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SESSION 2011

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SENATE BILL 42
Judiciary II Committee Substitute Adopted 3/28/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S42-PCS85307-TG-50

Short Title: Mech. Liens/Pvt Lien Agent.

(Public)

Sponsors:

Referred to:

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PERSONS FURNISHING LABOR OR MATERIALS IN CONNECTION WITH CERTAIN IMPROVEMENTS TO REAL PROPERTY TO GIVE WRITTEN NOTICE TO THE DESIGNATED LIEN AGENT OF THE OWNER OF THE IMPROVED REAL PROPERTY TO PRESERVE THEIR LIEN RIGHTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-7 is amended by adding new subdivisions to read:

"§ 44A-7. Definitions.

Unless the context otherwise requires in this Article:

(2a) Lien agent. – A title insurance company or title insurance agency designated by an owner pursuant to G.S. 44A-11.1.

(4a) Inspection department. – Any city or county building inspection department authorized by Chapter 160A or Chapter 153A of the General Statutes.

(6a) Potential lien claimant. – Any person entitled to claim a lien for improvements to real property under this Article who is subject to G.S. 44A-11.1."

SECTION 2. Article 2 of Chapter 44A of the General Statutes is amended by adding new sections to read:

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

(a) With regard to any improvements to real property to which this Article is applicable for which the costs of the undertaking at the time that the original building permit is issued is thirty thousand dollars \$30,000 or more, the owner shall designate a lien agent no later than the time the owner first contracts with any person for an improvement to the real property. The owner shall deliver written notice of designation to its designated lien agent by any method authorized in G.S. 44A-11.2(f), and shall include in its notice the street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property for the improvements to which the lien agent has been designated. Designation of a lien agent pursuant to this section does not make the lien agent an agent of the owner for purposes of receiving a Notice of Claim of Lien upon Funds or for any purpose other than the receipt of notices to the lien agent required under G.S. 44A-11.2.



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1 (b) The lien agent shall be chosen from among the list of registered lien agents
2 maintained by the Department of Insurance pursuant to G.S. 58-26-41.

3 (c) Upon receipt of written notification of designation by an owner pursuant to
4 subsection (a) of this section, the lien agent shall have the duties as set forth in
5 G.S. 58-26-41(b).

6 (d) In the event that the lien agent revokes its consent to serve as lien agent or is
7 removed by the owner, or otherwise becomes unable or unwilling to serve before the
8 completion of all improvements to the real property, the owner shall within three business days
9 of notice of such event do all of the following:

10 (1) Designate a successor lien agent and provide written notice of designation to
11 the successor lien agent pursuant to subsection (a) of this section.

12 (2) Provide the contact information for the successor lien agent to the inspection
13 department that issued any required building permit and to any persons who
14 requested information relating to the predecessor lien agent.

15 (3) Display the contact information for the successor lien agent on the building
16 permit or attachment thereto posted on the improved property or, if no
17 building permit was required, on a sign complying with G.S. 44A-11.2(e).

18 (e) Until such time as the owner has fully complied with subsection (d) of this section,
19 notice transmitted to the predecessor lien agent shall be deemed effective notice,
20 notwithstanding the fact that the lien agent may have resigned or otherwise become unable or
21 unwilling to serve.

22 (f) Any attorney who, in connection with a transaction involving improved real
23 property subject to this section for which the attorney is serving as the closing attorney,
24 contacts the lien agent and requests copies of the notices received by the lien agent relating to
25 the real property not more than five business days prior to the date of recordation of a deed or
26 deed of trust on the real property, shall be deemed to have fulfilled the attorney's professional
27 obligation as closing attorney to check such notices to lien agent and shall have no further duty
28 to request that the lien agent provide information pertaining to notices received subsequently by
29 the lien agent.

30 **"§ 44A-11.2. Identification of lien agent; notice to lien agent; effect of notice.**

31 (a) As used in this section, the term "contact information" shall mean the name,
32 physical and mailing address, telephone number, facsimile number, and electronic mail address
33 of the lien agent designated by the owner pursuant to G.S. 44A-11.1.

34 (b) Within seven days of receiving a written request by a potential lien claimant by any
35 delivery method specified in subsection (f) of this section, the owner shall provide a notice to
36 the potential lien claimant containing the contact information for the lien agent, by the same
37 delivery method used by the potential lien claimant in making the request. A potential lien
38 claimant making a request pursuant to this subsection who has not furnished labor at the site of
39 the improvements, or who did so prior to the posting of the contact information for the lien
40 agent pursuant to subsection (d) or (e) of this section, shall have no obligation to give notice to
41 the lien agent under this section until the potential lien claimant has received the contact
42 information from the owner.

43 (c) A contractor or subcontractor for improvements to real property subject to
44 G.S. 44A-11.1 shall, within three business days of contracting with a lower-tier subcontractor
45 who is not required to furnish labor at the site of the improvements, provide the lower-tier
46 subcontractor with a written notice containing the contact information for the lien agent
47 designated by the owner. Noncompliance with the notice requirements of this subsection shall
48 constitute an unfair trade practice subjecting the noncomplying contractor or subcontractor to a
49 claim for violation of G.S. 75-1.1 by any lower-tier subcontractor entitled to the notice who
50 suffers actual harm as a result of the noncompliance.

1 (d) For any improvement to real property subject to G.S. 44A-11.1, any building permit
 2 issued pursuant to G.S. 160A-417(d) or G.S. 153A-357(e) shall be conspicuously and
 3 continuously posted on the property for which the permit is issued until the completion of all
 4 construction.

5 (e) For any improvement to real property subject to G.S. 44A-11.1, a sign disclosing
 6 the contact information for the lien agent shall be conspicuously and continuously posted on the
 7 property until the completion of all construction if the contact information for the lien agent is
 8 not contained in a building permit or attachment thereto posted on the property.

9 (f) In complying with any requirement for written notice pursuant to this section, the
 10 notice shall be addressed to the person required to be provided with the notice and shall be
 11 delivered by any of the following methods:

- 12 (1) Certified mail, return receipt requested.
- 13 (2) Signature confirmation as provided by the United States Postal Service.
- 14 (3) Physical delivery and obtaining a delivery receipt from the lien agent.
- 15 (4) Facsimile with a facsimile confirmation.
- 16 (5) Depositing with a designated delivery service authorized pursuant to 26
 17 U.S.C. § 7502(f)(2).
- 18 (6) Electronic mail.

19 As used in this subsection, "delivery receipt" includes an electronic or facsimile confirmation.
 20 A return receipt or other receipt showing delivery of the notice to the addressee or written
 21 evidence that such notice was delivered by the postal service or other carrier to but not accepted
 22 by the addressee shall be prima facie evidence of receipt.

23 (g) When a lien agent is identified in a contract for improvements to real property
 24 consisting of a single-family residence entered into between an owner and a contractor for the
 25 improvements to the property, the contractor will be deemed to have met the requirement of
 26 notice under subsections (k) and (l) of this section on the date of the lien agent's receipt of the
 27 owner's notice of designation. The owner shall provide written notice to the lien agent
 28 containing the information pertaining to the contractor required in a notice to lien agent
 29 pursuant to subdivisions (1) through (4) of subsection (h) of this section, by any method of
 30 delivery authorized in G.S. 44A-11.2(f). The lien agent shall include the contractor in its
 31 response to any persons requesting information relating to persons who have given notice to the
 32 lien agent pursuant to this section.

33 (h) The form of the notice to be given under this section shall be substantially as
 34 follows:

"NOTICE TO LIEN AGENT"

- 36 (1) Potential lien claimant's name, mailing address, telephone number, fax
 37 number (if available), and electronic mailing address (if available):
 38 _____
- 39 (2) Name of the party with whom the potential lien claimant has contracted to
 40 improve the real property described below: _____
- 41 (3) A description of the property sufficient to identify the property, such as the
 42 name of the project, if applicable, the physical address as shown on the
 43 building permit or notice received from the owner: _____
- 44 (4) I give notice of my right subsequently to pursue a claim of lien for
 45 improvements to the real property described in this notice.

46
 47
 48 Dated: _____

49
 50
 51 _____
Potential Lien Claimant"

1 (i) The service of the Notice to Lien Agent does not satisfy the service or filing
2 requirements applicable to a Notice of Claim of Lien upon Funds under Part 2 of Article 2 of
3 this Chapter.

4 (j) The notice to lien agent shall not be filed with the clerk of superior court. An
5 inaccuracy in the description of the improved real property provided in the notice shall not bar
6 a person from claiming a lien under this Article or otherwise perfecting or enforcing a claim of
7 lien as provided in this Article, if the improved real property can otherwise reasonably be
8 identified from the information contained in the notice.

9 (k) Except as otherwise provided in this section, a potential lien claimant may perfect a
10 claim of lien on real property only if any of the following conditions is met:

11 (1) The lien agent identified in accordance with this section has received notice
12 from the potential lien claimant no later than 15 days after the first
13 furnishing of labor or materials by the potential lien claimant.

14 (2) Any of the following conditions is met:

15 a. The lien agent identified in accordance with this section has
16 received notice from the potential lien claimant prior to the
17 date of recordation of a conveyance of the property interest in
18 the real property to a bona fide purchaser for value protected
19 under G.S. 47-18 who is not an affiliate, relative, or insider of
20 the owner.

21 b. The potential lien claimant has filed a claim of lien pursuant
22 to G.S. 44A-12 prior to the recordation of a conveyance of
23 the property interest in the real property to a bona fide
24 purchaser for value protected under G.S. 47-18 who is not an
25 affiliate, relative, or insider of the owner.

26 As used in this subdivision, the terms "affiliate," "relative," and "insider"
27 shall have the meanings as set forth in G.S. 39-23.1.

28 (l) Except as otherwise provided in this section, the claim of lien on real property of a
29 potential lien claimant that is not filed prior to the recordation of any mortgage or deed of trust
30 shall be subordinate to the previously recorded mortgage or deed of trust unless any of the
31 following conditions is met:

32 (1) The lien agent identified in accordance with this section has received notice
33 from the potential lien claimant within 15 days after the first furnishing of
34 labor or materials by the potential lien claimant.

35 (2) The lien agent identified in accordance with this section has received notice
36 from the potential lien claimant prior to the date of recordation of the
37 mortgage or deed of trust for the benefit of one who is not an affiliate,
38 relative, or insider of the owner.

39 (m) With regard to an improvement to real property subject to G.S. 44A-11.1, a
40 potential lien claimant shall not be required to comply with this section if the lien agent contact
41 information is neither contained in the building permit or attachment thereto or sign posted on
42 the improved property pursuant to subsection (d) or (e) of this section at the time when the
43 potential lien claimant was furnishing labor at the site of the improvements, nor timely
44 provided by the owner in response to a written request by the potential lien claimant made
45 pursuant to subsection (b) of this section. The lien rights of a potential lien claimant who is
46 given erroneous information by the owner regarding the identity of the lien agent will not be
47 extinguished under subsection (k) of this section nor subordinated under subsection (l) of this
48 section.

49 (n) Except as provided in subsections (k) and (l) of this section, nothing contained in
50 this section shall affect a claim of lien upon funds pursuant to G.S. 44A-18.

1 (o) A potential lien claimant may provide the notice to lien agent required under this
2 section regardless of whether the improvements for which the potential lien claimant is
3 responsible are contracted, started, in process, or completed at the time of submitting the
4 notice."

5 **SECTION 3.** Article 26 of Chapter 58 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 58-26-41. Registration as a lien agent.**

8 (a) A title insurance company or title insurance agency authorized to do business in this
9 State that consents to serve as a lien agent pursuant to G.S. 44A-11.1 shall register with the
10 Department by providing the following information:

11 (1) Name of the title insurance company or title insurance agency consenting to
12 serve as a lien agent pursuant to G.S. 44A-11.1.

13 (2) Physical and mailing address, facsimile number and electronic mail address
14 to which notices may be delivered to the lien agent pursuant to
15 G.S. 44A-11.2.

16 (3) Telephone number of the lien agent.

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

19 (1) Provide written notice acknowledging its designation as a lien agent to the
20 owner within three business days of receipt of the owner's written notice of
21 designation, by the same method of delivery used by the owner in delivering
22 the notice of designation to the lien agent.

23 (2) Receive notices to lien agent delivered by potential lien claimants.

24 (3) Maintain a record of the date and time of delivery and the information
25 contained in each notice to lien agent received.

26 (4) Within three business days of receipt of a notice to lien agent by a potential
27 lien claimant relating to improvements to real property for which the lien
28 agent has been designated as the lien agent, provide written notice
29 confirming receipt of the notice to the person providing such notice, by the
30 same method used by the potential lien claimant in delivering the notice to
31 lien agent.

32 (5) Within three business days of receipt of any notice to lien agent by a
33 potential lien claimant relating to improved real property for which the lien
34 agent has not been designated as the lien agent, provide written notice to the
35 potential lien claimant that it is not the designated lien agent for the
36 improved property, by the same method used by the potential lien claimant
37 in delivering the notice to lien agent.

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

42 (7) Provide written notice of the potential lien claimants having delivered notice
43 to lien agent pursuant to G.S. 44A-11.2, including the information relating to
44 any contractor identified by the owner pursuant to G.S. 44A-11.2(g), within
45 one business day of receiving a request from any of the following persons or
46 their authorized agents:

47 a. An owner of the improved property.

48 b. A title insurance company issuing a policy of title insurance on the
49 improved property.

50 c. A contracted purchaser of the improved property.

51 d. A potential lien claimant.

1 e. A closing attorney, lender, or settlement agent as defined in
2 G.S. 45A-3(15) involved in a transaction involving the improved
3 property.

4 In responding to a request pursuant to this subdivision, the lien agent shall
5 include the information provided by each potential lien claimant pursuant to
6 G.S. 44A-11.2(h)(1) and G.S. 44A-11.2(h)(2) and, if specifically requested,
7 a copy of each notice to lien claimant received by the lien agent.

8 (8) Transfer all notices received and other documentation thereof to any
9 successor lien agent designated by the owner upon termination under
10 subsection (d) of this section.

11 (c) A registered lien agent may revoke its consent and be removed from the list of lien
12 agents by providing written notification of its revocation of consent to the Department of
13 Insurance and to all owners by whom the lien agent has been designated pursuant to
14 G.S. 44A-11.1 at least 30 days in advance of the effective date of its revocation of consent.

15 (d) For services rendered pursuant to each designation as a lien agent for improvements
16 to real property comprising one- or two-family dwellings, a lien agent may collect a fee of not
17 more than twenty-five dollars (\$25.00) from the owner. For services rendered pursuant to each
18 designation as a lien agent for all other improvements to real property, the lien agent may
19 collect a fee not to exceed fifty dollars (\$50.00) from the owner.

20 (e) The Department shall publish on its Web site a current list of lien agents registered
21 pursuant to this section."

22 **SECTION 4.** G.S. 87-14(a) is amended by adding a new subdivision to read:

23 **"§ 87-14. Regulations as to issue of building permits.**

24 (a) Any person, firm, or corporation, upon making application to the building inspector
25 or such other authority of any incorporated city, town, or county in North Carolina charged
26 with the duty of issuing building or other permits for the construction of any building, highway,
27 sewer, grading, or any improvement or structure where the cost thereof is to be thirty thousand
28 dollars (\$30,000) or more, shall, before being entitled to the issuance of a permit, satisfy the
29 following:

30 ...
31 (3) Any person, firm, or corporation, upon making application to the building
32 inspector or such other authority of any incorporated city, town, or county in
33 North Carolina charged with the duty of issuing building permits pursuant to
34 G.S. 160A-417(a)(1) or G.S. 153A-357(a)(1) for any improvements for
35 which the combined cost is to be thirty thousand dollars (\$30,000) or more,
36 shall be required to provide to the building inspector or other authority the
37 name, physical and mailing address, telephone number, facsimile number,
38 and electronic mail address of the lien agent designated by the owner
39 pursuant to G.S. 44A-11.1(a)."

40 **SECTION 5.** G.S. 160A-417 is amended by adding a new subsection to read:

41 **"§ 160A-417. Permits.**

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

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

48 ...

49 (d) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this
50 section where the cost of the work is thirty thousand dollars (\$30,000) or more unless the name,
51 physical and mailing address, telephone number, facsimile number, and electronic mail address

1 of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set
2 forth in the permit or in an attachment thereto. The building permit may contain the lien agent's
3 electronic mail address. The lien agent information for each permit issued pursuant to this
4 subsection shall be maintained by the inspection department in the same manner and in the
5 same location in which it maintains its record of building permits issued."

6 **SECTION 6.** G.S. 153A-357 is amended by adding a new subsection to read:

7 **"§ 153A-357. Permits.**

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

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

14 ...

15 (e) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this
16 section where the cost of the work is thirty thousand dollars (\$30,000) or more unless the name,
17 physical and mailing address, telephone number, facsimile number, and electronic mail address
18 of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set
19 forth in the permit or in an attachment thereto. The building permit may contain the lien agent's
20 electronic mail address. The lien agent information for each permit issued pursuant to this
21 subsection shall be maintained by the inspection department in the same manner and in the
22 same location in which it maintains its record of building permits issued."

23 **SECTION 7.** This act becomes effective April 1, 2013, and applies to
24 improvements to real property affected hereby for which the first furnishing of labor or
25 materials at the site of the improvements is on or after that date.