

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 1052\*  
Committee Substitute Favorable 6/13/12  
PROPOSED COMMITTEE SUBSTITUTE H1052-PCS11383-TG-49

Short Title: Mechanics Liens/Payment Bond Reforms.

(Public)

Sponsors:

Referred to:

May 23, 2012

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS  
3 LIEN, TAX LIEN, AND PAYMENT BOND LAWS, AS RECOMMENDED BY THE  
4 LEGISLATIVE RESEARCH COMMISSION'S MECHANICS LIENS ON REAL  
5 PROPERTY COMMITTEE.

6 The General Assembly of North Carolina enacts:

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

8 "**§ 44A-7. Definitions.**

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

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

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

15 (1)(3) ~~"Improve"~~ means to Improve. – To build, effect, alter, repair, or demolish  
16 any improvement upon, connected with, or on or beneath the surface of any  
17 real property, or to excavate, clear, grade, fill or landscape any real property,  
18 or to construct driveways and private roadways, or to furnish materials,  
19 including trees and shrubbery, for any of such purposes, or to perform any  
20 labor upon such improvements, and shall also mean and include any design  
21 or other professional or skilled services furnished by architects, engineers,  
22 land surveyors and landscape architects registered under Chapter 83A, 89A  
23 or 89C of the General Statutes, and rental of equipment directly utilized on  
24 the real property in making the improvement.

25 (2)(4) ~~"Improvement"~~ means all Improvement. – All or any part of any building,  
26 structure, erection, alteration, demolition, excavation, clearing, grading,  
27 filling, or landscaping, including trees and shrubbery, driveways, and private  
28 roadways, on real property.

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

32 (3)(6) ~~An "owner"~~ is a Owner. – A person who has an interest in the real property  
33 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.

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

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

6  
 7 CLAIM OF LIEN ON REAL PROPERTY

- 8  
 9 (1) Name and address of the person claiming the claim of lien on real property:  
 10 (2) Name and address of the record owner of the real property claimed to be  
 11 subject to the claim of lien on real property at the time the claim of lien on  
 12 real property is ~~filed~~ filed, and, if the claim of lien on real property is being  
 13 asserted pursuant to G.S. 44A-23, the name of the contractor through which  
 14 subrogation is being asserted:  
 15 (3) Description of the real property upon which the claim of lien on real  
 16 property is claimed: (Street address, tax lot and block number, reference to  
 17 recorded instrument, or any other description of real property is sufficient,  
 18 whether or not it is specific, if it reasonably identifies what is described.)  
 19 (4) Name and address of the person with whom the claimant contracted for the  
 20 furnishing of labor or materials:  
 21 (5) Date upon which labor or materials were first furnished upon said property  
 22 by the claimant:  
 23 (5a) Date upon which labor or materials were last furnished upon said property  
 24 by the claimant:  
 25 (6) General description of the labor performed or materials furnished and the  
 26 amount claimed therefor:  
 27 (7) I hereby certify that I have served the parties listed in paragraph two above  
 28 in accordance with the requirements of G.S. 44A-11.

29 \_\_\_\_\_  
 30 Lien Claimant

31 Filed this \_\_\_\_ day of \_\_\_\_, \_\_\_\_

32 \_\_\_\_\_  
 33 Clerk of Superior Court

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

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

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

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

- 48 (1) An agreement to waive the right to file a claim of lien on real property  
 49 granted under this Part, or an agreement to waive the right to serve a notice  
 50 of claim of lien upon funds granted under Part 2 of this Article, which  
 51 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  
 19 perfected effective immediately upon the first furnishing of labor, materials, or rental equipment  
 20 at the site of the improvement by a subcontractor. Any lien upon funds granted under this  
 21 section is perfected upon the giving of notice of claim of lien upon funds in writing to the  
 22 obligor as provided in G.S. 44A-19 and shall be effective upon the obligor's receipt of the  
 23 notice. The subrogation rights of a first, second, or third tier subcontractor to the claim of lien  
 24 on real 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 a misdemeanor, 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

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

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

5 "NOTICE OF PUBLIC SUBCONTRACT  
 6 "

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

16  
 17 Dated: \_\_\_\_\_

18  
 19 \_\_\_\_\_  
 20 Subcontractor"

21 (e) Notwithstanding subsections (b), (c), and (d) of this section, the obligation to  
 22 provide a notice of public subcontract shall not apply to claims of twenty thousand dollars  
 23 (\$20,000) or less and, for any claim exceeding twenty thousand dollars (\$20,000), shall apply  
 24 only to that portion of the claim in excess of twenty thousand dollars (\$20,000).

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

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

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

49 **"§ 44A-4. Enforcement of lien by sale.**

- 50 ...  
 (b) Notice and Hearings. –

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

46 If the ~~registered or~~ certified mail notice has been returned as  
47 undeliverable, or if the name of the person having legal title to the vehicle  
48 cannot reasonably be ascertained and the fair market value of the vehicle is  
49 less than eight hundred dollars (\$800.00), the lienor may institute a special  
50 proceeding in the county where the vehicle is being held, for authorization to

1 sell that vehicle. Market value shall be determined by the schedule of values  
2 adopted by the Commissioner under G.S. 105-187.3.

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

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

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

22 (2) If the property upon which the lien is claimed is other than a motor vehicle  
23 required to be registered, the lienor following the expiration of the 30-day  
24 period provided by subsection (a) shall issue notice to the person having  
25 legal title to the property, if reasonably ascertainable, and to the person with  
26 whom the lienor dealt if different by ~~registered or~~ certified mail, return  
27 receipt requested. Such notice shall state that a lien has been asserted against  
28 specific property and shall identify the lienor, the date that the lien arose, the  
29 general nature of the services performed and materials used or sold for  
30 which the lien is asserted, the amount of the lien, and that the lienor intends  
31 to sell the property in satisfaction of the lien. The notice shall inform the  
32 recipient that the recipient has the right to a judicial hearing at which time a  
33 determination will be made as to the validity of the lien prior to a sale taking  
34 place. The notice shall further state that the recipient has a period of 10 days  
35 from the date of receipt in which to notify the lienor by ~~registered or~~  
36 certified mail, return receipt requested, that a hearing is desired and that if  
37 the recipient wishes to contest the sale of his property pursuant to such lien,  
38 the recipient should notify the lienor that a hearing is desired. The notice  
39 shall state the required information in simplified terms and shall contain a  
40 form whereby the recipient may notify the lienor that a hearing is desired by  
41 the return of such form to the lienor. Failure of the recipient to notify the  
42 lienor within 10 days of the receipt of such notice that a hearing is desired  
43 shall be deemed a waiver of the right to a hearing prior to sale of the  
44 property against which the lien is asserted and the lienor may proceed to  
45 enforce the lien by public or private sale as provided in this section. If the  
46 lienor is notified within the 10-day period provided above that a hearing is  
47 desired prior to sale, the lien may be enforced by sale as provided in this  
48 section only pursuant to the order of a court of competent jurisdiction."

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

50 **"§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending**  
51 **suit within 30 days after service on owner.**

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

8 **SECTION 12.(c)** G.S. 44A-43 reads as rewritten:

9 **"§ 44A-43. Enforcement of self-service storage facility lien.**

10 ...

11 (b) Notice and Hearing:

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

21 ...

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

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

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

35 If the Division is notified within the 10-day period provided in this section that a hearing is  
36 desired prior to the sale, the lien may be enforced by a public sale as provided in this section  
37 and the Division will transfer title only pursuant to the order of a court of competent  
38 jurisdiction.

39 ...

40 (c) Public Sale. –

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

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

48 ...."

49 **SECTION 13.** Sections 1 through 3 and Sections 5 through 11 of this act become  
50 effective January 1, 2013, and apply to improvements to real property for which the first permit  
51 required to be obtained is obtained on or after that date or, with respect to projects for which no



- 1 permit is required, apply to improvement to real property commenced on or after that date.
- 2 Sections 4, 12, and 13 of this act are effective when this act becomes law.