

# Mechanic's Lien Workflow Checklist (Subcontractor Rights) (NC)

NEALE T. JOHNSON AND MICHAEL D. JEFFERSON, FOX ROTHSCHILD LLP,  
WITH PRACTICAL LAW REAL ESTATE

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A Checklist outlining the steps for creating, perfecting, enforcing, and discharging a mechanic's lien for work performed or material furnished by a subcontractor to improve privately owned commercial and residential real property in North Carolina. This Checklist outlines pre-lien notice requirements for owners and subcontractors or suppliers and also includes the requirements for filing a lien claim and the steps to perfect and enforce a mechanic's lien after filing the lien claim.

## BEFORE STARTING WORK TO 15 DAYS AFTER STARTING WORK

### DESIGNATE A LIEN AGENT (OWNER)

- Subject to limited exceptions, designate a lien agent from the list of registered lien agents on the North Carolina Lien Agent System before contracting with any person to improve real property.
- Notify the lien agent in writing that the owner has designated it as the owner's agent using one of the methods allowed by statute (N.C.G.S. § 44A-11.2(f)).

For more information relating to designating a lien agent, including exceptions to the notice requirement and resignation, revocation, and removal of a lien agent, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Designation of Lien Agent ([W-016-4869](#)).

### POST LIEN AGENT'S CONTACT INFORMATION (OWNER)

- Review the building permit to confirm that the lien agent's contact information is included.
- Post the building permit containing the lien agent's contact information at the project site at all times until construction is complete.

- Post a sign disclosing the lien agent's contact information at the site if:
  - a building permit is not issued for the project; or
  - the lien agent's contact information is not included in the building permit.

### IDENTIFY THE LIEN AGENT (CONTRACTOR)

- Review the building permit or other sign posted at the site to confirm the lien agent's contact information.
- If the lien agent's contact information is not posted at the project site, request the lien agent's contact information from the owner.
- Provide the lien agent's contact information to any lower-tier subcontractor or supplier within three business days after contracting with the lower-tier party by:
  - serving written notice on the party using one of the methods allowed by statute (N.C.G.S. § 44A-11.2(f)); or
  - including the lien agent's contact information in the written subcontract or purchase order.

For more information relating to identification of the owner's designated lien agent, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Identification of Lien Agent ([W-016-4869](#)).

### SERVE A NOTICE TO LIEN AGENT (OPTIONAL)

- Serve a notice to lien agent to protect a lien claimant's right to pursue:
  - a direct lien on real property (see Serve and File a Claim of Lien on Real Property Due to Wrongful Payment (Optional)); or
  - a subrogated lien on real property (see Serve and File a Subrogated Claim of Lien on Real Property (Optional)).
- Prepare the notice to lien agent using a form substantially similar to the statutory form prescribed by North Carolina law (N.C.G.S. § 44A-11.2(i)).
- At any time, but within 15 days after first furnishing labor or materials to the project site, serve the notice to lien agent on the owner's designated lien agent using one of the methods allowed by statute (N.C.G.S. § 44A-11.2(f)). Counsel should serve the notice electronically by filing the notice on the North Carolina Lien Agent System.

For more information on serving a notice to lien agent, including the form of notice and exceptions to the notice requirement, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Notice to Lien Agent ([W-016-4869](#)).

### ANY TIME BEFORE OR AFTER STARTING WORK

#### SERVE A NOTICE OF CLAIM OF LIEN ON FUNDS

- Serve a notice of claim of lien on funds as soon as possible, but at any time before or after starting work.
- Prepare the notice of claim of lien on funds using a form substantially similar to the statutory form prescribed by North Carolina law (N.C.G.S. § 44A-19(a)-(c)).
- Serve the notice of claim of lien on funds by personal delivery or any method authorized by North Carolina law on all potential obligors in the contract chain (N.C.G.S. § 44A-19(d)).
- On receipt of the notice of claim of lien on funds, ensure that the property owner (as obligor):
  - retains all funds subject to the lien on funds up to the total amount of the lien; and
  - stops making further payments to any contractor or higher-tier subcontractor.
- Consider filing a direct claim of lien on real property if both:
  - the owner makes a wrongful payment after receiving the notice of claim of lien on funds; and
  - the lien claimant is a first, second, or third tier subcontractor.
- (See File a Claim of Lien on Real Property Due to Wrongful Payment (Optional)).

For more information on perfecting a notice of claim of lien on funds, including requirements for first, second, or third tier and more remote subcontractors, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): First, Second, or Third Tier Subcontractors ([W-016-4869](#)), Subcontractors More Remote Than the Third Tier ([W-016-4869](#)), and Serving the Notice of Claim of Lien ([W-016-4869](#)).

### ZERO TO 120 DAYS AFTER COMPLETION OF WORK

#### DETERMINE EXTENT OF INTEREST HELD BY CONTRACTING PARTY

- Review the subcontract or purchase order to identify:
  - the contracting party; and
  - the amount of unpaid funds owed to the lien claimant.
- Order a title report to determine the extent of the interest held by the contracting party.
- If pursuing a direct claim of lien on real property due to wrongful payment, confirm that the party that received the notice of claim of lien on funds qualifies as an owner of the real property (N.C.G.S. § 44A-7(6)).

For more information on limitations related to liens on funds, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Limitations on Liens on Funds ([W-016-4869](#)).

For more information on limitations related to liens on real property, see Practice Note, Mechanic's Liens in Practice (Contractor Rights) (NC): Limitations on Liens on Real Property ([W-015-8524](#)).

#### SERVE AND FILE A CLAIM OF LIEN ON REAL PROPERTY DUE TO WRONGFUL PAYMENT (OPTIONAL)

- Consider filing a direct claim of lien on real property within 120 days after the last date of furnishing labor or materials to the project site if all the following conditions are met:
  - the lien claimant is a first, second, or third tier subcontractor;
  - the claimant timely serves a notice of claim of lien on funds on the property owner;
  - the owner fails to retain all funds subject to the lien after receipt of the notice;
  - the owner makes one or more payments to a contractor or higher-tier subcontractor after receipt of the notice; and
  - each of the higher-tier subcontractors in the contract chain above the lien claimant (if any) are paid
- Prepare a direct claim of lien on real property using a form substantially similar to the statutory form prescribed by North Carolina law (N.C.G.S. § 44A-12(c)). Include the required attachments. (N.C.G.S. § 44A-20(d)).
- Serve the claim of lien on the property owner by personal delivery or any method authorized by North Carolina law (N.C.G.S. § 44A-11(b)).
- File the claim of lien with the clerk of superior court in each county where the property is located within the 120-day statutory limitations period.
- Ensure that the clerk of superior court affixes an acknowledgment to the filed claim of lien.

For more information on perfecting a claim of lien on real property due to wrongful payment, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Lien on Real Property Due to Wrongful Payment ([W-016-4869](#)).

#### SERVE AND FILE A SUBROGATED CLAIM OF LIEN ON REAL PROPERTY (OPTIONAL)

- Consider filing a subrogated claim of lien on real property within 120 days after the last date of furnishing labor or materials to the project site if all the following conditions are met:
  - the lien claimant is first, second, or third tier subcontractor;
  - the claimant performs labor or furnishes materials to the project site under the terms of a subcontract or purchase order;
  - the claimant is not paid for its labor or material under the contract; and
  - the claimant's right to pursue a subrogated lien on funds is not extinguished (applicable to second or third tier subcontractors only).
- Prepare a subrogated claim of lien on real property using a form substantially similar to the statutory form prescribed by North Carolina law (N.C.G.S. § 44A-12(c)).
- Serve the claim of lien on the property owner and the contractor through which subrogation is asserted by personal delivery or any method authorized by North Carolina law (N.C.G.S. § 44A-11(a)(1), (b)).
- File the claim of lien with the clerk of superior court in each county where the property is located within the 120-day statutory limitations period.

- Ensure that the clerk of superior court affixes an acknowledgment to the filed claim of lien.

For more information on perfecting a subrogated claim of lien on real property, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Lien on Real Property by Subrogation ([W-016-4869](#)).

#### Post and File a Notice of Contract (Owner or Contractor)

- To extinguish a second or third tier subcontractor's right to assert a subrogated claim of lien on real property:
  - post a notice of contract on the property in a visible location adjacent to the building permit, if any; and
  - file the notice of contract in the office of the clerk of superior court in each county where the property is located.
- Confirm that the notice of contract is posted and filed within 30 days following the later of:
  - the date the building permit is issued for the improvement, if any; or
  - the date the contractor is awarded the contract for the improvement.
- Confirm that the notice of contract is:
  - in the statutory form;
  - signed by the contractor; and
  - acknowledged by the clerk of superior court. (N.C.G.S. § 44A-23(b)(2).)

For more information on posting and filing a notice of contract, including the form of notice, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Notice of Contract ([W-016-4869](#)).

#### Serve a Notice of Subcontract (Subcontractor)

- After the owner or contractor posts and files a notice of contract, serve a signed and completed notice of subcontract on the contractor to preserve the claimant's rights.
- Prepare the notice of subcontract using a form substantially similar to the statutory form prescribed by North Carolina law (N.C.G.S. § 44A-23(b)(3)).
- Ensure that the notice of subcontract includes a request for written notice from the contractor of each later payment made by the contractor to the first tier subcontractor within five days of making each payment.
- Serve the notice of subcontract on the contractor by any method authorized by North Carolina law (N.C.G.S. § 44A-23(b)(1)(a)).

For more information on preparing and serving a notice of subcontract, including the form of notice, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Notice of Subcontract ([W-016-4869](#)).

#### Notify Subcontractor of Payments (Contractor)

- After receiving a notice of subcontract, notify the claimant in writing within five days of making a payment to the first tier subcontractor to fully extinguish the claimant's rights.
- Serve written notice of each payment on the claimant by any method authorized by North Carolina law (N.C.G.S. § 44A-23(b)(1)(b)).

For more information on a contractor's duty to provide written notice of payments, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Notification of Payments ([W-016-4869](#)).

## ENFORCE THE LIEN CLAIM

### DETERMINE LIEN PRIORITY

- Review the record title to the property to determine the priority of the mechanic's lien.
- Conduct a search of the bankruptcy court records to determine if the property owner filed for bankruptcy.
- Review the terms of any subordination agreement between the lien claimant and the lender providing construction financing for the project (if applicable).
- If pursuing a subrogated lien on real property, determine whether the contractor signed a lien waiver before the claimant perfects its lien on real property (see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Waiver of Lien Rights ([W-016-4869](#))).

For more information relating to the priority of mechanic's liens in North Carolina, see:

- Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Priority of a Lien on Funds ([W-016-4869](#)).
- Practice Note, Mechanic's Liens in Practice (Contractor Rights) (NC): Priority of a Lien on Real Property ([W-015-8524](#)).
- State Q&A, Real Estate Finance: North Carolina: Questions 6 ([2-567-4906](#)), 7([2-567-4906](#)), and 8([2-567-4906](#)).

### COMMENCE ACTION TO ENFORCE THE LIEN CLAIM

#### File a Complaint: Lien on Funds

- File a complaint in any county where a party to the action resides within the applicable statutory limitations period, which is restricted by:
  - the statute of limitations; and
  - the statute of repose.
- (See State Q&A, Statutes of Limitations: North Carolina: Questions 3 ([7-524-4952](#)) and 24 ([7-524-4952](#))).
- Name all parties listed in the notice of claim of lien on funds as defendants in the action. Include any other adverse lien claimants that have an interest in the funds (optional).

For more information on enforcing a lien on funds, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Enforcing a Lien on Funds ([W-016-4869](#)).

#### File a Complaint and Notice of Lis Pendens: Lien on Real Property

- If pursuing a direct or subrogated lien on real property, file the complaint within 180 days after the last date of furnishing labor or materials at the project site.
- Add claims for statutory lien enforcement for each type of lien that the claimant seeks to enforce (lien on real property or lien on funds).
- Name the property owner as a defendant in the action. As applicable, include any other adverse lien claimants that have an interest in:
  - the property (lien on real property); or
  - the funds (lien on funds).

- If the property owner has filed bankruptcy, file a proof of claim with the receiver or the bankruptcy court instead of filing a civil complaint (N.C.G.S. § 44A-13(a)).
- If required, prepare a notice of lis pendens (N.C.G.S. § 1-116(b); see Practice Note, Mechanic's Liens in Practice (Contractor Rights) (NC): Notice of the Action ([W-015-8524](#)) and State Q&A, Provisional Remedies: North Carolina: Question 10 ([W-000-5472](#))).
- After filing the complaint (or proof of claim), but within 180 days after the last date of furnishing labor or materials at the project site, file the notice of lis pendens in each county where the real property is located except the county where the civil action is filed.

For more information on enforcing a lien on real property, see Practice Note, Mechanic's Liens in Practice (Contractor Rights) (NC): Enforcing a Lien on Real Property ([W-015-8524](#)).

For information on commencing an action in North Carolina generally, including the required contents of the complaint, see State Q&A, Commencing an Action: North Carolina ([W-000-3306](#)).

#### **OBTAIN JUDGMENT AND EXECUTE ON THE LIEN CLAIM**

- Obtain a final judgment in the lien enforcement action:
  - determining the principal amount of the lien, including interest and attorneys' fees; and
  - directing the sale of the property.
- Execute on the judgment by selling the improved real property to pay the lien.
- Ensure that the sale of the improved real property and the distribution of proceeds are conducted under the execution sale provisions of North Carolina law (N.C.G.S. §§ 1-339.41 to 1-339.76).

For more information on obtaining a final judgment, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Judgment ([W-016-4869](#)).

#### **WAIVING AND DISCHARGING LIENS**

##### **EXECUTE A LIEN WAIVER**

- Review the terms of the subcontract or purchase order to confirm that it does not contain a prohibited waiver of the claimant's lien rights (see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Waiver of Lien Rights ([W-016-4869](#))).
- Consider executing a written mechanic's lien waiver periodically as payments are made to waive, release, or discharge a lien on funds (in whole or in part) on receipt of:
  - partial payment (for example, progress payments); or
  - final payment.

##### **DISCHARGE A LIEN ON FUNDS**

- File the notice of claim of lien on funds with the clerk of superior court in each county where the real property is located.
- Discharge (or release) the notice of claim of lien on funds using one of six approved methods under North Carolina law (N.C.G.S. § 44A-16(a)).

For more information on discharging or releasing a lien on funds, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Discharging a Lien on Funds ([W-016-4869](#)).

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