

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SENATE BILL 42
RATIFIED BILL

AN ACT TO REQUIRE PERSONS FURNISHING LABOR OR MATERIALS IN CONNECTION WITH CERTAIN IMPROVEMENTS TO REAL PROPERTY TO GIVE WRITTEN NOTICE TO THE DESIGNATED LIEN AGENT OF THE OWNER OF THE IMPROVED REAL PROPERTY TO PRESERVE THEIR LIEN RIGHTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-7 is amended by adding new subdivisions to read:

"§ 44A-7. Definitions.

Unless the context otherwise requires in this Article:

- ...
- (2a) Lien agent. – A title insurance company or title insurance agency designated by an owner pursuant to G.S. 44A-11.1.
- ...
- (4a) Inspection department. – Any city or county building inspection department authorized by Chapter 160A or Chapter 153A of the General Statutes.
- ...
- (6a) Potential lien claimant. – Any person entitled to claim a lien for improvements to real property under this Article who is subject to G.S. 44A-11.1."

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

"§ 44A-11.1. Lien agent; designation and duties.

(a) With regard to any improvements to real property to which this Article is applicable for which the costs of the undertaking at the time that the original building permit is issued is thirty thousand dollars \$30,000 or more, the owner shall designate a lien agent no later than the time the owner first contracts with any person to improve the real property. Provided, however, that the owner is not required to designate a lien agent for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that is used by the owner as a residence. The owner shall deliver written notice of designation to its designated lien agent by any method authorized in G.S. 44A-11.2(f), and shall include in its notice the street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property for the improvements to which the lien agent has been designated. Designation of a lien agent pursuant to this section does not make the lien agent an agent of the owner for purposes of receiving a Notice of Claim of Lien upon Funds or for any purpose other than the receipt of notices to the lien agent required under G.S. 44A-11.2.

(b) The lien agent shall be chosen from among the list of registered lien agents maintained by the Department of Insurance pursuant to G.S. 58-26-41.

(c) Upon receipt of written notification of designation by an owner pursuant to subsection (a) of this section, the lien agent shall have the duties as set forth in G.S. 58-26-41(b).

(d) In the event that the lien agent revokes its consent to serve as lien agent or is removed by the owner, or otherwise becomes unable or unwilling to serve before the completion of all improvements to the real property, the owner shall within three business days of notice of such event do all of the following:

- (1) Designate a successor lien agent and provide written notice of designation to the successor lien agent pursuant to subsection (a) of this section.



- (2) Provide the contact information for the successor lien agent to the inspection department that issued any required building permit and to any persons who requested information from the owner relating to the predecessor lien agent.
- (3) Display the contact information for the successor lien agent on the building permit or attachment thereto posted on the improved property or, if no building permit was required, on a sign complying with G.S. 44A-11.2(e).

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

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

"§ 44A-11.2. Identification of lien agent; notice to lien agent; effect of notice.

(a) As used in this section, the term "contact information" shall mean the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1.

(b) Within seven days of receiving a written request by a potential lien claimant by any delivery method specified in subsection (f) of this section, the owner shall provide a notice to the potential lien claimant containing the contact information for the lien agent, by the same delivery method used by the potential lien claimant in making the request. A potential lien claimant making a request pursuant to this subsection who has not furnished labor at the site of the improvements, or who did so prior to the posting of the contact information for the lien agent pursuant to subsection (d) or (e) of this section, shall have no obligation to give notice to the lien agent under this section until the potential lien claimant has received the contact information from the owner.

(c) A contractor or subcontractor for improvements to real property subject to G.S. 44A-11.1 shall, within three business days of contracting with a lower-tier subcontractor who is not required to furnish labor at the site of the improvements, provide the lower-tier subcontractor with a written notice containing the contact information for the lien agent designated by the owner. This notice shall be given pursuant to subsection (f) of this section or may be given by including the lien agent contact information in a written subcontract entered into by, or a written purchase order issued to, the lower-tier subcontractor entitled to the notice required by this subsection. Any contractor or subcontractor who has previously received notice of the lien agent contact information, whether from the building permit, the inspections office, a notice from the owner, contractor, or subcontractor, or by any other means, and who fails to provide the lien agent contact information to the lower-tier subcontractor in the time required under this subsection, shall be liable to the lower-tier subcontractor for any actual damages incurred by the lower-tier subcontractor as a result of the failure to give notice.

(d) For any improvement to real property subject to G.S. 44A-11.1, any building permit issued pursuant to G.S. 160A-417(d) or G.S. 153A-357(e) shall be conspicuously and continuously posted on the property for which the permit is issued until the completion of all construction.

(e) For any improvement to real property subject to G.S. 44A-11.1, a sign disclosing the contact information for the lien agent shall be conspicuously and continuously posted on the property until the completion of all construction if the contact information for the lien agent is not contained in a building permit or attachment thereto posted on the property.

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

- (1) Certified mail, return receipt requested.
- (2) Signature confirmation as provided by the United States Postal Service.
- (3) Physical delivery and obtaining a delivery receipt from the lien agent.
- (4) Facsimile with a facsimile confirmation.

(5) Depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2).

(6) Electronic mail, with delivery receipt.

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

(g) When a lien agent is identified in a contract for improvements to real property consisting of a single-family residence entered into between an owner and a contractor for the improvements to the property, the contractor will be deemed to have met the requirement of notice under subsections (k) and (l) of this section on the date of the lien agent's receipt of the owner's notice of designation. The owner shall provide written notice to the lien agent containing the information pertaining to the contractor required in a notice to lien agent pursuant to subdivisions (1) through (3) of subsection (h) of this section, by any method of delivery authorized in G.S. 44A-11.2(f). The lien agent shall include the contractor in its response to any persons requesting information relating to persons who have given notice to the lien agent pursuant to this section.

(g1) When a lien agent is not identified in a contract for improvements to real property subject to G.S. 44A-11.1 entered into between an owner and a design professional, the design professional will be deemed to have met the requirement of notice under subsections (k) and (l) of this section on the date of the lien agent's receipt of the owner's designation of the lien agent. The owner shall provide written notice to the lien agent containing the information pertaining to the design professional required in a notice to lien agent pursuant to subdivisions (1) through (3) of subsection (h) of this section, by any method of delivery authorized in subsection (f) of this section. The lien agent shall include the design professional in its response to any persons requesting information relating to persons who have given notice to the lien agent pursuant to this section. For purposes of this subsection, the term "design professional" shall mean any architects, engineers, land surveyors, and landscape architects registered under Chapter 83A, 89A, or 89C of the General Statutes.

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

"NOTICE TO LIEN AGENT

(1) Potential lien claimant's name, mailing address, telephone number, fax number (if available), and electronic mailing address (if available):

(2) Name of the party with whom the potential lien claimant has contracted to improve the real property described below:

(3) A description of the real property sufficient to identify the real property, such as the name of the project, if applicable, the physical address as shown on the building permit or notice received from the owner:

(4) I give notice of my right subsequently to pursue a claim of lien for improvements to the real property described in this notice.

Dated: _____

Potential Lien Claimant"

(i) The service of the Notice to Lien Agent does not satisfy the service or filing requirements applicable to a Notice of Claim of Lien upon Funds under Part 2 of Article 2 of this Chapter.

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

(k) Except as otherwise provided in this section, a potential lien claimant may perfect a claim of lien on real property only if any of the following conditions is met:

- (1) The lien agent identified in accordance with this section has received notice from the potential lien claimant no later than 15 days after the first furnishing of labor or materials by the potential lien claimant.
- (2) Any of the following conditions is met:
 - a. The lien agent identified in accordance with this section has received notice from the potential lien claimant prior to the date of recordation of a conveyance of the property interest in the real property to a bona fide purchaser for value protected under G.S. 47-18 who is not an affiliate, relative, or insider of the owner.
 - b. The potential lien claimant has filed a claim of lien pursuant to G.S. 44A-12 prior to the recordation of a conveyance of the property interest in the real property to a bona fide purchaser for value protected under G.S. 47-18 who is not an affiliate, relative, or insider of the owner.

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

(l) Except as otherwise provided in this section, the claim of lien on real property of a potential lien claimant that is not filed prior to the recordation of any mortgage or deed of trust shall be subordinate to the previously recorded mortgage or deed of trust unless any of the following conditions is met:

- (1) The lien agent identified in accordance with this section has received notice from the potential lien claimant within 15 days after the first furnishing of labor or materials by the potential lien claimant.
- (2) The lien agent identified in accordance with this section has received notice from the potential lien claimant prior to the date of recordation of the mortgage or deed of trust for the benefit of one who is not an affiliate, relative, or insider of the owner.

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

(n) Except as provided in subsections (k) and (l) of this section, nothing contained in this section shall affect a claim of lien upon funds pursuant to G.S. 44A-18.

(o) A potential lien claimant may provide the notice to lien agent required under this section regardless of whether the improvements for which the potential lien claimant is responsible are contracted, started, in process, or completed at the time of submitting the notice."

SECTION 3. Article 26 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-26-41. Registration as a lien agent.

(a) A title insurance company or title insurance agency authorized to do business in this State that consents to serve as a lien agent upon designation by any owner pursuant to G.S. 44A-11.1 shall register with the Department by providing the following information:

- (1) Name of the title insurance company or title insurance agency consenting to serve as a lien agent pursuant to G.S. 44A-11.1.
- (2) Physical and mailing address, facsimile number and electronic mail address to which notices may be delivered to the lien agent pursuant to G.S. 44A-11.2.
- (3) Telephone number of the lien agent.

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

- (1) Provide written notice acknowledging its designation as a lien agent to the owner within three business days of receipt of the owner's written notice of designation, by the same method of delivery used by the owner in delivering the notice of designation to the lien agent.
- (2) Receive notices to lien agent delivered by potential lien claimants pursuant to G.S. 44A-11.2 and copies of notices of claim of lien upon funds delivered by potential lien claimants pursuant to G.S. 44A-23(a1)(3) or G.S. 44A-23(b)(5)c.
- (3) Maintain a record of the date and time of delivery and the information contained in each notice to lien agent received.
- (4) Within three business days of receipt of a notice to lien agent by a potential lien claimant relating to improvements to real property for which the lien agent has been designated as the lien agent, provide written notice confirming receipt of the notice to the person providing such notice, by the same method used by the potential lien claimant in delivering the notice to lien agent. If the notice is received by email, the acknowledgment sent by the lien agent must include the email received, including the header showing the date and time of receipt.
- (5) Within three business days of receipt of any notice to lien agent by a potential lien claimant relating to improved real property for which the lien agent has not been designated as the lien agent, provide written notice to the potential lien claimant that it is not the designated lien agent for the improved property, by the same method used by the potential lien claimant in delivering the notice to lien agent.
- (6) Within three business days of receipt of information relating to the contractor provided by the owner pursuant to G.S. 44A-11.2(g), provide a written notice to the contractor acknowledging receipt of this information, by any method of delivery authorized in G.S. 44A-11.2(f).
- (7) Provide written notice of the potential lien claimants having delivered notice to lien agent pursuant to G.S. 44A-11.2, including the information relating to any contractor identified by the owner pursuant to G.S. 44A-11.2(g), within one business day of receiving a request from any of the following persons or their authorized agents:
 - a. An owner of the improved property.
 - b. A title insurance company or title insurance agency issuing a policy of title insurance on the improved property.
 - c. A contracted purchaser of the improved property.
 - d. A potential lien claimant.
 - e. A closing attorney, lender, or settlement agent as defined in G.S. 45A-3(15) involved in a transaction involving the improved property.

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

- (8) Transfer all notices received and other documentation thereof to any successor lien agent designated by the owner upon termination under G.S. 44A-11.1(d).

(c) A registered lien agent may revoke its consent and be removed from the list of lien agents by providing written notification of its revocation of consent to the Department of Insurance and to all owners by whom the lien agent has been designated pursuant to G.S. 44A-11.1 at least 30 days in advance of the effective date of its revocation of consent.

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

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

SECTION 4. G.S. 87-14(a) is amended by adding a new subdivision to read:
"§ 87-14. Regulations as to issue of building permits.

(a) Any person, firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, town, or county in North Carolina charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, grading, or any improvement or structure where the cost thereof is to be thirty thousand dollars (\$30,000) or more, shall, before being entitled to the issuance of a permit, satisfy the following:

...

(3) Any person, firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, town, or county in North Carolina charged with the duty of issuing building permits pursuant to G.S. 160A-417(a)(1) or G.S. 153A-357(a)(1) for any improvements for which the combined cost is to be thirty thousand dollars (\$30,000) or more, other than improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the applicant uses as a residence, shall be required to provide to the building inspector or other authority the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a)."

SECTION 5. G.S. 160A-417 is amended by adding a new subsection to read:
"§ 160A-417. Permits.

(a) No person shall commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

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

...

(d) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the applicant uses as a residence, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued."

SECTION 6. G.S. 153A-357 is amended by adding a new subsection to read:
"§ 153A-357. Permits.

(a) No person may commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work:

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

...

(e) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the applicant uses as a residence, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued."

SECTION 6.1. G.S. 44A-23 is amended to read as follows:

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

(a) First tier subcontractor. – A first tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article, may, to the extent of this claim, enforce the claim of lien on real property of the contractor created by Part 1 of this Article. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the 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 attached, and the commencement of the action, no~~

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

- (1) The subcontractor has given notice to the lien agent, if any, designated by the owner, pursuant to G.S. 44A-11.2.
- (2) The subcontractor has served a notice of claim of lien upon funds upon the owner pursuant to G.S. 44A-19(d).
- (3) The subcontractor has delivered a copy of the notice of claim of lien upon funds served upon the owner to the lien agent, if any, designated by the owner, by any method authorized in G.S. 44A-11.2(f).

(b) Second or third subcontractor. –

(1) A second or third tier subcontractor, who gives notice of claim of lien upon funds 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 contractor, within 30 days following the date the building permit is issued for the improvement of the real property involved, posts on the property in a visible location adjacent to the posted building permit 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 and the second or third tier subcontractor fails to serve upon the contractor a completed and signed notice of subcontract form 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 and the service upon the contractor of a signed notice of subcontract, the contractor serves upon the second or third tier subcontractor, within five days following each subsequent payment, by the same means of service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the notice of subcontract form set forth herein.

(2) The form of the notice of contract to be so utilized under this section shall be substantially as follows and the fee for filing the same with the clerk of superior court shall be the same as charged for filing a claim of lien 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 attached, and the commencement of the action, no~~

(5) No action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent, upon the occurrence of all of the following:

a. The second or third tier subcontractor has given notice to the lien agent, if any, designated by the owner, pursuant to G.S. 44A-11.2.

b. The second or third tier subcontractor has served a notice of claim of lien upon funds upon the owner pursuant to G.S. 44A-19(d).

c. The second or third tier subcontractor has delivered a copy of the notice of claim of lien upon funds served upon the owner to the lien agent, if any, designated by the owner, by any method authorized in G.S. 44A-11.2(f)."

SECTION 7. This act becomes effective April 1, 2013, and applies to improvements to real property affected hereby for which the first furnishing of labor or materials at the site of the improvements is on or after that date.

In the General Assembly read three times and ratified this the 28th day of June, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____m. this _____ day of _____, 2012