

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 180
Feb 27, 2013
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH10079-TG-4 (02/25)

Short Title: Mechanics Liens/Technical Corrections. (Public)

Sponsors: Representative Stevens.

Referred to:

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 at the time that the original building permit is issued is thirty thousand dollars \$30,000 or more, the owner shall designate a lien agent no later than the time the owner first contracts with any person 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), and shall include in its notice the owner's contact information, street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property for the improvements to which the lien agent has been designated. Designation of a lien agent pursuant to this section does not make the lien agent an agent of the owner for purposes of receiving a 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.
- (2) Provide the contact information for the successor lien agent to the inspection department that issued any required building permit and to any persons who requested information from the owner relating to the predecessor lien agent.



* D R H 1 0 0 7 9 - T G - 4 *

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

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

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

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

17 "**§ 44A-11.2. (Effective April 1, 2013) Identification of lien agent; notice to lien agent;**
18 **effect of notice.**

19 ...
20 (b1) A potential lien claimant making a request pursuant to ~~this~~ subsection (b) of this
21 section who has not furnished ~~labor~~ labor, materials, rental equipment, or professional design
22 services at the site of the improvements, or who last furnished labor, materials, rental
23 equipment, or professional design services at the site of the improvements ~~did so~~ prior to the
24 posting of the contact information for the lien agent pursuant to subsection (d) or (e) of this
25 section, shall have no obligation to give notice to the lien agent under this section until the
26 potential lien claimant has received the contact information from the owner.

27 ...
28 (f) In complying with any requirement for written notice pursuant to this section, the
29 notice shall be addressed to the person required to be provided with the notice and shall be
30 delivered by any of the following methods:

- 31 (1) Certified mail, return receipt requested.
- 32 (2) Signature confirmation as provided by the United States Postal Service.
- 33 (3) Physical delivery and obtaining a delivery receipt from the lien agent.
- 34 (4) Facsimile with a facsimile confirmation.
- 35 (5) Depositing with a designated delivery service authorized pursuant to 26
36 U.S.C. § 7502(f)(2).
- 37 (6) Electronic mail, with delivery receipt.
- 38 (7) Utilizing an Internet Web site to transmit to a designated lien agent, with
39 delivery receipt, all information required to notify the lien agent of its
40 designation pursuant to G.S. 44A-11.1, to provide a notice to lien agent
41 pursuant to this section, or to deliver a copy of a notice of claim of lien upon
42 funds to a designated lien agent pursuant to G.S. 44A-23(a)(1)(3) or
43 G.S. 44A-23(b)(5)c.

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

48 (g) When a lien agent is identified in a contract between an owner and a contractor for
49 improvements to real property consisting of a single-family ~~residence entered into between an~~
50 ~~owner and a contractor for the improvements to the property,~~ residence, the contractor will be
51 deemed to have met the requirement of notice under subsections (l) and (m) of this section on

1 the date of the lien agent's receipt of the owner's notice of ~~designation~~designation of the lien
 2 agent. The owner shall provide written notice to the lien agent containing the information
 3 pertaining to the contractor required in a notice to lien agent pursuant to subdivisions (1)
 4 through (3) of subsection (i) of this section, by any method of delivery authorized in
 5 G.S. 44A-11.2(f). The lien agent shall include the ~~contractor~~contractor's name and address in
 6 its response to any persons requesting information relating to persons who have given notice to
 7 the lien agent pursuant to this section.

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

20 (i) The form of the notice to be given under this section shall be substantially as
 21 follows:

22 "NOTICE TO LIEN AGENT

- 23 (1) Potential lien claimant's name, mailing address, telephone number, fax
 24 number (if available), and electronic mailing address (if available):
 25 (2) Name of the party with whom the potential lien claimant has contracted to
 26 improve the real property described below:
 27 (3) A description of the real property sufficient to identify the real property,
 28 such as the name of the project, if applicable, the physical address as shown
 29 on the building permit or notice received from the owner:
 30 (4) I give notice of my right subsequently to pursue a claim of lien for
 31 improvements to the real property described in this notice.

32 Dated: _____
 33 _____

34 Potential Lien Claimant"

35 (j) The service of the Notice to Lien Agent does not satisfy the service or filing
 36 requirements applicable to a Notice of Claim of Lien upon Funds under Part 2 of Article 2 of
 37 this ~~Chapter~~Chapter or a Claim of Lien on Real Property under Part 1 or Part 2 of Article 2 of
 38 this Chapter.

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

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

- 47 (1) The lien agent identified in accordance with this section has received a
 48 Notice to Lien Agent ~~notice~~ from the potential lien claimant no later than 15
 49 days after the first furnishing of labor or materials by the potential lien
 50 claimant or, in the case of a potential lien claimant to whom subsection (b1)

of this section applies, within 15 days of the receipt by the potential lien claimant of the requested contact information for the lien agent.

- (2) Any of the following conditions is met:
 - a. The lien agent identified in accordance with this section has received ~~notice~~ a Notice to Lien Agent from the potential lien claimant prior to the date of recordation of a conveyance of the property interest in the real property to a bona fide purchaser for value protected under G.S. 47-18 who is not an affiliate, relative, or insider of the owner.
 - b. The potential lien claimant has ~~filed a perfected~~ its claim of lien on real property pursuant to G.S. 44A-12-11 prior to the recordation of a conveyance of the property interest in the real property to a bona fide purchaser for value protected under G.S. 47-18 who is not an affiliate, relative, or insider of the owner.

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

(m) Except as otherwise provided in this section, for any improvement to real property subject to G.S. 44A-11.1, the claim of lien on real property of a potential lien claimant that is not ~~filed-perfected~~ pursuant to G.S. 44A-11 prior to the recordation of any mortgage or deed of trust for the benefit of one who is not an affiliate, relative, or insider of the owner shall be subordinate to the previously recorded mortgage or deed of trust unless ~~any~~ at least one of the following conditions is met:

- (1) The lien agent identified in accordance with this section has received ~~notice~~ a Notice to Lien Agent from the potential lien ~~claimant~~ claimant:
 - a. ~~within~~ Within 15 days after the first furnishing of labor or materials by the potential lien ~~claimant~~ claimant;
 - b. Within 15 days after the lien agent is designated as such by the owner; or
 - c. In the case of a potential lien claimant to whom subsection (b1) of this section applies, within 15 days of the receipt by the potential lien claimant of the requested contact information for the lien agent.
- (2) The lien agent identified in accordance with this section has received ~~notice~~ a Notice to Lien Agent from the potential lien claimant prior to the date of recordation of the mortgage or deed of ~~trust for the benefit of one who is not an affiliate, relative, or insider of the owner.~~ trust.

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

...."
SECTION 3. G.S. 44A-19(e) reads as rewritten:
"§ 44A-19. Notice of claim of lien upon funds.

...
 (e) Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real

1 property, except a notice of a claim of lien upon funds may be filed with the clerk of superior
2 court under either of the following circumstances:

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

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

9 **"§ 44A-20. Duties and liability of obligor.**

10 ...

11 (d) If the obligor is an owner of the property being improved, the lien claimant shall be
12 entitled to a claim of lien upon real property upon the interest of the obligor in the real property
13 to the extent of the owner's personal liability under subsection (b) of this section, which claim
14 of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through
15 G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and
16 subject to the same filing requirements and periods of limitation applicable to the contractor.
17 The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon ~~the~~
18 ~~filing of the claim of lien on real property pursuant to G.S. 44A-12.~~satisfaction of those
19 requirements set forth in G.S. 44A-11. A lien waiver signed by the contractor prior to the
20 ~~commencement of an action to enforce a perfected claim of lien on real property granted under~~
21 ~~G.S. 44A-23~~occurrence of all of the actions specified in G.S. 44A-23(a1) and
22 G.S. 44A-23(b)(5) waives the subcontractor's right to enforce the contractor's claim of lien on
23 real property, but does not affect the subcontractor's right to a claim of lien on funds or the
24 subcontractor's right to a claim of lien on real property allowed under this subsection. The
25 claim of lien on real property as provided under this subsection shall be in the form set out in
26 G.S. 44A-12(c) and shall contain, in addition, a copy of the notice of claim of lien upon funds
27 given pursuant to G.S. 44A-19 as an exhibit together with proof of service thereof by affidavit,
28 and shall state the grounds the lien claimant has to believe that the obligor is personally liable
29 for the debt under subsection (b) of this section."

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

31 **"§ 44A-23. (Effective April 1, 2013) Contractor's claim of lien on real property;**
32 **perfection of subrogation rights of subcontractor.**

33 (a) First tier subcontractor. – A first tier subcontractor may, to the extent of its claim,
34 enforce the claim of lien on real property of the contractor created by Part 1 of this Article. The
35 manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of
36 lien on real property is perfected as of the time set forth in G.S. 44A-10 upon satisfaction of
37 those requirements set forth in G.S. 44A-11. ~~filing of the claim of lien on real property pursuant~~
38 ~~to G.S. 44A-12.~~ ~~When completing the claim of lien on real property form, the subcontractor~~
39 ~~may use as the date upon which labor or materials were first or last furnished on the real~~
40 ~~property either the date of the first or last furnishing of labor or materials on the real property~~
41 ~~by the subcontractor making the claim or the date of the first or last furnishing of labor or~~
42 ~~materials on the real property by the contractor through which the claim of lien on real property~~
43 ~~is being asserted.~~

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

- 46 (1) The subcontractor has given notice to the lien agent, if any, designated by
47 the owner, pursuant to G.S. 44A-11.2.
- 48 (2) The subcontractor has served a notice of claim of lien upon funds upon the
49 owner pursuant to G.S. 44A-19(d).

- 1 (3) The subcontractor has delivered a copy of the notice of claim of lien upon
2 funds served upon the owner to the lien agent, if any, designated by the
3 owner, by any method authorized in G.S. 44A-11.2(f).
4 ...

5 (d) When completing the claim of lien on real property form to perfect the contractor's
6 claim of lien on real property, a first, second, or third tier subcontractor may use as the date
7 upon which labor or materials were first or last furnished on the real property either any date on
8 or after the date of the first furnishing of labor or materials on the real property, or any date on
9 or before the date of the last furnishing of labor or materials on the real property by the
10 subcontractor making the claim, or any date on or after the date of the first furnishing of labor
11 or materials on the real property, or any date on or before the date of the last furnishing of labor
12 or materials on the real property by the contractor through which the claim of lien on real
13 property is being asserted."

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

15 "**§ 44A-27. Actions on payment bonds; service of notice.**

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

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

34 "**§ 58-26-45. (Effective April 1, 2013) Registration as a lien agent.**

35 ...
36 (b) Upon receipt of the notice of designation by the owner pursuant to G.S. 44A-11.1, a
37 lien agent shall have the duty to do all of the following:

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

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

- 49 a. An owner of the improved property.
50 b. A title insurance company or title insurance agency issuing a policy
51 of title insurance on the improved property.

- 1 c. A contracted purchaser of the improved property.
- 2 d. A potential lien claimant.
- 3 e. A closing attorney, lender, or settlement agent as defined in
- 4 G.S. 45A-3(15) involved in a transaction involving the improved
- 5 property.

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

10 ...

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

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

18 **SECTION 8.** This act becomes effective April 1, 2013, and applies to
19 improvements to real property affected hereby for which the first furnishing of labor or
20 materials at the site of the improvements is on or after that date.