

Mechanic's Liens in Practice (Subcontractor Rights) (NC)

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A Practice Note addressing statutory mechanic's liens arising out of construction projects for the improvement of privately owned residential and commercial real property in North Carolina. This Note focuses on providing practical guidance on the processes and procedures a subcontractor must follow to create, perfect, enforce, and discharge a mechanic's lien in North Carolina.

A mechanic's lien (also known as a construction lien) can be a powerful tool to secure payment for performing or furnishing labor, services, materials, or equipment to improve real property in North Carolina. Chapter 44A, Article 2, Parts 1 and 2 of the North Carolina General Statutes govern mechanic's liens on privately owned residential and commercial real property (N.C.G.S. §§ 44A-7 to 44A-23).

In North Carolina, there are two types of mechanic's liens:

- A lien on real property for parties contracting directly with the owner (N.C.G.S. §§ 44A-7 to 44A-16).
- A lien on funds for parties contracting with a party other than the owner (N.C.G.S. §§ 44A-18 to 44A-23).

Strict compliance with North Carolina's lien law is necessary to create a valid mechanic's lien. Failure to comply with the statutory requirements for creating, perfecting, and enforcing a mechanic's lien may cause the lien to be void and unenforceable.

This Note focuses specifically on subcontractor rights under North Carolina law to assist counsel in:

- Creating a valid mechanic's lien.
- Perfecting and enforcing lien rights.
- Determining the priority of lien rights.
- Discharging a mechanic's lien.

This Note does not address:

- Claims arising out of contractor work (N.C.G.S. §§ 44A-7 to 44A-16; see Practice Note, Mechanic's Liens in Practice (Contractor Rights) (NC) ([W-015-8524](#))).
- Claims arising out of a broker services agreement for commercial real estate under the Commercial Real Estate Broker Lien Act (N.C.G.S. §§ 44A-24.1 to 44A-24.14).
- Claims arising out of a construction contract with the state or other political subdivision for the construction, reconstruction, alteration, or repair of a public improvement (N.C.G.S. §§ 44A-25 to 44A-35).

PERSONS ENTITLED TO A MECHANIC'S LIEN

A mechanic's lien may be asserted by any person that performs one of the following services:

- Builds, effects, alters, repairs, or demolishes any improvement on, connected with, or on or beneath the surface of any real property.
- Excavates, clears, grades, fills, or landscapes any real property.
- Constructs driveways and private roadways.
- Furnishes materials, including trees and shrubbery, for any of the above purposes.
- Performs any labor on the improvements.
- Furnishes any design or other professional or skilled services. These services must be performed by registered architects, engineers, land surveyors, and landscape architects.
- Rents equipment directly used on the real property in making the improvements.

(N.C.G.S. § 44A-7(3).)

Under North Carolina's lien law, potential lien claimants include:

- Contractors, including:
 - a general or prime contractor;
 - architects, engineers, land surveyors, and landscape architects hired to provide design or other professional or skilled services; or
 - trade contractors.

- Subcontractors.
- Suppliers of:
 - labor;
 - services;
 - materials; or
 - equipment.

(N.C.G.S. § 44A-7(6a).)

Subcontractors and suppliers include:

- First tier subcontractors.
- Second tier subcontractors.
- Third tier subcontractors.
- More remote subcontractors.

(N.C.G.S. §§ 44A-7(2), (8-9), and 44A-18(d).)

Subcontractors and suppliers typically contract with a party other than the property owner (an obligor). An obligor owes money to a contractor, subcontractor, or supplier for performing or furnishing labor, services, or materials to improve real property. Obligors include:

- Owners.
- Contractors.
- Higher-tier subcontractors.

(N.C.G.S. § 44A-7(5).)

For more information on contractors entitled to a mechanic's lien, see Practice Note, Mechanic's Liens in Practice (Contractor Rights) (NC): Persons Entitled to a Mechanic's Lien ([W-015-8524](#)).

PROPERTY INTERESTS SUBJECT TO A MECHANIC'S LIEN

In North Carolina, subcontractors and suppliers may assert:

- A lien on funds.
- A lien on real property, in limited situations.

LIEN ON FUNDS

Subcontractors and suppliers most commonly have a lien on funds. The right to file a lien on funds (a notice of claim of lien on funds) is available to:

- Any:
 - first tier subcontractor;
 - second tier subcontractor;
 - third tier subcontractor; or
 - more remote subcontractor.
- That furnishes:
 - labor;
 - materials; or
 - rental equipment.
- At the project site.

(N.C.G.S. § 44A-18(a)-(d).)

The lien attaches to funds that the obligor (property owner) owes to the contractor or subcontractor that contracted with the lien claimant. For example:

- A first tier subcontractor has a direct lien on the funds that an owner owes to the general contractor.
- A second tier subcontractor has a direct lien on the funds that the general contractor owes to the first tier subcontractor that contracted with the second tier subcontractor.
- A third tier supplier has a direct lien on the funds that the first tier subcontractor owes to the second tier subcontractor that contracted with the third tier supplier.

(N.C.G.S. § 44A-18(a)-(c).)

Second and third tier subcontractors are also subrogated to the rights of the lien claimant above them in the contract chain. For example:

- The amount of the second tier subcontractor's lien on funds is limited by the amount of the first tier subcontractor's direct lien on funds owed by the owner to the general contractor.
- The amount of the third tier supplier's lien on funds is limited by the amount of:
 - the second tier subcontractor's direct lien on funds owed from the general contractor to the first tier subcontractor; and
 - the first tier subcontractor's direct lien on funds owed from the owner to the general contractor.

Subrogation rights do not extend to subcontractors and suppliers more remote than the third tier (N.C.G.S. § 44A-18(d)).

LIEN ON REAL PROPERTY

Subcontractors and suppliers (parties without a direct contract with the property owner) are only entitled to a lien on real property in limited circumstances. Subcontractors and suppliers may only assert a lien on real property if:

- The owner obligates itself directly to the subcontractor or supplier by wrongfully "paying over" a lien on funds (N.C.G.S. § 44A-20(d); see Lien on Real Property Due to Wrongful Payment).
- The subcontractor or supplier claims a subrogated lien on real property through a party that contracted with the property owner (N.C.G.S. § 44A-23; see Lien on Real Property by Subrogation).

Subrogation means stepping into the shoes of another party to enforce that party's rights. A subrogated lien on real property is only available to first, second, and third tier subcontractors (N.C.G.S. § 44A-23).

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

WHAT IS COVERED BY A MECHANIC'S LIEN

All claims arising from a contract to improve real property can be included in a lien claim. The amount claimed is limited to the unpaid amount remaining due on the contract.

LIMITATIONS ON LIENS ON FUNDS

A lien on funds attaches to the specific unpaid funds owed to the contractor or subcontractor that contracted with the lien claimant. If the contractor or higher-tier subcontractors have been paid in full before a lien claimant serves a notice of claim of lien on funds on the obligor, the lien attaches to nothing.

The unpaid funds are tied to the specific contract and not to specific work. For example, an owner cannot defeat a grading subcontractor's lien on funds by claiming that the owner already paid the general contractor for grading work completed at the project site if other funds are still owed to the general contractor.

For 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](#)).

PRE-LIEN NOTICE REQUIREMENTS

DESIGNATION OF LIEN AGENT

Subject to limited exceptions, before an owner contracts with any person to improve real property, the owner must both:

- Designate a lien agent from the list of registered lien agents on the North Carolina Lien Agent System (N.C.G.S. § 44A-11.1(a)-(b)). Currently, only title insurance companies and title insurance agencies authorized to do business in North Carolina qualify as lien agents (N.C.G.S. § 58-26-45(a)).
- Notify the lien agent in writing that the owner has designated it as the owner's agent by one of the following methods:
 - certified mail, return receipt requested;
 - signature confirmation as provided by the US Postal Service;
 - physical delivery with delivery receipt;
 - facsimile with confirmation;
 - depositing with a federally authorized and designated delivery service (for example, DHL Express, Federal Express, or UPS) (26 U.S.C. § 7502(f)(2));
 - electronic mail with delivery receipt; or
 - using a website approved for that use by the designated lien agent to transmit to the designated lien agent, with delivery receipt, all information required to notify the lien agent of its designation.

(N.C.G.S. § 44A-11.2(f).)

The written notice of designation from the owner to the lien agent must include:

- A description of the real property, such as:
 - street address;
 - tax map lot and block number;
 - reference to recorded instrument; or
 - any other description that reasonably identifies the real property.
- The owner's contact information.

(N.C.G.S. § 44A-11.1(a).)

The owner is not required to designate a lien agent if either:

- The total cost of improvements is less than \$30,000.
- The improvements are:
 - to an existing single-family residential dwelling unit occupied by the owner as a residence (N.C.G.S. § 87-15.5(7)); or
 - for the addition of an accessory building or accessory structure, the use of which is incidental to the owner's residential dwelling unit.

(N.C.G.S. § 44A-11.1(a).)

Once designated, the owner's lien agent has specific duties prescribed by law (N.C.G.S. § 58-26-45(b)). Designation of a lien agent does not make the lien agent an agent of the owner for:

- Receiving:
 - a claim of lien on real property;
 - a notice of claim of lien on funds; or
 - a notice of subcontract.
- Any other purpose other than the receipt of notices to the lien agent.

(N.C.G.S. § 44A-11.1(a).)

For more information on lien agents, see State Q&A, Real Estate Finance: North Carolina: Question 8 ([2-567-4906](#)).

Resignation, Revocation, or Removal

The owner must designate a successor lien agent if the owner's designated lien agent:

- Resigns.
- Is no longer licensed to serve as a lien agent.
- Revokes its consent to serve as lien agent.
- Is removed by the owner.
- Otherwise cannot or is unwilling to serve before completion of all improvements to the real property.

Within three business days of receiving notice of one of the above events, the owner must do all the following:

- Designate a successor lien agent and provide written notice of designation to the successor lien agent.
- Provide the contact information for the successor lien agent to:
 - the inspection department that issued the building permit, if any; and
 - any person that requested information from the owner relating to the predecessor lien agent.
- Display the contact information for the successor lien agent on:
 - the building permit posted on the improved real property, if any; or
 - a sign posted on the improved real property.

(N.C.G.S. § 44A-11.1(d).)

IDENTIFICATION OF LIEN AGENT

Posting Contact Information

The owner must post the lien agent's contact information at the project site at all times until construction is complete. Often, the

lien agent's contact information is contained in the building permit. The building permit must be posted in a conspicuous place on the site, such as a permit box. A sign disclosing the lien agent's contact information may also be posted at the site if the necessary information is not contained in the building permit. (N.C.G.S. § 44A-11.2(d)-(e).)

Request for Contact Information

On request, the owner must provide written notice to a lien claimant containing the lien agent's contact information. The owner must respond to a request for the lien agent's contact information:

- Within seven days of receiving a written request from the lien claimant.
- By the same delivery method used by the lien claimant.

(N.C.G.S. § 44A-11.2(b).)

Duty to Provide Contact Information

Contractors or subcontractors must provide lower-tier subcontractors or suppliers with written notice of the lien agent's contact information within three business days of contracting with the lower-tier party (N.C.G.S. § 44A-11.2(c)). Contractors or subcontractors may include the lien agent's contact information as part of the written subcontract or purchase order.

A contractor or subcontractor is liable to the lower-tier subcontractor for actual damages incurred by the lower-tier subcontractor if the contractor or subcontractor both:

- Receives written notice of the lien agent's contact information from:
 - the building permit;
 - the inspections office;
 - a notice from the owner, contractor, or subcontractor; or
 - any other means.
- Fails to provide the lien agent's contact information to the lower-tier subcontractor within three business days of contracting with the lower-tier subcontractor.

(N.C.G.S. § 44A-11.2(c).)

NOTICE TO LIEN AGENT

All potential lien claimants with a right to a lien on real property must serve a notice to lien agent on the owner's designated lien agent to:

- Preserve the right to pursue a claim of lien on the owner's real property.
- Notify the lien agent that the claimant is performing or furnishing or intends to perform or furnish labor, services, or materials to improve the real property.

A notice to lien agent is not required to protect the claimant's right to pursue a claim of lien on funds (N.C.G.S. § 44A-11.2(o)).

Form of Notice to Lien Agent

A lien claimant must serve a notice to lien agent using a form substantially similar to the statutory form prescribed by North Carolina law. The notice to lien agent must include:

- The lien claimant's:
 - name;
 - mailing address;
 - telephone number;
 - fax number (if available); and
 - electronic mailing address (if available).
- The name of the party that contracted with the claimant to improve the real property.
- A description of the real property sufficient to identify the real property, such as:
 - the name of the project, if applicable; or
 - the physical address as shown on the building permit or notice received from the owner.
 - (N.C.G.S. § 44A-11.2(k).)
- A notice of the claimant's right to later pursue a claim of lien.
- The date.
- The claimant's signature.

(N.C.G.S. § 44A-11.2(i).)

A notice of lien agent should not be combined with or reference a notice of subcontract or notice of claim of lien on funds (see Notice of Subcontract and Notice of Claim of Lien on Funds). Each of these notices should be separate. (N.C.G.S. § 44A-11.2(j).)

Service of Notice to Lien Agent

Serve the notice to lien agent at any time, but no later than 15 days after first furnishing labor or materials (N.C.G.S. § 44A-11.2(l)(1), (p)). Serve the notice using one of the methods allowed by statute to designate the lien agent (N.C.G.S. § 44A-11.2(f); see Designation of Lien Agent).

Do not file the notice to lien agent with the clerk of superior court (N.C.G.S. § 44A-11.2(k)). Best practice is to serve the notice electronically by filing the notice on the North Carolina Lien Agent System (N.C.G.S. § 44A-11.2(f)(7)).

Exceptions to Notice Requirement

A lien claimant does not have to serve a notice to lien agent if the lien agent's contact information is neither:

- Contained in the building permit or attachments or a sign posted at the project site at the time the lien claimant first furnishes labor, materials, rental equipment, or professional design or surveying services at the project site (N.C.G.S. § 44A-11.2(d)-(e); see Posting Contact Information).
- Timely provided by the owner in response to a written request from the claimant (N.C.G.S. § 44A-11.2(b)-(b1); see Request for Contact Information).

(N.C.G.S. § 44A-11.2(n).)

Expiration, Renewal, and Cancellation of Notice to Lien Agent

A notice to lien agent automatically expires five years after the date of delivery (N.C.G.S. § 44A-11.2(r)). Effective October 1, 2018, a notice to lien agent may be:

- Renewed for one five-year period before expiration. The renewal can be completed using the North Carolina Lien Agent System. If the claimant timely renews its notice to lien agent:
 - the date of expiration of the notice of lien agent extends by five years; and
 - the priority date of the notice of lien agent relates back to its original delivery date.

(N.C.G.S. § 44A-11.2(s)-(t).)

- Cancelled before expiration. A lien claimant loses the priority date of the original notice to lien agent and must serve a new notice to protect its rights (N.C.G.S. § 44A-11.2(u)).

CREATING A MECHANIC'S LIEN

Subcontractors and suppliers may assert:

- A lien on funds.
- A direct lien on real property.
- A subrogated lien on real property.

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

NOTICE OF CLAIM OF LIEN ON FUNDS

A lien claimant asserting a lien on funds must prepare a 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; *Universal Mech., Inc. v. Hunt*, 442 S.E.2d 130, 132-33 (N.C. Ct. App. 1994)).

A notice of claim of lien on funds must include:

- The lien claimant's name and address.
- A general description of the improved real property.
- The name and address of the person that contracted with the claimant to improve the real property.
- The name and address of each person against or through which subrogation rights are claimed.
- A general description of the contract and the person against the interest of which the lien on funds is claimed (for example, the owner, contractor, or higher-tier subcontractor).
- The amount of the lien on funds claimed by the claimant under the contract.

(N.C.G.S. § 44A-19(a).)

A lien claimant should also consider including the following introductory language:

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

The lien claimant (or the claimant's attorney or agent) must sign the notice of claim of lien on funds. A notice of claim of lien on funds does not need to be sworn or notarized.

First, Second, or Third Tier Subcontractors

First, second, or third tier subcontractors must prepare a notice of claim of lien on funds that:

- Is addressed to:
 - the property owner;
 - the contractor;
 - the first tier subcontractor against or through which subrogation is claimed, if any; and
 - the second tier subcontractor against or through which subrogation is claimed, if any.
- Includes:
 - a general description of the real property on which labor was performed or material furnished;
 - a general description of the claimant's contract, including the names of the parties to the contract;
 - the amount of the lien on funds claimed under the contract;
 - a statement that the claimant gives notice of the lien on funds under North Carolina law and claims all rights of subrogation to which the claimant is entitled under North Carolina law;
 - the date;
 - the claimant's signature; and
 - the claimant's address.

(N.C.G.S. § 44A-19(b).)

Subcontractors More Remote Than the Third Tier

Subcontractors more remote than the third tier must prepare a notice of claim of lien on funds that:

- Is addressed to the person holding funds subject to the lien on funds.
- Includes the same information required for a notice given by first, second, or third tier subcontractors.

(N.C.G.S. § 44A-19(c).)

Subcontractors more remote than the third tier are not entitled to subrogation rights. For example, a sixth tier subcontractor may serve a notice of claim of lien on funds to the fifth tier subcontractor, but has no subrogation rights in the funds owed to the fourth tier subcontractor. (N.C.G.S. § 44A-18(d).)

Duties and Liabilities of Obligors

On receiving a notice of claim of lien on funds, the obligor (the party that owes money to a subcontractor or supplier in a tier above the lien claimant) has a duty to:

- Retain all funds subject to the lien on funds up to the total amount of the lien.
- Stop making further payments to any contractor or subcontractor in a tier above the lien claimant.

(N.C.G.S. § 44A-20(a).)

An obligor that makes a payment or "pays over" a lien on funds after receiving a notice of claim of lien on funds is personally liable to the lien claimant for the amount of the lien (N.C.G.S. § 44A-20(b)). For example:

- An owner may contract with a general contractor that subcontracts with a subcontractor for improvements to real property. The general contractor later fails to pay the subcontractor. The subcontractor serves the owner and the general contractor with a notice of claim of lien on funds.
- The owner, as the obligor, must withhold funds from the general contractor in the amount of the lien on funds claimed by the subcontractor. If the owner pays the general contractor after receiving the subcontractor's notice of claim of lien on funds, the owner is personally liable to the subcontractor for the amount of the lien.

An obligor that makes a wrongful payment after receiving a notice of claim of lien on funds is entitled to reimbursement and indemnification from the party receiving the wrongful payment (N.C.G.S. § 44A-20(c)).

LIEN ON REAL PROPERTY DUE TO WRONGFUL PAYMENT

First, second, or third tier subcontractors may assert a lien on real property if all the following conditions are met:

- The subcontractor timely serves a notice of claim of lien on funds on the obligor.
- The obligor is the owner of the real property.
- The obligor makes a payment to the contractor or other higher-tier subcontractor after receiving the notice of claim of lien on funds.
- Each of the higher-tier subcontractors in the contract chain above the lien claimant (if any) are paid.

First, second, or third tier subcontractors must perfect and enforce a lien on real property in the same manner that a contractor perfects and enforces its claim of lien on real property (see Practice Note, Mechanic's Liens in Practice (Contractor Rights) (NC): Perfecting a Lien on Real Property ([W-015-8524](#)) and Enforcing a Lien on Real Property ([W-015-8524](#))).

To be effective, the subcontractor must attach all the following items to its claim of lien on real property:

- A copy of the notice of claim of lien on funds as an exhibit.
- Proof of service.
- A statement of the grounds giving rise to the subcontractor's claim of lien on real property.

(N.C.G.S. § 44A-20(d).)

LIEN ON REAL PROPERTY BY SUBROGATION

First, second, or third tier subcontractors may assert a subrogated lien on real property in certain situations. Subrogation allows a subcontractor to step into the shoes of the contractor to perfect and enforce the contractor's claim of lien on real property to the extent of the subcontractor's rights. For example:

- First tier subcontractors are subrogated directly to the contractor's lien on real property.
- Second and third tier subcontractors are also subrogated directly through the contractor's lien on real property. However, a second or third tier subcontractor's right to assert a subrogated lien on real property may be extinguished if both of the following occur:

- the owner or contractor timely posts and files a completed and signed a notice of contract form (see Notice of Contract); and
- the second or third tier subcontractor fails to serve a completed and signed notice of subcontract form on the owner or contractor (see Notice of Subcontract).

(N.C.G.S. § 44A-23(a)-(b).)

First, second, or third tier subcontractors must perfect and enforce a subrogated lien on real property in the same manner that a contractor perfects and enforces its lien on real property (N.C.G.S. § 44A-23(a), (b)(4); see Practice Note, Mechanic's Liens in Practice (Contractor Rights) (NC): Perfecting a Lien on Real Property ([W-015-8524](#)) and Enforcing a Lien on Real Property ([W-015-8524](#))).

To be effective, a subcontractor's subrogated lien on real property must:

- Be in a form substantially similar to the statutory claim of lien on real property form (N.C.G.S. § 44A-12(c)). For information on the requirements for a lien on real property, see Practice Note, Mechanic's Liens in Practice (Contractor Rights) (NC): Creating a Lien on Real Property ([W-015-8524](#)).
- Include the name of the contractor through which subrogation is claimed (N.C.G.S. § 44A-12(c)(2)).
- Be served on the owner of the real property and the contractor through which subrogation is asserted (N.C.G.S. § 44A-11(a)(1)).

When preparing a subrogated claim of lien on real property, first, second, or third tier subcontractors may use any of the following dates for the date labor or materials were first or last furnished on the real property:

- Any date on or after the date of the first furnishing of labor or materials by:
 - the subcontractor making the claim; or
 - the contractor through which subrogation is claimed.
- Any date on or before the date of the last furnishing of labor or materials by:
 - the subcontractor making the claim; or
 - the contractor through which subrogation is claimed.

(N.C.G.S. § 44A-23(d).)

Notice of Contract (Owner or Contractor)

To extinguish a second or third tier subcontractor's right to assert a subrogated lien on real property, the owner or contractor must:

- Post a notice of contract on the property in a visible location adjacent to the posted building permit, if any.
- File a notice of contract in the office of the clerk of superior court in each county where the property is located.

The owner or contractor must post and file a notice of contract within 30 days following the later of:

- The date the building permit is issued for the improvement, if any.
- The date the contractor is awarded the contract for the improvement.

(N.C.G.S. § 44A-23(b)(1)(a).)

North Carolina law prescribes the form for the notice of contract. A notice of contract must include:

- The contractor's name and address.
- The owner's name and address at the time the notice of contract is filed.
- A general description of the real property to be improved, such as:
 - street address;
 - tax map lot and block number;
 - reference to recorded instrument; or
 - any other description that reasonably identifies the real property.
- The name and address of the person, firm, or corporation filing the notice of contract.
- The date.
- The contractor's signature.

After filing the notice of contract, the clerk affixes an acknowledgment, including:

- The date the notice is filed.
- The clerk's signature.

(N.C.G.S. § 44A-23(b)(2).)

Notice of Subcontract (Subcontractor)

A second or third tier subcontractor may protect its right to assert a subrogated lien on real property after the owner or contractor files and posts a notice of contract by serving a notice of subcontract on the contractor.

Second or third tier subcontractors must serve a signed and completed notice of subcontract on the contractor by any method authorized by North Carolina law (N.C.G.S. §§ 44A-23(b)(1)(a.) and 44A-19(d)). There is no filing requirement for a notice of subcontract. For more information on authorized service methods, see State Q&A, Commencing an Action: North Carolina: Question 15 ([W-000-3306](#)).

North Carolina law prescribes the form for the notice of subcontract. A notice of subcontract must include:

- The subcontractor's name and address.
- A general description of the real property on which the labor was performed or the material was furnished, such as:
 - street address;
 - tax map lot and block number;
 - reference to recorded instrument; or
 - any description that reasonable identifies the real property.
- A general description of the subcontractor's contract, including the names of the parties to the subcontract.
- A general description of the labor and materials performed and furnished under the subcontract.
- A request that the contractor notify the subcontractor in writing within five days of each later payment to the first tier subcontractor for labor performed or material furnished at the improved real property, including:
 - the date the payment was made; and
 - the period for which payment is made.

- The date.
- The subcontractor's signature.

(N.C.G.S. § 44A-23(b)(3).)

Notification of Payments (Contractor)

The contractor must take additional action to extinguish a second or third tier subcontractor's right to assert a subrogated lien on real property assuming:

- The owner or contractor properly posts and files a completed and signed notice of contract.
- The second or third tier subcontractor properly serves a completed and signed notice of subcontract.

The contractor must notify the subcontractor in writing within five days of making each later payment to the first tier subcontractor, as requested in the notice of subcontract. Written notice of each payment may be served on the subcontractor by any method authorized by North Carolina law (N.C.G.S. § 44A-23(b)(1)(b.)).

If the contractor provides proper written notice to the lower-tier subcontractor within five days of each later payment to the first tier subcontractor, the lower-tier subcontractor has no right to assert a subrogated lien on the real property. If the contractor fails to timely notify the subcontractor of any later payment, the lower-tier subcontractor maintains the right to assert a subrogated lien.

PERFECTING A LIEN ON FUNDS

A lien on funds:

- Attaches and is effective immediately on the first furnishing of labor, materials, or rental equipment at the project site.
- Is perfected by serving a notice of claim of lien on funds on all potential obligors. There is no filing requirement.

(N.C.G.S. § 44A-18(f).)

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

SERVING THE NOTICE OF CLAIM OF LIEN

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, including:

- The property owner.
- The contractor if the lien claimant is a subcontractor of any tier.
- Each tier of subcontractors between the contractor and the lien claimant if the claimant is a second or lower-tier subcontractor.

(N.C.G.S. § 44A-19(d).)

There is no deadline for serving a notice of claim of lien on funds. Best practice is to serve a notice of claim of lien on funds as soon as possible to capture the funds held by the obligor. The lien on funds does not attach to funds that have already been disbursed by the obligor before receiving the notice (see Limitations on Liens on Funds).

Do not file a notice of claim of lien on funds with the clerk of superior court unless the notice is:

- Attached to a claim of lien on real property (N.C.G.S. § 44A-20(d); see Lien on Real Property Due to Wrongful Payment).
- Filed by the obligor to discharge a lien on funds (N.C.G.S. § 44A-20(e); see Discharging a Lien on Funds).

(N.C.G.S. § 44A-19(e).)

North Carolina does not require lien claimants to post a notice of claim of lien at the project site.

AMENDING THE NOTICE OF CLAIM OF LIEN

As a general rule, lien claimants cannot amend a notice of claim of lien. A claimant may instead:

- Cancel the prior lien.
- Serve a new notice of claim of lien on funds, as appropriate.

The new (replacement) notice of claim of lien on funds relates back to the date the claimant serves the replacement notice and does not relate back to the date of service of the original notice (N.C.G.S. § 44A-18(f); see Priority of a Lien on Funds).

WAIVER OF LIEN RIGHTS

A lien claimant may not prospectively waive the right to claim a lien on funds by contract. Any attempt to waive the claimant's lien rights in advance is void and unenforceable. (N.C.G.S. § 44A-12(f).)

However, a claimant may:

- Subordinate its lien rights to an owner or an owner's lender.
- Waive, release, or discharge a lien on receipt of payment.

Partial lien waivers are common as part of the payment process. A contractor may waive its lien rights periodically as payments are made.

A subcontractor's right to enforce a subrogated lien on real property is waived if the contractor signs a lien waiver before the subcontractor perfects its lien on real property. However, a contractor's lien waiver does not affect the subcontractor's right to claim:

- A lien on funds (see Notice of Claim of Lien on Funds).
- A lien on real property due to wrongful payment (see Lien on Real Property Due to Wrongful Payment).

(N.C.G.S. § 44A-23(c).)

ENFORCING A LIEN ON FUNDS

A lien on funds is commonly discharged by payment or replacement with other security (see Discharging a Lien on Funds).

If the lien is not discharged, a lien claimant may enforce a lien on funds by:

- Filing a civil action for breach of contract.
- Adding claims for statutory lien enforcement for each type of lien that the claimant seeks to enforce (lien on funds or lien on real property).

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

FILING THE ACTION

North Carolina does not have a separate statute of limitations for filing an action to enforce a lien on funds. The lien claimant is limited by the statute of limitations and statute of repose on the underlying breach of contract claim. For more information on statutory limitations periods, see State Q&A, Statutes of Limitations: North Carolina: Questions 3 ([7-524-4952](#)) and 24 ([7-524-4952](#)).

A lien claimant may extend the deadline for filing an action to enforce a lien on funds by entering into a tolling agreement. A tolling agreement can toll or suspend any applicable statute of limitation, repose, or time within which a cause of action must be filed (*Charlotte Motor Speedway, Inc. v. Tindall Corp.*, 672 S.E.2d 691, 694 (N.C. Ct. App. 2009)).

PARTIES TO THE ACTION

Necessary parties to an action to enforce a lien on funds include:

- The obligor.
- The party that contracted with the lien claimant.

Best practice is to include all parties listed in the notice of claim of lien on funds. Other proper parties include adverse lien claimants that:

- Have an interest in the funds, such as:
 - the contractor;
 - other subcontractors or suppliers; and
 - third-party lenders.
- May be entitled to share the funds on a pro rata basis.

(N.C.G.S. § 44A-21; see Priority of a Lien on Funds.)

If an adverse lien claimant is not a party to a lien enforcement action:

- The adverse lien claimant is not bound by the judgment entered in the lien enforcement action.
- The adverse lien claimant may bring a future action to determine the priority of its lien rights in the same funds.
- A later purchaser may obtain title to the property subject to the rights of the adverse lien claimant, if any.

JUDGMENT

A judgment in an action to enforce a lien on funds:

- May be entered in the principal amount of the lien.
- Directs a sale of the real property subject to the judgment lien.

(N.C.G.S. § 44A-13(b).)

The judgment is limited to the principal amount stated in the notice of claim of lien on funds (N.C.G.S. § 44A-13(b)). North Carolina law

does not define the term "principal amount." The term generally means the amount of debt owed to the lien claimant, exclusive of:

- Interest.
- Attorneys' fees.

The parties may include interest in the principal amount by separate agreement. Attorneys' fees are not available. (*Paving Equip. of the Carolinas, Inc. v. Waters*, 470 S.E.2d 546, 547 (N.C. Ct. App. 1996).)

A sale of the improved real property and distribution of proceeds are governed by the execution sale provisions under North Carolina law (N.C.G.S. §§ 1-339.41 to 1-339.76).

ATTORNEYS' FEES

Reasonable attorneys' fees may be awarded to the attorney representing the prevailing party in a lien enforcement action. A "prevailing party" includes:

- A plaintiff or third-party plaintiff that obtains a judgment of at least 50% of the claimed amount.
- A defendant or third-party defendant that obtains a judgment of less than 50% of the claimed amount.

An award of attorneys' fees is:

- Within the discretion of the court.
- Taxed as part of the court costs.
- Payable by the non-prevailing party on a finding that there was an unreasonable refusal by the losing party to fully resolve the matter, which may include:
 - an opposing party's continued pursuit of a claim or defense without a basis in evidence or a meritless motion in litigation (*Terry's Floor Fashions, Inc. v. Crown Gen. Contractors, Inc.*, 645 S.E.2d 810, 821 (N.C. Ct. App. 2007), *aff'd* 669 S.E.2d 321 (N.C. 2008)); or
 - a party's unreasonable actions during settlement negotiations (*R & L Const. of Mt. Airy, LLC v. Diaz*, 770 S.E.2d 698, 700-01 (N.C. Ct. App. 2015); *Terry's Floor Fashions*, 645 S.E.2d at 820-21).

(N.C.G.S. § 44A-35.)

PRIORITY OF A LIEN ON FUNDS

A perfected notice of claim of lien on funds has super-priority over all other interests or claims against the funds, including, without limitation, liens arising from:

- Garnishment.
- Attachment.
- Levy.
- Judgment.
- Assignments.
- Security interests.
- Any other type of transfer, whether voluntary or involuntary.

(N.C.G.S. § 44A-22.)

There is no priority among liens on the same funds. Instead, funds held by an obligor are treated as a common fund and lien claimants receive payments from the fund on a pro rata basis. Subrogated liens

on funds are treated the same as direct liens on funds for purposes of proration. (N.C.G.S. § 44A-21.)

DISCHARGING A LIEN ON FUNDS

An obligor may file a perfected notice of claim of lien on funds with the clerk of superior court in each county where the real property is located for the purpose of discharging the lien (N.C.G.S. § 44A-20(e)).

In North Carolina, a notice of claim of lien on funds may be discharged by any of the following methods:

- Acknowledging payment of the debt in person at the clerk's office. The clerk must make an entry of the acknowledgment of satisfaction on the filed lien. The acknowledgement must be:
 - signed by the lien claimant (or the claimant's attorney or agent) in the presence of the clerk; and
 - witnessed by the clerk.
- Filing an instrument signed and acknowledged by the lien claimant stating that the debt has been paid or satisfied. The clerk must:
 - make an entry of the satisfaction on the filed lien; and
 - cancel the filed lien.
- Filing an original or certified copy of the judgment or decree in a lien enforcement action showing that the action has been dismissed or determined adversely to the lien claimant.
- Depositing cash with the clerk in an amount equal to the amount claimed in the lien on funds. On deposit, the clerk must cancel the filed lien.
- Depositing a corporate surety bond with the clerk in an amount equal to one and one-fourth times the amount claimed in the notice of claim of lien on funds. On deposit, the clerk must cancel the filed lien.

(N.C.G.S. §§ 44A-16(a) and 44A-20(e).)

The clerk may release funds or a corporate surety bond on receipt of one of the following:

- Written agreement of the parties.
- A final judgment of a court of competent jurisdiction.
- A consent order.

(N.C.G.S. § 44A-16(b).)

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