

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH50177-MDF-66 (03/14)

Short Title: Mechanics Lien and Bond Law Changes.

(Public)

Sponsors: Representatives Pridgen, Stam, and Martin (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS
3 LIEN AND BOND LAWS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 44A-7 reads as rewritten:

6 "§ 44A-7. Definitions.

7 Unless the context otherwise ~~requires in this Article~~ requires, the following definitions
8 apply in this Article:

9 (1) Contractor. – A person who contracts with an owner to improve real
10 property.

11 (2) First tier subcontractor. – A person who contracts with a contractor to
12 improve real property.

13 ~~(1)(3)~~ "Improve" means to Improve. – To build, effect, alter, repair, or demolish
14 any improvement upon, connected with, or on or beneath the surface of any
15 real property, or to excavate, clear, grade, fill or landscape any real property,
16 or to construct driveways and private roadways, or to furnish materials,
17 including trees and shrubbery, for any of such purposes, or to perform any
18 labor upon such improvements, and shall also mean and include any design
19 or other professional or skilled services furnished by architects, engineers,
20 land surveyors and landscape architects registered under Chapter 83A, 89A
21 or 89C of the General Statutes, off-site design, fabrication, and related labor
22 and materials in connection with noncommodity prefabricated materials,
23 products systems, or equipment customized for the use and benefit of
24 improving particular real property whether delivered to the real property or
25 not, and rental of equipment directly utilized on the real property in making
26 the improvement.

27 ~~(2)(4)~~ "Improvement" means all Improvement. – All or any part of any building,
28 structure, erection, alteration, demolition, excavation, clearing, grading,
29 filling, or landscaping, including trees and shrubbery, driveways, and private
30 roadways, on real property.

31 (5) Obligor. – An owner, contractor, or subcontractor in any tier who owes
32 money to another as a result of the other's partial or total performance of a
33 contract to improve real property.

34 ~~(3)(6)~~ An "owner" is a Owner. – A person who has an interest in the real property
35 improved and for whom an improvement is made and who ordered the



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1 improvement to be made. "Owner" includes successors in interest of the
2 owner and agents of the owner acting within their authority.

3 ~~(4)(7) "Real property" means the Real property. – The real estate that is improved,~~
4 including lands, leaseholds, tenements and hereditaments, and improvements
5 placed thereon.

6 (8) Second tier subcontractor. – A person who contracts with a first tier
7 subcontractor to improve real property.

8 (9) Third tier subcontractor. – A person who contracts with a second tier
9 subcontractor to improve real property."

10 **SECTION 2.** Article 2 of Chapter 44A of the General Statutes is amended by
11 adding three new sections to read:

12 **"§ 44A-9.1. Notice of commencement.**

13 (a) Filing of Notice of Commencement Required. – Prior to commencing to improve
14 any real property, or recommencing completion of any improvement after default or
15 abandonment, an owner, the owner's authorized agent, or a contractor acting pursuant to
16 subdivision (g)(1) of this section, shall file a notice of commencement with the clerk of the
17 superior court for each county in which any part of the real property is located and shall comply
18 with the requirements of subsection (c) of this section. A notice of commencement is:

19 (1) Required regardless of whether or not a payment bond has been given.

20 (2) Effective upon the filing of the notice.

21 (3) Required to be filed for each contractor with whom an owner contracts.

22 (b) Indexing of Notices of Commencement. – The clerk of court shall index a notice of
23 commencement received pursuant to subsection (a) of this section under the name of the owner
24 of the real property listed on the notice of commencement and shall also cross index the notice
25 of commencement under the name of the contractor.

26 (c) Posting and Distribution Requirements. –

27 (1) If a permit is required to be posted for a particular project, the owner or a
28 contractor acting pursuant to subdivision (g)(1) of this section shall post
29 adjacent to the permit on the real property being improved one of the
30 following:

31 a. A copy of the notice of commencement containing the clerk of
32 superior court's stamp showing the date on which it was filed.

33 b. A notarized statement that the notice of commencement has been
34 filed along with a copy of the notice.

35 (2) A contractor shall maintain at the project location multiple copies of the filed
36 notice of commencement and shall distribute a copy to any laborer,
37 subcontractor, or supplier within five days of a request for one.

38 (d) Contents of Notice of Commencement. – A notice of commencement required by
39 subsection (a) of this section shall contain all of the following information:

40 (1) A description sufficient for identification of the real property to be
41 improved. The description shall include the legal description of the real
42 property, which can be by reference to the recorded deed, and shall also
43 include the street address and tax identification number of the real property
44 if available or, if there is no street address available, such additional
45 information as will describe the physical location of the real property to be
46 improved.

47 (2) A general description of the improvement.

48 (3) The name and address of the owner, the owner's interest in the site of the
49 improvement, and the name and address of the fee simple titleholder, if other
50 than the owner.

51 (4) The name and address of the contractor.

1 (5) The signature of the owner or contractor.
2 (e) Form of Notice of Commencement. – A notice of commencement shall be in
3 substantially the following form:

4 Tax Identification No. of Real Property _____

5
6 NOTICE OF COMMENCEMENT

7
8 State of _____

9
10 County of _____

11
12
13 The undersigned hereby gives notice that improvement will be made to certain real
14 property, and, in accordance with Chapter 44A of the General Statutes, the following
15 information is provided in this Notice of Commencement.

16 1. Description of real property: (legal description of the real property and tax identification
17 number and street address if available) _____.

18 2. General description of improvement: _____.

19 3. Owner information: _____.

20 a. Name and address: _____.

21 b. Interest in property: _____.

22 c. Name and address of fee simple titleholder (if other than
23 Owner): _____.

24 4. Contractor information:

25 a. Name and address: _____.

26 b. Contractor's phone number: _____.

27
28 WARNING TO OWNER: A NOTICE OF COMMENCEMENT MUST BE FILED AND
29 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO
30 OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE
31 COMMENCING WORK OR FILING YOUR NOTICE OF COMMENCEMENT.

32
33 _____
34 Owner or Owner's Authorized Officer/Director/Partner/Manager or Contractor

35
36 _____
37 Signatory's Title/Office

38
39 Sworn to and subscribed before me this _____ day of _____, _____.

40
41 _____
42 Notary Public (SEAL)

43 My commission expires: _____

44
45 (f) Filing Notice Does Not Create Lien. – The filing of a notice of commencement
46 pursuant to subsection (a) of this section does not constitute a lien, cloud, or encumbrance on
47 real property but shall constitute constructive notice that claims of lien on real property under
48 this Part may be filed and may take priority as provided in G.S. 44A-10. The posting of a copy
49 of a notice of commencement in accordance with subsection (c) of this section shall not
50 constitute a lien, cloud, or encumbrance on real property nor actual or constructive notice of
51 any of these.

1 (g) Effect of Failure to File Notice. – If an owner or the owner's authorized agent fails
2 to file a notice of commencement in accordance with subsection (a) of this section:

3 (1) If the owner refuses to file the notice of commencement after a demand by a
4 contractor, the contractor may perform any of the functions authorized or
5 required of an owner under this section, including completing, filing, posting
6 copies of, and amending a notice of commencement. A contractor acting
7 pursuant to this subdivision shall serve the owner with a copy of a notice of
8 commencement by hand delivery or certified mail, return receipt requested,
9 within 10 days of filing.

10 (2) Notwithstanding any contractual provisions to the contrary, the contractor
11 and any subcontractors are excused from commencing to perform their
12 contractual obligations until the owner or a contractor has filed and posted a
13 notice of commencement in accordance with the requirements of subsection
14 (a) of this section.

15 (h) Amendment of Notice of Commencement. – A notice of commencement may be
16 amended to change erroneous information in the original notice, or to add information that was
17 omitted from the original notice, by filing an amended notice of commencement with the clerk
18 of superior court. The amended notice shall be identified as an amended notice of
19 commencement and must be given the same file number as the original notice of
20 commencement by the clerk of superior court. An owner or a contractor may amend a notice of
21 commencement under this section, but an owner shall not amend a notice filed by a contractor
22 and vice versa. A copy of an amended notice must be served by the owner upon the contractor,
23 or by the contractor upon the owner, and service shall be by any manner authorized by
24 G.S. 44A-19(d). An amendment that changes a contractor shall not be filed pursuant to this
25 subsection. A change in contractor shall be accomplished only by filing a new notice of
26 commencement in accordance with the requirements of subsection (a) of this section.

27 **"§ 44A-9.2. Requirements of permit issuing agencies.**

28 (a) Statement Required on Permit Card. – When a person applies for a permit that is
29 required to be posted for a particular improvement project, the authority issuing the permit shall
30 do both of the following:

31 (1) Print on the face of each issued permit card in no less than 14-point,
32 capitalized, boldfaced type, the following: 'WARNING TO OWNER AND
33 CONTRACTOR: A NOTICE OF COMMENCEMENT MUST BE FILED
34 AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION.'

35 (2) Furnish to the applicant two or more copies of a notice of commencement
36 form that conforms with the requirements of G.S. 44A-9.1.

37 (b) Receipt of Notice of Commencement a Prerequisite for Inspections. – The issuing
38 authority may not perform or approve any inspection related to the project until the applicant
39 files by mail, facsimile, hand delivery, or any other means with the issuing authority a copy of
40 the notice of commencement filed pursuant to G.S. 44A-9.1 containing the clerk of superior
41 court's stamp showing the date on which it was filed. The issuing authority shall verify that the
42 name and address of the owner, the name of the contractor, and the location or address of the
43 property being improved which is contained in the notice of commencement is consistent with
44 the information provided in the permit application. The issuing authority shall provide the
45 information on the notice of commencement to any person upon request.

46 (c) Section Does Not Require Action Prior to Permit Issuance. – This section does not
47 require the filing of a notice of commencement prior to the issuance of a permit.

48 (d) Exceptions. – If a local government requires a separate permit or inspection for
49 installation of temporary electrical service or other temporary utility service, land clearing, or
50 other preliminary site work, that permit may be issued or that inspection may be conducted
51 without providing the issuing authority with a copy of the notice of commencement.

1 (e) No Liability. – A permit issuing authority is not liable in any civil action for the
2 failure to verify that a notice of commencement has been filed as required by subsection (b) of
3 this section.

4 **"§ 44A-9.3. Owner built projects for one to four residential units.**

5 (a) Notice of Owner Built Project Required. – Prior to commencing to improve any real
6 property, or recommencing completion of any improvement after default or abandonment, an
7 owner shall file a notice of owner built project with the clerk of superior court for each county
8 in which any part of the real property is located if both of the following are true:

9 (1) The owner is acting as the general contractor on the project as reflected by
10 the building permit, by contracting directly with the parties that are
11 providing the labor and materials for the project.

12 (2) The project involves the construction of a residence designed to be occupied
13 by one to four families.

14 (b) Indexing of Notices of Owner Built Project. – The clerk of court shall index a notice
15 of owner built project received pursuant to subsection (a) of this section under the name of the
16 owner of the real property listed on the notice of owner built project.

17 (c) Posting and Distribution Requirements. –

18 (1) If a permit is required to be posted for a particular project, the owner shall
19 post adjacent to the permit on the real property being improved one of the
20 following:

21 a. A copy of the notice of owner built project containing the clerk of
22 superior court's stamp showing the date on which it was filed.

23 b. A notarized statement that the notice of owner built project has been
24 filed along with a copy of the notice.

25 (2) The owner shall maintain at the location of the project multiple copies of the
26 filed notice of owner built project and shall distribute a copy to any laborer,
27 subcontractor, or supplier within five days of a request for one.

28 (d) Owner Not Required to File Notice of Commencement. – Notwithstanding
29 G.S. 44A-9.1, for projects subject to this section, the owner shall not be required to file a notice
30 of commencement for a contract entered into by the owner for the provision of labor or
31 materials on any portion of the project.

32 (e) Contractor May File Notice of Commencement. – For projects subject to this
33 section, any party contracting directly with the owner of the real property on a project may file
34 a notice of commencement using the same docket file number as the owner's notice of owner
35 built project before commencing work on the project, and failure to do so shall,
36 notwithstanding G.S. 44A-10, result in their claim of lien on real property taking priority from
37 the date they file their claim of lien on real property, and any subcontractors of such a party's
38 claim of lien on real property shall take priority from the date they file their notice to owner.

39 (f) Contents of Notice of Owner Built Project. – A notice of owner built project
40 required by subsection (a) of this section shall contain all of the following information:

41 (1) A description sufficient for identification of the real property to be
42 improved. The description shall include the legal description of the real
43 property, which can be by reference to the recorded deed, and also should
44 include the street address and tax identification number of the real property
45 if available or, if there is no street address available, such additional
46 information as will describe the physical location of the real property to be
47 improved.

48 (2) A general description of the improvement.

49 (3) The name and address of the owner, the owner's interest in the site of the
50 improvement, and the name and address of the fee simple titleholder, if other
51 than such owner.

(g) A notice of owner built project must be in substantially the following form:

Tax Identification No. _____

NOTICE OF OWNER BUILT PROJECT

(for use when the Owner of the Real Property is also the General Contractor)

State of _____

County of _____

The undersigned hereby gives notice that improvement will be made to certain real property, and, in accordance with Chapter 44A of the General Statutes, the following information is provided in this Notice of Owner Built Project.

1. Description of real property: (legal description of the real property and street address if available) _____.

2. General description of improvement: _____.

3. Owner information: _____.

a. Name and address: _____.

b. Interest in property: _____.

c. Name and address of fee simple titleholder (if other than Owner): _____.

WARNING TO OWNER: A NOTICE OF OWNER BUILT PROJECT MUST BE FILED AND POSTED ON THE JOB SITE BEFORE COMMENCEMENT OF CONSTRUCTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR FILING YOUR NOTICE OF OWNER BUILT PROJECT.

Signature of Owner

Signatory's Title/Office

Sworn to and subscribed before me this _____ day of _____, _____.

Notary Public (SEAL)

My commission expires: _____

(h) Notice Is Effective Upon Filing. – A notice of owner built project is effective upon the filing of the notice with the clerk of superior court.

(i) Owner Signature Required. – The owner must sign a notice of owner built project, and no one else may be permitted to sign in his or her stead.

(j) Filing Notice Does Not Create Lien. – The filing of a notice of owner built project pursuant to subsection (a) of this section does not constitute a lien, cloud, or encumbrance on real property but shall constitute constructive notice that notices of commencement may be filed and that claims of lien on real property under this Part may be filed and may take priority as provided in G.S. 44A-10. The posting of a copy does not constitute a lien, cloud, or encumbrance on real property nor actual or constructive notice of any of them.

1 (k) Amendment of Notice of Owner Built Project. – A notice of owner built project
2 may be amended to change erroneous information in the original notice or add information that
3 was omitted from the original notice. The amended notice shall be identified as an amended
4 notice of owner built project and must be given the same file number as the original notice of
5 owner built project at the clerk of the superior court's office, and a copy of the amended notice
6 must be served by the owner upon each claimant who serves notice to owner or files a notice of
7 commencement before or within 30 days after the date the amended notice is filed, and service
8 shall be by any manner authorized by G.S. 44A-19(d).

9 (l) Effect of Owner's Failure to File Notice. – If an owner or the owner's authorized
10 agent fails to file a notice of owner built project in accordance with subsection (a) of this
11 section:

12 (1) The owner shall lose any defense of failure to serve a notice to owner or
13 notice of claim of lien on funds in any litigation.

14 (2) Until the owner has filed and posted a notice of owner built project, a
15 contractor or subcontractor is excused from commencing to perform
16 contractual obligations, any provisions of the construction contracts to the
17 contrary notwithstanding."

18 **SECTION 3.** G.S. 44A-10 reads as rewritten:

19 **"§ 44A-10. Effective date of claim of lien on real property.**

20 (a) A claim of lien on real property granted by this Article shall relate to and take effect
21 from the time of the first furnishing of labor or materials at the site of the improvement by the
22 person claiming the claim of lien on real property. the earlier of (i) the time that the claimant
23 files its claim of lien on real property with the clerk of superior court; (ii) the time that a notice
24 of commencement is filed with the clerk of superior court; or (iii) for a first, second, or third
25 tier subcontractor, the date of filing its notice to owner if there has been no notice of
26 commencement previously filed for the contractor through which the subcontractor has
27 provided labor and materials for the improvement of the property. In the event there are
28 insufficient proceeds to satisfy all claims of lien on real property, claims of lien shall be
29 satisfied as follows:

30 (1) Claims of lien on real property shall be satisfied in full by the priority of
31 their effective dates.

32 (2) Claims of lien on real property with the same effective date shall be satisfied
33 on a pro rata basis with the other claims of lien on real property with the
34 same effective date.

35 (b) If a notice of commencement or notice to owner is filed no more than five days
36 before the date that a deed or deed of trust is recorded for the same property, all claims of lien
37 on real property which would otherwise relate back to the date and time of the filing of the
38 notice of commencement are conclusively presumed to be inferior in time and right to the
39 rights created by the deed or deed of trust unless a contrary intention is expressed within the
40 terms of the deed or deed of trust."

41 **SECTION 4.** G.S. 44A-12 reads as rewritten:

42 **"§ 44A-12. Filing claim of lien on real property.**

43 (a) Place of Filing. – All claims of lien on real property must be filed in the office of the
44 clerk of superior court in each county where the real property subject to the claim of lien on
45 real property is located. The clerk of superior court shall note the claim of lien on real property
46 on the judgment docket and index the same under the name of the record owner of the real
47 property at the time the claim of lien on real property is filed. An additional copy of the claim
48 of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee
49 for benefit of creditors who obtains legal authority over the real property.

(b) Time of Filing. – Claims of lien on real property may be filed at any time after the maturity of the obligation secured thereby but not later than 120 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien.

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

CLAIM OF LIEN ON REAL PROPERTY

- (1) Name and address of the person claiming the claim of lien on real property:
- (2) Name and address of the record owner of the real property claimed to be subject to the claim of lien on real property at the time the claim of lien on real property is filed:
- (3) Description of the real property upon which the claim of lien on real property is claimed: (Street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)
- (4) Name and address of the person with whom the claimant contracted for the furnishing of labor or materials:
- ~~(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:
- (5b) SUBCONTRACTORS ONLY: Date upon which lien claimant filed its notice to owner with the clerk of court if such notice has been previously filed.
- (6) General description of the labor performed or materials furnished and the amount claimed therefor:

Lien Claimant

Filed this ____ day of ____, ____

Clerk of Superior Court

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

(d) No Amendment of Claim of Lien on Real Property. – A claim of lien on real property may not be amended. A claim of lien on real property may be cancelled by a claimant or the claimant's authorized agent or attorney and a new claim of lien on real property substituted therefor within the time herein provided for original filing.

(e) Notice of Assignment of Claim of Lien on Real Property. – When a claim of lien on real property has been filed, it may be assigned of record by the lien claimant in a writing filed with the clerk of superior court who shall note the assignment in the margin of the judgment docket containing the claim of lien on real property. Thereafter the assignee becomes the lien claimant of record.

~~(f) Waiver of Right to File, Serve, or Claim Liens as Consideration for Contract Against Public Policy. Liens. –~~

- (1) An agreement to waive the right to file a claim of lien on real property granted under this Part, or an agreement to waive the right to serve a notice of claim of lien upon funds granted under Part 2 of this Article, which agreement is in anticipation of and in consideration for the awarding of any contract, either expressed or implied, for the making of an improvement

upon real property under this Article is against public policy and is unenforceable. This section does not prohibit subordination or release of a lien granted under this Part or Part 2 of this Article.

(2) Lien waivers denoted as "partial" lien waivers shall not alter or waive the lien claimant's effective date created by the filing of a notice of commencement, a notice to owner, or by the prior filing of a claim of lien on real property. The sole manner of altering or waiving the effective date is by the lien claimant's executing a document expressly denoted as a "final" lien waiver.

(3) Unless expressly stated on the lien waiver form, the lien waiver shall be construed to be conditional upon the lien claimant's actual receipt of the specified funds.

(4) Lien waivers shall be substantially in the forms set forth below. Other forms may be used but, any substantive provisions that represent variations to the statutory forms affecting the lien rights created by this Article shall be unenforceable.

(g) Partial lien waivers shall be in substantially the following form:

PARTIAL LIEN WAIVER

The undersigned lien claimant, in consideration of the sum of \$ (insert amount of payment), hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(insert description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date specified above nor release claims for retention to become due at a later date nor any other claims expressly identified below:

Claims not released by this waiver:

THIS WAIVER IS / IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED: _____

(Lien Claimant)

By:- _____

(h) Final lien waivers shall be in substantially the following form:

FINAL LIEN WAIVER

The undersigned lien claimant, in consideration of the final payment in the amount of \$ _____ hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date of this lien waiver. Lien claimant, however, does hereby release any and all claims of lien for labor, materials, or services provided on or before the date of this waiver, including, but not exclusively, any amounts that may be deemed retainage. This lien waiver further waives any priority that lien claimant may have as a result of previously filing a Notice to Owner as prescribed by G.S. 44A-17.1. The only claims of lien for previously provided labor, services, or materials which are not hereby released are those claims expressly identified below:

Claims not released by this waiver:

THIS WAIVER IS / IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED: _____

(Lien Claimant)

By: _____ "

SECTION 5. G.S. 44A-17 is repealed.

SECTION 6. Chapter 44A of the General Statutes is amended by adding a new section to read:

"§ 44A-17.1. Subcontractor's notice to owner.

(a) As a prerequisite to asserting a claim of lien on real property under this Article, all subcontractors must serve upon the owner of the real property, by the same means of service as described in G.S. 44A-19(d), and file with the clerk of superior court in each county in which any part of the real property to be improved is located a written notice to owner setting forth all of the following information:

- (1) The name and address of the person serving and filing the notice to owner.
- (2) The name and address of the record owner of the real property at the time the notice to owner is filed.
- (3) A general description of the real property improved sufficient for identification of the real property.
- (4) The name and address of the contractor through which the claimant provided labor or materials.

(5) The name and address of the person with whom they contracted for the improvement of real property.

(6) The nature of the labor, materials, or work furnished or to be furnished to the real property.

(b) All notices to owner must be given using a form substantially as follows:

To:

_____, Owner of real property.

Name and Address

_____, contractor.

Name and Address

General description of real property where labor is to be performed or material furnished:

Name and address of the person with whom the undersigned subcontractor contracted for the improvement of real property:

Nature of the labor materials or work furnished or to be furnished by the undersigned to the real property:

The undersigned subcontractor gives this written Notice to Owner to the Owner of real property pursuant to North Carolina law and Chapter 44A of the General Statutes of North Carolina. This written Notice to Owner is not a Notice of Claim of Lien Upon Funds or a Claim of Lien on Real Property.

Dated: _____, Subcontractor

Address

(c) A subcontractor more remote than the first tier subcontractor must also serve a copy of the notice to owner upon the contractor as a prerequisite to filing, perfecting, and enforcing a claim of lien on real property under this Article.

(d) The notice to owner must be served upon the owner and contractor by the same means of service as described in G.S. 44A-19(d) before the subcontractor claimant commences, or not later than 30 days after the subcontractor claimant commences any furnishing of labor, materials, or equipment upon or for the real property. The notice to owner must also be filed in the office of the clerk of superior court in each county wherein the real property to be improved is located no later than 30 days after the subcontractor claimant commences any furnishing of labor, services, materials, or equipment upon or for the real property. If a notice of commencement has been filed, the notice to owner shall have the same record docket number of the notice of commencement and shall be filed along with the notice of commencement. The fee for filing the notice to owner with the clerk of superior court shall be the same as the fee for filing a claim of lien on real property. The notice to owner must be served and filed and does not give the subcontractor claimant serving the notice to owner any priority over other claimants under this Article.

(e) In the event the notice to owner is not filed and served by the subcontractor claimant as provided for in subsection (d) of this section within 30 days after the subcontractor claimant first commences any furnishing of labor, materials, or equipment, upon or for the real property

1 being improved, subcontractor claimant may still file and serve a notice to owner as provided
2 for in subsection (d) of this section. However, the subcontractor claimant's claim of lien on real
3 property under this Article shall not include or act as a claim of lien on real property for the
4 value of any unpaid labor, materials, or equipment furnished upon or for the real property more
5 than 30 days prior to the filing and service of the notice to owner as provided for in subsection
6 (d) of this section.

7 (f) The serving and filing of a notice to owner does not constitute a claim of lien on real
8 property, nor does it constitute a notice of claim of lien upon funds, but instead provides
9 constructive notice that a claim of lien on real property under Part 2 of this Article may be
10 perfected and may take priority as provided in G.S. 44A-10. The serving and filing of the
11 notice to owner does not dispense with the requirement for perfection of any lien as set forth in
12 this Article. The failure to serve and file the notice to owner is a complete and absolute defense
13 to enforcement of a claim of lien on real property by any person under Part 2 of this Article.

14 (g) A subcontractor, in the absence of a recorded notice of commencement, may rely
15 upon the information contained in the permit application to serve the notice to owner required
16 in subsections (a), (b), and (c) of this section.

17 (h) The clerk of superior court shall index the notice to owner under the name of the
18 record owner of the real property at the time the notice to owner is filed and cross index the
19 notice to owner under the name of any contractor or subcontractor listed in the notice."

20 **SECTION 7.** G.S. 44A-18 reads as rewritten:

21 **"§ 44A-18. Grant of lien upon funds; subrogation; perfection.**

22 ~~Upon compliance with this Article:~~

- 23 (1) A first tier subcontractor who furnished labor, materials, or rental equipment
24 at the site of the improvement shall ~~be entitled to have~~ have a lien upon funds that
25 are owed to the contractor with whom the first tier subcontractor dealt and
26 that arise out of the improvement on which the first tier subcontractor
27 worked or furnished materials.
- 28 (2) A second tier subcontractor who furnished labor, materials, or rental
29 equipment at the site of the improvement shall ~~be entitled to have~~ have a lien upon
30 funds that are owed to the first tier subcontractor with whom the second tier
31 subcontractor dealt and that arise out of the improvement on which the
32 second tier subcontractor worked or furnished materials. A second tier
33 subcontractor, to the extent of the second tier subcontractor's lien provided in
34 this subdivision, shall also be ~~entitled to be~~ entitled to be subrogated to the lien upon funds
35 of the first tier subcontractor with whom the second tier contractor dealt
36 provided for in subdivision (1) of this section and shall ~~be entitled to perfect~~
37 it by service of the notice of claim of lien upon funds to the extent of the
38 claim.
- 39 (3) A third tier subcontractor who furnished labor, materials, or rental
40 equipment at the site of the improvement shall ~~be entitled to have~~ have a lien upon
41 funds that are owed to the second tier subcontractor with whom the third tier
42 subcontractor dealt and that arise out of the improvement on which the third
43 tier subcontractor worked or furnished materials. A third tier subcontractor,
44 to the extent of the third tier subcontractor's lien upon funds provided in this
45 subdivision, shall also ~~be entitled to be~~ be subrogated to the lien upon funds of
46 the second tier subcontractor with whom the third tier contractor dealt and to
47 the lien upon funds of the first tier subcontractor with whom the second tier
48 subcontractor dealt to the extent that the second tier subcontractor is ~~entitled~~
49 ~~to be~~ entitled to be subrogated thereto, and in either case shall ~~be entitled to perfect~~
50 the same by service of the notice of claim of lien upon funds to the extent of the
51 claim.

- 1 (4) Subcontractors more remote than the third tier who furnished labor,
2 materials, or rental equipment at the site of the improvement shall ~~be entitled~~
3 ~~to have~~ a lien upon funds that are owed to the person with whom they dealt
4 and that arise out of the improvement on which they furnished labor,
5 materials, or rental equipment, but such remote tier subcontractor shall not
6 be entitled to subrogation to the rights of other persons.
- 7 (5) The liens upon funds granted under this section shall secure amounts earned
8 by the lien claimant as a result of having furnished labor, materials, or rental
9 equipment at the site of the improvement under the contract to improve real
10 property, including interest at the legal rate provided in G.S. 24-5, whether
11 or not such amounts are due and whether or not performance or delivery is
12 complete. In the event insufficient funds are retained to satisfy all lien
13 claimants, subcontractor lien claimants may recover the interest due under
14 this subdivision on a pro rata basis, but in no event shall interest due under
15 this subdivision increase the liability of the obligor under G.S. 44A-20.
- 16 (6) A lien upon funds granted under this section arises, attaches, and is perfected
17 effective immediately upon the furnishing of labor, materials, or rental
18 equipment at the site of the improvement by a subcontractor. Any lien upon
19 funds granted under this section is perfected upon the giving of notice of
20 claim of lien upon funds in writing to the obligor as provided in G.S. 44A-19
21 and shall be effective upon the obligor's receipt of the notice. The
22 subrogation rights of a first, second, or third tier subcontractor to the claim
23 of lien on real property of the contractor created by Part 1 of Article 2 of this
24 Chapter are perfected as provided in G.S. 44A-23. G.S. 44A-19.
- 25 (7) Until either (i) a lien claimant gives notice of a claim of lien upon funds in
26 writing to the obligor as provided in G.S. 44A-19 or (ii) a bankruptcy
27 petition is filed by or against any contractor or subcontractor against whose
28 interest the lien or liens upon funds is claimed, any contractor or
29 subcontractor against whose interest the lien or liens upon funds is claimed
30 may receive, use, or collect payments thereon and may use such proceeds in
31 the ordinary course of its business.
- 32 (8) A lien upon funds shall have priority as provided in G.S. 44A-22.
- 33 (9) The subrogation rights of a first, second, or third tier subcontractor to the
34 claim of lien on real property of the contractor created by Part 1 of Article 2
35 of this Chapter are perfected as provided in G.S. 44A-23."

36 **SECTION 8.** G.S. 44A-19 reads as rewritten:

37 **"§ 44A-19. Notice of claim of lien upon funds.**

- 38 (a) Notice of a claim of lien upon funds shall set forth all of the following information:
39 (1) The name and address of the person claiming the lien upon funds.
40 (2) A general description of the real property improved.
41 (3) The name and address of the person with whom the lien claimant contracted
42 to improve real property.
43 (4) The name and address of each person against or through whom subrogation
44 rights are claimed.
45 (5) A general description of the contract and the person against whose interest
46 the lien upon funds is claimed.
47 (6) The amount of the lien upon funds claimed by the lien claimant under the
48 contract.
- 49 (b) All notices of claims of liens upon funds by first, second, or third tier subcontractors
50 must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY FIRST, SECOND, OR THIRD TIER SUBCONTRACTOR

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, if any. (Name and address)

4. _____, second tier subcontractor against or through whom subrogation is claimed, if any. (Name and address)

General description of real property ~~where~~ on which labor performed or material furnished:

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

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

\$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated _____

_____, Lien Claimant

(Address)

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

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

To:

_____, person holding funds against which lien (Name and Address)

upon funds is claimed.

General description of real property ~~where~~ on which labor performed or material furnished: _____

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

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

\$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights to which he or she is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated: _____

_____, Lien Claimant

(Address)

(d) Notices of claims of lien upon funds under this section shall be served upon the obligor by personal delivery or in any manner authorized by Rule 4 of the North Carolina Rules of Civil Procedure. ~~A copy of the notice of claim of lien upon funds shall be attached to any claim of lien on real property filed pursuant to G.S. 44A-20(d) or G.S. 44A-23.~~

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

(1) When the notice of claim of lien upon funds is attached to a claim of lien on real property filed pursuant to ~~G.S. 44A-20(d)~~ ~~or~~ G.S. 44A-23. G.S. 44A-20(d).

(2) When the notice of claim of lien upon funds is filed by the obligor for the purpose of discharging the claim of lien upon funds in accordance with G.S. 44A-20(e).

(f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section is not a violation of G.S. 44A-12.1."

SECTION 9. G.S. 44A-20 reads as rewritten:

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

(a) Upon receipt of the notice of claim of lien upon funds provided for in this Article, the obligor shall be under a duty to retain any funds subject to the lien or liens upon funds under this Article up to the total amount of such liens upon funds as to which notices of claims of lien upon funds have been received.

(b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the obligor makes further payments to a contractor or subcontractor against whose interest the lien or liens upon funds are claimed, the lien upon funds shall continue upon ~~the funds~~ any remaining unpaid balances owed and the claimant further shall have a lien in any proceeds thereof in the hands of the contractor or subcontractor who received the payment, and in addition the obligor shall be personally liable to the person or persons entitled to liens upon funds up to the amount of such wrongful payments, not exceeding the total claims with respect to which the notice of claim of lien upon funds was received prior to payment. Provided the obligor has withheld funds from a contractor or subcontractor against whose interest the liens or liens upon funds are claimed in an amount equal to the total aggregate principal amount of the amounts claimed in all notice of claim of liens upon funds served upon the obligor in accordance with G.S. 44A-19 at the time the obligor makes any payment to a contractor or subcontractor against whose interest the lien or liens upon funds are claimed, the obligor shall not incur any personal liability to the person or persons entitled to a lien upon funds for paying out funds in violation of this subsection. The funds withheld by the obligor are not subject to any set-off claims, claims of recoupment, or current or future back charges which the obligor may assert in defense of its obligations to disburse said funds and may not be used for any other purpose until the claim of lien on the funds is satisfied. Said withheld funds shall constitute trust funds for the benefit of those entitled to a lien on said funds created by this Article even if said funds are not segregated in a separate account, and subsequent assignees of the obligor shall take said funds subject to the lien rights created by this Article.

(c) If an obligor makes a payment after receipt of notice of claim of lien on funds and incurs personal liability under subsection (b) of this section, the obligor shall be entitled to reimbursement and indemnification from the party receiving such ~~payment~~ payment and shall be entitled to setoff or recoup such amounts against any obligation that the obligor may otherwise owe to the party receiving such payment. The obligor's right to reimbursement, indemnification, setoff, and recoupment arising out of subsection (b) of this section are, however, subject to the provisions of subsection (b) of this section and shall not reduce the

1 amount of funds otherwise available to be disbursed to those claimants entitled to a lien upon
2 funds.

3 (d) If the obligor is an owner of the property being improved, the lien claimant shall be
4 entitled to a claim of lien upon real property upon the interest of the obligor in the real property
5 to the extent of the owner's personal liability under subsection (b) of this section, which claim
6 of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through
7 G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and
8 subject to the same filing requirements and periods of limitation applicable to the contractor.
9 The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the
10 filing of the claim of lien on real property pursuant to G.S. 44A-12. A lien waiver signed by the
11 contractor prior to filing of the claim of lien on real property waives the subcontractor's right to
12 a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien
13 on funds under this Article. The claim of lien on real property as provided under this subsection
14 shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice
15 of claim of lien upon funds given pursuant to G.S. 44A-19 and the notice to owner given
16 pursuant to G.S. 44A-17.1 as an exhibit together with proof of service thereof by affidavit, and
17 shall state the grounds the lien claimant has to believe that the obligor is personally liable for
18 the debt under subsection (b) of this section.

19 (e) A notice of claim of lien upon funds under G.S. 44A-19 may be filed by the obligor
20 with the clerk of superior court in each county where the real property upon which the filed
21 notice of claim of lien upon funds is located for the purpose of discharging the notice of claim
22 of lien upon funds by any of the methods described in G.S. 44A-16.

23 (f) A bond deposited under this section to discharge a filed notice of claim of lien upon
24 funds shall be effective to discharge any claim of lien on real property filed by the same lien
25 claimant pursuant to subsection (d) of this section or G.S. 44A-23 and shall further be effective
26 to discharge any notices of claims of lien upon funds served by lower tier subcontractors or any
27 claims of lien on real property filed by lower tier subcontractors pursuant to subsection (d) of
28 this section or G.S. 44A-23 claiming through or against the contractor or higher tier
29 subcontractors up to the amount of the bond."

30 **SECTION 10.** G.S. 44A-23 reads as rewritten:

31 **"§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation rights of**
32 **subcontractor.**

33 (a) First tier subcontractor. – A first tier subcontractor, who gives notice ~~of claim of lien~~
34 ~~upon funds to owner~~ as provided in this Article, may, to the extent of ~~this-its~~ claim, enforce the
35 claim of lien on real property of the contractor created by Part 1 of this Article. The manner of
36 such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on
37 real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the claim of lien
38 on real property pursuant to G.S. 44A-12. When completing the claim of lien on real property
39 form, the date upon which labor or materials were last furnished on the real property can be
40 either the date of the last furnishing of labor or materials on the real property by the
41 subcontractor making the claim or the date of last furnishing of labor or materials on the real
42 property by the contractor through which the claim of lien on real property is being asserted.
43 Upon the filing of the claim of lien on real property, with the notice ~~of claim of lien upon funds~~
44 ~~to owner~~ attached, and the commencement of the action, no action of the contractor shall be
45 effective to prejudice the rights of the subcontractor without his written consent. A lien waiver
46 signed by the contractor prior to commencement of the action waives the subcontractor's right
47 to a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien
48 on funds under this Article.

49 (b) Second or third subcontractor. –

50 (1) A second or third tier subcontractor, who gives notice ~~of claim of lien upon~~
51 ~~funds to owner~~ as provided in this Article, may, to the extent of his claim,

enforce the claim of lien on real property of the contractor created by Part 1 of Article 2 of the Chapter except when:

- a. The ~~owner or contractor~~, within 30 days following the date the ~~building permit~~ is issued for the improvement of the real property ~~involved, involved or within 30 days following the date the contractor is awarded the contract for the improvement of the real property involved, whichever is later~~, posts on the property in a visible location adjacent to the posted ~~building permit permit, if a permit is required~~, and files in the office of the clerk of superior court in each county wherein the real property to be improved is located, a completed and signed notice of ~~contract form commencement form in accordance with G.S. 44A-9.1~~ and the second or third tier subcontractor fails to serve upon the contractor a completed and signed notice of ~~subcontract to owner form in accordance with G.S. 44A-17.1~~ by the same means of service as described in G.S. 44A-19(d); or
- b. After the posting and filing of a signed notice of ~~contract commencement~~ and the service upon the contractor of a signed notice of ~~subcontract, to owner~~, the contractor serves upon the second or third tier subcontractor, within five days following each subsequent payment, by the same means of service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the notice of subcontract form set forth herein.

(2) The form of the notice of contract to be so utilized under this section shall be substantially as follows and the fee for filing the same with the clerk of superior court shall be the same as charged for filing a claim of lien on real property:

"NOTICE OF CONTRACT

"(1) Name and address of the Contractor:

"(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:

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

"(4) Name and address of the person, firm or corporation filing this Notice of Contract:

"Dated: _____

"Contractor

"Filed this the _____ day of _____, _____.

Clerk of Superior Court"

(3) The form of the notice of subcontract to be so utilized under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

"(1) Name and address of the subcontractor:

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

"(3)

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

"(ii) ~~General description of the labor and material performed and furnished thereunder:~~

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

"Dated: _____

Subcontractor"

(4) The manner of such enforcement shall be as provided by G.S. 44A-7 through G.S. 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon the filing of a claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real property, with the notice ~~of claim of lien upon funds to owner~~ attached, and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent."

SECTION 11. G.S. 44A-24 reads as rewritten:

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

If any contractor or other person receiving payment from an obligor for an improvement to real property or from a purchaser for a conveyance of real property with improvements shall knowingly furnish to such obligor, purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such real property, then such contractor, subcontractor or other person shall be guilty of a Class 1 ~~misdemeanor~~, misdemeanor and shall be subject to a claim for violation of G.S. 75-1.1 by any obligor, purchaser, lender who obtains a security interest in such property, title insurance company insuring title to such property, or any person who otherwise would be entitled to a claim of lien on real property under this Article and who suffers actual harm as a result of the misrepresentation. In addition, any person who knowingly signs or directs another person to sign such a written statement shall be guilty of a Class 1 misdemeanor and subject to a claim for violation of G.S. 75-1.1. Upon conviction and in the event the court shall grant any defendant a suspended sentence, the court may in its discretion include as a condition of such suspension a provision that the defendant shall reimburse the party who suffered loss on such conditions as the court shall determine are proper.

The elements of the offense herein stated are the furnishing of the false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment from an obligor or ~~purchaser, and in any purchaser by the person signing the document, a person directing another to sign the document, or any person or entity for whom the document was signed.~~ In any criminal prosecution hereunder it shall not be necessary for the State to prove that the obligor, purchaser, lender or title insurance company relied upon the false statement or that any person was injured thereby."

SECTION 12. G.S. 44A-27 reads as rewritten:

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

(a) Subject to the provision of subsection (b) hereof, any claimant who has performed labor or furnished materials in the prosecution of the work required by any contract for which a payment bond has been given pursuant to the provisions of this Article, and who has not been paid in full therefor before the expiration of 90 days after the day on which the claimant performed the last such labor or furnished the last such materials for which he claims payment,

1 may bring an action on such payment bond in his own name, to recover any amount due him
2 for such labor or materials and may prosecute such action to final judgment and have execution
3 on the judgment.

4 (b) Any claimant who has a direct contractual relationship with any subcontractor but
5 has no contractual relationship, express or implied, with the contractor may bring an action on
6 the payment bond only if he has given written notice of claim on payment bond to the
7 contractor within 120 days from the date on which the claimant performed the last of the labor
8 or furnished the last of the materials for which he claims payment, stating with substantial
9 accuracy the amount claimed and the name of the person for whom the work was performed or
10 to whom the material was furnished. The contractor shall furnish a copy of the payment bond
11 required by this Article within seven calendar days in response to a written request served by
12 any claimant in accordance with the provisions of G.S. 44A-27(d). Furthermore, unless the
13 contractor has failed to satisfy its obligation to timely furnish a copy of the payment bond to a
14 claimant upon proper request by the claimant, the claim of such a claimant shall be limited to
15 the labor or materials provided within 30 days prior to the claimant's service, in accordance
16 with subsection (c) of this section, of its written notice of subcontract to the contractor setting
17 forth the following information:

18 (1) The name and address of the person serving the notice of subcontract.

19 (2) A general description of the real property or project improved sufficient for
20 identification of the real property or project.

21 (3) The name and address of the person with whom they contracted for the
22 improvement of real property.

23 (4) The nature of the labor, materials, or work furnished or to be furnished to the
24 real property or project.

25 (c) ~~The notice~~ notices required by subsection (b), above, shall be served by registered
26 or certified mail, postage prepaid, in an envelope addressed to such contractor at any place
27 where his office is regularly maintained for the transaction of business or served in any manner
28 provided by law for the service of summons.

29 (d) The form of the notice of subcontract to be so used under this section shall be
30 substantially as follows:

31 "NOTICE OF SUBCONTRACT

32
33 (1) Name and address of the subcontractor:

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

37 (3)

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

40 (ii) General description of the labor and material performed and furnished
41 thereunder:

42
43 "Dated: _____

44
45 _____
46 Subcontractor "

47 **SECTION 13.** This act becomes effective July 1, 2012, and applies to
48 improvements to real property for which the first permit required to be obtained is obtained on
49 or after that date or, with respect to projects for which no permit is required, applies to
improvement to real property commenced on or after that date.