Chapter 22C.

Payments to Subcontractors.

§ 22C-1. Definitions.

Unless the context otherwise requires in this Chapter:

(1) "Contractor" means a person who contracts with an owner to improve real property.

(2) "Improve" means to build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapters 83A, 89C or 89A of the General Statutes.

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

(4) An "owner" is a person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.

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

(6) "Subcontractor" means any person who has contracted to furnish labor or materials to, or has performed labor for, a contractor or another subcontractor in connection with a contract to improve real property. (1987 (Reg. Sess., 1988), c. 946, s. 1.)

§ 22C-2. Performance by subcontractor.

Performance by a subcontractor in accordance with the provisions of its contract shall entitle it to payment from the party with whom it contracts. Payment by the owner to a contractor is not a condition precedent for payment to a subcontractor and payment by a contractor to a subcontractor is not a condition precedent for payment to any other subcontractor, and an agreement to the contrary is unenforceable. (1987 (Reg. Sess., 1988), c. 946; 1991, c. 620.)

§ 22C-3. Time of payment to subcontractors after contractor or other subcontractor has been paid.

When a subcontractor has performed in accordance with the provisions of his contract, the contractor shall pay to his subcontractor and each subcontractor shall pay to his subcontractor, within seven days of receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for such subcontractor's work and materials based on work completed or service provided under the subcontract. (1987 (Reg. Sess., 1988), c. 946.)

§ 22C-4. Conditions of payment.

Nothing in this Chapter shall prevent the contractor, at the time of application and certification to the owner, from withholding such application and certification to the owner for payment to the subcontractor for: unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the owner. (1987 (Reg. Sess., 1988), c. 946.)

§ 22C-5. Late payments to bear interest.

Should any periodic or final payment to a subcontractor be delayed by more than seven days after receipt of periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay his subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or a fraction thereof on such unpaid balance as may be due. (1987 (Reg. Sess., 1988), c. 946.)

§ 22C-6. Applicability of this Chapter.

The provisions of this Chapter shall not be applicable to residential contractors as defined in G.S. 87 10(1a), or to improvements to real property intended for residential purposes which are exempted from the application of Chapter 83A of the General Statutes pursuant to G.S. 83A-13(c)(1), or to improvements to real property intended for residential purposes which consist of 12 or fewer residential units. (1987 (Reg. Sess., 1988), c. 946.)