

1 materials, including trees and shrubbery, for any of such purposes, or to
2 perform any labor upon such improvements, or supplying rental
3 equipment, tools, appliances or machinery or the reasonable value of the
4 use of equipment utilized on the real property for the improvement, and
5 shall also mean and include any design or other professional or skilled
6 services furnished by architects, engineers, land surveyors and
7 landscape architects registered under Chapter 83A, 89A or 89C of the
8 General Statutes.

9 (2) 'Improvement' means all or any part of any building, structure, erection,
10 alteration, demolition, excavation, clearing, grading, filling, or
11 landscaping, including trees and shrubbery, driveways, and private
12 roadways, on real property.

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

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

20 (5) 'Obligor' means an owner, contractor or subcontractor in any tier who
21 owes money to another as a result of the other's partial or total
22 performance of a contract to improve real property.'"

23 Sec. 3. G.S. 44A-8 reads as rewritten:

24 "**§ 44A-8. Mechanics', laborers' and materialmen's lien; persons entitled to lien.**

25 Any person who performs or furnishes labor or professional design or surveying
26 services or furnishes materials or supplying of rental equipment, tools, appliances or
27 machinery or the reasonable value of the use of equipment utilized on the real property
28 for the improvement, pursuant to a contract, either express or implied, with the owner of
29 real property for the making of an improvement thereon shall, upon complying with the
30 provisions of this Article, have a lien on such real property to secure payment of all debts
31 owing for labor done or professional design or surveying services or material furnished
32 pursuant to such contract."

33 Sec. 4. G.S. 44A-10 reads as rewritten:

34 "**§ 44A-10. Effective date of liens.**

35 Liens granted by this Article shall relate to and take effect from the time of the first
36 ~~furnishing of labor or materials at the site of the improvement~~ acts to improve the real
37 property by the person claiming the lien."

38 Sec. 5. G.S. 44A-12 reads as rewritten:

39 "**§ 44A-12. Filing claim of lien.**

40 (a) Place of Filing. – All claims of lien against any real property must be filed in
41 the office of the clerk of superior court in each county wherein the real property subject
42 to the claim of lien is located. The clerk of superior court shall note the claim of lien on
43 the judgment docket and index the same under the name of the record owner of the real

1 property at the time the claim of lien is filed. An additional copy of the claim of lien may
2 also be filed with any receiver, referee in bankruptcy or assignee for benefit of creditors
3 who obtains legal authority over the real property.

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

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

10
11 **CLAIM OF LIEN ON REAL PROPERTY**

- 13 (1) Name and address of the person claiming the lien:
- 14 (2) Name and address of the record owner of the real property claimed to be
- 15 subject to the lien at the time the claim of lien is filed:
- 16 (3) Description of the real property upon which the lien is claimed: (Street
- 17 address, tax lot and block number, reference to recorded instrument, or
- 18 any other description of real property is sufficient, whether or not it is
- 19 specific, if it reasonably identifies what is described.)
- 20 (4) Name and address of the person with whom the claimant contracted ~~for~~
- 21 ~~the furnishing of labor or materials:~~ to improve real property:
- 22 (5) Date upon which ~~labor or materials~~ acts to improve real property were
- 23 first furnished upon said property by the claimant:
- 24 (5a) Date upon which ~~labor or materials~~ acts to improve real property were
- 25 last furnished upon said property by the claimant:
- 26 (6) General description of the ~~labor performed or materials furnished and the~~
- 27 ~~amount claimed therefor:~~ acts to improve real property (it is not necessary
- 28 that the lien claimant file an itemized list or description of act to
- 29 improve real property):
- 30 (7) Principal amount claimed:

31
32
33 Lien Claimant
34 Filed this day of....., 19.....
35
36 Clerk of Superior Court

37 A general description of the ~~labor performed or materials furnished~~ acts to improve real
38 property is sufficient. It is not necessary for lien claimant to file an itemized list of
39 ~~materials or a detailed statement of labor performed.~~ specific acts to improve real property.

40 (d) No Amendment of Claim of Lien. – A claim of lien may not be amended. A
41 claim of lien may be cancelled by a claimant or his authorized agent or attorney and a
42 new claim of lien substituted therefor within the time herein provided for original filing.

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

5 (f) Waiver of Right to File or Claim Liens as Consideration for Contract Against
6 Public Policy. – An agreement to waive the right to file or claim a lien granted under this
7 Article, which agreement is in anticipation of and in consideration for the awarding of
8 any contract, either expressed or implied, for the making of an improvement upon real
9 property under this Article is against public policy and is unenforceable. This section
10 does not prohibit subordination or release of a lien granted under this Article. A waiver
11 or release of a lien on real property following the awarding of any contract for the
12 improvement to real property requires full consideration of the contract amount."

13 Sec. 6. G.S. 44A-13 reads as rewritten:

14 **"§ 44A-13. Action to enforce lien.**

15 (a) Where and When Action Instituted. – An action to enforce the lien created by
16 this Article may be instituted in any county in which the lien is filed. No such action may
17 be commenced later than 180 days after the last furnishing of labor or materials at the site
18 of the improvement by the person claiming the lien. The time within which to commence
19 an action to enforce a lien on real property is extended by virtue of a voluntary dismissal
20 without prejudice taken under G.S. 1A-1, Rule 41(a). If the title to the real property
21 against which the lien is asserted is by law vested in a receiver or trustee in bankruptcy,
22 the lien shall be enforced in accordance with the orders of the court having jurisdiction
23 over said real ~~property~~-property; and the filing of a proof of claim in bankruptcy or with a
24 receiver within the time required by this section satisfies the requirement for the
25 commencement of a civil action by filing a complaint.

26 (b) Judgment. – Judgment enforcing a lien under this Article may be entered for
27 the principal amount ~~shown to be due, not exceeding the principal amount stated in the claim
28 of lien enforced thereby~~-as stated in the claim of lien and shown to be due plus interest at
29 the contract rate and court costs. The judgment shall direct a sale of the real property
30 subject to the lien thereby enforced.

31 (c) Notice of Action. – Unless the action enforcing the lien created by this Article
32 is instituted in the county in which the lien is filed, in order for the sale under the
33 provisions of G.S. 44A-14(a) to pass all title and interest of the owner to the purchaser
34 good against all claims or interests recorded, filed or arising after the first furnishing of
35 labor or materials at the site of the improvement by the person claiming the lien, a notice
36 of lis pendens shall be filed in each county in which the real property subject to the lien is
37 located within 180 days after the last furnishing of labor or materials at the site of the
38 improvement by the person claiming the lien. It shall not be necessary to file a notice of
39 lis pendens in the county in which the action enforcing the lien is commenced in order for
40 the judgment entered therein and the sale declared thereby to carry with it the priorities
41 set forth in G.S. 44A-14(a). If neither an action nor a notice of lis pendens is filed in each
42 county in which the real property subject to the lien is located within 180 days after the
43 last furnishing of labor or materials at the site of the improvement by the person claiming

1 the lien, as to real property claimed to be subject to the lien in such counties where the
2 action was neither commenced nor a notice of lis pendens filed, the judgment entered in
3 the action enforcing the lien shall not direct a sale of the real property subject to the lien
4 enforced thereby nor be entitled to any priority under the provisions of G.S. 44A-14(a),
5 but shall be entitled only to those priorities accorded by law to money judgments."

6 Sec. 7. G.S. 44A-16 reads as rewritten:

7 **"§ 44A-16. Discharge of record lien.**

8 Any lien filed under this Article may be discharged by any of the following methods:

- 9 (1) The lien claimant of record, his agent or attorney, in the presence of the
10 clerk of superior court may acknowledge the satisfaction of the lien
11 indebtedness, whereupon the clerk of superior court shall forthwith
12 make upon the record of such lien an entry of such acknowledgment of
13 satisfaction, which shall be signed by the lien claimant of record, his
14 agent or attorney, and witnessed by the clerk of superior court.
- 15 (2) The owner may exhibit an instrument of satisfaction signed and
16 acknowledged by the lien claimant of record which instrument states
17 that the lien indebtedness has been paid or satisfied, whereupon the
18 clerk of superior court shall cancel the lien by entry of satisfaction on
19 the record of such lien.
- 20 (3) By failure to enforce the lien within the time prescribed in this Article.
- 21 (4) By filing in the office of the clerk of superior court the original or
22 certified copy of a judgment or decree of a court of competent
23 jurisdiction showing that the action by the claimant to enforce the lien
24 has been dismissed or finally determined adversely to the claimant.
- 25 (5) Whenever a sum equal to ~~the amount of the lien or liens claimed one and~~
26 one-fourth times the principal amount stated in the lien on real property,
27 which shall be applied to the payment finally determined to be due, is
28 deposited with the clerk of court, to be applied to the payment finally
29 determined to be due, whereupon the clerk of superior court shall cancel the
30 lien or liens of record. court.
- 31 (6) Whenever a corporate surety bond, in a sum equal to one and one-fourth
32 times the amount of the lien or liens ~~claimed~~ stated in the lien on real
33 property and conditioned upon the payment of the amount finally
34 determined to be due in satisfaction of said lien or liens, is deposited
35 with the clerk of court, whereupon the clerk of superior court shall cancel
36 the lien or liens of record. court."

37 Sec. 8. The title of Part 2 of Article 2 of Chapter 44A of the General Statutes
38 reads as rewritten:

39 **"PART 2. LIENS OF MECHANICS, LABORERS AND**
40 **MATERIALMEN PERSONS FURNISHING LABOR, SERVICES, MATERIALS,**
41 **AND EQUIPMENT; DEALING WITH ONE A PERSON OTHER THAN AN**
42 **OWNER."**

43 Sec. 9. G.S. 44A-18 reads as rewritten:

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

Upon compliance with this Article:

- (1) A first tier subcontractor who furnished ~~labor or materials~~ labor, materials, or the rental of equipment at the site of the improvement shall be entitled to a lien upon funds which are owed to the contractor with whom the first tier subcontractor dealt and which arise out of the improvement on which the first tier subcontractor worked or furnished materials.
- (2) A second tier subcontractor who furnished ~~labor or materials~~ labor, materials, or the rental of equipment at the site of the improvement shall be entitled to a claim of lien upon funds which are owed to the first tier subcontractor with whom the second tier subcontractor dealt and which arise out of the improvement on which the second tier subcontractor worked or furnished materials. A second tier subcontractor, to the extent of his lien provided in this subdivision, shall also be entitled to be subrogated to the lien of the first tier subcontractor with whom he dealt provided for in subdivision (1) and shall be entitled to perfect it by notice to the extent of his claim.
- (3) A third tier subcontractor who furnished ~~labor or materials~~ labor, materials, or the rental of equipment at the site of the improvement shall be entitled to a claim of lien upon funds which are owed to the second tier subcontractor with whom the third tier subcontractor dealt and which arise out of the improvement on which the third tier subcontractor worked or furnished materials. A third tier subcontractor, to the extent of his lien provided in this subdivision, shall also be entitled to be subrogated to the lien of the second tier subcontractor with whom he dealt and to the lien of the first tier subcontractor with whom the second tier subcontractor dealt to the extent that the second tier subcontractor is entitled to be subrogated thereto, and in either case shall be entitled to perfect the same by notice to the extent of his claim.
- (4) Subcontractors more remote than the third tier who furnished ~~labor or material~~ labor, materials, or the rental of equipment at the site of the improvement shall be entitled to a claim of lien upon funds which are owed to the person with whom they dealt and which arise out of the improvement on which they furnished labor or material, but such remote tier subcontractor shall not be entitled to subrogation to the rights of other persons.
- (5) The ~~liens~~ claim of lien on funds granted under this section shall secure amounts ~~earned~~ claimed by the lien claimant as a result of his having furnished ~~labor or materials~~ labor, materials, or rental equipment at the site of the improvement under the contract to improve real property, including interest at the contract rate, whether or not such amounts are

due and whether or not performance or delivery is ~~complete~~. complete when notice is given to the obligor.

(6) A lien upon funds granted under this section is perfected upon the giving of notice in writing to the obligor as provided in G.S. 44A-19 and shall be effective upon the obligor's receipt of the notice. The subrogation rights of a first, second, or third tier subcontractor to the lien of the contractor created by Part 1 of Article 2 of this Chapter are perfected as provided in G.S. 44A-23. A claim of lien on funds shall apply to public contracts for the improvement of real property; a claim of lien on funds may be enforced against the State of North Carolina, its agencies, municipalities, counties, and other political subdivisions as an obligor; however, no lien on real property may exist against real property owned by the State of North Carolina, its agencies, municipalities, counties and other political subdivisions. This section does not prohibit nor limit any rights to payment pursuant to Article 3 of this Chapter.

(7) Upon filing of a lien on real property and serving a lien on funds by a subcontractor, no waiver, release or subordination by any obligor nor any payment by or to any obligor shall be effective to prejudice the subcontractor's lien on real property without the subcontractor's written consent."

Sec. 10. G.S. 44A-19 reads as rewritten:

"§ 44A-19. Notice to obligor.

(a) Notice of a claim of lien shall set forth:

- (1) The name and address of the person claiming the lien,
- (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 is claimed, and
- (6) The amount claimed by the lien claimant under his contract.

(b) ~~All notices~~ Notices of claims of liens by first, second or third tier subcontractors must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN ON FUNDS AND ON REAL PROPERTY BY FIRST, SECOND OR THIRD TIER SUBCONTRACTOR

To:

1. , owner of property involved.

(Name and address)

2. , general contractor.

1 (Name and address)
 2 3. , first tier subcontractor against
 3 (Name and address) or through whom subrogation
 4 is claimed, if any.
 5 4. , second tier subcontractor against
 6 (Name and address) or through whom subrogation is
 7 claimed, if any.
 8 General description of real property where ~~labor performed or material~~ acts to improve real
 9 property were furnished:
 10
 11
 12

13 General description of undersigned lien claimant's contract including the names of the
 14 parties thereto:
 15
 16
 17
 18

19 The amount of lien claimed pursuant to the above
 20 described contract: \$

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

24 Dated
 25 , Lien Claimant
 26 (Address)

27 (c) ~~All notices~~ Notices of claims of liens by subcontractors more remote than the
 28 third tier must be given using a form substantially as follows:
 29

30 **NOTICE OF CLAIM OF LIEN BY SUBCONTRACTOR**
 31 **MORE REMOTE THAN THE THIRD TIER**
 32

33 To:
 34 , person holding funds against which lien is claimed.
 35 (Name and Address)
 36 General description of real property where ~~labor performed or material furnished~~ acts to
 37 improve provided:
 38
 39
 40

41 General description of undersigned lien claimant's contract including the names of the
 42 parties thereto:
 43

1
2 The amount of lien claimed pursuant to the above
3 described contract: \$

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

7 Dated:
8 , Lien Claimant
9
10 (Address)

11 (d) Notices under this section shall be served upon the obligor in person or by
12 certified mail in any manner authorized by the North Carolina Rules of Civil Procedure.
13 A copy of the notice shall be attached to any claim of lien filed pursuant to G.S. 44A-
14 20(d)."

15 Sec. 11. G.S. 44A-21 reads as rewritten:

16 **"§ 44A-21. Pro rata payments.**

17 In the event that the funds in the hands of the obligor and the obligor's personal
18 liability, if any, under ~~the previous section G.S. 44A-20~~ are less than the amount of valid
19 lien claims that have been filed with the obligor under this Article the parties entitled to
20 liens shall share the funds on a pro rata basis."

21 Sec. 12. G.S. 44A-23 reads as rewritten:

22 **"§ 44A-23. Contractor's lien; perfection of waiver or release; subrogation rights of
23 subcontractor.**

24 (a) ~~First tier subcontractor.~~—A first-first, second, or third tier subcontractor, who
25 gives notice as provided in this Article, may, to the extent of his claim, enforce the lien of
26 the contractor created by Part 1 of Article 2 of this Chapter. The manner of such
27 enforcement shall be as provided by G.S. 44A-7 through 44A-16. The lien is perfected as
28 of the time set forth in G.S. 44A-10 upon filing of claim of lien pursuant to G.S. 44A-12.
29 Upon the filing of the notice and claim of lien and the commencement of the action, no action
30 of the contractor shall be effective to prejudice the rights of the subcontractor without his written
31 consent. a lien on real property by a subcontractor, no waiver, release or subordination by
32 any obligor nor any payment by or to any obligor shall be effective to prejudice the filing
33 subcontractor's lien on real property without the filing subcontractor's written consent. A
34 waiver or release of a lien on real property following the awarding of any contract for the
35 improvement to real property requires full consideration of the contract amount.

36 (b) ~~Second or third subcontractor.~~—

37 (1) ~~A second or third tier subcontractor, who gives notice as provided in~~
38 ~~this Article, may, to the extent of his claim, enforce the lien of the~~
39 ~~contractor created by Part 1 of Article 2 of the Chapter except when:~~

40 i. ~~The contractor, within 30 days following the date the building~~
41 ~~permit is issued for the improvement of the real property~~
42 ~~involved, posts on the property in a visible location adjacent to~~
43 ~~the posted building permit and files in the office of the Clerk of~~

- 1 Superior Court in each county wherein the real property to be
2 improved is located, a completed and signed Notice of Contract
3 form and the second or third tier subcontractor fails to serve upon
4 the contractor a completed and signed Notice of Subcontract
5 form by the same means of service as described in G.S. 44A-
6 19(d); or
- 7 ii. After the posting and filing of a signed Notice of Contract and
8 the service of a signed Notice of Subcontract, the contractor
9 serves upon the second or third tier subcontractor, within five
10 days following each subsequent payment, by the same means of
11 service as described in G.S. 44A-19(d), the written notice of
12 payment setting forth the date of payment and the period for
13 which payment is made as requested in the Notice of Subcontract
14 form set forth herein.
- 15 (2) The form of the Notice of Contract to be so utilized under this section
16 shall be substantially as follows and the fee for filing the same with the
17 Clerk of Superior Court shall be the same as charged for filing a Claim
18 of Lien:

19 **'NOTICE OF CONTRACT**

- 20
21
22 '(1) Name and address of the Contractor:
23 '(2) Name and address of the owner of the real property at the time this Notice of
24 Contract is recorded:
25 '(3) General description of the real property to be improved (street address, tax map
26 lot and block number, reference to recorded instrument, or any other description that
27 reasonably identifies the real property):
28 '(4) Name and address of the person, firm or corporation filing this Notice of
29 Contract:
30 'Dated:
31
32 'Contractor
33 'Filed this the _____ day of _____, 19____.
34 'Clerk of Superior Court'

- 35 (3) The form of the Notice of Subcontract to be so utilized under this
36 section shall be substantially as follows:
37

38 **'NOTICE OF SUBCONTRACT**

- 39
40 '(1) Name and address of the subcontractor:
41 '(2) General description of the real property where the labor was performed or the
42 material was furnished (street address, tax map lot and block number, reference to
43 recorded instrument, or any description that reasonably identifies the real property):

