

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1411*

Short Title: Amend N.C. Lien Law.

(Public)

Sponsors: Senators Hartsell; and Blackmon.

Referred to: Judiciary II.

May 25, 1994

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES REGARDING LIENS ON REAL PROPERTY AND TO AMEND AND MAKE PERMANENT THE LAW REGARDING ATTORNEYS' FEES IN ACTIONS RELATING TO LIENS ON REAL PROPERTY AND PAYMENT AND PERFORMANCE BONDS, 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 architects, engineers, land surveyors and landscape~~

1 ~~architects registered under Chapter 83A, 89A or 89C of the General~~
2 ~~Statutes.~~

3 (2) ~~'Improvement' means all or any part of any building, structure,~~
4 ~~erection, alteration, demolition, excavation, clearing, grading, filling,~~
5 ~~or 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~~
8 ~~improved and for whom an improvement is made and who ordered the~~
9 ~~improvement to be made. "Owner" includes successors in interest of~~
10 ~~the 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
18 contractor 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
21 any 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
24 to perform any labor upon such improvements, and shall also mean
25 and include any design or other professional or skilled services
26 furnished by architects, engineers, land surveyors, and landscape
27 architects registered under Chapter 83A, 89A or 89C of the General
28 Statutes, and rental of equipment directly utilized on the real property
29 in making the improvement.

30 (4) 'Improvement' means all or any part of any building, structure,
31 erection, alteration, demolition, excavation, clearing, grading, filling,
32 or 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.

43 (8) 'Lienor' means a person who has either a lien on real property or a lien
44 on funds or both under this Article.

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

25 **"§ 44A-7.1. Waiver, release, or subordination of any lien on real property.**

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

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

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

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

38 **"§ 44A-7.2. Waiver, release, or subordination of any lien on funds ineffective;**
39 **compromise or settlement.**

40 A waiver, release, or subordination of a lien on funds prior to receipt of full payment
41 by the waiving, releasing, or subordinating party is against public policy and is
42 unenforceable. This section shall not prevent parties from resolving by compromise or
43 settlement the amount of the claim giving rise to a lien on funds.

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

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

4 **"§ 44A-7.4. Applicability of lien on funds to public contracts.**

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

10 **"§ 44A-7.5. Agency.**

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

13 **"§ 44A-7.6. Acknowledgment not required.**

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

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

18 **"§ 44A-8. ~~Mechanics', laborers' and materialmen's lien; persons~~ Persons entitled**
19 **to ~~lien.~~ lien on real property.**

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

26 **"§ 44A-9. ~~Extent of lien.~~ lien on real property.**

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

37 **"§ 44Ai ~~Liens granted by this Article shall relate to and take effect from the time of~~**
38 **~~the first furnishing of labor or materials at the site of the improvement~~**
39 **~~by the person claiming the lien.~~**

40 **"§ 44A-10.1. Priority of contractor's lien on real property.**

41 (a) General Priority. – Except as provided in subsection (b) of this section, the

42 following rules apply to determining the priority of a contractor's lien on real property:
43 (1) If a contractor's lien on real property is filed while a notice of
44 commencement is effective as to the improvement in connection with

1 which the contractor's lien on real property arises, the priority of the
2 contractor's lien on real property is determined as of the time the notice
3 of commencement is recorded.

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

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

15 **"§ 44A-10.2. Notice of commencement; recording.**

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

- 19 (1) A description sufficient to identify the real property being or intended
20 to be improved;
- 21 (2) The name, address, and interest in the real property of the owner;
- 22 (3) The name and address of the record owner (if different from the owner
23 named pursuant to subdivision (2) of this subsection);
- 24 (4) The name and address of the contractor or contractors; and
- 25 (5) The duration of the notice of commencement.

26 The following form shall be sufficient:

27
28 **'NOTICE OF COMMENCEMENT, OWNER RECORDING**

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

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

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

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43 3. The name and address of the record owner (if different from the owner
44 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).....'

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

1 (d) A notice of commencement recorded by an owner may state a duration of any
2 period not in excess of three years after it is recorded, but if the duration stated is less
3 than six months, the duration of the notice is six months after it is recorded. If no
4 duration is stated, the duration of the notice is one year after it is recorded. The duration
5 of a notice of commencement recorded by a lienor is one year after it is recorded, and
6 any different duration stated in the notice is not effective.

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

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

19 (g) The notice of commencement shall be recorded in the office of the register of
20 deeds in each county where the improvement or any part of the improvement is located.
21 The register of deeds shall index the notice of commencement in the real property
22 records under the name of the record owner of the real property at the time the notice is
23 recorded, as grantor, and under the names of the contractor or contractors named in the
24 notice, as grantee.

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

27 **"§ 44A-10.3. Termination of notice of commencement; request for notice.**

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

31 (1) Recording, in the office where the notice of commencement was
32 recorded, a notice of termination denominated 'termination of notice of
33 commencement' and containing:

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

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

38 c. A statement of the effective date of the notice of termination,
39 which may not be earlier than 30 days after the notice of
40 termination is recorded; and

41 d. If the notice of termination is intended to apply only to a
42 portion of the real property subject to the notice of
43 commencement, a statement of that fact and a description of the

1 portion of the real property to which the notice of termination
2 applies; and

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

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

23
24 **'REQUEST FOR NOTICE OF TERMINATION**
25 **OF NOTICE OF COMMENCEMENT**

26
27 'The undersigned requests a copy of any Notice of Termination recorded with
28 respect to the Notice of Commencement recorded in Book at Page
29 County Registry. The copy of the Notice of Termination shall be sent to
30 the undersigned at the address indicated.

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32
33 **NAME OF PARTY REQUESTING COPY**

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36 **STREET ADDRESS OR POST OFFICE BOX NUMBER**

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39 **CITY, STATE, AND ZIP CODE'**

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41 **"§ 44A-11. Perfecting liens-~~a lien on real property.~~**

42 Liens granted by this Article shall be-~~Upon filing a lien on real property pursuant to~~
43 G.S. 44A-12, the lien on real property is perfected as of the time set forth in G.S. 44A-10

1 44A-10.1 upon filing of claim of lien pursuant to G.S. 44A-12 and may be enforced
2 pursuant to G.S. 44A-13.

3 **"§ 44A-12. Filing claim of lien, a lien on real property.**

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

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

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

19
20 **CLAIM OF LIEN 'LIEN ON REAL PROPERTY**

21 'PLEASE TAKE NOTICE that the lienor, being a contractor as defined by G.S.
22 44A-7 or a subcontractor asserting rights under G.S. 44A-18, claims a lien on the real
23 property described below:

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

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28 (2) Name and address of the record owner of the real property claimed to
29 be subject to the lien on real property at the time the ~~claim of lien on~~
30 real property is filed:

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

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42 (4) Name and address of the ~~person party with whom the claimant lienor~~
43 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:

 - (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~~ claim of lien on real property filed under this Article may not be amended. A ~~claim of lien~~ claim of lien may be cancelled by a claimant or his authorized agent or attorney and a new ~~claim of lien~~ 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 contract. Any subsequent lien on real property shall be treated as a separate filing for purposes of priority and computation of periods of filing and enforcement of a lien on real property.

(e) Notice of Assignment of Claim of Lien-Lien on Real Property. – When a ~~claim of lien on real property~~ claim of lien on real property has been filed, it may be assigned of record by the ~~lien claimant~~

1 lienor in a writing filed with the clerk of superior court who shall note said the
2 assignment in the margin of the judgment docket containing the claim of lien- lien on real
3 property. Thereafter the assignee becomes the lien claimant lienor of record. In order for
4 the assignment to be effective against the owner, the owner shall receive actual notice of
5 the assignment.

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

12 **"§ 44A-13. Action to enforce lien- lien on real property.**

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

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

36 (c) ~~Notice of Action. — Unless the action enforcing the lien created by this Article~~
37 ~~is instituted in the county in which the lien is filed, in order for the sale under the~~
38 ~~provisions of G.S. 44A-14(a) to pass all title and interest of the owner to the purchaser~~
39 ~~good against all claims or interests recorded, filed or arising after the first furnishing of~~
40 ~~labor or materials at the site of the improvement by the person claiming the lien, a/ A~~
41 ~~notice of lis pendens shall be filed in each county in which the real property subject to~~
42 ~~the lien on real property is located/ located, except the county in which the action is~~
43 ~~commenced. The notice of **lis pendens** shall be filed within the time provided in~~
44 ~~subsection (a) of this section for the commencement of the action by the lienor. within~~

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

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

16 (a) Execution Sale; Effect of Sale. – Except as provided in subsection (b) of this
17 section, sales under this Article and distribution of proceeds thereof shall be made in
18 accordance with the execution sale provisions set out in G.S. 1-339.41 through 1-
19 339.76. The sale of real property to satisfy a lien granted by this Article on real property
20 shall pass all title and interest of the owner to the purchaser, good against all claims or
21 interests recorded, filed or arising after the first furnishing of labor or materials at the site of
22 the improvement by the person claiming a lien. against which the lien on real property has
23 priority under G.S. 44A-10.1, 44A-18.1, or 44A-20.1.

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

37 **"§ 44A-15. Attachment available to lien claimant-lienor.**

38 In addition to other grounds for attachment, in all cases where the owner removes or
39 attempts or threatens to remove an improvement from real property subject to a lien
40 under this Article, on real property, without the written permission of the lien claimant
41 lienor or with the intent to deprive the lien claimant-lienor of his lien, the lien on real
42 property, the remedy of attachment of the property subject to the lien on real property
43 shall be available to the lien claimant-lienor or any other person.

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

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

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

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

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

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

28 (4) By filing in the office of the clerk of superior court the ~~The~~ original or a
29 certified copy of a final judgment or decree of a court of competent
30 jurisdiction showing that the lienor's action by the claimant to enforce
31 the lien on real property has been dismissed with prejudice or
32 otherwise finally determined adversely to the claimant. ~~lienor,~~ is filed
33 with the clerk of superior court;

34 (5) Whenever a ~~A~~ sum equal to one and one-fourth times the principal
35 amount ~~of~~ stated in the lien on real property, which shall be applied to
36 the payment finally determined to be due, ~~or liens claimed~~ is deposited
37 with the clerk of superior court, to be applied to the payment finally
38 determined to be due, whereupon the clerk of superior court shall cancel the
39 lien or liens of record. ~~court;~~ or

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

1 the clerk of superior court shall cancel the lien or liens of record. superior
 2 court.

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

7 "§ 44A ~~Unless the context otherwise requires in this Article:~~

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

19 **"§ 44A-18. Grant of lien; subrogation; perfection. Subcontractors' liens; perfection;**
 20 **enforcement.**

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

23 (1) First Tier Subcontractors.

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

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

39 (2) Second Tier Subcontractors.

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

1 tier subcontractor ~~worked or~~ furnished labor, services, or
2 materials. A second tier subcontractor, to the extent of his lien
3 provided in this subdivision, shall also be entitled to be subrogated to
4 the lien of the first tier subcontractor with whom he dealt provided
5 for in subdivision (1) and shall be entitled to perfect it by notice to
6 the extent of his claim.

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

18 c. A second tier subcontractor, to the extent of that subcontractor's
19 lien on funds provided in G.S. 44A-18(2)a., upon compliance
20 with subdivision (7) of this section, may perfect and enforce the
21 lien on real property that the first tier subcontractor with whom
22 the second tier subcontractor dealt may enforce under G.S.
23 44A-18(1)b. The second tier subcontractor's lien on real
24 property under this sub-subdivision shall not exceed in amount
25 the least of (i) the lien on funds provided to the second tier
26 subcontractor by G.S. 44A-18(2)a.; (ii) the lien on funds
27 provided to the first tier subcontractor by G.S. 44A-18(1)a.; or
28 (iii) the amount of the contractor's lien on real property
29 provided by G.S. 44A-8.

30 (3) Third Tier Subcontractors.

31 a. A third tier subcontractor ~~who furnished labor or materials at the~~
32 ~~site of the~~ shall be entitled to a lien ~~upon~~ on funds ~~which~~ that are
33 owed or become owed to the second tier subcontractor with
34 whom the third tier subcontractor dealt and which arise out of for
35 the improvement on which the third tier subcontractor ~~worked or~~
36 furnished labor, services, or materials. A third tier subcontractor,
37 to the extent of his lien provided in this subdivision, shall also be
38 entitled to be subrogated to the lien of the second tier subcontractor
39 with whom he dealt and to the lien of the first tier subcontractor with
40 whom the second tier subcontractor dealt to the extent that the
41 second tier subcontractor is entitled to be subrogated thereto, and in
42 either case shall be entitled to perfect the same by notice to the extent
43 of his claim.

44 b. A third tier subcontractor, to the extent of that subcontractor's
45 lien on funds provided in G.S. 44A-18(3)a., upon compliance

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

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

23 d. A third tier subcontractor, to the extent of that subcontractor's
 24 lien on funds provided in G.S. 44A-18(3)a., upon compliance
 25 with subdivision (7) of this section, may perfect and enforce the
 26 lien on real property that the second tier subcontractor with
 27 whom the third tier subcontractor dealt may enforce under G.S.
 28 44A-18(2)c. The third tier subcontractor's lien on real property
 29 under this sub-subdivision shall not exceed in amount the least
 30 of (i) the lien on funds provided to the third tier subcontractor
 31 by G.S. 44A-18(3)a.; (ii) the lien on funds provided to the
 32 second tier subcontractor by G.S. 44A-18(2)a.; (iii) the lien on
 33 funds provided to the first tier subcontractor by G.S. 44A-
 34 18(1)a.; or (iv) the amount of the contractor's lien on real
 35 property provided by G.S. 44A-8.

36 (4) Remote Tier Subcontractors. – Subcontractors more remote than the
 37 third tier who ~~furnished labor or material at the site of the improvement~~
 38 improve real property shall be entitled to a lien ~~upon~~ on funds which
 39 that are owed or become owed to the person with whom ~~they~~ the
 40 remote tier subcontractors dealt and ~~which arise out of for~~ the
 41 improvement on which ~~they~~ the remote tier subcontractors furnished
 42 labor ~~labor, services, or material, but such~~ the remote tier subcontractor
 43 subcontractors shall not be entitled to ~~subrogation to enforce~~ the rights
 44 liens of other persons.

- 1 (5) Amounts Secured by Lien on Funds. —~~The liens~~ A lien granted on funds
2 under this section shall secure amounts earned by the ~~lien claimant~~
3 lienor as a result of ~~his~~ having furnished ~~labor~~ labor, services, or
4 materials at the site of the improvement under the contract to improve
5 real property, whether or not such amounts are due and whether or not
6 performance or delivery is ~~complete~~ complete when notice is given to
7 the obligor.
- 8 (6) Perfection and Enforcement of Lien on Funds. — A lien ~~upon~~ on funds
9 granted under this section is ~~and~~ all rights to enforce another's lien on
10 funds are perfected upon the giving of notice in writing to the ~~obligor~~
11 any obligor against whom the lien is asserted as provided in G.S. 44A-
12 19 and shall be effective upon the obligor's receipt of the notice. The
13 subrogation rights of a first, second, or third tier subcontractor to the lien of
14 the contractor created by Part 1 of Article 2 of this Chapter are perfected as
15 provided in G.S. 44A-23. A lien on funds is enforced by a civil action
16 and is subject to the statute of limitations in G.S. 1-52(2).
- 17 (7) Perfection and Enforcement of a Lien on Real Property. — To perfect a
18 lien on real property, the subcontractor shall file in the office of the
19 clerk of superior court a lien on real property prepared in accordance
20 with G.S. 44A-12 with a copy of the subcontractor's lien on funds
21 prepared in accordance with G.S. 44A-19 and a certificate of service
22 substantially as required by G.S. 44A-19(d). Alternatively, the
23 subcontractor may combine the lien on real property with the lien on
24 funds in one form if the form contains the information required in G.S.
25 44A-12 and G.S. 44A-19 and includes a certificate of service
26 substantially as required by G.S. 44A-19(d). The lien on real property
27 under this subdivision may be filed at any time after the
28 subcontractor's contract for the improvement of real property is made
29 but not later than 120 days after the last furnishing of labor, services,
30 or materials at the site of the improvement pursuant to the contractor's
31 contract. The action to enforce a lien on real property under this
32 subdivision shall be commenced not later than 180 days from the date
33 of the filing of the lien on real property by the subcontractor under this
34 subdivision. If an action is commenced prior to the time of the
35 maturity of the owner's obligation to pay the contractor, the court,
36 upon motion and hearing, shall order that the action be stayed until the
37 maturity of the owner's obligation. The priority of the lien on real
38 property enforced by the subcontractor is governed by G.S. 44A-18.1.
- 39 (8) No Prejudice to Subcontractor's Rights After Filing. — Upon the filing
40 of a lien on real property by a subcontractor, no waiver, release, or
41 subordination by an obligor nor any payment to an obligor shall be
42 effective to prejudice the filing subcontractor's lien on real property
43 without that subcontractor's written consent.

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

"§ 44A-18.1. Priority of a subcontractor's lien on real property by virtue of asserting the 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 subcontractor's lien on real property pursuant to G.S. 44A-18:

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

(b) Priority Against a Subsequent Purchaser That is a Protected Party. – Whether or not a notice of commencement has been filed and whether or not any other contractor's or any other subcontractor's lien on real property has been filed under this Article, in order for a subcontractor's lien on real property pursuant to G.S. 44A-18 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 subcontractor'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-19. Notice to obligor.

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

- (1) The name and address of the person claiming the ~~lien,~~ lien on funds(lienor);
- (2) A general description of the real property ~~improved,~~ improved;
- (3) The name and address of the person with whom the ~~lien claimant~~ lienor contracted to improve real ~~property,~~ property;
- (4) The name and address of the owner and each ~~person~~ contractor or subcontractor against or through whom ~~subrogation rights are claimed,~~ the lienor makes this claim;
- (5) A general description of the ~~lienor's contract and the person against whose interest the lien is claimed,~~ contract; and
- (6) The amount claimed by the ~~lien claimant~~ lienor under ~~his~~ the lienor's contract.

(b) All notices of claims of liens on funds given to obligors by first, second or third tier subcontractors ~~must~~ shall be given using a form substantially as follows:

**NOTICE OF CLAIM OF LIEN BY
FIRST, SECOND OR THIRD TIER SUBCONTRACTOR
'SUBCONTRACTOR'S LIEN ON FUNDS**

'PLEASE TAKE NOTICE that the lienor claims a lien on funds owed to the contractor and to each subcontractor against or through whom this claim is made. Upon receipt of this lien on funds you may not make any further payments to any of these parties unless you retain from those payments an amount sufficient to satisfy this lien on funds. Failure to withhold sums as required may result in direct liability to the lienor.'

To:

1. _____, owner of property involved.

(Name and address)

2. _____, general contractor.

(Name and address)

3. _____, first tier subcontractor
against or through
whom ~~subrogation is claimed,~~
lienor claims, if any.

(Name and address)

4. _____, second tier subcontractor
against or through whom
~~subrogation is claimed,~~
lienor claims, if any.

(Name and address)

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:

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 ~~shall~~ must 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:

The amount of lien on funds claimed pursuant to the above
described 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 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:

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

Lienor

1
2 By:(Signature).....

3
4
5 (Address) (Address)'
6

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

13 'STATE OF NORTH CAROLINA
14 'COUNTY OF

15
16 'On this day of, 19....., I,(name), being the (title or
17 capacity of signor), of, lienor, served a copy of the foregoing
18 Subcontractor's Lien on Funds, upon (name of obligor) by
19 (hand delivery, certified mail, or in any other manner authorized by the North Carolina
20 Rules of Civil Procedure).

21
22(signature).....'
23

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

26 "**§ 44A-20. Duties and liability of obligor.**

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

32 (b) ~~If, after the receipt of the notice to the obligor, the obligor shall make further~~
33 ~~payments to a contractor or subcontractor against whose interest the lien or liens are~~
34 ~~claimed, the lien shall continue upon the funds in the hands of the contractor or~~
35 ~~subcontractor who received the payment, and in addition the obligor shall be personally~~
36 ~~liable to the person or persons entitled to liens up to the amount of such wrongful~~
37 ~~payments, not exceeding the total claims with respect to which the notice was received~~
38 ~~prior to payment.~~

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

42 (b2) If, after receipt of the lien on funds, the obligor makes further payment to a
43 contractor or subcontractor against whose interest the lien or liens on funds are claimed
44 without complying with subsection (a) of this section, the lien on funds shall continue

1 upon the funds in the hands of the contractor or subcontractor who received the
2 payment.

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

6 (d) If the obligor is an owner of the property being improved, the ~~lien claimant~~
7 ~~shall be~~ lienor is entitled to a lien ~~upon the interest on real property of the obligor in the~~
8 ~~real property~~ to the extent of the owner's personal direct liability under subsection (b),
9 ~~which lien shall be enforced only in the manner set forth in G.S. 44A-7 through 44A-16 and~~
10 ~~which lien shall be entitled to the same priorities and subject to the same filing requirements~~
11 ~~and periods of limitation applicable to the contractor. The lien is perfected as of the time set~~
12 ~~forth in G.S. 44A-10 upon filing of claim of lien pursuant to G.S. 44A-12. (b1) of this section.~~
13 The lien on real property under this subsection may be filed at any time after the
14 subcontractor's contract for the improvement of real property is made but not later than
15 120 days after the last furnishing of labor, services, or materials at the site of the
16 improvement pursuant to the contractor's contract. The claim of lien on real property
17 shall be in the form set out in G.S. 44A-12(c) and shall contain, include, in addition, a
18 copy of the notice-subcontractor's lien on funds given pursuant to G.S. 44A-19 as an
19 exhibit together with proof a certificate of service substantially in the form specified by
20 G.S. 44A-19(d) thereof by affidavit, and shall state the grounds the lien claimant has to
21 believe that the obligor is personally liable for the debt under subsection (b), and shall include
22 the information for subcontractors required by G.S. 44A-12(c)(7). The action to enforce
23 a lien on real property under this subsection shall be commenced not later than 180 days
24 from the date of the filing of the lien on real property by the subcontractor under this
25 subsection. The priority of a subcontractor's direct lien on real property pursuant to this
26 section is provided by G.S. 44A-20.1.

27 **"§ 44A-20.1. Priority of a subcontractor's direct liability lien on real property.**

28 The priority of a subcontractor's lien on real property arising pursuant to G.S. 44A-
29 20(d) shall be governed by G.S. 44A-10.1, and all references in G.S. 44A-10.1 to
30 'contractor's lien on real property' shall be interpreted to mean 'subcontractor's lien on
31 real property'.

32 **"§ 44A-21. Pro rata payments.**

33 In the event that the funds in the hands of the obligor and the obligor's ~~personal direct~~
34 liability, if any, under ~~the previous section G.S. 44A-20,~~ are less than the principal
35 amount and interest of valid lien claims liens on funds that have been filed with received
36 by the obligor under this Article Part, the parties entitled to liens on funds shall share
37 the funds on a pro rata basis. The principal amount of valid liens shall be paid first,
38 without interest being considered on the proration. Any remaining funds shall be
39 prorated among the valid lienors on the basis of the remaining outstanding lien balance
40 due each.

41 **"§ 44A-22. Priority of liens. liens on funds.**

42 Liens on funds perfected under this ~~Article Part~~ have priority over all other interests
43 or claims theretofore or thereafter created or suffered in the funds by the person against
44 whose interest the lien on funds is ~~asserted, served,~~ including, but not limited to, liens

1 arising from garnishment, attachment, levy, judgment, assignments, security interests,
2 and any other type of transfer, whether voluntary or involuntary. Any security interest,
3 whether or not perfected, granted by the person against whose interest the lien on funds
4 is served, any lien of a judgment creditor with levy of attachment or garnishment of the
5 interest of the person against whom the lien on funds is served, and the interest of any
6 purchaser for value, with or without notice, from the person against whom the lien on
7 funds is served shall be inferior to the lien on funds to the extent that funds exist in the
8 hands of the obligor at the time of service of the lien on funds. Any person who
9 receives payment from an obligor ~~in bad faith~~ with knowledge of a ~~claim of lien on funds~~
10 shall take such payment subject to the ~~claim of lien~~ lien on funds.

11 **~~"§ 44A-23. Contractor's lien; perfection of subrogation rights of subcontractor.~~**

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

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

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

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

34 ii. ~~After the posting and filing of a signed Notice of Contract and~~
35 ~~the service of a signed Notice of Subcontract, the contractor~~
36 ~~serves upon the second or third tier subcontractor, within five~~
37 ~~days following each subsequent payment, by the same means of~~
38 ~~service as described in G.S. 44A-19(d), the written notice of~~
39 ~~payment setting forth the date of payment and the period for~~
40 ~~which payment is made as requested in the Notice of~~
41 ~~Subcontract form set forth herein.~~

42 (2) ~~The form of the Notice of Contract to be so utilized under this section~~
43 ~~shall be substantially as follows and the fee for filing the same with the~~

1 Clerk of Superior Court shall be the same as charged for filing a Claim
2 of Lien:

3
4 ~~'NOTICE OF CONTRACT~~

5
6 ~~'(1) Name and address of the Contractor:~~

7
8 ~~'(2) Name and address of the owner of the real property at the time this Notice of~~
9 ~~Contract is recorded:~~

10
11 ~~'(3) General description of the real property to be improved (street address, tax~~
12 ~~map lot and block number, reference to recorded instrument, or any other description~~
13 ~~that reasonably identifies the real property):~~

14
15 ~~'(4) Name and address of the person, firm or corporation filing this Notice of~~
16 ~~Contract:~~

17
18 ~~'Dated:~~

19
20 _____
21 _____
22 ~~'Contractor~~

23
24 ~~'Filed this the _____ day of _____, 19_____.~~

25 _____
26 _____
27 ~~Clerk of Superior Court'~~

28 ~~(3) The form of the Notice of Subcontract to be so utilized under this~~
29 ~~section shall be substantially as follows:~~

30 ~~'NOTICE OF SUBCONTRACT~~

31
32 ~~'(1) Name and address of the subcontractor:~~

33
34 ~~'(2) General description of the real property where the labor was performed or the~~
35 ~~material was furnished (street address, tax map lot and block number, reference to~~
36 ~~recorded instrument, or any description that reasonably identifies the real property):~~

37
38 ~~'(3)~~

39 ~~'(i) General description of the subcontractor's contract, including the~~
40 ~~names of the parties thereto:~~

41
42 ~~'(ii) General description of the labor and material performed and furnished~~
43 ~~thereunder:~~

1 ~~'(4) Request is hereby made by the undersigned subcontractor that he be notified~~
2 ~~in writing by the contractor of, and within five days following, each subsequent~~
3 ~~payment by the contractor to the first tier subcontractor for labor performed or material~~
4 ~~furnished at the improved real property within the above descriptions of such in~~
5 ~~paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the~~
6 ~~period for which payment is made.~~

7
8 'Dated:

9
10 _____
11 Subcontractor'

12 (4) ~~The manner of such enforcement shall be as provided by G.S. 44A-7~~
13 ~~through G.S. 44A-16. The lien is perfected as of the time set forth in~~
14 ~~G.S. 44A-10 upon the filing of a Claim of Lien pursuant to G.S. 44A-~~
15 ~~12. Upon the filing of the notice and claim of lien and the~~
16 ~~commencement of the action, no action of the contractor shall be~~
17 ~~effective to prejudice the rights of the second or third tier~~
18 ~~subcontractor without his written consent.~~

19 **"§ 44A-23.1. Assignment of subcontractor's lien on funds.**

20 When a subcontractor's lien on funds has been served, the lien on funds may be
21 assigned by the lienor by a dated, notarized instrument which shall state the assignment.
22 The assignment shall be served upon the same parties as those required under G.S. 44A-
23 19(d) and by the method required by this Article. Thereafter the assignee becomes
24 the lienor.

25 **"PART 3. CRIMINAL SANCTIONS FOR FURNISHING**
26 **A FALSE STATEMENT IN CONNECTION WITH**
27 **IMPROVEMENT TO REAL PROPERTY.**

28 **"§ 44A-24. False statement a misdemeanor.**

29 If any contractor or other person receiving payment from an obligor for an
30 improvement to real property or from a purchaser for a conveyance of real property with
31 improvements shall knowingly furnish to ~~such the~~ obligor, purchaser, or to a lender who
32 obtains a security interest in ~~said the~~ real property, or to a title insurance company
33 insuring title to ~~such the~~ real property, a false written statement of the sums due or
34 claimed to be due for ~~labor~~ labor, services, or material furnished at the site of
35 improvements to ~~such the~~ real property, then ~~such the~~ contractor, subcontractor or other
36 person shall be guilty of a Class 1 misdemeanor. Upon conviction and in the event the
37 court shall grant any defendant a suspended sentence, the court may in its discretion
38 include as a condition of ~~such the~~ suspension a provision that the defendant shall
39 reimburse the party who suffered loss on such conditions as the court shall determine
40 are proper.

41 The elements of the offense herein stated are the furnishing of the false written
42 statement with knowledge that it is false and the subsequent or simultaneous receipt of
43 payment from an obligor or purchaser, and in any prosecution hereunder it shall not be

1 necessary for the State to prove that the obligor, purchaser, lender or title insurance
2 company relied upon the false statement or that any person was injured thereby."

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

4 **"§ 153A-357. Permits.**

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

6 (1) The construction, reconstruction, alteration, repair, movement to
7 another site, removal, or demolition of any building;

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

9 (3) The installation, extension, alteration, or general repair of any heating
10 or cooling equipment system; or

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

13 without first securing from the inspection department with jurisdiction over the site of
14 the work each permit required by the State Building Code and any other State or local
15 law or local ordinance or regulation applicable to the work. A permit shall be in writing
16 and shall contain a provision that the work done shall comply with the State Building
17 Code and all other applicable State and local laws and local ordinances and regulations.
18 No permit may be issued unless the plans and specifications are identified by the name
19 and address of the author thereof; and if the General Statutes of North Carolina require
20 that plans for certain types of work be prepared only by a registered architect or
21 registered engineer, no permit may be issued unless the plans and specifications bear the
22 North Carolina seal of a registered architect or of a registered engineer. If a provision
23 of the General Statutes of North Carolina or of any ordinance requires that work be
24 done by a licensed specialty contractor of any kind, no permit for the work may be
25 issued unless the work is to be performed by such a duly licensed contractor. No permit
26 issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction,
27 installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or
28 less in any single-family residence or farm building unless the work involves: the
29 addition, repair or replacement of load bearing structures; the addition (excluding
30 replacement of same size and capacity) or change in the design of plumbing; the
31 addition, replacement or change in the design of heating, air conditioning, or electrical
32 wiring, devices, appliances, or equipment; the use of materials not permitted by the
33 North Carolina Uniform Residential Building Code; or the addition (excluding
34 replacement of like grade of fire resistance) of roofing. Violation of this section
35 constitutes a Class 1 misdemeanor.

36 (b) No permit shall be issued pursuant to subsection (a) of this section for any
37 land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S.
38 113A-57, unless an erosion control plan has been approved by the Sedimentation
39 Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government
40 pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site
41 of the activity.

42 (c) No permit shall be issued pursuant to subsection (a) of this section unless a
43 copy of the notice of commencement with respect to the work pursuant to G.S. 44A-
44 10.2, with evidence of its recording by the register of deeds in the county where the

1 permit is to be issued, is submitted with the application for the permit. A copy of the
2 notice of commencement and evidence of its recording shall be retained in the file."

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

4 "**§ 160A-417. Permits.**

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

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

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

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

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

13 without first securing from the inspection department with jurisdiction over the site of
14 the work any and all permits required by the State Building Code and any other State or
15 local laws applicable to the work. A permit shall be in writing and shall contain a
16 provision that the work done shall comply with the State Building Code and all other
17 applicable State and local laws. No permits shall be issued unless the plans and
18 specifications are identified by the name and address of the author thereof, and if the
19 General Statutes of North Carolina require that plans for certain types of work be
20 prepared only by a registered architect or registered engineer, no permit shall be issued
21 unless the plans and specifications bear the North Carolina seal of a registered architect
22 or of a registered engineer. When any provision of the General Statutes of North
23 Carolina or of any ordinance requires that work be done by a licensed specialty
24 contractor of any kind, no permit for the work shall be issued unless the work is to be
25 performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C
26 of Chapter 143 shall be required for any construction, installation, repair, replacement,
27 or alteration costing five thousand dollars (\$5,000) or less in any single family residence
28 or farm building unless the work involves: the addition, repair or replacement of load
29 bearing structures; the addition (excluding replacement of same size and capacity) or
30 change in the design of plumbing; the addition, replacement or change in the design of
31 heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use
32 of materials not permitted by the North Carolina Uniform Residential Building Code; or
33 the addition (excluding replacement of like grade of fire resistance) of roofing.
34 Violation of this section shall constitute a Class 1 misdemeanor.

35 (b) No permit shall be issued pursuant to subsection (a) of this section for any
36 land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S.
37 113A-57, unless an erosion control plan has been approved by the Sedimentation
38 Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government
39 pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site
40 of the activity.

41 (c) No permit shall be issued pursuant to subsection (a) of this section unless a
42 copy of the notice of commencement with respect to the work pursuant to G.S. 44A-
43 10.2, with evidence of its recording by the register of deeds in the county where the

1 permit is to be issued, is submitted with the application for the permit. A copy of the
2 notice of commencement and evidence of its recording shall be retained in the file."

3 Sec. 4. G.S. 44A-35 reads as rewritten:

4 **"§ 44A-35. Attorneys' fees.**

5 In any suit brought or defended under the provisions of Article 2 or Article 3 of this
6 Chapter, the presiding judge may allow a reasonable attorneys' fee to the attorney
7 representing the prevailing party. party only where there is privity of contract between
8 the prevailing party and the losing party. For purposes of this section, a claimant under
9 a payment bond shall be deemed to be in privity of contract with the surety. This-The
10 attorneys' fee is to be taxed as part of the court costs and be payable by the losing party
11 upon a finding that there was an unreasonable refusal by the losing party to fully resolve
12 the matter which constituted the basis of the suit or the basis of the defense. For
13 purposes of this section, 'prevailing party' is a party plaintiff or third party plaintiff who
14 obtains a judgment of at least fifty percent (50%) of the monetary amount sought in a
15 claim or is a party defendant or third party defendant against whom a claim is asserted
16 which results in a judgment of less than fifty percent (50%) of the amount sought in the
17 claim defended. Notwithstanding the foregoing, in the event an offer of judgment is
18 served in accordance with G.S. 1A-1, Rule 68, a 'prevailing party' is an offeree who
19 obtains judgment in an amount more favorable than the last offer or is an offeror against
20 whom judgment is rendered in an amount less favorable than the last offer."

21 Sec. 5. Section 4 of Chapter 1010 of the 1991 Session Laws reads as
22 rewritten:

23 "Sec. 4. Section 1 of this act is effective upon ratification and applies to actions
24 filed on or after the date of ratification. Section 2 of this act is effective upon
25 ratification. Section 3 of this act is effective upon ratification and applies to actions
26 filed on or after the date of ~~ratification but before July 1, 1994.~~ ratification."

27 Sec. 6. The Revisor of Statutes shall cause to be printed along with this act
28 all explanatory comments of the drafters of this act as the Revisor may deem
29 appropriate.

30 Sec. 7. Sections 1, 2, and 3 of this act become effective July 1, 1995, and
31 apply to liens on real property filed and liens on funds served on and after July 1, 1995.
32 Claims of lien filed with the clerk of superior court under G.S. 44A-12 prior to July 1,
33 1995, shall be enforced in accordance with the law in effect at the time of filing.
34 Notices of claims of lien served under G.S. 44A-19 prior to July 1, 1995, shall be
35 enforced in accordance with the law in effect at the time of service, including the
36 applicable provisions of G.S. 44A-23. Sections 4 and 5 of this act become effective
37 July 1, 1994. The remainder of this act is effective upon ratification.