

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 180
PROPOSED COMMITTEE SUBSTITUTE H180-PCS30137-TG-7

Short Title: Mechanics Liens/Technical Corrections.

(Public)

Sponsors:

Referred to:

February 28, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS TECHNICAL CORRECTIONS TO THE LAWS
GOVERNING MECHANICS LIENS.

The General Assembly of North Carolina enacts:

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

"§ 44A-11.1. (Effective April 1, 2013) 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 are thirty thousand dollars (\$30,000) or more, either at the time that the original building permit is issued, or is thirty thousand dollars \$30,000 or more, issued or, in cases in which no building permit is required, at the time the contract for the improvements is entered into with the owner, the owner shall designate a lien agent no later than the 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 deliver written notice of designation to its designated lien agent by any method authorized in G.S. 44A-11.2(f), G.S. 44A-11.2(g), 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~~, designated, and the owner's contact information. 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 Claim of Lien on Real Property, 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.

(b) The lien agent shall be chosen from among the list of registered lien agents maintained by the Department of Insurance pursuant to G.S. 58-26-45.

(c) Upon receipt of written notification of designation by an owner pursuant to subsection (a) of this section, the lien agent shall have the duties as set forth in G.S. 58-26-45(b).

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

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



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1 (2) Provide the contact information for the successor lien agent to the inspection
2 department that issued any required building permit and to any persons who
3 requested information from the owner relating to the predecessor lien agent.
4 (3) Display the contact information for the successor lien agent on the building
5 permit or attachment thereto posted on the improved property or, if no
6 building permit was required, on a sign complying with
7 ~~G.S. 44A-11.2(e)~~-G.S. 44A-11.2(f).
8 (e) Until such time as the owner has fully complied with subsection (d) of this
9 section, notice transmitted to the predecessor lien agent shall be deemed
10 effective notice, notwithstanding the fact that the lien agent may have
11 resigned or otherwise become unable or unwilling to serve.
12 (f) Any attorney who, in connection with a transaction involving improved real
13 property subject to this section for which the attorney is serving as the closing attorney,
14 contacts the lien agent in writing and requests copies of the notices received by the lien agent
15 relating to the real property not more than five business days prior to the date of recordation of
16 a deed or deed of trust on the real property, shall be deemed to have fulfilled the attorney's
17 professional obligation as closing attorney to check such notices to lien agent and shall have no
18 further duty to request that the lien agent provide information pertaining to notices received
19 subsequently by the lien agent."

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

21 "**§ 44A-11.2. (Effective April 1, 2013) Identification of lien agent; notice to lien agent;**
22 **effect of notice.**

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

26 (b) Within seven days of receiving a written request by a potential lien claimant by any
27 delivery method specified in subsection ~~(f)~~-(g) of this section, the owner shall provide a notice
28 to the potential lien claimant containing the contact information for the lien agent, by the same
29 delivery method used by the potential lien claimant in making the request.

30 (c) A potential lien claimant making a request pursuant to ~~this~~-subsection (b) of this
31 section who did not receive the lien agent contact information pursuant to subsection (d) of this
32 section, and who has not furnished labor-labor, materials, rental equipment, or professional
33 design or surveying services at the site of the improvements, or who last furnished labor,
34 materials, rental equipment, or professional design or surveying services at the site of the
35 improvements ~~did so~~ prior to the posting of the contact information for the lien agent pursuant
36 to subsection ~~(d)~~-(e) or ~~(e)~~-(f) of this section, shall have no obligation to give notice to the lien
37 agent under this section until the potential lien claimant has received the contact information
38 from the owner.

39 ~~(e)~~(d) A contractor or subcontractor for improvements to real property subject to
40 G.S. 44A-11.1 shall, within three business days of contracting with a lower-tier subcontractor
41 who is not required to furnish labor at the site of the improvements, provide the lower-tier
42 subcontractor with a written notice containing the contact information for the lien agent
43 designated by the owner. This notice shall be given pursuant to subsection ~~(f)~~-(g) of this section
44 or may be given by including the lien agent contact information in a written subcontract entered
45 into by, or a written purchase order issued to, the lower-tier subcontractor entitled to the notice
46 required by this subsection. Any contractor or subcontractor who has previously received
47 notice of the lien agent contact information, whether from the building permit, the inspections
48 office, a notice from the owner, contractor, or subcontractor, or by any other means, and who
49 fails to provide the lien agent contact information to the lower-tier subcontractor in the time
50 required under this subsection, shall be liable to the lower-tier subcontractor for any actual
51 damages incurred by the lower-tier subcontractor as a result of the failure to give notice.

1 ~~(d)~~(e) 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)~~(f) 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)~~(g) 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, with delivery receipt.
- 19 (7) Utilizing an Internet Web site approved for such use by the designated lien
20 agent to transmit to the designated lien agent, with delivery receipt, all
21 information required to notify the lien agent of its designation pursuant to
22 G.S. 44A-11.1, to provide a notice to the designated lien agent pursuant to
23 this section, or to deliver a copy of a notice of claim of lien upon funds to the
24 designated lien agent pursuant to G.S. 44A-23(a1)(3) or G.S. 44A-23(b)(5)c.

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

29 ~~(g)~~(h) When a lien agent is identified in a contract between an owner and a contractor for
30 improvements to real property consisting of a single-family residence entered into between an
31 owner and a contractor for the improvements to the property, residence, the contractor will be
32 deemed to have met the requirement of notice under subsections ~~(l)~~(m) and ~~(m)~~(n) of this
33 section on the date of the lien agent's receipt of the owner's notice of ~~designation~~designation of
34 the lien agent. The owner shall provide written notice to the lien agent containing the
35 information pertaining to the contractor required in a notice to lien agent pursuant to
36 subdivisions (1) through (3) of subsection ~~(i)~~(j) of this section, by any method of delivery
37 authorized in ~~G.S. 44A-11.2(f).~~G.S. 44A-11.2(g). The lien agent shall include the
38 ~~contractor~~contractor's name and address in its response to any persons requesting information
39 relating to persons who have given notice to the lien agent pursuant to this section.

40 ~~(h)~~(i) When a lien agent is not identified in a contract for improvements to real property
41 subject to G.S. 44A-11.1 entered into between an owner and a design professional, the design
42 professional will be deemed to have met the requirement of notice under subsections ~~(l)~~(m)
43 and ~~(m)~~(n) of this section on the date of the lien agent's receipt of the owner's designation of
44 the lien agent. The owner shall provide written notice to the lien agent containing the
45 information pertaining to the design professional required in a notice to lien agent pursuant to
46 subdivisions (1) through (3) of subsection ~~(i)~~(j) of this section, by any method of delivery
47 authorized in subsection ~~(f)~~(g) of this section. The lien agent shall include the design
48 ~~professional~~professional's name and address in its response to any persons requesting
49 information relating to persons who have given notice to the lien agent pursuant to this section.
50 For purposes of this subsection, the term "design professional" shall mean any architects,

1 engineers, land surveyors, and landscape architects registered under Chapter 83A, 89A, or 89C
2 of the General Statutes.

3 ~~(i)~~(j) The form of the notice to be given under this section shall be substantially as
4 follows:

5 "NOTICE TO LIEN AGENT

- 6 (1) Potential lien claimant's name, mailing address, telephone number, fax
7 number (if available), and electronic mailing address (if available):
8 (2) Name of the party with whom the potential lien claimant has contracted to
9 improve the real property described below:
10 (3) A description of the real property sufficient to identify the real property,
11 such as the name of the project, if applicable, the physical address as shown
12 on the building permit or notice received from the owner:
13 (4) I give notice of my right subsequently to pursue a claim of lien for
14 improvements to the real property described in this notice.

15 Dated: _____

16 _____
17 Potential Lien Claimant"

18 ~~(j)~~(k) The service of the Notice to Lien Agent does not satisfy the service or filing
19 requirements applicable to a Notice of Claim of Lien upon Funds under Part 2 of Article 2 of
20 this ~~Chapter~~ Chapter or a Claim of Lien on Real Property under Part 1 or Part 2 of Article 2 of
21 this Chapter.

22 ~~(k)~~(l) The notice to lien agent shall not be filed with the clerk of superior court. An
23 inaccuracy in the description of the improved real property provided in the notice shall not bar
24 a person from claiming a lien under this Article or otherwise perfecting or enforcing a claim of
25 lien as provided in this Article, if the improved real property can otherwise reasonably be
26 identified from the information contained in the notice.

27 ~~(l)~~(m) Except as otherwise provided in this section, for any improvement to real property
28 subject to G.S. 44A-11.1, a potential lien claimant may perfect a claim of lien on real property
29 only if ~~any~~ at least one of the following conditions is met:

- 30 (1) The lien agent identified in accordance with this section has received a
31 Notice to Lien Agent notice from the potential lien claimant no later than 15
32 days after the first furnishing of labor or materials by the potential lien
33 claimant.
34 (2) Any of the following conditions is met:
35 a. The lien agent identified in accordance with this section has received
36 ~~notice~~ a Notice to Lien Agent from the potential lien claimant prior
37 to the date of recordation of a conveyance of the property interest in
38 the real property to a bona fide purchaser for value protected under
39 G.S. 47-18 who is not an affiliate, relative, or insider of the owner.
40 b. The potential lien claimant has ~~filed a~~ perfected its claim of lien on
41 real property pursuant to G.S. 44A-12 ~~G.S. 44A-11~~ prior to the
42 recordation of a conveyance of the property interest in the real
43 property to a bona fide purchaser for value protected under
44 G.S. 47-18 who is not an affiliate, relative, or insider of the owner.

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

47 ~~(m)~~(n) Except as otherwise provided in this section, for any improvement to real property
48 subject to G.S. 44A-11.1, the claim of lien on real property of a potential lien claimant that is
49 not ~~filed~~ perfected pursuant to G.S. 44A-11 prior to the recordation of any mortgage or deed of
50 trust for the benefit of one who is not an affiliate, relative, or insider of the owner shall be

1 subordinate to the previously recorded mortgage or deed of trust unless ~~any~~ at least one of the
2 following conditions is met:

- 3 (1) The lien agent identified in accordance with this section has received ~~notice~~
4 a Notice to Lien Agent from the potential lien ~~claimant~~ claimant ~~within no~~
5 later than 15 days after the first furnishing of labor or materials by the
6 potential lien claimant.
- 7 (2) The lien agent identified in accordance with this section has received ~~notice~~
8 a Notice to Lien Agent from the potential lien claimant prior to the date of
9 recordation of the mortgage or deed of ~~trust for the benefit of one who is not~~
10 an affiliate, relative, or insider of the owner trust.

11 ~~(n)(o)~~ For any improvement to real property subject to G.S. 44A-11.1, a
12 potential lien claimant shall not be required to comply with this section if the lien agent contact
13 information is neither contained in the building permit or attachment ~~thereto or sign~~ thereto, nor
14 displayed on a sign posted on the improved property pursuant to subsection ~~(d)-(e)~~ (e)-(f) of
15 this section at the time when the potential lien claimant was furnishing ~~labor~~ labor, materials,
16 rental equipment, or professional design or surveying services at the site of the improvements,
17 nor timely provided by the owner in response to a written request by the potential lien claimant
18 made pursuant to subsection (b) of this section. The lien rights of a potential lien claimant who
19 is given erroneous information by the owner regarding the identity of the lien agent will not be
20 extinguished under subsection ~~(+)(m)~~ of this section nor subordinated under subsection ~~(m)-(n)~~
21 of this section.

22 ~~(+)(p)~~ Except as provided in subsections ~~(+)(m)~~ and ~~(m)-(n)~~ of this section, nothing
23 contained in this section shall affect a claim of lien upon funds pursuant to G.S. 44A-18.

24 ~~(+)(q)~~ A potential lien claimant may provide the notice to lien agent required under this
25 section regardless of whether the improvements for which the potential lien claimant is
26 responsible are contracted, started, in process, or completed at the time of submitting the
27 notice."

28 **SECTION 3.** G.S. 44A-19(e) reads as rewritten:

29 **"§ 44A-19. Notice of claim of lien upon funds.**

30 ...

31 (e) Notices of claims of lien upon funds shall not be filed with the clerk of superior
32 court and shall not be indexed, docketed, or recorded in any way as to affect title to any real
33 property, except a notice of a claim of lien upon funds may be filed with the clerk of superior
34 court under either of the following circumstances:

- 35 (1) When the notice of claim of lien upon funds is attached to a claim of lien on
36 real property filed pursuant to G.S. 44A-20(d).
- 37 (2) When the notice of claim of lien upon funds or a copy thereof is filed by the
38 obligor for the purpose of discharging the claim of lien upon funds in
39 accordance with G.S. 44A-20(e)."

40 **SECTION 4.** G.S. 44A-20(d) reads as rewritten:

41 **"§ 44A-20. Duties and liability of obligor.**

42 ...

43 (d) If the obligor is an owner of the property being improved, the lien claimant shall be
44 entitled to a claim of lien upon real property upon the interest of the obligor in the real property
45 to the extent of the owner's personal liability under subsection (b) of this section, which claim
46 of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through
47 G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and
48 subject to the same filing requirements and periods of limitation applicable to the contractor.
49 The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon ~~the~~
50 filing of the claim of lien on real property pursuant to G.S. 44A-12. satisfaction of those
51 requirements set forth in G.S. 44A-11. A lien waiver signed by the contractor prior to the

1 commencement of an action to enforce a perfected claim of lien on real property granted under
2 ~~G.S. 44A-23~~ occurrence of all of the actions specified in G.S. 44A-23(a1) and
3 G.S. 44A-23(b)(5) waives the subcontractor's right to enforce the contractor's claim of lien on
4 real property, but does not affect the subcontractor's right to a claim of lien on funds or the
5 subcontractor's right to a claim of lien on real property allowed under this subsection. The
6 claim of lien on real property as provided under this subsection shall be in the form set out in
7 G.S. 44A-12(c) and shall contain, in addition, a copy of the notice of claim of lien upon funds
8 given pursuant to G.S. 44A-19 as an exhibit together with proof of service thereof by affidavit,
9 and shall state the grounds the lien claimant has to believe that the obligor is personally liable
10 for the debt under subsection (b) of this section."

11 **SECTION 5.** G.S. 44A-23 reads as rewritten:

12 "**§ 44A-23. (Effective April 1, 2013) Contractor's claim of lien on real property;**
13 **perfection of subrogation rights of subcontractor.**

14 (a) First tier subcontractor. – A first tier subcontractor may, to the extent of its claim,
15 enforce the claim of lien on real property of the contractor created by Part 1 of this Article. The
16 manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of
17 lien on real property is perfected as of the time set forth in G.S. 44A-10 upon satisfaction of
18 those requirements set forth in G.S. 44A-11. ~~filing of the claim of lien on real property pursuant~~
19 ~~to G.S. 44A-12. When completing the claim of lien on real property form, the subcontractor~~
20 ~~may use as the date upon which labor or materials were first or last furnished on the real~~
21 ~~property either the date of the first or last furnishing of labor or materials on the real property~~
22 ~~by the subcontractor making the claim or the date of the first or last furnishing of labor or~~
23 ~~materials on the real property by the contractor through which the claim of lien on real property~~
24 ~~is being asserted.~~

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

27 ...

28 (3) The subcontractor has delivered a copy of the notice of claim of lien upon
29 funds served upon the owner to the lien agent, if any, designated by the
30 owner, by any method authorized in ~~G.S. 44A-11.2(f).~~ G.S. 44A-11.2(g).

31 (b) Second or third tier subcontractor. –

32 ...

33 (5) No action of the contractor shall be effective to prejudice the rights of the
34 second or third tier subcontractor without his written consent, upon the
35 occurrence of all of the following:

36 ...

37 c. The second or third tier subcontractor has delivered a copy of the
38 notice of claim of lien upon funds served upon the owner to the lien
39 agent, if any, designated by the owner, by any method authorized in
40 ~~G.S. 44A-11.2(f).~~ G.S. 44A-11.2(g).

41 ...

42 (d) When completing the claim of lien on real property form to perfect the contractor's
43 claim of lien on real property, a first, second, or third tier subcontractor may use as the date
44 upon which labor or materials were first or last furnished on the real property either any date on
45 or after the date of the first furnishing of labor or materials on the real property, or any date on
46 or before the date of the last furnishing of labor or materials on the real property by the
47 subcontractor making the claim, or any date on or after the date of the first furnishing of labor
48 or materials on the real property, or any date on or before the date of the last furnishing of labor
49 or materials on the real property by the contractor through which the claim of lien on real
50 property is being asserted."

51 **SECTION 6.** G.S. 44A-27(b) reads as rewritten:

1 "§ 44A-27. Actions on payment bonds; service of notice.

2 ...
3 (b) Any claimant who has a direct contractual relationship with any subcontractor but
4 has no contractual relationship, express or implied, with the contractor may bring an action on
5 the payment bond only if he has given written notice of claim on payment bond to the
6 contractor within 120 days from the date on which the claimant performed the last of the labor
7 or furnished the last of the materials for which he claims payment, stating with substantial
8 accuracy the amount claimed and the name of the person for whom the work was performed or
9 to whom the material was furnished. The contractor ~~shall furnish~~ shall, in response to a written
10 request served by any claimant in accordance with the provisions of subsection (c) of this
11 section, send a copy of the payment bond required by this Article to the claimant making the
12 request within seven calendar days after receipt of such request. in response to a written request
13 ~~served by any claimant in accordance with the provisions of subsection (c) of this~~
14 ~~section.~~ Subject to the exception set forth in subsection (e) of this section, unless the contractor
15 has failed to satisfy its obligation to timely furnish a copy of the payment bond to a claimant
16 upon proper request by the claimant, the claim of such a claimant shall not include labor or
17 materials provided more than 75 days prior to the claimant's service, in accordance with
18 subsections (c) and (d) of this section, of its written notice of public subcontract to the
19 contractor."

20 **SECTION 7.** G.S. 58-26-45 reads as rewritten:

21 "§ 58-26-45. (Effective April 1, 2013) Registration as a lien agent.

22 ...
23 (b) Upon receipt of the notice of designation by the owner pursuant to G.S. 44A-11.1, a
24 lien agent shall have the duty to do all of the following:

25 ...
26 (6) Within three business days of receipt of information relating to the
27 contractor provided by the owner pursuant to ~~G.S. 44A-11.2(g);~~
28 G.S. 44A-11.2(h), provide a written notice to the contractor acknowledging
29 receipt of this information, by any method of delivery authorized in
30 ~~G.S. 44A-11.2(f);~~ G.S. 44A-11.2(g).

31 (6a) Within three business days of receipt of information relating to a design
32 professional provided by the owner pursuant to G.S. 44A-11.2(i), provide a
33 written notice to the design professional acknowledging receipt of this
34 information by any method of delivery authorized in G.S. 44A-11.2(g).

35 (7) Provide written notice of the potential lien claimants having delivered notice
36 to lien agent pursuant to G.S. 44A-11.2, including the information relating to
37 any contractor identified by the owner pursuant to ~~G.S. 44A-11.2(g);~~
38 G.S. 44A-11.2(h), and relating to any design professional identified by the
39 owner pursuant to G.S. 44A-11.2(i), within one business day of receiving a
40 request from any of the following persons or their authorized agents:

- 41 a. An owner of the improved property.
- 42 b. A title insurance company or title insurance agency issuing a policy
43 of title insurance on the improved property.
- 44 c. A contracted purchaser of the improved property.
- 45 d. A potential lien claimant.
- 46 e. A closing attorney, lender, or settlement agent as defined in
47 G.S. 45A-3(15) involved in a transaction involving the improved
48 property.

49 In responding to a request pursuant to this subdivision, the lien agent shall
50 include the information provided by each potential lien claimant pursuant to
51 ~~G.S. 44A-11.2(h)(1)~~ G.S. 44A-11.2(i)(1) and ~~G.S. 44A-11.2(h)(2)~~

1 G.S. 44A-11.2(i)(2) and, if specifically requested, a copy of each notice to
2 lien ~~claimant-agent~~ received by the lien agent.

3 ...
4 (d) For services rendered pursuant to each designation as a lien agent for improvements
5 to real property comprising one- or two-family dwellings, a lien agent ~~may~~ shall collect a fee of
6 ~~not more than~~ twenty-five dollars (\$25.00) from the owner. For services rendered pursuant to
7 each designation as a lien agent for all other improvements to real property, the lien agent
8 ~~may~~ shall collect a fee ~~not to exceed~~ of fifty dollars (\$50.00) from the owner.

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

11 **SECTION 8.** This act becomes effective April 1, 2013. Sections 1, 2, 4, 5, and 7
12 apply to improvements to real property affected thereby for which the first furnishing of labor
13 or materials at the site of the improvements is on or after April 1, 2013. Section 3 applies to
14 notices of claims of lien filed on or after April 1, 2013. Section 6 applies to improvements to
15 real property for which the first building permit is obtained on or after April 1, 2013.