

**NORTH CAROLINA GENERAL ASSEMBLY
CONFERENCE REPORT
Senate Bill 42**

S42-CRTG-212 [v.6]

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[NO] Title Change

[YES] For Committee Substitute

To: The President of the Senate
The Speaker of the House of Representatives

The conferees appointed to resolve the differences between the Senate and the House of Representatives on Senate Bill 42, 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, House Committee Substitute Favorable 6/20/12, Fourth Edition Engrossed 6/21/12, submit the following report:

The Senate and the House agree to the following amendments and the Senate concurs in House Committee Substitute Favorable 6/20/12, Fourth Edition Engrossed 6/21/12, as amended:

On page 1, line 26, by rewriting the line to read:

"time the owner first contracts with any person to improve the real property. Provided, however, that the owner is not required to designate a lien agent for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that is used by the owner as a residence. The owner shall"; and

on page 2, line 14, by rewriting the line to read:

"requested information from the owner relating to the predecessor lien agent."; and

on page 2, lines 47-50, by rewriting the lines to read:

"designated by the owner. This notice shall be given pursuant to subsection (f) of this section or may be given by including the lien agent contact information in a written subcontract entered into by, or a written purchase order issued to, the lower-tier subcontractor entitled to the notice required by this subsection. Any contractor or subcontractor who has previously received notice of the lien agent contact information, whether from the building permit, the inspections office, a notice from the owner, contractor or subcontractor, or by any other means, and who fails to provide the lien agent contact information to the lower-tier subcontractor in the time required under this subsection, shall be liable to the lower tier subcontractor for any actual damages incurred by the lower-tier subcontractor as a result of the failure to give notice."; and



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on page 3, line 29, by deleting the words "subsections (1) through (4)" and substituting the words "subsections (1) through (3)"; and

on page 3, lines 32-33, by inserting the following new subsection between the lines:

"(g1) When a lien agent is not identified in a contract for improvements to real property subject to G.S. 44A-11.1 entered into between an owner and a design professional, the design professional will be deemed to have met the requirement of notice under subsections (k) and (l) of this section on the date of the lien agent's receipt of the owner's designation of the lien agent. The owner shall provide written notice to the lien agent containing the information pertaining to the design professional required in a notice to lien agent pursuant to subdivisions (1) through (3) of subsection (h) of this section, by any method of delivery authorized in subsection (f) of this section. The lien agent shall include the design professional in its response to any persons requesting information relating to persons who have given notice to the lien agent pursuant to this section. For purposes of this subsection, the term "design professional" shall mean any architects, engineers, land surveyors and landscape architects registered under Chapter 83A, 89A or 89C of the General Statutes."; and

on page 5, line 9, by rewriting the line to read:

"State that consents to serve as a lien agent upon designation by any owner pursuant to G.S. 44A-11.1 shall register with the "; and

on page 5, line 23, by rewriting the line to read:

"(2) Receive notices to lien agent delivered by potential lien claimants pursuant to G.S. 44A-11.2 and copies of notices of claim of lien upon funds delivered by potential lien claimants pursuant to G.S. 44A-23(a1)(3) or G.S. 44A-23(b)(5)c."; and

on page 5, line 31, by rewriting the line to read:

"lien agent. If the notice is received by email, the acknowledgment sent by the lien agent must include the email received, including the header showing the date and time of receipt."; and

On page 6, line 10, by rewriting the line to read:

"G.S. 44A-11.1(d)."; and

On page 6, line 36, by rewriting the line to read:

"other than improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the applicant uses as a residence, shall be required to provide to the building inspector or other authority the"; and

on page 6, line 50, by rewriting the line to read:

"section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the applicant uses as a residence, unless the name."; and

On page 7, line 16, by rewriting the line to read:

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"section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the applicant uses as a residence, unless the name,"; and

On page 7, lines 22-23, by inserting the following new section between those lines:

"SECTION 6.1. G.S. 44A-23 is amended to read as follows:

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

(a) First tier subcontractor. – A first tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article, may, to the extent of this claim, enforce the claim of lien on real property of the contractor created by Part 1 of this Article. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the 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, and the commencement of the action, no~~

(a1) No action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent, upon the occurrence of all of the following:

- (1) The subcontractor has given notice to the lien agent, if any, designated by the owner, pursuant to G.S. 44A-11.2.
- (2) The subcontractor has served a notice of claim of lien upon funds upon the owner pursuant to G.S. 44A-19(d).
- (3) The subcontractor has delivered a copy of the notice of claim of lien upon funds served upon the owner to the lien agent, if any, designated by the owner, by any method authorized in G.S. 44A-11.2(f).

(b) Second or third subcontractor. –

- (1) A second or third tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article, may, to the extent of his claim, enforce the claim of lien on real property of the contractor created by Part 1 of Article 2 of the Chapter except when:
 - a. The contractor, within 30 days following the date the building permit is issued for the improvement of the real property involved, posts on the property in a visible location adjacent to the posted building permit and files in the office of the clerk of superior court in each county wherein the real property to be improved is located, a completed and signed notice of contract form and the second or third tier subcontractor fails to serve upon the contractor a completed and signed notice of subcontract form by the same means of service as described in G.S. 44A-19(d); or
 - b. After the posting and filing of a signed notice of contract and the service upon the contractor of a signed notice of subcontract, the contractor serves upon the second or third tier subcontractor, within five days following each subsequent payment, by the same means of service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the notice of subcontract form set forth herein.

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

"NOTICE OF CONTRACT

"(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 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, and the commencement of the action, no~~
- (5) No action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent, upon the occurrence of all of the following:

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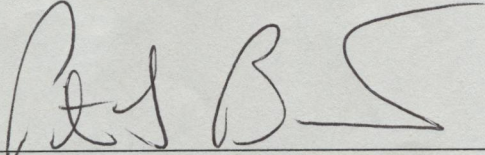
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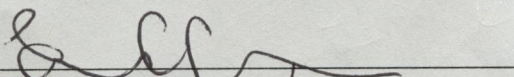
- a. The second or third tier subcontractor has given notice to the lien agent, if any, designated by the owner, pursuant to G.S. 44A-11.2.
- b. The second or third tier subcontractor has served a notice of claim of lien upon funds upon the owner pursuant to G.S. 44A-19(d).
- c. The second or third tier subcontractor has delivered a copy of the notice of claim of lien upon funds served upon the owner to the lien agent, if any, designated by the owner, by any method authorized in G.S. 44A-11.2(f)."

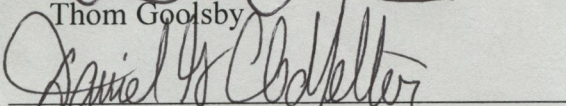
The conferees recommend that the Senate and the House of Representatives adopt this report.

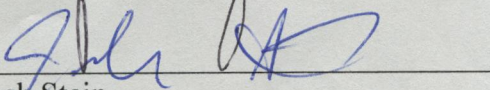
Date Conferees approved report: June 27, 2012.

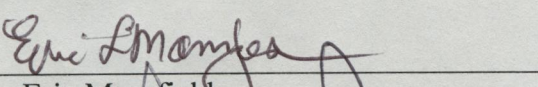
Conferees for the Senate

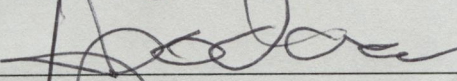

Peter S. Brunstetter, Chair


Thom Goolsby

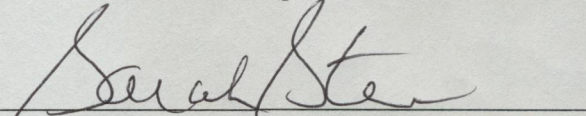

Daniel G. Clodfelter

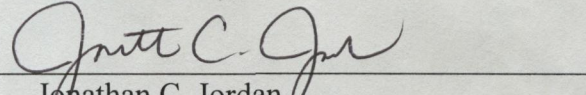

Josh Stein

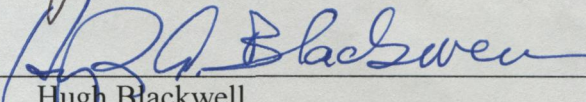

Eric Mansfield

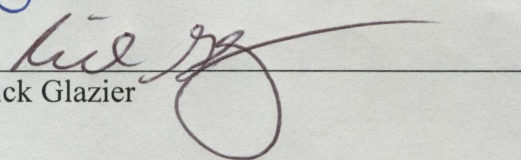

Tom Apodaca

Conferees for the House of Representatives


Sarah Stevens, Chair


Jonathan C. Jordan


Hugh Blackwell


Rick Glazier

House Submitted 6/27/12 w/o my today's supp-calendar
House ADOPTED 6/27/12 (11/3) EV Message Received _____
 ADOPTED _____ (/) Ordered Enrolled _____

Senate notified
Special Message
Denise White

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