 4. G.S. 44A-13 is amended by adding new subsections to read:

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

...

(d) Former Owner Not a Necessary Party to Action. – In an action brought under this section, a former owner of the improved property at the time the lien arose, who holds no ownership interest in the property at the time the action is commenced, and against whom the plaintiff seeks no relief, is not a necessary party to the action.

(e) Subsequent Purchaser and Lender Not Necessary or Proper Parties to Action Filed After Claim of Lien is Discharged. – If a claim of lien on real property filed under this Article is discharged pursuant to G.S. 44A-16(5) or G.S. 44A-16(6) prior to the filing of an action to enforce the claim of lien under G.S. 44A-13, then neither a subsequent purchaser of the real property upon which the lien is claimed nor the subsequent purchaser's lender shall be a

1 necessary or proper party to the action. However, nothing herein precludes the lien claimant
2 from asserting any claims against any party that are separate and distinct from enforcement of
3 the lien.

4 (f) Subsequent Purchaser and Lender No Longer Necessary or Proper Parties Upon
5 Discharge of Claim of Lien After Action Is Filed. – If a an action to enforce a lien under
6 G.S. 44A-13 is commenced before the claim of lien is discharged pursuant to G.S. 44A-16(5)
7 or G.S. 44A-16(6), a subsequent purchaser of the real property upon which the lien is claimed
8 and the subsequent purchaser's lender shall cease to be a necessary or proper party to the action,
9 and any claim for lien enforcement asserted against the subsequent purchaser of the real
10 property upon which the lien is claimed or the subsequent purchaser's lender shall be dismissed
11 upon motion of any party upon a showing that the claim of lien was discharged pursuant to
12 G.S. 44A-16. However, nothing herein precludes the lien claimant from continuing to pursue
13 any claims against any party that are separate and distinct from enforcement of the lien.

14 (g) Bonds Prohibited From Requiring Subsequent Purchaser or Lender to Remain
15 Parties to Action After Discharge of Claim of Lien. – The fact that a subsequent purchaser of
16 the real property upon which the lien is claimed or the subsequent purchaser's lender is not a
17 party to an action to enforce a claim of lien on real property subsequent to discharge of that
18 claim of lien by the contractor under G.S. 44A-16 shall not invalidate the claim of lien under
19 this Chapter nor shall it invalidate any bond filed under G.S. 44A-16 to discharge the claim of
20 lien. Further, a bond filed under G.S. 44A-16(a)(6) shall not require that a subsequent purchaser
21 of the real property upon which the lien is claimed or the subsequent purchaser's lender remain
22 a party to an action to enforce a claim of lien after the claim of lien has been discharged
23 pursuant to G.S. 44A-16.

24 (h) Definition of "Subsequent Purchaser." – For purposes of this section, a "subsequent
25 purchaser" means a party whose record interest is protected under G.S. 47-18, including any
26 beneficiary of a deed of trust or mortgagee of that party, the priority of whose interest is
27 protected under the provisions of G.S. 47-20, and who was not the owner of the real property at
28 the time of the improvements giving rise to the lien claim as defined in G.S. 44A-7(3)."

29 **SECTION 5.** G.S. 44A-17 is repealed.

30 **SECTION 6.** G.S. 44A-18 reads as rewritten:

31 **"§ 44A-18. Grant of lien upon funds; subrogation; perfection.**

32 ~~Upon compliance with this Article:~~

33 ~~(1)(a)~~ A first tier subcontractor who furnished labor, materials, or rental equipment at the
34 site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the
35 contractor with whom the first tier subcontractor dealt and that arise out of the improvement on
36 which the first tier subcontractor worked or furnished materials.

37 ~~(2)(b)~~ A second tier subcontractor who furnished labor, materials, or rental equipment at
38 the site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the first
39 tier subcontractor with whom the second tier subcontractor dealt and that arise out of the
40 improvement on which the second tier subcontractor worked or furnished materials. A second
41 tier subcontractor, to the extent of the second tier subcontractor's lien provided in this
42 subdivision, shall also be ~~entitled to be~~ subrogated to the lien upon funds of the first tier
43 subcontractor with whom the second tier contractor dealt provided for in subdivision (1) of this
44 section and shall ~~be entitled to~~ perfect it by service of the notice of claim of lien upon funds to
45 the extent of the claim.

46 ~~(3)(c)~~ A third tier subcontractor who furnished labor, materials, or rental equipment at the
47 site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the second
48 tier subcontractor with whom the third tier subcontractor dealt and that arise out of the
49 improvement on which the third tier subcontractor worked or furnished materials. A third tier
50 subcontractor, to the extent of the third tier subcontractor's lien upon funds provided in this
51 subdivision, shall also ~~be entitled to~~ be subrogated to the lien upon funds of the second tier

1 subcontractor with whom the third tier contractor dealt and to the lien upon funds of the first
 2 tier subcontractor with whom the second tier subcontractor dealt to the extent that the second
 3 tier subcontractor is ~~entitled to be~~ subrogated thereto, and in either case shall ~~be entitled to~~
 4 perfect ~~the same~~ by service of the notice of claim of lien upon funds to the extent of the claim.

5 ~~(4)(d)~~ Subcontractors more remote than the third tier who furnished labor, materials, or
 6 rental equipment at the site of the improvement shall ~~be entitled to have~~ a lien upon funds that
 7 are owed to the person with whom they dealt and that arise out of the improvement on which
 8 they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not
 9 be entitled to subrogation to the rights of other persons.

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

18 ~~(6)(f)~~ A lien upon funds granted under this section arises, attaches, and is perfected
 19 effective immediately upon the first furnishing of labor, materials, or rental equipment at the
 20 site of the improvement by a subcontractor. Any lien upon funds granted under this section is
 21 perfected upon the giving of notice of claim of lien upon funds in writing to the obligor as
 22 provided in G.S. 44A-19 and shall be effective upon the obligor's receipt of the notice. The
 23 subrogation rights of a first, second, or third tier subcontractor to the claim of lien on real
 24 property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as
 25 provided in G.S. 44A-23, G.S. 44A-19.

26 (g) Until a lien claimant gives notice of a claim of lien upon funds in writing to the
 27 obligor as provided in G.S. 44A-19, any owner, contractor, or subcontractor against whose
 28 interest the lien upon funds is claimed may make, receive, use, or collect payments thereon and
 29 may use such proceeds in the ordinary course of its business."

30 **SECTION 7.** G.S. 44A-19 reads as rewritten:

31 **"§ 44A-19. Notice of claim of lien upon funds.**

- 32 (a) Notice of a claim of lien upon funds shall set forth all of the following information:
- 33 (1) The name and address of the person claiming the lien upon funds.
 - 34 (2) A general description of the real property improved.
 - 35 (3) The name and address of the person with whom the lien claimant contracted
 36 to improve real property.
 - 37 (4) The name and address of each person against or through whom subrogation
 38 rights are claimed.
 - 39 (5) A general description of the contract and the person against whose interest
 40 the lien upon funds is claimed.
 - 41 (6) The amount of the lien upon funds claimed by the lien claimant under the
 42 contract.

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

45 **NOTICE OF CLAIM OF LIEN UPON FUNDS BY FIRST, SECOND, OR THIRD TIER**
 46 **SUBCONTRACTOR**

47 To:

48 1. _____, owner of property involved.

49 (Name and address)

50 2. _____, ~~general~~ contractor.

51 (Name and address)

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

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

General description of real property ~~whereon~~ which 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:

_____, person holding funds against which lien upon funds is claimed.

(Name and Address)

General description of real property ~~whereon~~ which 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 to which he or she is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated: _____

_____, Lien Claimant

(Address)

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

(e) Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real

1 property, except a notice of a claim of lien upon funds may be filed with the clerk of superior
2 court under either of the following circumstances:

3 (1) When the notice of claim of lien upon funds is attached to a claim of lien on
4 real property filed pursuant to ~~G.S. 44A-20(d)~~ ~~or~~
5 ~~G.S. 44A-23~~. G.S. 44A-20(d).

6 (2) When the notice of claim of lien upon funds is filed by the obligor for the
7 purpose of discharging the claim of lien upon funds in accordance with
8 G.S. 44A-20(e).

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

11 **SECTION 8.** G.S. 44A-20 reads as rewritten:

12 **"§ 44A-20. Duties and liability of obligor.**

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

17 (b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the
18 obligor makes further payments to a contractor or subcontractor against whose interest the lien
19 or liens upon funds are claimed, the lien upon funds shall continue upon the funds in the hands
20 of the contractor or subcontractor who received the payment, and in addition the obligor shall
21 be personally liable to the person or persons entitled to liens upon funds up to the amount of
22 such wrongful payments, not exceeding the total claims with respect to which the notice of
23 claim of lien upon funds was received prior to payment.

24 (c) If an obligor makes a payment after receipt of notice of claim of lien on funds and
25 incurs personal liability under subsection (b) of this section, the obligor shall be entitled to
26 reimbursement and indemnification from the party receiving such payment.

27 (d) If the obligor is an owner of the property being improved, the lien claimant shall be
28 entitled to a claim of lien upon real property upon the interest of the obligor in the real property
29 to the extent of the owner's personal liability under subsection (b) of this section, which claim
30 of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through
31 G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and
32 subject to the same filing requirements and periods of limitation applicable to the contractor.
33 The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the
34 filing of the claim of lien on real property pursuant to G.S. 44A-12. A lien waiver signed by the
35 contractor prior to filing of the claim of lien on real property waives the subcontractor's right to
36 a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien
37 on funds under this Article. The claim of lien on real property as provided under this subsection
38 shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice
39 of claim of lien upon funds given pursuant to G.S. 44A-19 as an exhibit together with proof of
40 service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the
41 obligor is personally liable for the debt under subsection (b) of this section.

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

46 (f) A bond deposited under this section to discharge a filed notice of claim of lien upon
47 funds shall be effective to discharge any claim of lien on real property filed by the same lien
48 claimant pursuant to subsection (d) of this section or G.S. 44A-23 and shall further be effective
49 to discharge any notices of claims of lien upon funds served by lower tier subcontractors or any
50 claims of lien on real property filed by lower tier subcontractors pursuant to subsection (d) of

1 this section or G.S. 44A-23 claiming through or against the contractor or higher tier
2 subcontractors up to the amount of the bond."

3 **SECTION 9.** G.S. 44A-23 reads as rewritten:

4 **"§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation rights of**
5 **subcontractor.**

6 (a) First tier subcontractor. – A first tier ~~subcontractor, who gives notice of claim of lien~~
7 ~~upon funds as provided in this Article,~~ subcontractor may, to the extent of ~~this~~ its claim, enforce
8 the claim of lien on real property of the contractor created by Part 1 of this Article. The manner
9 of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on
10 real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the claim of lien
11 on real property pursuant to G.S. 44A-12. When completing the claim of lien on real property
12 form, the subcontractor may use as the date upon which labor or materials were first or last
13 furnished on the real property either the date of the first or last furnishing of labor or materials
14 on the real property by the subcontractor making the claim or the date of the first or last
15 furnishing of labor or materials on the real property by the contractor through which the claim
16 of lien on real property is being asserted. Upon the filing of the claim of lien on real ~~property,~~
17 ~~with the notice of claim of lien upon funds attached,~~ property and the commencement of the
18 action, no action of the contractor shall be effective to prejudice the rights of the subcontractor
19 without his written consent. A lien waiver signed by the contractor prior to commencement of
20 the action waives the subcontractor's right to a claim of lien on real property but does not affect
21 the subcontractor's rights to a claim of lien on funds under this Article.

22 (b) Second or third subcontractor. –

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

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

39 b. After the posting and filing of a signed notice of contract and the
40 service upon the contractor of a signed notice of subcontract, the
41 contractor serves upon the second or third tier subcontractor, within
42 five days following each subsequent payment, by the same means of
43 service as described in G.S. 44A-19(d), the written notice of payment
44 setting forth the date of payment and the period for which payment is
45 made as requested in the notice of subcontract form set forth herein.

46 (2) The form of the notice of contract to be so utilized under this section shall be
47 substantially as follows and the fee for filing the same with the clerk of
48 superior court shall be the same as charged for filing a claim of lien on real
49 property:

50 "NOTICE OF CONTRACT

51 "(1) Name and address of the Contractor:

"(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:

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

"(4) Name and address of the person, firm or corporation filing this Notice of Contract:

"Dated: _____

"Contractor

"Filed this the ____ day of _____, ____.

Clerk of Superior Court"

(3) The form of the notice of subcontract to be so utilized under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

"(1) Name and address of the subcontractor:

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

"(3)

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

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

"(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within five days following, each subsequent payment by the contractor to the first tier subcontractor for labor performed or material furnished at the improved real property within the above descriptions of such in paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the period for which payment is made.

"Dated: _____

Subcontractor"

(4) The manner of such enforcement shall be as provided by G.S. 44A-7 through G.S. 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon the filing of a claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real ~~property, with the notice of claim of lien upon funds attached,~~ property and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent."

SECTION 10. G.S. 44A-24 reads as rewritten:

"§ 44A-24. ~~False statement a misdemeanor.~~ False statement, an unfair and deceptive trade practice, and grounds for disciplinary action against a licensed contractor or qualifying party.

If any contractor or other person receiving payment from an obligor for an improvement to real property or from a purchaser for a conveyance of real property with improvements subject to this Article or to Article 3 of this Chapter shall knowingly furnish to such obligor, purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such real property, then such contractor, subcontractor or other person shall be guilty of a Class 1 ~~misdemeanor.~~ misdemeanor and shall be subject to a claim for violation of G.S. 75-1.1 by any

1 obligor, purchaser, lender who obtains a security interest in such property, title insurance
2 company insuring title to such property, or any person who otherwise would be entitled to a
3 claim of lien on real property under this Article and who suffers actual harm as a result of the
4 misrepresentation. In addition, any person who knowingly signs or directs another person to
5 sign such a written statement shall be guilty of a Class 1 misdemeanor and subject to a claim
6 for violation of G.S. 75-1.1. Upon conviction and in the event the court shall grant any
7 defendant a suspended sentence, the court may in its discretion include as a condition of such
8 suspension a provision that the defendant shall reimburse the party who suffered loss on such
9 conditions as the court shall determine are proper.

10 The elements of the offense herein stated are the furnishing of the false written statement
11 with knowledge that it is false and the subsequent or simultaneous receipt of payment from an
12 obligor or ~~purchaser, and in any purchaser by the person signing the document, a person~~
13 directing another to sign the document, or any person or entity for whom the document was
14 signed. In any criminal prosecution hereunder it shall not be necessary for the State to prove
15 that the obligor, purchaser, lender or title insurance company relied upon the false statement or
16 that any person was injured thereby.

17 In addition to the criminal sanctions and civil liabilities created by this section, conduct
18 constituting the offense herein stated and causing actual harm to any person by any licensed
19 contractor or qualifying party, as that term is used in Chapter 87 of the General Statutes, shall
20 constitute deceit and misconduct subject to disciplinary action under Chapter 87 of the General
21 Statutes, including revocation, suspension, or restriction of a license or the ability to act as a
22 qualifying party for a license."

23 **SECTION 11.** G.S. 44A-27 reads as rewritten:

24 **"§ 44A-27. Actions on payment bonds; service of notice.**

25 (a) Subject to the provision of subsection (b) hereof, any claimant who has performed
26 labor or furnished materials in the prosecution of the work required by any contract for which a
27 payment bond has been given pursuant to the provisions of this Article, and who has not been
28 paid in full therefor before the expiration of 90 days after the day on which the claimant
29 performed the last such labor or furnished the last such materials for which he claims payment,
30 may bring an action on such payment bond in his own name, to recover any amount due him
31 for such labor or materials and may prosecute such action to final judgment and have execution
32 on the judgment.

33 (b) Any claimant who has a direct contractual relationship with any subcontractor but
34 has no contractual relationship, express or implied, with the contractor may bring an action on
35 the payment bond only if he has given written notice of claim on payment bond to the
36 contractor within 120 days from the date on which the claimant performed the last of the labor
37 or furnished the last of the materials for which he claims payment, stating with substantial
38 accuracy the amount claimed and the name of the person for whom the work was performed or
39 to whom the material was furnished. The contractor shall furnish a copy of the payment bond
40 required by this Article within seven calendar days in response to a written request served by
41 any claimant in accordance with the provisions of G.S. 44A-27(c). Subject to the exception set
42 forth in subsection (e) of this section, unless the contractor has failed to satisfy its obligation to
43 timely furnish a copy of the payment bond to a claimant upon proper request by the claimant,
44 the claim of such a claimant shall not include labor or materials provided more than 75 days
45 prior to the claimant's service, in accordance with subsections (c) and (d) of this section, of its
46 written notice of public subcontract to the contractor.

47 (c) ~~The notices required by and any requests for copy of payment bond~~
48 referenced by subsection (b), (b) of this section, above, shall be served by registered or certified
49 mail, or by signature confirmation as provided by the United States Postal Service, postage
50 prepaid, in an envelope addressed to such contractor at any place where his office is regularly
51 maintained for the transaction of business or to such agent identified in the contractor's project

statement referenced in subdivision (1) of subsection (f) of this section or served in any manner provided by law for the service of summons.

(d) The form of the notice of public subcontract to be served pursuant to subsection (b) of this section shall be substantially as follows:

"NOTICE OF PUBLIC SUBCONTRACT

- (1) Name and address of the subcontractor giving notice of public subcontract:
(2) General description of the real property on which the labor was or is to be performed or the material was or is to be furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):
(3) General description of the subcontractor's contract, including the names and addresses of the parties thereto:
(4) General description of the labor and material performed and furnished thereunder:

Dated: _____

Subcontractor"

(e) Notwithstanding subsections (b), (c), and (d) of this section, the obligation to provide a notice of public subcontract shall not apply to claims of twenty thousand dollars (\$20,000) or less and, for any claim exceeding twenty thousand dollars (\$20,000), shall apply only to that portion of the claim in excess of twenty thousand dollars (\$20,000).

(f) In connection with any construction contract for which a bond is required by G.S. 44A-26(a):

- (1) The contractor shall provide to each subcontractor that it engages to perform labor or furnish materials in the performance of the construction contract a contractor's project statement containing all of the following information:
a. The name of the project.
b. The physical address of the project.
c. The name of the contracting body.
d. The name of the contractor.
e. The name, phone number, and mailing address of an agent authorized by the contractor to accept service of the requests for payment bond, the notice of public subcontract, and the notice of claim on payment bond referenced in subsection (b) of this section.
f. The name and address of the principal place of business of the surety issuing the payment bond required by G.S. 44A-26(a) for the construction contract.
(2) Each subcontractor shall provide each subcontractor that it engages to perform labor or furnish materials in the performance of the construction contract a copy of the contractor's project statement.
(3) No agreement entered into between a contractor and a subcontractor or between a subcontractor and its subcontractor shall be enforceable against the lower tier party until the contractor's project statement has been provided to the lower tier party."

SECTION 12. G.S. 105-362(b) reads as rewritten:

"§ 105-362. Discharge of lien on real property.

- (b) Release of Separate Parcels from Tax Lien. -

- 1 (2) When real property listed as one parcel is divided, a part thereof ~~may~~shall be
 2 released as provided in subdivision (b)(1), above, after the assessed
 3 valuation of the part to be released has been determined and certified to the
 4 tax collector by the ~~tax supervisor~~county assessor and payment of all
 5 past-due taxes on the parent parcel, the taxes on the part to be released, plus
 6 any penalties, interest, and costs allowed by law have been fully paid. The
 7 county assessor shall have 10 business days from receipt of a written request
 8 for valuation under this subdivision to provide the valuation; provided,
 9 however, this subdivision shall not apply upon a showing of good cause by
 10 the tax collector based on the tax payment history of the owner of the parent
 11 parcel."

12 **SECTION 13.(a)** G.S. 44A-4(b) reads as rewritten:

13 **"§ 44A-4. Enforcement of lien by sale.**

14 ...

15 (b) Notice and Hearings. –

- 16 (1) If the property upon which the lien is claimed is a motor vehicle that is
 17 required to be registered, the lienor following the expiration of the relevant
 18 time period provided by subsection (a) shall give notice to the Division of
 19 Motor Vehicles that a lien is asserted and sale is proposed and shall remit to
 20 the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles
 21 shall issue notice by ~~registered or~~ certified mail, return receipt requested, to
 22 the person having legal title to the property, if reasonably ascertainable, to
 23 the person with whom the lienor dealt if different, and to each secured party
 24 and other person claiming an interest in the property who is actually known
 25 to the Division or who can be reasonably ascertained. The notice shall state
 26 that a lien has been asserted against specific property and shall identify the
 27 lienor, the date that the lien arose, the general nature of the services
 28 performed and materials used or sold for which the lien is asserted, the
 29 amount of the lien, and that the lienor intends to sell the property in
 30 satisfaction of the lien. The notice shall inform the recipient that the
 31 recipient has the right to a judicial hearing at which time a determination
 32 will be made as to the validity of the lien prior to a sale taking place. The
 33 notice shall further state that the recipient has a period of 10 days from the
 34 date of receipt in which to notify the Division by ~~registered or~~ certified mail,
 35 return receipt requested, that a hearing is desired and that if the recipient
 36 wishes to contest the sale of his property pursuant to such lien, the recipient
 37 should notify the Division that a hearing is desired. The notice shall state the
 38 required information in simplified terms and shall contain a form whereby
 39 the recipient may notify the Division that a hearing is desired by the return
 40 of such form to the Division. The Division shall notify the lienor whether
 41 such notice is timely received by the Division. In lieu of the notice by the
 42 lienor to the Division and the notices issued by the Division described
 43 above, the lienor may issue notice on a form approved by the Division
 44 pursuant to the notice requirements above. If notice is issued by the lienor,
 45 the recipient shall return the form requesting a hearing to the lienor, and not
 46 the Division, within 10 days from the date the recipient receives the notice if
 47 a judicial hearing is requested. If the ~~registered or~~ certified mail notice has
 48 been returned as undeliverable and the notice of a right to a judicial hearing
 49 has been given to the owner of the motor vehicle in accordance with
 50 G.S. 20-28.4, no further notice is required. Failure of the recipient to notify
 51 the Division or lienor, as specified in the notice, within 10 days of the receipt

1 of such notice that a hearing is desired shall be deemed a waiver of the right
2 to a hearing prior to the sale of the property against which the lien is
3 asserted, and the lienor may proceed to enforce the lien by public or private
4 sale as provided in this section and the Division shall transfer title to the
5 property pursuant to such sale. If the Division or lienor, as specified in the
6 notice, is notified within the 10-day period provided above that a hearing is
7 desired prior to sale, the lien may be enforced by sale as provided in this
8 section and the Division will transfer title only pursuant to the order of a
9 court of competent jurisdiction.

10 If the ~~registered or~~ certified mail notice has been returned as
11 undeliverable, or if the name of the person having legal title to the vehicle
12 cannot reasonably be ascertained and the fair market value of the vehicle is
13 less than eight hundred dollars (\$800.00), the lienor may institute a special
14 proceeding in the county where the vehicle is being held, for authorization to
15 sell that vehicle. Market value shall be determined by the schedule of values
16 adopted by the Commissioner under G.S. 105-187.3.

17 In such a proceeding a lienor may include more than one vehicle, but the
18 proceeds of the sale of each shall be subject only to valid claims against that
19 vehicle, and any excess proceeds of the sale shall be paid immediately to the
20 Treasurer for disposition pursuant to Chapter 116B of the General Statutes.

21 The application to the clerk in such a special proceeding shall contain the
22 notice of sale information set out in subsection (f) hereof. If the application
23 is in proper form the clerk shall enter an order authorizing the sale on a date
24 not less than 14 days therefrom, and the lienor shall cause the application
25 and order to be sent immediately by first-class mail pursuant to G.S. 1A-1,
26 Rule 5, to each person to whom notice was mailed pursuant to this
27 subsection. Following the authorized sale the lienor shall file with the clerk a
28 report in the form of an affidavit, stating that the lienor has complied with
29 the public or private sale provisions of G.S. 44A-4, the name, address, and
30 bid of the high bidder or person buying at a private sale, and a statement of
31 the disposition of the sale proceeds. The clerk then shall enter an order
32 directing the Division to transfer title accordingly.

33 If prior to the sale the owner or legal possessor contests the sale or lien in
34 a writing filed with the clerk, the proceeding shall be handled in accordance
35 with G.S. 1-301.2.

- 36 (2) If the property upon which the lien is claimed is other than a motor vehicle
37 required to be registered, the lienor following the expiration of the 30-day
38 period provided by subsection (a) shall issue notice to the person having
39 legal title to the property, if reasonably ascertainable, and to the person with
40 whom the lienor dealt if different by ~~registered or~~ certified mail, return
41 receipt requested. Such notice shall state that a lien has been asserted against
42 specific property and shall identify the lienor, the date that the lien arose, the
43 general nature of the services performed and materials used or sold for
44 which the lien is asserted, the amount of the lien, and that the lienor intends
45 to sell the property in satisfaction of the lien. The notice shall inform the
46 recipient that the recipient has the right to a judicial hearing at which time a
47 determination will be made as to the validity of the lien prior to a sale taking
48 place. The notice shall further state that the recipient has a period of 10 days
49 from the date of receipt in which to notify the lienor by ~~registered or~~
50 certified mail, return receipt requested, that a hearing is desired and that if
51 the recipient wishes to contest the sale of his property pursuant to such lien,

1 the recipient should notify the lienor that a hearing is desired. The notice
 2 shall state the required information in simplified terms and shall contain a
 3 form whereby the recipient may notify the lienor that a hearing is desired by
 4 the return of such form to the lienor. Failure of the recipient to notify the
 5 lienor within 10 days of the receipt of such notice that a hearing is desired
 6 shall be deemed a waiver of the right to a hearing prior to sale of the
 7 property against which the lien is asserted and the lienor may proceed to
 8 enforce the lien by public or private sale as provided in this section. If the
 9 lienor is notified within the 10-day period provided above that a hearing is
 10 desired prior to sale, the lien may be enforced by sale as provided in this
 11 section only pursuant to the order of a court of competent jurisdiction."

12 **SECTION 13.(b)** G.S. 44A-24.10 reads as rewritten:

13 **"§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending**
 14 **suit within 30 days after service on owner.**

15 If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending
 16 suit to enforce a lien within 30 days after a properly served written demand of the owner,
 17 lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be
 18 by ~~registered or certified~~ mail, return receipt requested, or by personal service. The claimant
 19 shall file proof of properly served written demand with the clerk of the superior court. The
 20 provisions of this section shall not extend to any other deadline provided by law for the filing
 21 of any pleadings or for the foreclosure of any lien governed by this Part."

22 **SECTION 13.(c)** G.S. 44A-43 reads as rewritten:

23 **"§ 44A-43. Enforcement of self-service storage facility lien.**

24 ...
 25 (b) Notice and Hearing:

26 (1) If the property upon which the lien is claimed is a motor vehicle, the lienor,
 27 following the expiration of the 15-day period provided by subsection (a),
 28 shall give notice to the Division of Motor Vehicles that a lien is asserted and
 29 that a sale is proposed. The lienor shall remit to the Division a fee of two
 30 dollars (\$2.00); and shall also furnish the Division with the last known
 31 address of the occupant. The Division of Motor Vehicles shall issue notice
 32 by ~~registered or certified~~ mail, return receipt requested to the person having
 33 legal title to the vehicle, if reasonably ascertainable, and to the occupant, if
 34 different, at his last known address. The notice shall:

35 ...
 36 c. State that the legal title holder and the occupant have a period of 10
 37 days from the date of receipt of the notice in which to notify the
 38 Division of Motor Vehicles by ~~registered or certified~~ mail, return
 39 receipt requested, that a hearing is desired to contest the sale of the
 40 vehicle pursuant to the lien.

41 The person with legal title or the occupant must, within 10 days of receipt of the notice
 42 from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the
 43 vehicle pursuant to the lien, and that the Division should so notify lienor.

44 Failure of the person with legal title or the occupant to notify the Division that a hearing is
 45 desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against
 46 which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor
 47 may proceed to enforce the lien by a public sale as provided by this section; and the Division
 48 shall transfer title to the property pursuant to such sale.

49 If the Division is notified within the 10-day period provided in this section that a hearing is
 50 desired prior to the sale, the lien may be enforced by a public sale as provided in this section

1 and the Division will transfer title only pursuant to the order of a court of competent
2 jurisdiction.

3 ...
4 (c) Public Sale. –

5 (1) Not less than 20 days prior to sale by public sale the lienor:

6 a. Shall cause notice to be delivered by ~~registered or~~ certified mail to
7 the person having a security interest in the property if reasonably
8 ascertainable, and to the occupant at the occupant's last known
9 address. Notice given pursuant to this subdivision shall be presumed
10 delivered when it is properly addressed, first-class postage prepaid,
11 and deposited with the United States Postal Service.

12"

13 **SECTION 14.** Sections 1 through 3 and Sections 5 through 11 of this act become
14 effective January 1, 2013, and apply to improvements to real property for which the first permit
15 required to be obtained is obtained on or after that date or, with respect to projects for which no
16 permit is required, apply to improvement to real property commenced on or after that date.
17 Section 12 of this act is effective when it becomes law and applies to taxes imposed for taxable
18 years beginning on or after July 1, 2012. Sections 4, 13, and 14 of this act are effective when
19 this act becomes law.