

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 434

Short Title: Amend N.C. Lien Law.

(Public)

Sponsors: Senators Hartsell and Soles.

Referred to: Judiciary I/Constitution

March 21, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES REGARDING LIENS ON REAL PROPERTY, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 44A of the General Statutes reads as rewritten:

"ARTICLE 2.

"STATUTORY LIENS ON REAL PROPERTY AND ON FUNDS.

"PART 1. GENERAL PROVISIONS: LIENS OF MECHANICS, LABORERS AND MATERIALMEN DEALING WITH OWNER. PERSONS FURNISHING LABOR, SERVICES, OR MATERIALS.

"§ 44A-7. Definitions.

Unless the context otherwise requires in this Article:

- (1) '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

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

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

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

11 (4) ~~'Real property' means the real estate that is improved, including lands,
12 leaseholds, tenements and hereditaments, and improvements placed
13 thereon.~~

14 In this Article:

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

17 (2) 'First tier subcontractor' means a person who contracts with a contractor
18 to improve real property.

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

30 (4) 'Improvement' means all or any part of any building, structure, erection,
31 alteration, demolition, excavation, clearing, grading, filling, or
32 landscaping, including trees and shrubbery, driveways, and private
33 roadways, on real property.

34 (5) 'Lien' means any lien on funds or on real property or claim of a lien on
35 funds or on real property under this Article and includes any document
36 filed under G.S. 44A-12 or served under G.S. 44A-19.

37 (6) 'Lien on funds' means any lien or claim of a lien with respect to funds
38 under this Article and includes any document served under G.S. 44A-
39 19.

40 (7) 'Lien on real property' means any lien or claim of a lien with respect to
41 real property under this Article and includes any document filed under
42 G.S. 44A-12.

- 1 (8) 'Lienor' means a person who has either a lien on real property or a lien
2 on funds or both under this Article.
- 3 (9) 'Obligor' means an owner, contractor, or subcontractor in any tier who
4 owes money to another as a result of the other's partial or total
5 performance of a contract to improve real property.
- 6 (10) 'Owner' means a person who has an interest in the real property and for
7 whom an improvement is made and who ordered the improvement to be
8 made. 'Owner' includes successors in interest of the owner and agents of
9 the owner acting within their authority.
- 10 (11) 'Protected party' means an individual who purchases and takes record
11 title to a single family dwelling unit, all or a part of which the individual
12 or an individual to whom the individual is related occupies or intends to
13 occupy as a residence. An individual is 'related' to an individual if that
14 individual is (i) the spouse of the individual; (ii) a brother, brother-in-
15 law, sister, or sister-in-law of the individual; (iii) an ancestor or
16 descendant of the individual or of the individual's spouse; or (iv) any
17 other relative by blood, marriage, or adoption of the individual or the
18 individual's spouse if the relative shares the same residence with the
19 individual.
- 20 (12) 'Real property' means the real estate that is improved, including lands,
21 leaseholds, tenements and hereditaments, and improvements placed
22 thereon.
- 23 (13) 'Second tier subcontractor' means a person who contracts with a first tier
24 subcontractor to improve real property.
- 25 (14) 'Third tier subcontractor' means a person who contracts with a second
26 tier subcontractor to improve real property.

27 **"§ 44A-7.1. Waiver, release, or subordination of any lien on real property.**

28 (a) This section applies to any waiver, release, or subordination of any lien on real
29 property.

30 (b) A waiver of a lien on real property in consideration for the awarding of any
31 contract for the making of an improvement on real property under this Article is against
32 public policy and is unenforceable. This section does not prohibit any waiver or release
33 at any time after the contract by the lienor is made. This section does not prohibit any
34 subordination at any time.

35 (c) A waiver, release, or subordination of a lien on real property requires no
36 consideration.

37 (d) Subject to G.S. 44A-18(8), a waiver, release, or subordination of a lien on real
38 property serves to waive, release, or subordinate the rights of all parties claiming through
39 the waiving, releasing, or subordinating party.

40 **"§ 44A-7.2. Waiver, release, or subordination of any lien on funds ineffective;**
41 **compromise or settlement.**

42 A waiver, release, or subordination of a lien on funds prior to receipt of full payment
43 by the waiving, releasing, or subordinating party is against public policy and is

1 unenforceable. This section shall not prevent parties from resolving by compromise or
2 settlement the amount of the claim giving rise to a lien on funds.

3 **"§ 44A-7.3. No liens on governmental real property.**

4 Nothing in this Article shall extend a lien on real property to the real property of the
5 State of North Carolina or of any agencies, municipalities, counties, or other political
6 subdivisions of the State of North Carolina.

7 **"§ 44A-7.4. Applicability of lien on funds to public contracts.**

8 A lien on funds shall apply to public contracts for the improvement of real property
9 only as to funds received by a contractor from the public owner. No lien on funds or
10 liability with respect to a lien on funds may be enforced against the State of North
11 Carolina or any agencies, municipalities, counties, or other political subdivisions of the
12 State of North Carolina.

13 **"§ 44A-7.5. Agency.**

14 Any lien or notice that may be filed, recorded, or given pursuant to this Article may
15 be executed, filed, recorded, or given by the lienor's agent or attorney.

16 **"§ 44A-7.6. Acknowledgment not required.**

17 Any document that may be served, recorded, or filed under this Article need not be
18 acknowledged.

19 **"PART 1A. LIENS OF PERSONS FURNISHING LABOR, SERVICES, OR**
20 **MATERIALS DEALING WITH AN OWNER.**

21 **"§ 44A-8. ~~Mechanics', laborers' and materialmen's lien; persons~~ Persons entitled to**
22 **lien. ~~lien on real property.~~**

23 Any person who performs or furnishes labor or professional design or surveying services or
24 furnishes materials improves real property pursuant to a contract, either express or implied,
25 with the an owner of real property for the making of an improvement thereon to real
26 property shall, upon complying with the provisions of this Article, Part, have a lien on
27 such the real property to secure payment of all debts owing for labor done or professional
28 design or surveying services or material furnished pursuant to such the contract.

29 **"§ 44A-9. ~~Extent of lien.~~ lien on real property.**

30 Liens authorized under the provisions of this Article A lien on real property shall extend
31 to the improvement and to the lot or tract on which the improvement is situated, to the
32 extent of the interest of the owner. When the lot or tract on which a building is erected an
33 improvement is made is not surrounded at the time of making the contract with the owner
34 by an enclosure separating it from adjoining land of the same owner, the lot or tract to
35 which any lien on real property extends shall be such area as is reasonably necessary for
36 the convenient use and occupation of such building, improvement, but in no case shall the
37 area include a building, structure, or improvement not normally used or occupied or
38 intended to be used or occupied with the building improvement with respect to which the
39 lien on real property is claimed.

40 **"§ 44Ah Liens granted by this Article shall relate to and take effect from the time of**
41 **the first furnishing of labor or materials at the site of the improvement by**
42 **the person claiming the lien.**

43 **"§ 44A-10.1. Priority of contractor's lien on real property.**

(a) General Priority. – Except as provided in subsection (b) of this section, the following rules apply to determining the priority of a contractor's lien on real property:

(1) If a contractor's lien on real property is filed while a notice of commencement is effective as to the improvement in connection with which the contractor's lien on real property arises, the priority of the contractor's lien on real property is determined as of the time the notice of commencement is recorded.

(2) If a contractor's lien on real property is filed while there is no effective notice of commencement as to the improvement in connection with which the contractor's lien on real property arises, the priority of the contractor's lien on real property is determined as of the time the contractor's lien on real property is filed.

(b) Priority Against a Subsequent Purchaser That Is a Protected Party. – Whether or not a notice of commencement has been recorded, in order for a contractor's lien on real property to have priority over the interest of a subsequent purchaser that is a protected party or a successor in interest to the subsequent purchaser, the contractor's lien on real property shall be filed before the document conveying an interest in the real property to the protected party is recorded.

"§ 44A-10.2. Notice of commencement; recording.

(a) Except as provided in subsection (b) of this section, a notice of commencement shall be signed by the owner, shall be denominated 'notice of commencement', and shall state:

(1) A description sufficient to identify the real property being or intended to be improved;

(2) The name, address, and interest in the real property of the owner;

(3) The name and address of the record owner (if different from the owner named pursuant to subdivision (2) of this subsection);

(4) The name and address of the contractor or contractors; and

(5) The duration of the notice of commencement.

The following form shall be sufficient:

'NOTICE OF COMMENCEMENT, OWNER RECORDING

'PLEASE TAKE NOTICE that this notice of commencement is recorded pursuant to G.S. 44A-10.2(a) and (g).

1. Description of the real property upon which the improvements are being or intended to be made (Street address, tax lot and block number, reference to recorded instrument, or any other description of the real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.):

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2. The name, address, and interest in the real property of the owner:

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- 3. The name and address of the record owner (if different from the owner named above):
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- 4. The name and address of the contractor or contractors:
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- ..
- 5. Duration of this notice of commencement (not less than six months or more than three years; if none stated, duration is one year):
.....
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- ..

.....(Insert name of owner).....
Owner
 By:.....(signature).....'

(b) If there is no effective notice of commencement applicable to an improvement, a lienor who is entitled to file a lien on real property may sign and record a notice of commencement denominated 'notice of commencement, lienor recording', stating:

- (1) A description sufficient to identify the real property being or intended to be improved;
- (2) The name and address of the record owner against whom the notice of commencement is effective;
- (3) The name and address of the lienor recording the notice of commencement;
- (4) The name and address of the owner or other person with whom the lienor contracted with respect to the improvement;
- (5) The name and address of each contractor and subcontractor (if not the lienor) through which the lienor asserts its lien on real property;
- (6) A brief description of the labor, services, or materials furnished or to be furnished by the lienor for the improvement; and
- (7) The duration of the notice of commencement, which shall be one year.

The following form shall be sufficient:

'NOTICE OF COMMENCEMENT, LIENOR RECORDING

PLEASE TAKE NOTICE that the lienor is entitled to a lien on real property and records this notice of commencement pursuant to G.S. 44A-10.2(b) and (g).

1. Description of the real property upon which the improvements are being or intended to be made (Street address, tax lot and block number, reference to recorded instrument, or other description of the real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.):

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2. The name and address of the record owner against whom the notice of commencement is effective:

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3. The name and address of the lienor recording this notice of commencement:

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4. The name and address of the owner or other person with whom the lienor contracted with respect to the improvement:

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5. The name and address of each contractor and subcontractor (if not the lienor) through which the lienor asserts its lien on real property:

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6. A brief description of the labor, services, or materials furnished or to be furnished by the lienor for the improvement:

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.....

7. Duration of this notice of commencement: One year.

.....(Insert name of lienor).....
Lienor

By:.....(signature).....'

1 (c) A lienor recording a notice of commencement shall send a copy of the notice to
2 the record owner no later than the date it is recorded by depositing it in the United States
3 mail, first-class postage prepaid, addressed to the owner at the address shown on the tax
4 records of the county in which the property is located, or by any other method of
5 effecting its actual delivery. The failure of the lienor to send the notice of
6 commencement to the record owner shall not impair the effectiveness of the notice.

7 (d) A notice of commencement recorded by an owner may state a duration of any
8 period not in excess of three years after it is recorded, but if the duration stated is less
9 than six months, the duration of the notice is six months after it is recorded. If no
10 duration is stated, the duration of the notice is one year after it is recorded. The duration
11 of a notice of commencement recorded by a lienor is one year after it is recorded, and any
12 different duration stated in the notice is not effective.

13 (e) The owner or the lienor who recorded a notice of commencement may extend
14 its duration by signing and recording, before the notice lapses, a continuation statement
15 that refers to the location in the record and date of recording of the notice of
16 commencement and states the date to which duration of the notice is extended, which
17 date shall be no more than one year from the date of the recording of that continuation
18 statement. An extended notice of commencement shall be effective as of the time of the
19 recording of the original notice. Continuation statements for successive terms may be
20 recorded pursuant to this subsection.

21 (f) The notice of commencement is effective only as to the contractor named in
22 the notice and those persons claiming through that contractor. In the case of multiple
23 contracts with an owner for the same improvement, the notice shall be effective only as to
24 the contractors named in the notice and those persons claiming through them.

25 (g) The notice of commencement shall be recorded in the office of the register of
26 deeds in each county where the improvement or any part of the improvement is located.
27 The register of deeds shall index the notice of commencement in the real property records
28 under the name of the record owner of the real property at the time the notice is recorded,
29 as grantor, and under the names of the contractor or contractors named in the notice, as
30 grantee.

31 (h) A notice of commencement shall be recorded prior to the issuance of a permit
32 as provided by G.S. 153A-357(c) and G.S. 160A-417(c).

33 **"§ 44A-10.3. Termination of notice of commencement; request for notice.**

34 (a) The owner or the lienor who recorded a notice of commencement may
35 terminate the notice as to all or any identified portion of the real property subject to the
36 notice of commencement by:

37 (1) Recording, in the office where the notice of commencement was
38 recorded, a notice of termination denominated 'termination of notice of
39 commencement' and containing:

40 a. The information required by G.S. 44A-10.2(a) or (b) for a notice
41 of commencement;

42 b. A reference to the recorded notice of commencement by its
43 location in the record and a statement of its date of recording;

- c. A statement of the effective date of the notice of termination, which may not be earlier than 30 days after the notice of termination is recorded; and
- d. If the notice of termination is intended to apply only to a portion of the real property subject to the notice of commencement, a statement of that fact and a description of the portion of the real property to which the notice of termination applies; and

(2) Sending, at least 21 days before the effective date of the notice of termination, a copy of the notice of termination, showing the date it was recorded, to all persons who have requested that the person recording the notice of commencement notify them of the recording of a notice of termination. The notice of termination shall be sent by depositing it in the United States mail, first-class postage prepaid, addressed to the person to be notified, or by any other method effecting its actual delivery. Either (i) a certificate of service and a receipt from the United States Post Office showing the person and address to which the notice was sent and the date of mailing or (ii) a receipt signed by the requestor dated not less than 10 days before the effective date of termination shall be proof that the notice of termination was timely sent. Third parties shall be entitled to rely on such proof unless they have actual knowledge that the notice of termination was not sent.

(b) Any person may request a copy of a notice of termination by recording a request for notice of termination in the office of the register of deeds in each county where the notice of commencement is recorded. The request shall be indexed in the real property records under the name of the record owner as grantor and shall be described as 'Req. for N/T Book Page'. The following form shall be sufficient:

**'REQUEST FOR NOTICE OF TERMINATION
OF NOTICE OF COMMENCEMENT**

'The undersigned requests a copy of any Notice of Termination recorded with respect to the Notice of Commencement recorded in Book at Page, County Registry. The copy of the Notice of Termination shall be sent to the undersigned at the address indicated.

.....
NAME OF PARTY REQUESTING COPY

.....
STREET ADDRESS OR POST OFFICE BOX NUMBER

.....
CITY, STATE, AND ZIP CODE'

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2 **"§ 44A-11. Perfecting liens. a lien on real property.**

3 ~~Liens granted by this Article shall be~~ Upon filing a lien on real property pursuant to G.S.
4 44A-12, the lien on real property is perfected as of the time set forth in G.S. 44A-10-44A-
5 10.1 upon filing of claim of lien pursuant to G.S. 44A-12 and may be enforced pursuant to
6 G.S. 44A-13.

7 **"§ 44A-12. Filing ~~claim of lien.~~ a lien on real property.**

8 (a) Place of Filing. ~~—All claims of A lien against any on~~ real property must shall be
9 filed in the office of the clerk of superior court in each county wherein where the real
10 property subject to the claim of lien on real property is located. The clerk of superior court
11 shall note the claim of lien on real property on the judgment docket and index the same
12 under the name of the record owner of the real property at the time the claim of lien on
13 real property is filed. An additional copy of the claim of lien may also be filed with any
14 receiver, referee in bankruptcy or assignee for benefit of creditors who obtains legal authority
15 over the real property.

16 (b) Time of Filing. ~~—Claims of A lien on real property may be filed at any time~~
17 after the maturity of the obligation secured thereby contract for the improvement has been
18 made but not later than 120 days after the last furnishing of labor labor, services, or
19 materials at the site of the improvement by or on behalf of the person claiming the lien.
20 lien on real property.

21 (c) Contents of ~~Claim of a Lien to Be Filed on Real Property.~~ —All claims of A lien
22 must on real property shall be filed using a form substantially as follows:

23
24 **CLAIM OF LIEN 'LIEN ON REAL PROPERTY**

25 'PLEASE TAKE NOTICE that the lienor, being a contractor as defined by G.S. 44A-
26 7 or a subcontractor asserting rights under G.S. 44A-18, claims a lien on the real property
27 described below:

28 (1) Name and address of the ~~person claiming the lien:~~ lienor:

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31 ..
32 (2) Name and address of the record owner of the real property claimed to be
33 subject to the lien on real property at the time the claim of lien on real
34 property is filed:

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37 ..
38 (3) Description of the real property ~~upon which the~~ subject to the lien is
39 claimed: on real property (Street address, tax lot and block number,
40 reference to recorded instrument, or any other description of real
41 property is sufficient, whether or not it is specific, if it reasonably
42 identifies what is described):

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- (4) Name and address of the ~~person~~party with whom the ~~claimant~~lienor contracted for the furnishing of ~~labor~~labor, services, or materials:
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- ..
- (5) ~~Date upon which labor or materials were first furnished upon said property by the claimant:~~
- (5a) ~~Date upon which labor or materials were last furnished upon said property by the claimant:~~
- (6) General description of the labor performed or to be performed, services rendered or to be rendered, or materials furnished or to be furnished, and the amount claimed therefor, or to be claimed for the labor, services, or materials, with principal and any interest stated separately:
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- ..
- (7) Is this lien on real property being filed by a subcontractor in order to perfect the contractor's lien on real property, if any, pursuant to the rights of the subcontractor as provided in G.S. 44A-18, or to perfect a lien on real property to the extent of the direct liability of the owner, if any, under G.S. 44A-20(d)? If so, check here [].

.....
(Insert name of lienor).....
 Lien-Claimant-Lienor

By:(signature).....

Filed this day of....., 19.....

CLERK OF SUPERIOR COURT-COURT'.

A general description of the ~~labor performed~~labor, services, or materials furnished is sufficient. It is not necessary for ~~lien claimant~~a lienor to file an itemized list of ~~materials or a detailed statement of labor performed~~labor, services, or materials.

(d) No Amendment of Claim of Lien-Lien on Real Property; Multiple Filings. – A claim of lien on real property filed under this Article may not be amended. A claim of lien may be cancelled by a claimant or his authorized agent or attorney and a new claim of lien substituted therefor within the time herein provided for original filing. A lienor may file subsequent liens on real property with respect to the same improvement and the same

1 contract. Any subsequent lien on real property shall be treated as a separate filing for
2 purposes of priority and computation of periods of filing and enforcement of a lien on
3 real property.

4 (e) ~~Notice of Assignment of Claim of Lien.~~ Lien on Real Property. – When a ~~claim~~
5 ~~of lien on real property~~ has been filed, it may be assigned of record by the ~~lien claimant~~
6 ~~lienor~~ in a writing filed with the clerk of superior court who shall note ~~said the~~ assignment
7 in the margin of the judgment docket containing the ~~claim of lien.~~ lien on real property.
8 Thereafter the assignee becomes the ~~lien claimant~~ lienor of record. In order for the
9 assignment to be effective against the owner, the owner shall receive actual notice of the
10 assignment.

11 (f) ~~Waiver of Right to File or Claim Liens as Consideration for Contract Against~~
12 ~~Public Policy.~~ – An agreement to waive the right to file or claim a lien granted under this
13 ~~Article, which agreement is in anticipation of and in consideration for the awarding of~~
14 ~~any contract, either expressed or implied, for the making of an improvement upon real~~
15 ~~property under this Article is against public policy and is unenforceable. This section~~
16 ~~does not prohibit subordination or release of a lien granted under this Article.~~

17 **"§ 44A-13. Action to enforce lien-lien on real property.**

18 (a) ~~Where and When Action Instituted.~~ Commenced. – An action to enforce ~~the a~~
19 ~~lien created by this Article on real property~~ may be ~~instituted~~ commenced in any county in
20 ~~which the lien is filed.~~ where venue is otherwise proper. ~~No such action may be commenced~~
21 ~~later than 180 days after the last furnishing of labor or materials at the site of the improvement by~~
22 ~~the person claiming the lien.~~ The action shall be commenced not later than 180 days from
23 the filing of the lien on real property. The time within which to commence an action to
24 enforce a lien on real property is not extended by virtue of a voluntary dismissal without
25 prejudice taken under G.S. 1A-1, Rule 41(a). If the title to the real property against which
26 the lien on real property is asserted is by law vested in a receiver or trustee in bankruptcy,
27 is subject to the control of a bankruptcy court, the lien on real property shall be enforced
28 in accordance with the orders of the court having jurisdiction over said the real property.
29 property; the filing of a proof of claim in bankruptcy or with a receiver within the time
30 required by this section satisfies the requirement for the commencement of a civil action
31 and the filing of a notice of lis pendens.

32 (b) ~~Judgment.~~ – Judgment ~~A judgment enforcing a lien under this Article on real~~
33 ~~property~~ may be entered for the ~~principal~~ amount shown to be due, not exceeding the
34 ~~principal amount stated in the claim of lien enforced thereby.~~ due and shall bear interest as
35 provided in G.S. 24-5. The judgment shall direct a sale of the real property subject to the
36 lien thereby enforced. property, shall specify the lien on real property to which the
37 judgment relates, and shall state the priority date of the lien on real property. To the
38 extent that a judgment is entered for an amount in excess of the amount stated in the lien
39 on real property plus interest, the excess shall not be enforced as a lien on real property
40 but shall be a separate judgment enforceable under G.S. 1-233 and G.S. 1-234.

41 (c) ~~Notice of Action.~~ – Unless the action enforcing the lien created by this Article
42 is instituted in the county in which the lien is filed, in order for the sale under the
43 provisions of G.S. 44A-14(a) to pass all title and interest of the owner to the purchaser

1 ~~good against all claims or interests recorded, filed or arising after the first furnishing of~~
2 ~~labor or materials at the site of the improvement by the person claiming the lien, a~~
3 ~~notice of lis pendens shall be filed in each county in which the real property subject to the~~
4 ~~lien on real property is located located, except the county in which the action is~~
5 ~~commenced. The notice of lis pendens shall be filed within the time provided in~~
6 ~~subsection (a) of this section for the commencement of the action by the lienor. within~~
7 ~~180 days after the last furnishing of labor or materials at the site of the improvement by~~
8 ~~the person claiming the lien. It shall not be necessary to file a notice of lis pendens in the~~
9 ~~county in which the action enforcing the lien is commenced in order for the judgment~~
10 ~~entered therein and the sale declared thereby to carry with it the priorities set forth in G.S.~~
11 ~~44A-14(a). If neither an action nor a notice of lis pendens is filed in each county in which~~
12 ~~the real property subject to the lien is located within 180 days after the last furnishing of~~
13 ~~labor or materials at the site of the improvement by the person claiming the lien, as to real~~
14 ~~property claimed to be subject to the lien in such counties where the action was neither~~
15 ~~commenced nor a notice of lis pendens filed, the judgment entered in the action enforcing~~
16 ~~the lien shall not direct a sale of the real property subject to the lien enforced thereby nor~~
17 ~~be entitled to any priority under the provisions of G.S. 44A-14(a), but shall be entitled~~
18 ~~only to those priorities accorded by law to money judgments.~~

19 **"§ 44A-14. Sale of property in satisfaction of judgment enforcing lien on real**
20 **property or upon order prior to judgment; distribution of proceeds.**

21 (a) Execution Sale; Effect of Sale. – Except as provided in subsection (b) of this
22 section, sales under this Article and distribution of proceeds thereof shall be made in
23 accordance with the execution sale provisions set out in G.S. 1-339.41 through 1-339.76.
24 The sale of real property to satisfy a lien ~~granted by this Article~~ on real property shall pass
25 all title and interest of the owner to the purchaser, good against all claims or interests
26 ~~recorded, filed or arising after the first furnishing of labor or materials at the site of the~~
27 ~~improvement by the person claiming a lien~~ against which the lien on real property has
28 priority under G.S. 44A-10.1, 44A-18.1, or 44A-20.1.

29 (b) Sale of Property upon Order Prior to Judgment. – A resident judge of superior
30 court in the district in which the action to enforce the lien on real property is pending, a
31 judge regularly holding the superior courts of ~~the said that~~ that district, any judge holding a
32 session of superior court, either civil or criminal, in ~~the said that~~ that district, a special judge of
33 superior court residing in ~~the said that~~ that district, or the chief judge of the district court in
34 which the action to enforce the lien on real property is pending, may, upon notice to all
35 interested parties and after a hearing thereupon and upon a finding that a sale prior to
36 judgment is necessary to prevent substantial waste, destruction, depreciation or other
37 damage to ~~said the~~ the real property prior to the final determination of ~~said the~~ the action, order
38 any real property against which a lien ~~under this Article~~ on real property is asserted, sold in
39 any manner determined by ~~said the~~ the judge to be commercially reasonable. The rights of all
40 parties shall be transferred to the proceeds of the sale. Application for ~~such the~~ the order and
41 further proceedings thereon may be heard in or out of session.

42 **"§ 44A-15. Attachment available to ~~lien claimant~~ lienor.**

1 In addition to other grounds for attachment, in all cases where the owner removes or
2 attempts or threatens to remove an improvement from real property subject to a lien ~~under~~
3 ~~this Article, on real property,~~ without the written permission of the ~~lien claimant~~ lienor or
4 with the intent to deprive the ~~lien claimant~~ lienor of his ~~lien,~~ the lien on real property, the
5 remedy of attachment of the property subject to the lien on real property shall be
6 available to the ~~lien claimant~~ lienor or any other person.

7 "**§ 44A-16. Discharge of record ~~lien.~~ lien on real property.**

8 (a) A lien on real property is discharged by failure to enforce the lien on real
9 property in accordance with G.S. 44A-13 within the time limitations prescribed in this
10 Article.

11 (b) Any ~~A~~ lien filed ~~under this Article~~ may be on real property is discharged by any of
12 the following methods: in whole or, if so provided, in part, and the clerk of superior court
13 shall cancel the lien of record to the extent discharged upon the request of any person,
14 when:

15 (1) The ~~lien claimant~~ of record, his agent or attorney, in the presence of the
16 clerk of superior court may acknowledge the satisfaction of the lien
17 indebtedness, whereupon the clerk of superior court shall forthwith
18 make upon the record of such lien an entry of such acknowledgment of
19 satisfaction, which shall be signed by the ~~lien claimant~~ of record, his
20 agent or attorney, and witnessed by the clerk of superior court. ~~An~~
21 instrument requesting that the lien on real property be discharged in
22 whole or in part, signed by the lienor or the lienor's agent or attorney,
23 and acknowledged before a person authorized to administer oaths, is
24 filed with the clerk of superior court;

25 (2) The ~~owner~~ may exhibit an instrument of satisfaction signed and
26 acknowledged by the ~~lien claimant~~ of record which instrument states
27 that the ~~lien indebtedness~~ has been paid or satisfied, whereupon the
28 clerk of superior court shall cancel the lien by entry of satisfaction on
29 the record of such lien. ~~An~~ instrument stating that the indebtedness
30 secured by the lien on real property has been paid or discharged, signed
31 by the lienor or the lienor's agent or attorney, and acknowledged before
32 a person authorized to administer oaths, is filed with the clerk of
33 superior court;

34 (3) By failure to enforce the lien within the time prescribed in this Article.

35 (4) By filing in the office of the clerk of superior court the ~~The~~ original or a
36 certified copy of a final judgment or decree of a court of competent
37 jurisdiction showing that the lienor's action ~~by the claimant~~ to enforce the
38 lien on real property has been dismissed with prejudice or otherwise
39 finally determined adversely to the ~~claimant~~ lienor, is filed with the
40 clerk of superior court;

41 (5) Whenever a ~~A~~ sum equal to one and one-fourth times the principal
42 amount ~~of~~ stated in the lien on real property, which shall be applied to
43 the payment finally determined to be due, ~~or liens claimed~~ is deposited

with the clerk of superior court, to be applied to the payment finally determined to be due, whereupon the clerk of superior court shall cancel the ~~lien or liens of record.~~ court; or

- (6) ~~Whenever a~~ A corporate surety bond, in a sum equal to one and one-fourth times the principal amount of the ~~stated in the~~ lien on real property or liens claimed and conditioned upon the payment of the amount finally determined to be due in satisfaction of ~~said~~ the ~~lien or liens, on real property,~~ is deposited with the clerk of court, whereupon the clerk of superior court shall cancel the ~~lien or liens of record.~~ superior court.

"PART 2. LIENS OF MECHANICS, LABORERS AND MATERIALMEN PERSONS FURNISHING LABOR, SERVICES, OR MATERIALS DEALING WITH ONE A PERSON OTHER THAN AN OWNER.

"§ 44Aü Unless the context otherwise requires in this Article:

- (1) ~~'Contractor'~~ means a person who contracts with an owner to improve real property.
- (2) ~~'First tier subcontractor'~~ means a person who contracts with a contractor to improve real property.
- (3) ~~'Obligor'~~ means an owner, contractor or subcontractor in any tier who owes money to another as a result of the other's partial or total performance of a contract to improve real property.
- (4) ~~'Second tier subcontractor'~~ means a person who contracts with a first tier subcontractor to improve real property.
- (5) ~~'Third tier subcontractor'~~ means a person who contracts with a second tier subcontractor to improve real property.

"§ 44A-18. Grant of lien; subrogation; perfection. Subcontractors' liens; perfection; enforcement.

Upon compliance with this Article: Subcontractors are entitled to liens provided by this section, subject to other requirements in this Article:

(1) First Tier Subcontractors.

a. A first tier subcontractor who furnished labor or materials at the site of the improvement shall be entitled to a lien upon on funds which that are owed or become owed to the contractor with whom the first tier subcontractor dealt and which arise out of for the improvement on which the first tier subcontractor ~~worked~~ or furnished labor, services, or materials.

b. A first tier subcontractor, to the extent of that subcontractor's lien on funds provided in G.S. 44A-18(1)a., upon compliance with subdivision (7) of this section, may perfect and enforce the lien on real property of the contractor with whom the subcontractor dealt. The first tier subcontractor's lien on real property under this sub-subdivision shall not exceed in amount the lesser of the lien on funds provided to the first tier subcontractor by G.S. 44A-

1 18(1)a. or the amount of the contractor's lien on real property
2 provided by G.S. 44A-8.

3 (2) Second Tier Subcontractors.

4 a. ~~A second tier subcontractor who furnished labor or materials at the~~
5 ~~site of the improvement shall be entitled to a lien upon on funds~~
6 ~~which that are owed or become owed to the first tier~~
7 ~~subcontractor with whom the second tier subcontractor dealt and~~
8 ~~which arise out of for the improvement on which the second tier~~
9 ~~subcontractor worked or furnished labor, services, or materials. A~~
10 ~~second tier subcontractor, to the extent of his lien provided in this~~
11 ~~subdivision, shall also be entitled to be subrogated to the lien of the~~
12 ~~first tier subcontractor with whom he dealt provided for in subdivision~~
13 ~~(1) and shall be entitled to perfect it by notice to the extent of his~~
14 ~~claim.~~

15 b. A second tier subcontractor, to the extent of that subcontractor's
16 lien on funds provided in G.S. 44A-18(2)a., upon compliance
17 with subdivision (6) of this section, may perfect and enforce the
18 lien on funds under G.S. 44A-18(1)a. of the first tier
19 subcontractor with whom the second tier subcontractor dealt.
20 The second tier subcontractor's lien on funds under this sub-
21 subdivision upon funds that are owed or become owed to the
22 contractor by the owner shall not exceed in amount the lesser of
23 (i) the lien on funds provided to the second tier subcontractor by
24 G.S. 44A-18(2)a.; or (ii) the lien on funds provided to the first
25 tier subcontractor by G.S. 44A-18(1)a.

26 c. A second tier subcontractor, to the extent of that subcontractor's
27 lien on funds provided in G.S. 44A-18(2)a., upon compliance
28 with subdivision (7) of this section, may perfect and enforce the
29 lien on real property that the first tier subcontractor with whom
30 the second tier subcontractor dealt may enforce under G.S. 44A-
31 18(1)b. The second tier subcontractor's lien on real property
32 under this sub-subdivision shall not exceed in amount the least of
33 (i) the lien on funds provided to the second tier subcontractor by
34 G.S. 44A-18(2)a.; (ii) the lien on funds provided to the first tier
35 subcontractor by G.S. 44A-18(1)a.; or (iii) the amount of the
36 contractor's lien on real property provided by G.S. 44A-8.

37 (3) Third Tier Subcontractors.

38 a. ~~A third tier subcontractor who furnished labor or materials at the site~~
39 ~~of the improvement shall be entitled to a lien upon on funds which~~
40 ~~that are owed or become owed to the second tier subcontractor~~
41 ~~with whom the third tier subcontractor dealt and which arise out of~~
42 ~~for the improvement on which the third tier subcontractor worked~~
43 ~~or furnished labor, services, or materials. A third tier subcontractor,~~

1 to the extent of his lien provided in this subdivision, shall also be
2 entitled to be subrogated to the lien of the second tier subcontractor
3 with whom he dealt and to the lien of the first tier subcontractor with
4 whom the second tier subcontractor dealt to the extent that the second
5 tier subcontractor is entitled to be subrogated thereto, and in either
6 case shall be entitled to perfect the same by notice to the extent of his
7 claim.

8 b. A third tier subcontractor, to the extent of that subcontractor's
9 lien on funds provided in G.S. 44A-18(3)a., upon compliance
10 with subdivision (6) of this section, may perfect and enforce the
11 lien on funds under G.S. 44A-18(2)a. of the second tier
12 subcontractor with whom the third tier subcontractor dealt. The
13 third tier subcontractor's lien on funds under this sub-subdivision
14 upon funds that are owed or become owed to the first tier
15 subcontractor by the contractor shall not exceed in amount the
16 lesser of (i) the lien on funds provided to the third tier
17 subcontractor by G.S. 44A-18(3)a.; or (ii) the lien on funds
18 provided to the second tier subcontractor by G.S. 44A-18(2)a.

19 c. A third tier subcontractor, to the extent of that subcontractor's
20 lien on funds provided in G.S. 44A-18(3)a., upon compliance
21 with subdivision (6) of this section, may perfect and enforce the
22 right of the second tier subcontractor under G.S. 44A-18(2)b. to
23 enforce the lien on funds under G.S. 44A-18(1)a. of the first tier
24 subcontractor with whom the second tier subcontractor dealt.
25 The third tier subcontractor's lien on funds under this sub-
26 subdivision upon funds that are owed or become owed to the
27 contractor by the owner shall not exceed in amount the least of
28 (i) the lien on funds provided to the third tier subcontractor by
29 G.S. 44A-18(3)a.; (ii) the lien on funds provided to the second
30 tier subcontractor by G.S. 44A-18(2)a.; or (iii) the lien on funds
31 provided to the first tier subcontractor by G.S. 44A-18(1)a.

32 d. A third tier subcontractor, to the extent of that subcontractor's
33 lien on funds provided in G.S. 44A-18(3)a., upon compliance
34 with subdivision (7) of this section, may perfect and enforce the
35 lien on real property that the second tier subcontractor with
36 whom the third tier subcontractor dealt may enforce under G.S.
37 44A-18(2)c. The third tier subcontractor's lien on real property
38 under this sub-subdivision shall not exceed in amount the least of
39 (i) the lien on funds provided to the third tier subcontractor by
40 G.S. 44A-18(3)a.; (ii) the lien on funds provided to the second
41 tier subcontractor by G.S. 44A-18(2)a.; (iii) the lien on funds
42 provided to the first tier subcontractor by G.S. 44A-18(1)a.; or

1 (iv) the amount of the contractor's lien on real property provided
2 by G.S. 44A-8.

3 (4) Remote Tier Subcontractors. – Subcontractors more remote than the
4 third tier who ~~furnished labor or material at the site of the improvement~~
5 improve real property shall be entitled to a lien ~~upon~~ on funds which that
6 are owed or become owed to the person with whom ~~they~~ the remote tier
7 subcontractors dealt ~~and which arise out of for~~ the improvement on which
8 ~~they~~ the remote tier subcontractors furnished ~~labor~~ labor, services, or
9 material, but ~~such~~ the remote tier subcontractor subcontractors shall not
10 be entitled to ~~subrogation to enforce the rights~~ liens of other persons.

11 (5) Amounts Secured by Lien on Funds. – ~~The liens~~ A lien granted on funds
12 under this section shall secure amounts earned by the ~~lien claimant~~ lienor
13 as a result of ~~his~~ having furnished ~~labor~~ labor, services, or materials at
14 the site of the improvement under the contract to improve real property,
15 whether or not such amounts are due and whether or not performance or
16 delivery is ~~complete~~ complete when notice is given to the obligor.

17 (6) Perfection and Enforcement of Lien on Funds. – A lien ~~upon~~ on funds
18 ~~granted~~ under this section is ~~and all rights to enforce another's lien on~~
19 funds are perfected upon the giving of notice in writing to the obligor any
20 obligor against whom the lien is asserted as provided in G.S. 44A-19
21 and shall be effective upon the obligor's receipt of the notice. ~~The~~
22 ~~subrogation rights of a first, second, or third tier subcontractor to the lien of~~
23 ~~the contractor created by Part 1 of Article 2 of this Chapter are perfected as~~
24 ~~provided in G.S. 44A-23.~~ A lien on funds is enforced by a civil action and
25 is subject to the statute of limitations in G.S. 1-52(2).

26 (7) Perfection and Enforcement of a Lien on Real Property. – To perfect a
27 lien on real property, the subcontractor shall file in the office of the
28 clerk of superior court a lien on real property prepared in accordance
29 with G.S. 44A-12 with a copy of the subcontractor's lien on funds
30 prepared in accordance with G.S. 44A-19 and a certificate of service
31 substantially as required by G.S. 44A-19(d). Alternatively, the
32 subcontractor may combine the lien on real property with the lien on
33 funds in one form if the form contains the information required in G.S.
34 44A-12 and G.S. 44A-19 and includes a certificate of service
35 substantially as required by G.S. 44A-19(d). The lien on real property
36 under this subdivision may be filed at any time after the subcontractor's
37 contract for the improvement of real property is made but not later than
38 120 days after the last furnishing of labor, services, or materials at the
39 site of the improvement pursuant to the contractor's contract. The action
40 to enforce a lien on real property under this subdivision shall be
41 commenced not later than 180 days from the date of the filing of the lien
42 on real property by the subcontractor under this subdivision. If an
43 action is commenced prior to the time of the maturity of the owner's

1 obligation to pay the contractor, the court, upon motion and hearing,
2 shall order that the action be stayed until the maturity of the owner's
3 obligation. The priority of the lien on real property enforced by the
4 subcontractor is governed by G.S. 44A-18.1.

5 (8) No Prejudice to Subcontractor's Rights After Filing. – Upon the filing of
6 a lien on real property by a subcontractor, no waiver, release, or
7 subordination by an obligor nor any payment to an obligor shall be
8 effective to prejudice the filing subcontractor's lien on real property
9 without that subcontractor's written consent.

10 (9) No Prejudice to Subcontractor's Rights After Notice. – Upon receipt by
11 the obligor of notice of a subcontractor's lien on funds, no waiver,
12 release, or subordination by an obligor, nor any payment to an obligor,
13 shall be effective to prejudice the subcontractor's lien on funds.

14 **§ 44A-18.1. Priority of a subcontractor's lien on real property by virtue of**
15 **asserting the contractor's lien on real property.**

16 (a) General Priority. – Except as provided in subsection (b) of this section, the
17 following rules apply to determining the priority of a subcontractor's lien on real property
18 pursuant to G.S. 44A-18:

19 (1) If there is an effective notice of commencement at the time a
20 subcontractor files a lien on real property pursuant to G.S. 44A-18, the
21 lien on real property has priority as of the time of the recording of the
22 notice of commencement.

23 (2) If there is no effective notice of commencement at the time a
24 subcontractor files a lien on real property pursuant to G.S. 44A-18, the
25 lien on real property has priority as of the earliest of the time of filing of
26 (i) a lien on real property by the contractor through whom the
27 subcontractor claims a lien on real property; (ii) a lien on real property
28 by another subcontractor who claims a lien on real property through the
29 same contractor; or (iii) the lien on real property by the subcontractor.

30 (b) Priority Against a Subsequent Purchaser That Is a Protected Party. – Whether
31 or not a notice of commencement has been filed and whether or not any other contractor's
32 or any other subcontractor's lien on real property has been filed under this Article, in
33 order for a subcontractor's lien on real property pursuant to G.S. 44A-18 to have priority
34 over the interest of a subsequent purchaser that is a protected party or a successor in
35 interest to the subsequent purchaser, the subcontractor's lien on real property shall be
36 filed before the document conveying an interest in the real property to the protected party
37 is recorded.

38 **§ 44A-19. Notice to obligor.**

39 (a) Notice of a claim of lien to obligors shall be given by serving a subcontractor's
40 lien on funds which shall set forth:

41 (1) The name and address of the person claiming the ~~lien,~~ lien on
42 funds(lienor);

43 (2) A general description of the real property ~~improved,~~ improved;

The amount of lien on funds claimed pursuant to the above described lienor's contract: \$.....

The undersigned lien claimant lienor gives this notice of claim of lien Subcontractor's Lien on Funds pursuant to North Carolina law and claims all rights of subrogation to which he the lienor is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina. entitled.

Dated Dated:.....

....., Lien Claimant
.....(Insert name of lienor).....
Lienor

By:(Signature).....

(Address) (Address)'

(c) All notices of claims of liens liens on funds given to obligors by subcontractors more remote than the third tier must shall be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN BY SUBCONTRACTOR
MORE REMOTE THAN THE THIRD TIER
'LIEN ON FUNDS BY SUBCONTRACTOR
MORE REMOTE THAN THE THIRD TIER

'PLEASE TAKE NOTICE that the lienor claims a lien on funds owed to the subcontractor with whom the lienor dealt. Upon receipt of this lien on funds you may not make any further payment to the named subcontractor unless you retain from those payments an amount sufficient to satisfy this lien on funds. Failure to withhold sums as required may result in your direct liability to the lienor.

To:
, person holding funds against which (Name and Address) lien on funds is claimed.

General description of real property where labor performed performed, services rendered, or material furnished:

General description of undersigned lien claimant's lienor's contract including the names of the parties thereto:

1 The amount of lien on funds claimed pursuant to the above
2 described contract: \$

3 The ~~undersigned lien claimant-lienor~~ gives this ~~notice of claim of lien~~-Subcontractor's
4 Lien on Funds pursuant to North Carolina law and claims all rights to which ~~he~~-the lienor
5 is ~~entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.~~
6 entitled.

7 Dated:
8, ~~Lien Claimant~~
9(Insert name of lienor).....
10 Lienor

11
12 By:(Signature).....

13
14
15 (Address) (Address)'
16

17 (d) A subcontractor's lien on funds ~~Notices~~-under this section shall be served upon
18 the obligor in person by any person, ~~or~~-by certified ~~mail~~-mail, or in any other manner
19 authorized by the North Carolina Rules of Civil Procedure. A copy of the ~~notice~~
20 subcontractor's lien on funds and a certificate of service shall be attached to any ~~claim~~-of
21 lien on real property filed pursuant to G.S. 44A-18 or G.S. 44A-20(d). The certificate of
22 service shall be in a form substantially as follows:

23 'STATE OF NORTH CAROLINA
24 'COUNTY OF

25
26 'On this day of, 19....., I,(name), being the (title or
27 capacity of signer), of, lienor, served a copy of the foregoing
28 Subcontractor's Lien on Funds, upon (name of obligor) by (hand
29 delivery, certified mail, or in any other manner authorized by the North Carolina Rules of
30 Civil Procedure).

31
32(Signature).....'
33

34 (e) A subcontractor's lien on funds is not required to be filed in the office of the clerk
35 of superior court to be effective against the funds.

36 **"§ 44A-20. Duties and liability of obligor.**

37 (a) Upon receipt of the ~~notice~~-lien on funds as provided for in this ~~Article-Part~~, the
38 obligor shall be under a duty to ~~retain any funds subject to the lien or liens under this~~
39 ~~Article up to the total amount of such liens as to which notice has withhold from all~~
40 further payments a sum sufficient to satisfy the lien or liens on funds that have been
41 received.

42 (b) ~~If, after the receipt of the notice to the obligor, the obligor shall make further~~
43 ~~payments to a contractor or subcontractor against whose interest the lien or liens are~~

1 ~~claimed, the lien shall continue upon the funds in the hands of the contractor or~~
2 ~~subcontractor who received the payment, and in addition the obligor shall be personally~~
3 ~~liable to the person or persons entitled to liens up to the amount of such wrongful~~
4 ~~payments, not exceeding the total claims with respect to which the notice was received~~
5 ~~prior to payment.~~

6 (b1) The obligor shall be directly liable to the person or persons entitled to liens on
7 funds under this Part up to the amount of funds that the obligor is required to, but fails to,
8 withhold under this section.

9 (b2) If, after receipt of the lien on funds, the obligor makes further payment to a
10 contractor or subcontractor against whose interest the lien or liens on funds are claimed
11 without complying with subsection (a) of this section, the lien on funds shall continue
12 upon the funds in the hands of the contractor or subcontractor who received the payment.

13 (c) If an obligor ~~shall make~~ makes a payment after receipt of ~~notice~~ a lien on funds
14 and ~~incur personal~~ incurs direct liability therefor, the obligor ~~shall be~~ is entitled to
15 reimbursement and indemnification from the party receiving ~~such~~ the payment.

16 (d) If the obligor is an owner of the property being improved, the ~~lien claimant shall~~
17 ~~be~~ lienor is entitled to a lien upon the interest on real property of the obligor in the real
18 property to the extent of the owner's ~~personal~~ direct liability under subsection (b), which
19 lien shall be enforced only in the manner set forth in G.S. 44A-7 through 44A-16 and which lien
20 shall be entitled to the same priorities and subject to the same filing requirements and periods of
21 limitation applicable to the contractor. The lien is perfected as of the time set forth in G.S. 44A-
22 10 upon filing of claim of lien pursuant to G.S. 44A-12. (b1) of this section. The lien on real
23 property under this subsection may be filed at any time after the subcontractor's contract
24 for the improvement of real property is made but not later than 120 days after the last
25 furnishing of labor, services, or materials at the site of the improvement pursuant to the
26 contractor's contract. The ~~claim of lien on real property~~ shall be in the form set out in G.S.
27 44A-12(c) and shall ~~contain~~, include, in addition, a copy of the ~~notice~~ subcontractor's lien
28 on funds given pursuant to G.S. 44A-19 as ~~an exhibit~~ together with ~~proof~~ a certificate of
29 service substantially in the form specified by G.S. 44A-19(d) thereof by affidavit, and shall
30 state the grounds the lien claimant has to believe that the obligor is personally liable for the debt
31 under subsection (b) and shall include the information for subcontractors required by G.S.
32 44A-12(c)(7). The action to enforce a lien on real property under this subsection shall be
33 commenced not later than 180 days from the date of the filing of the lien on real property
34 by the subcontractor under this subsection. The priority of a subcontractor's direct lien on
35 real property pursuant to this section is provided by G.S. 44A-20.1.

36 **"§ 44A-20.1. Priority of a subcontractor's direct liability lien on real property.**

37 The priority of a subcontractor's lien on real property arising pursuant to G.S. 44A-
38 20(d) shall be governed by G.S. 44A-10.1, and all references in G.S. 44A-10.1 to
39 'contractor's lien on real property' shall be interpreted to mean 'subcontractor's lien on real
40 property'.

41 **"§ 44A-21. Pro rata payments.**

42 In the event that the funds in the hands of the obligor and the obligor's ~~personal~~ direct
43 liability, if any, under ~~the previous section~~ G.S. 44A-20, are less than the principal amount

1 and interest of valid ~~lien claims~~ liens on funds that have been ~~filed with~~ received by the
2 obligor under this ~~Article Part~~, the parties entitled to liens on funds shall share the funds
3 on a pro rata basis. The principal amount of valid liens shall be paid first, without
4 interest being considered on the proration. Any remaining funds shall be prorated among
5 the valid lienors on the basis of the remaining outstanding lien balance due each.

6 **"§ 44A-22. Priority of ~~liens~~ liens on funds.**

7 Liens on funds perfected under this ~~Article Part~~ have priority over all other interests or
8 claims theretofore or thereafter created or suffered in the funds by the person against
9 whose interest the lien on funds is ~~asserted, served,~~ including, but not limited to, liens
10 arising from garnishment, attachment, levy, judgment, assignments, security interests,
11 and any other type of transfer, whether voluntary or involuntary. Any security interest,
12 whether or not perfected, granted by the person against whose interest the lien on funds is
13 served, any lien of a judgment creditor with levy of attachment or garnishment of the
14 interest of the person against whom the lien on funds is served, and the interest of any
15 purchaser for value, with or without notice, from the person against whom the lien on
16 funds is served shall be inferior to the lien on funds to the extent that funds exist in the
17 hands of the obligor at the time of service of the lien on funds. Any person who receives
18 payment from an obligor ~~in bad faith~~ with knowledge of a ~~claim of lien~~ on funds shall take
19 such payment subject to the ~~claim of lien~~ lien on funds.

20 **"§ 44A-23. Contractor's ~~lien~~; perfection of subrogation rights of subcontractor.**

21 (a) ~~First tier subcontractor.~~— A first tier subcontractor, who gives notice as
22 provided in this Article, may, to the extent of his claim, enforce the lien of the contractor
23 created by Part 1 of Article 2 of this Chapter. The manner of such enforcement shall be as
24 provided by G.S. 44A-7 through 44A-16. The lien is perfected as of the time set forth in
25 G.S. 44A-10 upon filing of claim of lien pursuant to G.S. 44A-12. Upon the filing of the
26 notice and claim of lien and the commencement of the action, no action of the contractor
27 shall be effective to prejudice the rights of the subcontractor without his written consent.

28 (b) ~~Second or third subcontractor.~~—

29 (1) ~~A second or third tier subcontractor, who gives notice as provided in~~
30 ~~this Article, may, to the extent of his claim, enforce the lien of the~~
31 ~~contractor created by Part 1 of Article 2 of the Chapter except when:~~

32 i. ~~The contractor, within 30 days following the date the building~~
33 ~~permit is issued for the improvement of the real property~~
34 ~~involved, posts on the property in a visible location adjacent to~~
35 ~~the posted building permit and files in the office of the Clerk of~~
36 ~~Superior Court in each county wherein the real property to be~~
37 ~~improved is located, a completed and signed Notice of Contract~~
38 ~~form and the second or third tier subcontractor fails to serve upon~~
39 ~~the contractor a completed and signed Notice of Subcontract~~
40 ~~form by the same means of service as described in G.S. 44A-~~
41 ~~19(d); or~~

42 ii. ~~After the posting and filing of a signed Notice of Contract and~~
43 ~~the service 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.~~

~~(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:~~

~~'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 _____, 19____.~~

~~_____
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:~~

1 insuring title to ~~such~~the real property, a false written statement of the sums due or
2 claimed to be due for ~~labor~~labor, services, or material furnished at the site of
3 improvements to ~~such~~the real property, then ~~such~~the contractor, subcontractor or other
4 person shall be guilty of a Class 1 misdemeanor. Upon conviction and in the event the
5 court shall grant any defendant a suspended sentence, the court may in its discretion
6 include as a condition of ~~such~~the suspension a provision that the defendant shall
7 reimburse the party who suffered loss on such conditions as the court shall determine are
8 proper.

9 The elements of the offense herein stated are the furnishing of the false written
10 statement with knowledge that it is false and the subsequent or simultaneous receipt of
11 payment from an obligor or purchaser, and in any prosecution hereunder it shall not be
12 necessary for the State to prove that the obligor, purchaser, lender or title insurance
13 company relied upon the false statement or that any person was injured thereby."

14 Sec. 2. G.S. 153A-357 reads as rewritten:

15 "**§ 153A-357. Permits.**

16 (a) No person may commence or proceed with:

- 17 (1) The construction, reconstruction, alteration, repair, movement to another
18 site, removal, or demolition of any building;
- 19 (2) The installation, extension, or general repair of any plumbing system;
- 20 (3) The installation, extension, alteration, or general repair of any heating or
21 cooling equipment system; or
- 22 (4) The installation, extension, alteration, or general repair of any electrical
23 wiring, devices, appliances, or equipment

24 without first securing from the inspection department with jurisdiction over the site of the
25 work each permit required by the State Building Code and any other State or local law or
26 local ordinance or regulation applicable to the work. A permit shall be in writing and
27 shall contain a provision that the work done shall comply with the State Building Code
28 and all other applicable State and local laws and local ordinances and regulations.
29 Nothing in this section shall require a county to review and approve residential building
30 plans submitted to the county pursuant to Section R-110 of Volume VII of the North
31 Carolina State Building Code; provided that the county may review and approve such
32 residential building plans as it deems necessary. No permit may be issued unless the
33 plans and specifications are identified by the name and address of the author thereof; and
34 if the General Statutes of North Carolina require that plans for certain types of work be
35 prepared only by a registered architect or registered engineer, no permit may be issued
36 unless the plans and specifications bear the North Carolina seal of a registered architect
37 or of a registered engineer. If a provision of the General Statutes of North Carolina or of
38 any ordinance requires that work be done by a licensed specialty contractor of any kind,
39 no permit for the work may be issued unless the work is to be performed by such a duly
40 licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be
41 required for any construction, installation, repair, replacement, or alteration costing five
42 thousand dollars (\$5,000) or less in any single-family residence or farm building unless
43 the work involves: the addition, repair or replacement of load bearing structures; the

1 addition (excluding replacement of same size and capacity) or change in the design of
2 plumbing; the addition, replacement or change in the design of heating, air conditioning,
3 or electrical wiring, devices, appliances, or equipment; the use of materials not permitted
4 by the North Carolina Uniform Residential Building Code; or the addition (excluding
5 replacement of like grade of fire resistance) of roofing. Violation of this section
6 constitutes a Class 1 misdemeanor.

7 (b) No permit shall be issued pursuant to subsection (a) of this section for any
8 land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S.
9 113A-57, unless an erosion control plan has been approved by the Sedimentation
10 Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government
11 pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of
12 the activity.

13 (c) No permit shall be issued pursuant to subsection (a) of this section unless a
14 copy of the notice of commencement with respect to the work pursuant to G.S. 44A-10.2,
15 with evidence of its recording by the register of deeds in the county where the permit is to
16 be issued, is submitted with the application for the permit. A copy of the notice of
17 commencement and evidence of its recording shall be retained in the file."

18 Sec. 3. G.S. 160A-417 reads as rewritten:

19 "**§ 160A-417. Permits.**

20 (a) No person shall commence or proceed with:

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

23 (2) The installation, extension, or general repair of any plumbing system,

24 (3) The installation, extension, alteration, or general repair of any heating or
25 cooling equipment system, or

26 (4) The installation, extension, alteration, or general repair of any electrical
27 wiring, devices, appliances, or equipment,

28 without first securing from the inspection department with jurisdiction over the site of the
29 work any and all permits required by the State Building Code and any other State or local
30 laws applicable to the work. A permit shall be in writing and shall contain a provision
31 that the work done shall comply with the State Building Code and all other applicable
32 State and local laws. Nothing in this section shall require a city to review and approve
33 residential building plans submitted to the city pursuant to Section R-110 of Volume VII
34 of the North Carolina State Building Code; provided that the city may review and
35 approve such residential building plans as it deems necessary. No permits shall be issued
36 unless the plans and specifications are identified by the name and address of the author
37 thereof, and if the General Statutes of North Carolina require that plans for certain types
38 of work be prepared only by a registered architect or registered engineer, no permit shall
39 be issued unless the plans and specifications bear the North Carolina seal of a registered
40 architect or of a registered engineer. When any provision of the General Statutes of North
41 Carolina or of any ordinance requires that work be done by a licensed specialty contractor
42 of any kind, no permit for the work shall be issued unless the work is to be performed by
43 such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143

1 shall be required for any construction, installation, repair, replacement, or alteration
2 costing five thousand dollars (\$5,000) or less in any single family residence or farm
3 building unless the work involves: the addition, repair or replacement of load bearing
4 structures; the addition (excluding replacement of same size and capacity) or change in
5 the design of plumbing; the addition, replacement or change in the design of heating, air
6 conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials
7 not permitted by the North Carolina Uniform Residential Building Code; or the addition
8 (excluding replacement of like grade of fire resistance) of roofing. Violation of this
9 section shall constitute a Class 1 misdemeanor.

10 (b) No permit shall be issued pursuant to subsection (a) of this section for any
11 land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S.
12 113A-57, unless an erosion control plan has been approved by the Sedimentation
13 Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government
14 pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of
15 the activity.

16 (c) No permit shall be issued pursuant to subsection (a) of this section unless a
17 copy of the notice of commencement with respect to the work pursuant to G.S. 44A-10.2,
18 with evidence of its recording by the register of deeds in the county where the permit is to
19 be issued, is submitted with the application for the permit. A copy of the notice of
20 commencement and evidence of its recording shall be retained in the file."

21 Sec. 4. The Revisor of Statutes shall cause to be printed along with this act all
22 explanatory comments of the drafters of this act as the Revisor may deem appropriate.

23 Sec. 5. Sections 1, 2, and 3 of this act become effective July 1, 1996, and
24 apply to liens on real property filed and liens on funds served on and after July 1, 1996.
25 Claims of lien filed with the clerk of superior court under G.S. 44A-12 prior to July 1,
26 1996, shall be enforced in accordance with the law in effect at the time of filing. Notices
27 of claims of lien served under G.S. 44A-19 prior to July 1, 1996, shall be enforced in
28 accordance with the law in effect at the time of service, including the applicable
29 provisions of G.S. 44A-23. The remainder of this act is effective upon ratification.