



## Mechanics & Materialmen Liens

### A. NCGS 44A – Article 2

#### 1. Introduction

- a. Purpose of the statute is to provide a remedy to those that improve property and do not receive payment
- b. Lien Claimant is given a security interest in the property
- c. Problem/Issue: **Relation Back**
- d. Can only be asserted against Private Property

#### 2. Class of Persons (NCGS 44-7)

- a. Anyone who “improves” the property
  - i. **Note:** Anyone dealing with Owner is referred to as a “Contractor”
  - ii. The statute makes no distinction between “GCs” and “Subs”
- b. Builders
- c. Others not so Obvious
  - i. Graders
  - ii. Excavators
  - iii. Fillers
  - iv. Landscapers
  - v. Repairmen
  - vi. Rental Equipment Provider
  - vii. Architects

- viii. Engineers
- ix. Surveyors
- x. Landscape Architects

3. Requirements to Lien property (NCGS 44-8)

- a. Furnishes Labor, Materials or Equipment
  - i. The materials must be delivered to the site
  - ii. The materials must be used to improve the property

b. Pursuant to a Contract

c. With the **Owner of the Real Property**

i. Two Obvious Scenarios

- a. GC as Owner of Real Property
- b. Remodel/Rehab

ii. Definition of "Owners"

a. Buyers

Provided they close on the purchase [See *Carolina Builders Corp v. Howard-Veasey Homes, Inc.*, 324 SE2d 626 (1985).]

b. Agents

c. Spouses

d. Tenants

In which case, the Lien attached to the Leasehold Interest [See *Miller vs. Lemontree Inn*, 233 Se2d 69 (1977)]

4. Claim of Lien Form

a. Requirements (NCGS 44A-12(c))

- i. Name and Address of Person Claiming the Lien
- ii. Name and Address of Record Owner
- iii. Description of Real Property

- i. The Description of the Real Property must be reasonably identify the property in question
    - ii. Address
    - iii. Metes & Bounds
    - iv. Lot and Block
  - iv. Name of Person Who Claimant Contracted With
  - v. Date Labor or Materials First Furnished
    - i. Lien will relate back to this date
    - ii. Prevents an Owner from selling the property without settling up with the Contractor
  - vi. Date Labor or Materials Last Furnished
  - vii. General Description of the Labor or Materials Furnished
- b. Where Filed? (NCGS 44A-12(a))
  - i. The Claim of Lien must be filed in the Office of the Clerk of Superior Court in the County where the labor was performed or the materials were furnished
- c. When Filed (NCGS 44A-12(b))
  - i. The Claim of Lien must be filed within 120 days after the last furnishing of labor or materials
  - ii. This requirement must be strictly complied with
  - iii. Returning to the Job
    - i. May result in extending the deadline provided that:
    - ii. The additional work is within the general scope of the contract
    - iii. The Owner assents to the additional work
    - iv. The work is done in good faith and not for the sole purpose of extending the deadline
    - v. *See Beaman vs. Elizabeth City Hotel Corp., 163 SE2d 117 (1932)*
- d. Perfecting the Lien

- i. Must bring a lawsuit within 180 days after the last furnishing of labor or materials
- ii. Lawsuit may be filed within any County, provided that a Lis Pendens is filed in County where property is situated
- iii. If Lawsuit is not initiated within this time frame, Lien is extinguished by Law
- iv. If the Lien Claimant/Plaintiff loses, the Lien is extinguished

B. What to do at the Closing?

- a. Get your Calculator out - Have time frames been met by the Lien Claimant?
  - i. If the Claim of Lien was not filed within 120 days of the last furnishing that the claim is dead
  - ii. If it has been 180 days since the last furnishing and a lawsuit has not been filed than claim is dead
  - iii. Make sure Abstractor has checked all Counties in the Judgment Computer
- b. Pay the Claim of Lien at Closing
- c. Ask Seller to have Lien Bonded Over
- d. Defense
  - i. A complete defense to a claim of Lien exists if:
    1. Owner hires GC
    2. 1<sup>st</sup> Tier Contractor (GC) is paid in full by Owner *prior to receiving notice of non-payment to 2<sup>nd</sup> Tier Contractor (Sub)*
    3. GC executes a Lien Waiver

C. Liens on Funds

- a. Describes the situation when a 2<sup>nd</sup> or 3<sup>rd</sup> Tier Contractor (Sub) provides notice to the Owner of non-payment
- b. If Notice is given to Owner subsequent to payment in full of 1<sup>st</sup> Tier Contractor (GC), then there is no liability to Owner
- c. **If Notice is given to Owner prior to payment in full of 1<sup>st</sup> Tier Contractor (GC), then there is liability to Owner and Claim of Lien can become attached to the real property**

- d. If Owner receives notice from a Sub, Owner should refuse to pay the GC until the Owner confirms that the Sub has been paid and released the lien

#### D. Subrogation Liens

- a. 2<sup>nd</sup> and 3<sup>rd</sup> Tier Contractors (Subs) are entitled to subrogate (“Step in the shoes”) of the 1<sup>st</sup> Tier Contractor (GC)
- b. Sub is entitled to assert a lien on real property to the same extent as the GC
- c. Applies when the GC has not been paid in full
- d. If Owner receives notice from a Sub, Owner should refuse to pay the GC until the Owner confirms that the Sub has been paid and released the lien

#### E. New Lien Waiver Forms

##### 1. Difference in Forms

- a. Form 1 (No Recent Improvements)
  - i. Refinances
  - ii. Most Purchases between Individuals
- b. Form 2 (Construction Recently Completed)
  - i. New Construction
  - ii. Renovation/Rehab
- c. Form 3 (Construction in process or Immediately Contemplated)
  - i. Development vs. Vertical Loans
  - ii. Limited Scenario

##### 2. Point of the Forms

- a. Very little verbage has changed
- b. Intended to Stimulate Critical Thinking

##### 3. Scenarios

- a. Owner Contracts with (one) GC
- b. Owner as GC
- c. Agent of Owner Contracts with Multiple Parties

- d. Owner Contracts with Multiple Parties

4. Who Signs?

- a. Anyone who has Contracted with “Owner”

- b. Repairs – Punch List Items

- c. Advantages of having a layer between Owner and GC

- d. Affiliated Parties & Agents

5. Ramifications

- a. Underwriter

- i. Huge Source of Claims

- ii. Savvy Contractor Attorneys

- b. Attorney