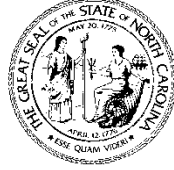


NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601



March 27, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Mechanics Lien on Real Property, pursuant to G.S. 120-30.17(1).

Senator Peter Brunstetter
Co-Chair

Representative Sarah Stevens
Co-Chair

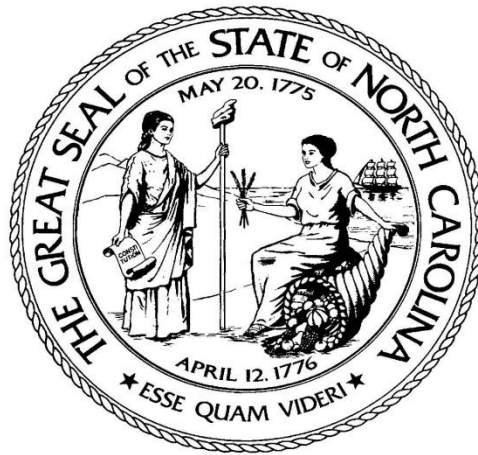
Co-Chairs
Committee on Mechanics Lien on Real Property
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION

**MECHANICS LIEN ON REAL PROPERTY
COMMITTEE**

NORTH CAROLINA GENERAL ASSEMBLY



**REPORT TO THE
2012 SESSION
of the
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA**

MARCH, 2012

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TABLE OF CONTENTS

LETTER OF TRANSMITTAL	7
LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP	9
PREFACE.....	10
COMMITTEE PROCEEDINGS	11
FINDING AND RECOMMENDATIONS.....	13
APPENDICES	
<u>APPENDIX A</u> MEMBERSHIP OF THE LRC COMMITTEE ON MECHANICS LIEN ON REAL PROPERTY.....	14
<u>APPENDIX B</u> COMMITTEE CHARGE	15
<u>APPENDIX C</u> STATUTORY AUTHORITY	16
<u>APPENDIX D</u> LEGISLATIVE PROPOSALS	17

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TRANSMITTAL LETTER

Month Day, Year

[\[Back to Top\]](#)

TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Mechanics Lien on Real Property, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

[\[Back to Top\]](#)

2011 – 2012

President Pro Tempore of the Senate

Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives

Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

[\[Back to Top\]](#)

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Mechanics Lien on Real Property, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Peter Brunstetter and Representative Sarah Stevens, Co-Chairs of the Committee. The full membership of the Committee is listed under [Committee Membership](#). A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

[\[Back to Top\]](#)

The Legislative Research Commission's Committee on Mechanics Lien on Real Property met three times after the 2011 Regular Session. The Committee's Charge can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

At its first meeting on February 23, 2012, Committee staff summarized Bill Draft 2011-TGz-13. The committee then received presentations by two attorneys representing the North Carolina Bar Association, Keith Coltrain and Andy Carmen, who first explained existing law governing mechanics liens and payment bond claims under Articles 2 and 3 of Chapter 44A. Messrs. Coltrain and Carmen then provided a detailed summary of the changes proposed in the bill draft and additional changes recommended by the Bar Association to address problems that subcontractors were experiencing resulting from bankruptcy court interpretation of current laws governing liens upon funds, and which proposed changes were posted on the Committee website in Mr. Coltrain's letter and its enclosure.

Lastly, the committee received presentations from Susan Lewis, CEO of Beam Construction Company, Inc., and Mr. J. Scott Bengel, CFO of Shelco, Inc. These speakers explained why general contractors support the bill draft's provisions relating to payment bond claims on public construction projects. As explained by the speakers, these provisions are intended to avoid double payment liability by requiring persons who do not contract directly with the prime contractor to notify the prime contractor of their involvement in the public construction project as a condition of making a payment bond claim.

Rep. Stam asked the committee to consider adding provisions clarifying when a former owner of property subject to a lien is a necessary party in an action to enforce the lien, and Sen. Stein asked the committee to consider adding provisions dealing with procedures for releasing a tax lien on a subdivided parcel of property.

Presiding Co-Chair Stevens announced that the committee may discuss other issues at its next meeting, including the problem of "hidden liens" in private construction projects and liens for work done on leased premises.

At the Committee's second meeting on March 7, 2012, Presiding Co-Chair Brunstetter acknowledged and expressed appreciation to stakeholders who met the previous week to discuss and resolve differences over provisions in Bill Draft 2011-TGz-13 relating to payment bond claims.

Sen. Brunstetter stated that the Co-Chairs recognized that there were legitimate unresolved concerns relating to proposed legislation to address the problem of hidden liens, contained in Bill Draft 2011-TGz-15. Sen. Brunstetter expressed the Co-Chairs' desire that stakeholders interested in this issue also engage in discussions in an effort to resolve their differences.

Next, Committee staff explained changes to the earlier bill draft contained in revised Bill Draft 2011-TGz-13A. These changes included the addition of provisions addressing the problem affecting subcontractors' liens upon funds in cases involving bankruptcy, clarifying when former owners are necessary parties in lien enforcement actions, and modifying the law governing the release of tax liens on subdivided parcels, all of which were discussed at the Committee's first meeting.

As staff further explained to the Committee, a number of changes to the payment bond provisions in the bill draft resulted from discussions held at a meeting attended by interested parties and Committee staff on February 27, 2012. At this meeting, persons representing the interests of general contractors, subcontractors, suppliers and credit managers involved in public projects discussed various concerns with the original version of the bill draft, and identified a number of revisions to address those concerns. Participants were asked to notify Committee staff of any objections to the suggested changes discussed at this meeting by no later than Friday, March 2, 2012. As of March 6, 2012, no objections had been received by staff, at which time the revised bill draft was posted on the Committee website, incorporating the changes suggested at the stakeholders meeting as well as several noncontroversial revisions suggested by stakeholders after the meeting.

After staff's presentation, the Committee discussed the bill draft and staff was instructed to revise the draft to address several technical issues raised and discussed during the meeting.

On March 20, 2012, a draft Report to the 2012 Session of the 2011 General Assembly was circulated to committee members, including the proposed legislation contained in revised Bill Draft 2011-TGz-13A.

The Committee's third and last meeting was held on March 27, 2012, at which time the Committee, after discussion, voted to adopt the draft as its Report to the 2012 Session of the 2011 General Assembly.

FINDINGS AND RECOMMENDATIONS

[\[Back to Top\]](#)

The Committee recommends the changes contained in the proposed legislation presented in this report to Article 2 and Article 3 of Chapter 44A of the General Statutes, to address problems under the current law, including subcontractor claims of lien upon funds being impaired by decisions of federal bankruptcy courts interpreting current law, and prime contractors on public projects incurring double payment liability as a result of claims under payment bonds by subcontractors and suppliers whose participation in the project was unknown by the contractor when it made payments to first-tier subcontractors.

In addition, the Committee recommends changes to clarify when a former owner of real property subject to a mechanics lien is a necessary party to an action to enforce the lien, and to improve the procedure by which a subdivided parcel of real property is released from a tax lien.

The Committee also examined the issue of liability for title insurance claims resulting from mechanics liens under Article 2 of Chapter 44A that are not filed as of the date of closing on the sale of the improved property, referred to as "hidden liens." In the time allocated to it for its work, however, the Committee was not able to evaluate unresolved issues relating to the provisions addressing this issue in Bill Draft 2011-TGz-15, and therefore does not recommend legislation on this issue during the 2012 short session.

The Committee recommends further study of the hidden liens issue to determine what, if any, changes to current law should be made during the 2013 Session, including consideration of the following issues:

- identifying and assessing problems resulting from hidden liens, including their impact on bona fide purchasers of improved real property and the potential effect of claims paid by title insurers for hidden liens on the availability of title insurance coverage for mechanics liens in North Carolina;
- identifying what, if any, legislative action is needed to address these problems; and
- identifying, assessing, and fairly allocating any burden or expense resulting from such legislative action on all affected parties, including sellers and purchasers of improved property, title insurers, lenders, and persons providing labor and services in connection with improvements to real property.

The Committee also recommends further study of the need for changes to current law to strengthen the lien rights of persons who contract with the owner of a leasehold interest to provide labor or materials in connection with improvements to the leased property.

COMMITTEE MEMBERSHIP

[\[Back to Top\]](#)

2011-2012

President Pro Tempore of the Senate
Appointments:

Senator Peter Brunstetter, Co-Chair

Senator Thom Goolsby
Senator Kathy Harrington
Senator Josh Stein

Speaker of the House of Representatives
Appointments:

Representative Sarah Stevens, Co-Chair

Representative Hugh Blackwell
Representative Bill Faison
Representative Paul Stam

COMMITTEE CHARGE

[\[Back to Top\]](#)

Study issues related to mechanic's liens on real property in North Carolina, including ways to address "hidden" liens in real estate transactions, and any other issues the committee deems relevant to the study.

STATUTORY AUTHORITY

[\[Back to Top\]](#)

NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

[\[Back to Top\]](#)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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D

BILL DRAFT 2011-TGz-13A [v.10] (02/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/21/2012 10:19:42 AM

Short Title: Mechanics Liens/Payment Bond Reforms. (Public)

Sponsors: Unknown.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S
3 MECHANICS LIEN, TAX LIEN, AND PAYMENT 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
8 definitions 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
14 demolish any improvement upon, connected with, or on or beneath the
15 surface of any real property, or to excavate, clear, grade, fill or
16 landscape any real property, or to construct driveways and private
17 roadways, or to furnish materials, including trees and shrubbery, for
18 any of such purposes, or to perform any labor upon such
19 improvements, and shall also mean and include any design or other
20 professional or skilled services furnished by architects, engineers, land
21 surveyors and landscape architects registered under Chapter 83A, 89A
22 or 89C of the General Statutes, off-site design, fabrication, and related
23 labor and materials in connection with noncommodity prefabricated

1 materials, products systems, or equipment customized for the use and
2 benefit of improving particular real property whether delivered to the
3 real property or not, and rental of equipment directly utilized on the
4 real property in making the improvement.

5 ~~(2)~~(4) "Improvement" means all Improvement. – All or any part of any
6 building, structure, erection, alteration, demolition, excavation,
7 clearing, grading, filling, or landscaping, including trees and
8 shrubbery, driveways, and private roadways, on real property.

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

12 ~~(3)~~(6) An "owner" is a Owner. – A person who has an interest in the real
13 property improved and for whom an improvement is made and who
14 ordered the improvement to be made. "Owner" includes successors in
15 interest of the owner and agents of the owner acting within their
16 authority.

17 ~~(4)~~(7) "Real property" means the Real property. – The real estate that is
18 improved, including lands, leaseholds, tenements and hereditaments,
19 and improvements placed thereon.

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

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

24 **SECTION 2.** G.S. 44A-11 reads as rewritten:

25 **"§ 44A-11. Perfecting claim of lien on real property.**

26 (a) Perfection. – A claim of lien on real property granted by this Article shall be
27 perfected as of the time provided in G.S. 44A-10 upon the filing of the claim of lien on
28 real property under G.S. 44A-12 and may be enforced pursuant to
29 G.S. 44A-13 occurrence of all of the following:

30 (1) Service of a copy of the claim of lien on real property upon the record
31 owner of the real property claimed to be subject to the claim of lien,
32 and if the claim of lien on real property is being asserted pursuant to
33 G.S. 44A-23, also upon the contractor through which subrogation is
34 being asserted.

35 (2) Filing of the claim of lien on real property under G.S. 44A-12.

36 (b) Method of Service. – Service of the claim of lien on real property pursuant to
37 subsection (a) of this section shall not require proof of actual receipt by the listed
38 recipient and shall be complete upon the occurrence of any of the following:

39 (1) Personal delivery of a copy of the claim of lien on real property upon
40 the recipient.

41 (2) Deposit of a copy of the claim of lien on real property in a postpaid,
42 properly addressed wrapper in either of the following:

43 (i) A post office or official depository under the exclusive care
44 and custody of the United States Postal Service.

(ii) An authorized depository under the exclusive care and custody of a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2).

(c) Service Address. – For purposes of this section, a wrapper addressed to a party required to be served under subdivision (a)(1) of this section shall be conclusively deemed properly addressed if it uses any of the following addresses:

- (1) The address for the party to be served listed on the permit issued for the improvement.
- (2) The address for the party to be served listed with the tax rolls for any county in North Carolina.
- (3) The address of the registered agent for the party to be served listed with the North Carolina Secretary of State's office."

SECTION 3. G.S. 44A-12 reads as rewritten:

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

(a) **Place of Filing.** – All claims of lien on real property must be filed in the office of the clerk of superior court in each county where the real property subject to the claim of lien on real property is located. The clerk of superior court shall note the claim of lien on real property on the judgment docket and index the same under the name of the record owner of the real property at the time the claim of lien on real property is filed. An additional copy of the claim of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee 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~~filed, and, if the claim of lien on real property is being asserted pursuant to G.S. 44A-23, the name of the contractor through which subrogation is being asserted:
- (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:

Appendix D

- 1 (5) Date upon which labor or materials were first furnished upon said
2 property by the claimant:
3 (5a) Date upon which labor or materials were last furnished upon said
4 property by the claimant:
5 (6) General description of the labor performed or materials furnished and
6 the amount claimed therefor:
7 (7) I hereby certify that I have served the parties listed in paragraph two
8 above in accordance with the requirements of G.S. 44A-11.

9 _____
10 Lien Claimant

11 Filed this ____ day of ____, ____

12 _____
13 Clerk of Superior Court

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

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

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

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

- 28 (1) An agreement to waive the right to file a claim of lien on real property
29 granted under this Part, or an agreement to waive the right to serve a
30 notice of claim of lien upon funds granted under Part 2 of this Article,
31 which agreement is in anticipation of and in consideration for the
32 awarding of any contract, either expressed or implied, for the making
33 of an improvement upon real property under this Article is against
34 public policy and is unenforceable. This section does not prohibit
35 subordination or release of a lien granted under this Part or Part 2 of
36 this Article.
37 (2) Lien waivers denoted as "partial" lien waivers shall not alter or waive
38 the lien claimant's effective date for any lien claim created by this
39 Article. The sole manner of altering or waiving the effective date is by
40 the lien claimant's executing a document expressly denoted as a "final"
41 lien waiver.
42 (3) Unless expressly stated on the lien waiver form, the lien waiver shall
43 be construed to be conditional upon the lien claimant's actual receipt of
44 the specified funds.
45 (4) Lien waivers shall be substantially in the forms set forth below. Other
46 forms may be used, but any substantive provisions that represent

Appendix D

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 does it release claims for retention to become due at a later date nor does it release 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:

Appendix D

(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 the effective date of any lien claim created by this Article. 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 4. G.S. 44A-13 is amended by adding a new subsection to read:

"§ 44A-13. Action to enforce claim of lien on real property.

...

(d) Former Owner Not a Necessary Party to Action. – In an action brought under this section, a former owner of the improved property at the time the lien arose, who holds no ownership interest in the property at the time the action is commenced, and against whom the plaintiff seeks no relief, is not a necessary party to the action."

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

SECTION 6. G.S. 44A-18 reads as rewritten:

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

~~Upon compliance with this Article:~~

~~(1a)~~ A first tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the contractor with whom the first tier subcontractor dealt and that arise out of the improvement on which the first tier subcontractor worked or furnished materials.

~~(2b)~~ A second tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to have~~ a lien upon funds that

Appendix D

1 are owed to the first tier subcontractor with whom the second tier subcontractor dealt
2 and that arise out of the improvement on which the second tier subcontractor worked or
3 furnished materials. A second tier subcontractor, to the extent of the second tier
4 subcontractor's lien provided in this subdivision, shall also be ~~entitled to be~~ subrogated
5 to the lien upon funds of the first tier subcontractor with whom the second tier
6 contractor dealt provided for in subdivision (1) of this section and shall ~~be entitled to~~
7 perfect it by service of the notice of claim of lien upon funds to the extent of the claim.

8 (3c) A third tier subcontractor who furnished labor, materials, or rental
9 equipment at the site of the improvement shall ~~be entitled to have~~ a lien upon funds that
10 are owed to the second tier subcontractor with whom the third tier subcontractor dealt
11 and that arise out of the improvement on which the third tier subcontractor worked or
12 furnished materials. A third tier subcontractor, to the extent of the third tier
13 subcontractor's lien upon funds provided in this subdivision, shall also ~~be entitled to be~~
14 subrogated to the lien upon funds of the second tier subcontractor with whom the third
15 tier contractor dealt and to the lien upon funds of the first tier subcontractor with whom
16 the second tier subcontractor dealt to the extent that the second tier subcontractor is
17 ~~entitled to be~~ subrogated thereto, and in either case shall ~~be entitled to perfect the same~~
18 it by service of the notice of claim of lien upon funds to the extent of the claim.

19 (4d) Subcontractors more remote than the third tier who furnished labor,
20 materials, or rental equipment at the site of the improvement shall ~~be entitled to have~~ a
21 lien upon funds that are owed to the person with whom they dealt and that arise out of
22 the improvement on which they furnished labor, materials, or rental equipment, but such
23 remote tier subcontractor shall not be entitled to subrogation to the rights of other
24 persons.

25 (5e) The liens upon funds granted under this section shall secure amounts
26 earned by the lien claimant as a result of having furnished labor, materials, or rental
27 equipment at the site of the improvement under the contract to improve real property,
28 including interest at the legal rate provided in G.S. 24-5, whether or not such amounts
29 are due and whether or not performance or delivery is complete. In the event
30 insufficient funds are retained to satisfy all lien claimants, subcontractor lien claimants
31 may recover the interest due under this subdivision on a pro rata basis, but in no event
32 shall interest due under this subdivision increase the liability of the obligor under
33 G.S. 44A-20.

34 (6f) A lien upon funds granted under this section arises, attaches, and is
35 perfected effective immediately upon the first furnishing of labor, materials, or rental
36 equipment at the site of the improvement by a subcontractor. Any lien upon funds
37 granted under this section is perfected upon the giving of notice of claim of lien upon
38 funds in writing to the obligor as provided in G.S. 44A-19 and shall be effective upon
39 the obligor's receipt of the notice. The subrogation rights of a first, second, or third tier
40 subcontractor to the claim of lien on real property of the contractor created by Part 1 of
41 Article 2 of this Chapter are perfected as provided in G.S. 44A-23. G.S. 44A-19.

42 (g) Until a lien claimant gives notice of a claim of lien upon funds in
43 writing to the obligor as provided in G.S. 44A-19, any owner, contractor or
44 subcontractor against whose interest the lien upon funds is claimed may make, receive,
45 use, or collect payments thereon and may use such proceeds in the ordinary course of its
46 business."

Appendix D

SECTION 7. G.S. 44A-19 reads as rewritten:

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

(a) Notice of a claim of lien upon funds shall set forth all of the following information:

- (1) The name and address of the person claiming the lien upon funds.
- (2) A general description of the real property improved.
- (3) The name and address of the person with whom the lien claimant contracted to improve real property.
- (4) The name and address of each person against or through whom subrogation rights are claimed.
- (5) A general description of the contract and the person against whose interest the lien upon funds is claimed.
- (6) The amount of the lien upon funds claimed by the lien claimant under the contract.

(b) All notices of claims of liens upon funds by first, second, or third tier subcontractors 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)

Appendix D

(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.~~ G.S. 44A-20(d).

(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 8. 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

Appendix D

1 upon funds under this Article up to the total amount of such liens upon funds as to
2 which notices of claims of lien upon funds have been received.

3 (b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the
4 obligor makes further payments to a contractor or subcontractor against whose interest
5 the lien or liens upon funds are claimed, the lien upon funds shall continue upon the
6 funds in the hands of the contractor or subcontractor who received the payment, and in
7 addition the obligor shall be personally liable to the person or persons entitled to liens
8 upon funds up to the amount of such wrongful payments, not exceeding the total claims
9 with respect to which the notice of claim of lien upon funds was received prior to
10 payment.

11 (c) If an obligor makes a payment after receipt of notice of claim of lien on funds
12 and incurs personal liability under subsection (b) of this section, the obligor shall be
13 entitled to reimbursement and indemnification from the party receiving such payment.

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

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

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

44 **SECTION 9.** G.S. 44A-23 reads as rewritten:

45 **"§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation**
46 **rights of subcontractor.**

Appendix D

1 (a) First tier subcontractor. – A first tier ~~subcontractor, who gives notice of claim~~
2 ~~of lien upon funds as provided in this Article,~~ subcontractor may, to the extent of ~~this~~-its
3 claim, enforce the claim of lien on real property of the contractor created by Part 1 of
4 this Article. The manner of such enforcement shall be as provided by G.S. 44A-7
5 through 44A-16. The claim of lien on real property is perfected as of the time set forth
6 in G.S. 44A-10 upon filing of the claim of lien on real property pursuant to
7 G.S. 44A-12. When completing the claim of lien on real property form, the
8 subcontractor may use as the date upon which labor or materials were first or last
9 furnished on the real property either the date of the first or last furnishing of labor or
10 materials on the real property by the subcontractor making the claim or the date of the
11 first or last furnishing of labor or materials on the real property by the contractor
12 through which the claim of lien on real property is being asserted. Upon the filing of the
13 claim of lien on real ~~property, with the notice of claim of lien upon funds attached,~~
14 property and the commencement of the action, no action of the contractor shall be
15 effective to prejudice the rights of the subcontractor without his written consent. A lien
16 waiver signed by the contractor prior to commencement of the action waives the
17 subcontractor's right to a claim of lien on real property but does not affect the
18 subcontractor's rights to a claim of lien on funds under this Article.

19 (b) Second or third subcontractor. –

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

24 a. The owner or contractor, within 30 days following the date the
25 building permit is issued for the improvement of the real
26 property ~~involved,~~ involved or within 30 days following the
27 date the contractor is awarded the contract for the improvement
28 of the real property involved, whichever is later, posts on the
29 property in a visible location adjacent to the posted ~~building~~
30 ~~permit~~ permit, if a permit is required, and files in the office of
31 the clerk of superior court in each county wherein the real
32 property to be improved is located, a completed and signed
33 notice of contract form and the second or third tier
34 subcontractor fails to serve upon the contractor a completed and
35 signed notice of subcontract form by the same means of service
36 as described in G.S. 44A-19(d); or; or

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

45 (2) The form of the notice of contract to be so utilized under this section
46 shall be substantially as follows and the fee for filing the same with the

Appendix D

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~~ on which 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, property~~ and the commencement of the action, no action of the contractor shall

1 be effective to prejudice the rights of the second or third tier
2 subcontractor without his written consent."

3 **SECTION 10.** G.S. 44A-24 reads as rewritten:

4 "**§ 44A-24. False statement a ~~misdemeanor~~, ~~misdemeanor~~, an unfair and deceptive**
5 **trade practice, and grounds for disciplinary action against a licensed**
6 **contractor or qualifying party.**

7 If any contractor or other person receiving payment from an obligor for an
8 improvement to real property or from a purchaser for a conveyance of real property with
9 improvements subject to this Article or to Article 3 of this Chapter shall knowingly
10 furnish to such obligor, purchaser, or to a lender who obtains a security interest in said
11 real property, or to a title insurance company insuring title to such real property, a false
12 written statement of the sums due or claimed to be due for labor or material furnished at
13 the site of improvements to such real property, then such contractor, subcontractor or
14 other person shall be guilty of a Class 1 ~~misdemeanor~~, ~~misdemeanor~~ and shall be
15 subject to a claim for violation of G.S. 75-1.1 by any obligor, purchaser, lender who
16 obtains a security interest in such property, title insurance company insuring title to such
17 property, or any person who otherwise would be entitled to a claim of lien on real
18 property under this Article and who suffers actual harm as a result of the
19 misrepresentation. In addition, any person who knowingly signs or directs another
20 person to sign such a written statement shall be guilty of a Class 1 misdemeanor and
21 subject to a claim for violation of G.S. 75-1.1. Upon conviction and in the event the
22 court shall grant any defendant a suspended sentence, the court may in its discretion
23 include as a condition of such suspension a provision that the defendant shall reimburse
24 the party who suffered loss on such conditions as the court shall determine are proper.

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

32 In addition to the criminal sanctions and civil liabilities created by this section,
33 conduct constituting the offense herein stated and causing actual harm to any person by
34 any licensed contractor or qualifying party, as that term is used in Chapter 87 of the
35 General Statutes, shall constitute deceit and misconduct subject to disciplinary action
36 under Chapter 87 of the General Statutes, including revocation, suspension, or
37 restriction of a license or the ability to act as a qualifying party for a license."

38 **SECTION 11.** G.S. 44A-27 reads as rewritten:

39 "**§ 44A-27. Actions on payment bonds; service of notice.**

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

Appendix D

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

3 (b) Any claimant who has a direct contractual relationship with any subcontractor
4 but has no contractual relationship, express or implied, with the contractor may bring an
5 action on the payment bond only if he has given written notice of claim on payment
6 bond to the contractor within 120 days from the date on which the claimant performed
7 the last of the labor or furnished the last of the materials for which he claims payment,
8 stating with substantial accuracy the amount claimed and the name of the person for
9 whom the work was performed or to whom the material was furnished. The contractor
10 shall furnish a copy of the payment bond required by this Article within seven calendar
11 days in response to a written request served by any claimant in accordance with the
12 provisions of G.S. 44A-27(c). Subject to the exception set forth in subsection (e) of this
13 section, unless the contractor has failed to satisfy its obligation to timely furnish a copy
14 of the payment bond to a claimant upon proper request by the claimant, the claim of
15 such a claimant shall be limited to the labor or materials provided within 60 days prior
16 to the claimant's service, in accordance with subsections (c) and (d) of this section, of its
17 written notice of public subcontract to the contractor.

18 (c) ~~The notice notices~~ required by and any requests for copy of payment bond
19 referenced by subsection (b) of this section, above, shall be served by ~~registered or~~
20 certified mail, or by signature confirmation as provided by the United States Postal
21 Service, postage prepaid, in an envelope addressed to such contractor at any place
22 where his office is regularly maintained for the transaction of business or to such agent
23 identified in the contractor's project statement referenced in subsection (f)(1) below, or
24 served in any manner provided by law for the service of summons.

25 (d) The form of the notice of public subcontract to be served pursuant to
26 subsection (b) of this section shall be substantially as follows:

27 'NOTICE OF PUBLIC SUBCONTRACT

- 28
- 29 (1) Name and address of the subcontractor giving notice of public
30 subcontract:
- 31 (2) General description of the real property on which the labor was
32 performed or the material was furnished (street address, tax map lot
33 and block number, reference to recorded instrument, or any description
34 that reasonably identifies the real property):
- 35 (3) General description of the subcontractor's contract, including the
36 names and addresses of the parties thereto:
- 37 (4) General description of the labor and material performed and furnished
38 thereunder:

39

40 Dated: _____

41 _____

42 Subcontractor'

43 (e) Notwithstanding subsections (b), (c), and (d) above, the obligation to provide
44 a notice of public subcontract shall not apply to claims of \$10,000.00 or less, and for
45 any claim exceeding \$10,000.00, shall apply only to that portion of the claim in excess
46 of \$10,000.00.

Appendix D

1 (f) In connection with any construction contract for which a bond is required by
2 G.S. 44A-26(a):

3 (1) The contractor shall provide to each subcontractor that it engages to
4 perform labor or furnish materials in the performance of the
5 construction contract a contractor's project statement containing all of
6 the following information:

7 a. The name of the project.

8 b. The physical address of the project.

9 c. The name of the contracting body.

10 d. The name of the contractor.

11 e. The name, phone number, and mailing address of an agent
12 authorized by the contractor to accept service of the requests for
13 payment bond, the notice of public subcontract and the notice of
14 claim on payment bond referenced in subsection (b) of this
15 section.

16 f. The name and address of the principal place of business of the
17 surety issuing the payment bond required by G.S. 44A-26(a) for
18 the construction contract.

19 (2) Each subcontractor shall provide each subcontractor that it engages to
20 perform labor or furnish materials in the performance of the
21 construction contract a copy of the contractor's project statement.

22 (3) No agreement entered into between a contractor and a subcontractor or
23 between a subcontractor and its subcontractor shall be enforceable
24 against the lower tier party until the contractor's project statement has
25 been provided to the lower tier party."

26 **SECTION 12.** G.S. 105-362(b) reads as rewritten:

27 **"§ 105-362. Discharge of lien on real property.**

28 ...

29 (b) Release of Separate Parcels from Tax Lien. –

30 ...

31 (2) When real property listed as one parcel is divided, a part thereof ~~may~~ shall
32 be released as provided in subdivision (b)(1), above, after the assessed valuation of the
33 part to be released has been determined and certified to the tax collector by the ~~tax~~
34 ~~supervisor~~ county assessor and payment of all past-due taxes on the parent parcel, the
35 taxes on the part to be released, plus any penalties, interest, and costs allowed by law,
36 have been fully paid. The county assessor shall have ten business days from receipt of a
37 written request for valuation under this subdivision to provide the valuation; provided,
38 however, this subdivision shall not apply upon a showing of good cause by the tax
39 collector based on the tax payment history of the owner of the parent parcel."

40 **SECTION 13.1.** G.S. 44A-4(b) reads as rewritten:

41 **"§ 44A-4. Enforcement of lien by sale.**

42 ...

43 "(b) Notice and Hearings. –

44 (1) If the property upon which the lien is claimed is a motor vehicle that is
45 required to be registered, the lienor following the expiration of the
46 relevant time period provided by subsection (a) shall give notice to the

1 Division of Motor Vehicles that a lien is asserted and sale is proposed
2 and shall remit to the Division a fee of ten dollars (\$10.00). The
3 Division of Motor Vehicles shall issue notice by ~~registered or~~ certified
4 mail, return receipt requested, to the person having legal title to the
5 property, if reasonably ascertainable, to the person with whom the
6 lienor dealt if different, and to each secured party and other person
7 claiming an interest in the property who is actually known to the
8 Division or who can be reasonably ascertained. The notice shall state
9 that a lien has been asserted against specific property and shall identify
10 the lienor, the date that the lien arose, the general nature of the services
11 performed and materials used or sold for which the lien is asserted, the
12 amount of the lien, and that the lienor intends to sell the property in
13 satisfaction of the lien. The notice shall inform the recipient that the
14 recipient has the right to a judicial hearing at which time a
15 determination will be made as to the validity of the lien prior to a sale
16 taking place. The notice shall further state that the recipient has a
17 period of 10 days from the date of receipt in which to notify the
18 Division by ~~registered or~~ certified mail, return receipt requested, that a
19 hearing is desired and that if the recipient wishes to contest the sale of
20 his property pursuant to such lien, the recipient should notify the
21 Division that a hearing is desired. The notice shall state the required
22 information in simplified terms and shall contain a form whereby the
23 recipient may notify the Division that a hearing is desired by the return
24 of such form to the Division. The Division shall notify the lienor
25 whether such notice is timely received by the Division. In lieu of the
26 notice by the lienor to the Division and the notices issued by the
27 Division described above, the lienor may issue notice on a form
28 approved by the Division pursuant to the notice requirements above. If
29 notice is issued by the lienor, the recipient shall return the form
30 requesting a hearing to the lienor, and not the Division, within 10 days
31 from the date the recipient receives the notice if a judicial hearing is
32 requested. If the ~~registered or~~ certified mail notice has been returned as
33 undeliverable and the notice of a right to a judicial hearing has been
34 given to the owner of the motor vehicle in accordance with
35 G.S. 20-28.4, no further notice is required. Failure of the recipient to
36 notify the Division or lienor, as specified in the notice, within 10 days
37 of the receipt of such notice that a hearing is desired shall be deemed a
38 waiver of the right to a hearing prior to the sale of the property against
39 which the lien is asserted, and the lienor may proceed to enforce the
40 lien by public or private sale as provided in this section and the
41 Division shall transfer title to the property pursuant to such sale. If the
42 Division or lienor, as specified in the notice, is notified within the
43 10-day period provided above that a hearing is desired prior to sale, the
44 lien may be enforced by sale as provided in this section and the
45 Division will transfer title only pursuant to the order of a court of
46 competent jurisdiction.

1 If the ~~registered or~~ certified mail notice has been returned as
2 undeliverable, or if the name of the person having legal title to the
3 vehicle cannot reasonably be ascertained and the fair market value of
4 the vehicle is less than eight hundred dollars (\$800.00), the lienor may
5 institute a special proceeding in the county where the vehicle is being
6 held, for authorization to sell that vehicle. Market value shall be
7 determined by the schedule of values adopted by the Commissioner
8 under G.S. 105-187.3.

9 In such a proceeding a lienor may include more than one vehicle,
10 but the proceeds of the sale of each shall be subject only to valid
11 claims against that vehicle, and any excess proceeds of the sale shall
12 be paid immediately to the Treasurer for disposition pursuant to
13 Chapter 116B of the General Statutes.

14 The application to the clerk in such a special proceeding shall
15 contain the notice of sale information set out in subsection (f) hereof.
16 If the application is in proper form the clerk shall enter an order
17 authorizing the sale on a date not less than 14 days therefrom, and the
18 lienor shall cause the application and order to be sent immediately by
19 first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom
20 notice was mailed pursuant to this subsection. Following the
21 authorized sale the lienor shall file with the clerk a report in the form
22 of an affidavit, stating that the lienor has complied with the public or
23 private sale provisions of G.S. 44A-4, the name, address, and bid of
24 the high bidder or person buying at a private sale, and a statement of
25 the disposition of the sale proceeds. The clerk then shall enter an order
26 directing the Division to transfer title accordingly.

27 If prior to the sale the owner or legal possessor contests the sale or
28 lien in a writing filed with the clerk, the proceeding shall be handled in
29 accordance with G.S. 1-301.2.

- 30 (2) If the property upon which the lien is claimed is other than a motor
31 vehicle required to be registered, the lienor following the expiration of
32 the 30-day period provided by subsection (a) shall issue notice to the
33 person having legal title to the property, if reasonably ascertainable,
34 and to the person with whom the lienor dealt if different by ~~registered~~
35 ~~or~~ certified mail, return receipt requested. Such notice shall state that a
36 lien has been asserted against specific property and shall identify the
37 lienor, the date that the lien arose, the general nature of the services
38 performed and materials used or sold for which the lien is asserted, the
39 amount of the lien, and that the lienor intends to sell the property in
40 satisfaction of the lien. The notice shall inform the recipient that the
41 recipient has the right to a judicial hearing at which time a
42 determination will be made as to the validity of the lien prior to a sale
43 taking place. The notice shall further state that the recipient has a
44 period of 10 days from the date of receipt in which to notify the lienor
45 by ~~registered or~~ certified mail, return receipt requested, that a hearing
46 is desired and that if the recipient wishes to contest the sale of his

1 property pursuant to such lien, the recipient should notify the lienor
2 that a hearing is desired. The notice shall state the required information
3 in simplified terms and shall contain a form whereby the recipient may
4 notify the lienor that a hearing is desired by the return of such form to
5 the lienor. Failure of the recipient to notify the lienor within 10 days of
6 the receipt of such notice that a hearing is desired shall be deemed a
7 waiver of the right to a hearing prior to sale of the property against
8 which the lien is asserted and the lienor may proceed to enforce the
9 lien by public or private sale as provided in this section. If the lienor is
10 notified within the 10-day period provided above that a hearing is
11 desired prior to sale, the lien may be enforced by sale as provided in
12 this section only pursuant to the order of a court of competent
13 jurisdiction."

14 **SECTION 13.2.** G.S. 44A-24.10 reads as rewritten:

15 **"§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in**
16 **pending suit within 30 days after service on owner.**

17 If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a
18 pending suit to enforce a lien within 30 days after a properly served written demand of
19 the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of
20 the demand shall be by ~~registered or~~ certified mail, return receipt requested, or by
21 personal service. The claimant shall file proof of properly served written demand with
22 the clerk of the superior court. The provisions of this section shall not extend to any
23 other deadline provided by law for the filing of any pleadings or for the foreclosure of
24 any lien governed by this Part."

25 **SECTION 13.3.** G.S. 44A-43(b)(1) and (c)(1)a. read as rewritten:

26 **"§ 44A-43. Enforcement of self-service storage facility lien.**

- 27 ...
- 28 (b) Notice and Hearing:
- 29 (1) If the property upon which the lien is claimed is a motor vehicle, the
30 lienor, following the expiration of the 15-day period provided by
31 subsection (a), shall give notice to the Division of Motor Vehicles that
32 a lien is asserted and that a sale is proposed. The lienor shall remit to
33 the Division a fee of two dollars (\$2.00); and shall also furnish the
34 Division with the last known address of the occupant. The Division of
35 Motor Vehicles shall issue notice by ~~registered or~~ certified mail, return
36 receipt requested to the person having legal title to the vehicle, if
37 reasonably ascertainable, and to the occupant, if different, at his last
38 known address. The notice shall:
- 39 ...
- 40 c. State that the legal title holder and the occupant have a period
41 of 10 days from the date of receipt of the notice in which to
42 notify the Division of Motor Vehicles by ~~registered or~~ certified
43 mail, return receipt requested, that a hearing is desired to
44 contest the sale of the vehicle pursuant to the lien.

Appendix D

1 The person with legal title or the occupant must, within 10 days of receipt of the
2 notice from the Division of Motor Vehicles, notify the Division of his desire to contest
3 the sale of the vehicle pursuant to the lien, and that the Division should so notify lienor.

4 Failure of the person with legal title or the occupant to notify the Division that a
5 hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the
6 vehicle against which the lien is asserted. Upon such failure, the Division shall so notify
7 the lienor; the lienor may proceed to enforce the lien by a public sale as provided by this
8 section; and the Division shall transfer title to the property pursuant to such sale.

9 If the Division is notified within the 10-day period provided in this section that a
10 hearing is desired prior to the sale, the lien may be enforced by a public sale as provided
11 in this section and the Division will transfer title only pursuant to the order of a court of
12 competent jurisdiction.

13 ...

14 (c) Public Sale. –

15 (1) Not less than 20 days prior to sale by public sale the lienor:

16 a. Shall cause notice to be delivered by ~~registered or~~ certified mail
17 to the person having a security interest in the property if
18 reasonably ascertainable, and to the occupant at the occupant's
19 last known address. Notice given pursuant to this subdivision
20 shall be presumed delivered when it is properly addressed,
21 first-class postage prepaid, and deposited with the United States
22 Postal Service."

23 **SECTION 14.** Sections 1 through 3 and sections 5 through 11 of this act
24 become effective January 1, 2013, and apply to improvements to real property for which
25 the first permit required to be obtained is obtained on or after that date or, with respect
26 to projects for which no permit is required, apply to improvement to real property
27 commenced on or after that date. Section 12 of this act is effective when it becomes law
28 and applies to taxes imposed for taxable years beginning on or after July 1, 2012.
29 Sections 4, 13 and 14 of this act are effective when it becomes law.

30

