



How to File & Foreclose a Mechanic's Lien

INTRODUCTION

Although you will likely encounter liens in a variety of contexts in your legal career, this Quick Reference Guide addresses how to file and foreclose the following types of mechanic's liens:

- (1) Claim of lien on real property for an unpaid contractor (or subcontractor, in certain instances)
- (2) Claim of lien on funds for an unpaid subcontractor

Important Terms & Definitions

General contractor: individual or business contracted directly with the owner of the real property to perform services or provide labor/materials to the property

Subcontractor: individual or business contracted with the general contractor (or another subcontractor) to perform services or provide labor/materials to the property in order to complete the land improvement project for which the general contractor has been hired by the property owner

Obligor: owner of the real property for which labor and/or materials were provided by the general contractor or subcontractor

First furnishing: date on which the general contractor or subcontractor first performed services or provided labor/materials to the property

Last furnishing: date on which on which the general contractor or subcontractor last performed services or provided labor/materials to the property

Subrogation: process by which a subcontractor is permitted to “step into the shoes” of the general contractor and assert whatever rights against the property owner that the general contractor may have

Lien agent: authorized title insurance company that receives and tracks notices from contractors and subcontractors of potential claims of lien

Perfecting a lawsuit: requirement that a lawsuit must be filed to enforce a lien on real property within 180 days of the claimant's last date of furnishing

Typical Construction Context

At some point in your career, probably sooner than later, you will have a general contractor or subcontractor client — maybe a painter or a landscaper or a carpenter — who has performed services or provided materials on a project to improve real property, but who has not been paid. In the typical construction context, the general contractor will enter into a contract with the owner of real property for some improvement to the land (like the construction of a house). The general contractor, more than likely, will then enter into other contracts with subcontractors for certain services (like plumbers or electricians). Those subcontractors, in turn, may enter into other contracts with other subcontractors for materials or other services (like pipe or electrical wires).

APPLICABLE STATUTES

- [N.C. Gen. Stat. § 44A-10](#) | Claim of lien on real property effective from date of first furnishing
- [N.C. Gen. Stat. § 44A-11.1](#) | Outline of Notice to Lien Agent (effective April 1, 2013)
- [N.C. Gen. Stat. § 44A-11.2\(f\)](#) | Acceptable methods for delivering Notice to Lien Agent
- [N.C. Gen. Stat. § 44A-12\(b\)](#) | 120-day timeframe for filing claim of lien from date of last furnishing
- [N.C. Gen. Stat. § 44A-12\(c\)\(3\)](#) | Requirement that claim of lien on real property include description of real property; examples of sufficient information that may be provided to fulfill requirement
- [N.C. Gen. Stat. § 44A-12\(d\)](#) | Amendments to claim of lien on real property not permitted
- [N.C. Gen. Stat. § 44A-13](#) | Requirement that action be brought to foreclose claim of lien on real property within 180 days of last furnishing
- [N.C. Gen. Stat. § 44A-18](#) | Statute governing claim of lien on funds
- [N.C. Gen. Stat. § 44A-18\(f\)](#) | Requirement that obligor, upon receiving subcontractor's claim of lien on funds, hold funds from next payment to satisfy lien claimant
- [N.C. Gen. Stat. § 44A-35](#) | Attorneys' fees are recoverable (although not included in the claim of lien)

See additional statutes under **Sample Statutory Forms** at the end of this Guide.

The Lien Statute

Like all states, in the typical construction context, North Carolina law permits the contractors and subcontractors in the contractual chain to recover for their services by filing a claim of lien, thereby holding the real property or funds as security for payment of completed work. In North Carolina, the mechanic's lien is a fundamental principal of state law and guaranteed under article X, section 3 of the North Carolina State Constitution. [Chapter 44A](#) of the North Carolina General Statutes (hereinafter "section 44A") outlines the requirements and mechanisms for filing and eventually enforcing a claim of lien on real property or a claim of lien on funds. The lien statute is very technical, however, and failing to follow the requirements of the law exactly may result in a defective lien and preclude the (sub)contractor's ability to enforce the lien in court.

Preliminary Questions

[Question 1](#): *Is your client a contractor or a subcontractor?*

It matters whether your client is a **contractor** (that is, contracted directly with the owner) or a **subcontractor** (that is, contracted with the contractor). Under North Carolina law, a claim of lien on real property is only available to contractors, and a claim of lien on funds is only available to subcontractors. However, a subcontractor may also claim a lien on real property in two instances:

- (a) by claiming a right of subrogation to the general contractor;
or
- (b) by claiming that the owner made wrongful payments to the contractor in violation of the subcontractor's claim of lien on funds.

Both types of claims are discussed in more detail below.

[Question 2](#): *Was the project private or public?*

A contractor on a private project (like the construction of a home or an office building) is entitled to bring a claim of lien on real property under [Chapter 44A](#). On the other hand, a contractor to a public project (like the construction of a school or a road) is required to seek recovery under the payment bond for the project.

In other words, because public property is owned by all of us, it would not be fair for a contractor who provided painting services at the Governor's Mansion to be able to sell it because he was not paid. Instead, the law permits the painter to recover by bringing a claim under the payment bond for the project.

[Question 3](#): *On what date did your client last perform services or provide labor to the property?*

[Section 44A-12\(b\)](#) requires that any claim of lien must be filed "not later than 120 days after the furnishing of labor or materials at the site . . ." This confuses many unwitting contractors; after all, a four-month delay in payment, especially on a large construction project, is not unusual. However, a contractor who waits too long may find that they have lost their right to pursue their claim under the lien statute.

CLAIM OF LIEN ON REAL PROPERTY

The Basics

Where to File

A claim of lien on real property must be filed with the **Clerk of Superior Court in the county in which the property is located**, even if the owner and the contractor live in different counties. Occasionally, a piece of property may extend into more than two counties, in which case the claim of lien must be filed with the Clerk of Superior Court in both counties.

When to File

If the contractor provided labor or materials to a private job, and if it is within the **120-day filing period**, the contractor should immediately proceed to file a claim of lien in order to enforce his lien rights. Sometimes, the act of filing the lien itself is enough to trigger payment to the contractor. After all, most landowners do not want title to their property to be clouded with a claim of lien and will often try to negotiate payment once the lien is filed.

Absolute Filing Deadlines

North Carolina's lien statute is intentionally technical and its deadlines, unlike other deadlines you may encounter in litigation, are absolute. There is no *motion for extension of time* to file a claim of lien on real property. A claim of lien filed even one day too late is defective and, therefore, unenforceable.

Delivery Requirements

The owner of the real property for which the contractor performed labor and/or provided materials should be served by **certified mail or designated delivery service**. If your client is a subcontractor, each party in the contractual chain should also be served by certified mail or designated delivery service.

Subrogation

If your client is a first-, second- or third-tier subcontractor, the analysis and procedure for filing a claim of lien on real property are the same, except that the subcontractor claims the lien by subrogation. "Subrogation" permits the subcontractor to "step into the shoes" of the general contractor and assert whatever rights against the owner that the general contractor may have.

Part 2 of the statutory claim of lien on real property form requires that a subcontractor asserting a subrogation claim of lien on real property do so by identifying the name of the contractor through whom these rights are asserted. Although this is sufficient to establish the claim of lien on real property, it is important to note that the **subcontractor is only entitled to whatever rights the general contractor has to the owner**. If the owner has already paid the general contractor, the owner has a complete defense to the subcontractor's claim.

Required Information for Statutory Form

Unlike other pleadings you may encounter, claims of lien on real property are statutory forms, which means the statute prescribes exactly what information the claim of lien should contain. You will need the following information in order to complete the statutory form:

- Name and address of lien claimant
- Name and address of real property owner
- Property identification/description (*e.g.*, street address, parcel identification number or reference to a recorded instrument)
- Dates on which the contractor first and last performed services or provided labor/materials to the property (dates of first and last furnishing)
- General description of the labor performed or material furnished to the property
- Account of all money due to the contractor, including the entire principal balance and whatever interest is owed, from the date of first furnishing until the date the claim of lien is filed (should not include attorneys' fees)

If your client is a subcontractor asserting a subrogation claim of lien on real property, you will also need the following information, in addition to the items provided above:

- Name of the contractor through whom subrogation rights are asserted
- Name and address of the person with whom the lien claimant contracted for the furnishing of labor or materials

The statutory form can be found in [section 44A-12\(c\)](#). See [Sample Form 2](#) at the end of this Guide.

Defective Claim of Lien

[Section 44A-12\(d\)](#) provides that “a claim of lien on real property may not be amended. A claim of lien may be cancelled . . . and a new claim of lien on real property substituted therefor within the time . . . provided.” In other words, if the claim of lien is defective, the only option is to cancel the original defective claim and file a new claim, all within the 120-day time period. If your client has waited until the last day to instruct you to file the lien, a mistake in the lien filing may prejudice the client's rights. It is, therefore, extremely important that you carefully complete the statutory form.

Common Filing Pitfalls & How To Avoid Them

There are several places on the statutory form which routinely confuse lien claimants and often result in defective filings. Again, it is very important that the claim of lien be completed and filed correctly the first time to ensure that the client's rights are protected. These common pitfalls and ways to avoid them are discussed in detail below.

[Pitfall 1: Filing With the Incorrect Office](#)

As discussed above, the claim of lien on real property must be filed with the Clerk of Superior Court in the county (or counties) in which the property is located. Although the claim of lien also affects title to real property, it should not be filed with the the Register of Deeds. Many claimants mistakenly file the lien with that office, which will file virtually any document presented. However, a lien filed with the Register of Deeds rather than the Clerk of Superior Court is invalid.

[Pitfall 2: Not Including Enough Information To Reasonably Identify the Property](#)

The statutory lien requires that the property be reasonably identified. [Section 44A-12\(c\)\(3\)](#) does not require that the property be identified by the legal description; a street address, parcel identification number, or reference to a recorded instrument is *probably* sufficient. However, the more information you can provide, the better. If you can find the most recently recorded deed with a legal description of the project, it is a good practice to include that information as the first exhibit to the claim of lien.

[Pitfall 3: Identifying Only One of the Required Furnishing Dates](#)

The claim of lien should identify both the last date (for reasons previously discussed) *and* the first date on which labor and materials were provided by the (sub)contractor to the project. The date of **first furnishing** is important if the claim of lien is not paid, and it becomes necessary to foreclose the lien. Then, according to [section 44A-10](#), the claim of lien relates back to the first day the contractor provided labor or materials to the project. If there is more than one contractor proceeding against the same property, the contractor who furnished first will have a higher priority than one who furnished later.

[Pitfall 4: Miscalculating Money Due To the Contractor at the Time the Lien is Filed](#)

The claim of lien should include an accurate account of all money due to the contractor at the time the lien is filed. This amount should include the entire principal balance and whatever interest is owed (either at the agreed-upon rate or the legal rate of eight percent per year), calculated up to the date the claim of lien is filed. Although attorneys' fees are recoverable under [section 44A-35](#), these fees are not included in the claim of lien.

Pitfall 5: Failure to Serve the Owner with a Copy of the Claim of Lien Using a Method that Provides Documented Proof of Delivery

It is a good practice to serve the owner by certified mail or designated delivery service to ensure that you can prove, if necessary, that the parties were each served with a copy of the claim of lien. Similarly, if your client is a subcontractor (as discussed below), it is also a good practice to ensure that each party in the contractual chain is served by certified mail or designated delivery service. Although this increases the initial expense of the lien filing, it also ensures that, should a court require it, you can produce the documentation necessary to prove that the lien claimant attempted to resolve the matter before bringing a lawsuit.

FAQs

What if the owner still refuses to pay after being served with the claim of lien?

Sometimes, simply filing the claim of lien on real property will be enough to force the owner to pay. If, however, the owner still refuses to pay, the lien claimant must, within 180 days of last furnishing, bring an action to foreclose the claim of lien on real property ([N.C. Gen. Stat. § 44A-13](#)). This begins and proceeds like any other lawsuit, but the primary difference is that the lawsuit must be filed within the 180-day period of time. Failing to do so will preclude recovery under the claim of lien.

Are there alternatives to recovery under the claim of lien?

If the lawsuit to foreclose the claim of lien on real property is not filed within 180 days of the date of last furnishing, the contractor will still have three years under North Carolina law to recover based on **breach of contract**. However, because the lien statute allows for the foreclosure and sale of the property to pay the lien balance, it is a much more effective remedy to bring an action to foreclose the claim of lien as discussed above.

How is a lawsuit to enforce a claim of lien similar to/different from other lawsuits?

In addition to the 180-day filing deadline discussed above, unlike other lawsuits, the lawsuit to enforce the claim of lien also includes as a prayer for relief that the property be sold in order to compensate the lien claimant for the principal balance, interest and attorneys' fees.

Like all lawsuits, however, an action to foreclose the claim of lien on real property should also include any other additional or alternative claims, like breach of contract and unjust enrichment. When representing a subcontractor, a lawsuit to enforce the claim of lien on real property should also include a claim to enforce the claim of lien on funds, which is discussed in more detail below.

Pre-Lien Notices

It is rare for a client to retain you for assistance with the pre-lien notices required under North Carolina law. Nevertheless, these notices — and the failure to properly serve them — can be fatal to a lien claimant's case.

Notice to Lien Agent

The newest notice, outlined under [section 44A-11.1](#), is the Notice to Lien Agent, passed into law by the General Assembly and effective on April 1, 2013. Historically, owners and title insurance companies faced the problem of “hidden liens,” or otherwise valid and proper liens filed on real property after the real property had been sold. To combat this problem, North Carolina now requires that, on **any contract in excess of \$30,000**, the owner or general contractor designate a lien agent to receive notice of potential lien claims.

Role of Lien Agent

The **lien agent** is an authorized title insurance company whose only role is to receive and track notices from contractors and subcontractors of potential claims of lien.

When to Serve Notice

Contractors and subcontractors must serve on the lien agents a Notice to Lien Agent within **15 days of first furnishing** labor or materials to a project. This notice, like the claim of lien, is a statutory form ([N.C. Gen. Stat. § 44A-11.2\(i\)](#)). See [Sample Form 4](#) at the end of this Guide.

Delivery Requirements

The Notice to Lien Agent must be delivered to the lien agent by one of the methods outlined in [section 44A-11.2\(f\)](#), which includes delivery through an approved website. Notably, the new North Carolina Online Lien Agent System website, www.liensnc.com, permits potential lien claimants to serve these notices on the lien agent electronically and to obtain confirmation that the delivery was accepted.

Failure to File Notice – Repercussions

Failure of a contractor or subcontractor to file a Notice to Lien Agent only precludes a lien claim if the property is sold, refinanced or otherwise transferred before the claim of lien is filed. Unless the property is transferred, failure to file the Notice to Lien Agent has no effect. Filing the notice, however, preserves the right to later file a lien. Therefore, contractors and subcontractors should get in the habit of filing these notices as a matter of course on all new projects.

Notice of Subcontract

The second notice which all subcontractors should get in the habit of serving is a Notice of Subcontract. In large projects, particularly large-scale commercial projects with numerous subcontractors of

all tiers, North Carolina law provides that owners can cut off lien liability to second- and third-tier subcontractors if the contractor posts a Notice of Contract within 30 days of the issuance of the building permit.

How does the subcontractor benefit from serving a Notice of Subcontract?

If properly posted at the jobsite next to the building permit and filed with the Clerk of Superior Court in the county (or counties) where the property is located, a Notice of Contract bars any second- or third-tier subcontractor from filing a subrogation claim of lien on real property. (First-tier subcontractors are not affected.) However, if a second- or third-tier subcontractor properly serves a Notice of Subcontract on the contractor, the subcontractor's **right to enforce the contractor's claim of lien on real property is preserved**. The Notice of Subcontract must be served by certified mail and also follows a statutory form (N.C. Gen. Stat. § 44A-23). See [Sample Form 1](#) at the end of this Guide.

CLAIM OF LIEN ON FUNDS

The claim of lien on funds, governed by [section 44A-18](#), is an option that allows subcontractors to recover for unpaid services.

How is a claim of lien on funds similar to a claim of lien on real property?

Like a claim of lien on real property, a claim of lien on funds:

- should be served by certified mail or designated delivery service;
- is a statutory form (N.C. Gen. Stat. § 44A-19) (substantially the same and, in most cases, contains the same information; see [Sample Form 3](#) at the end of this Guide); and
- should be remedied by the claimant, in the event the lien is not paid, by bringing a lawsuit to foreclose the lien (including a prayer for relief that the court order payment of the funds to the subcontractor).

How is a claim of lien on funds different from a claim of lien on real property?

Unlike a claim of lien on real property, a claim of lien on funds:

- is available only to subcontractors;
- does not have to be filed with the Clerk of Superior Court;
- must only be served by the subcontractor on any obligor to be valid;
- requires the obligor, once in receipt of the subcontractor's claim of lien on funds, to hold those funds from the next payment in order to satisfy the lien claimant (N.C. Gen. Stat. § 44A-18(f)); and
- is not required to be filed within a specific time period (may be served as late as three years after the furnishing of labor or materials).

Since a claim of lien on funds is not required to be filed within a specific time period, what risk does a delay in serving the claim pose to the lien claimant?

The problem with a delay, of course, is that the claim of lien on funds **only applies to funds still held by the obligor at the time the lien is served**. The longer a subcontractor delays serving a claim of lien on funds, the more likely that the funds have already been paid out, in which case the obligor will have no obligation to withhold any additional money.

What happens if the obligor fails to hold the funds and instead makes payment against the interest of the lien claimant?

An obligor who receives a subcontractor's claim of lien on funds, fails to hold those funds as required by [section 44A-18\(f\)](#), and instead makes payment against the interest of the lien claimant will be **subject to the lien claimant for personal liability** in the amount claimed.

But again, because a claim of lien on funds and any subsequent lawsuit apply only to funds in the hands of the obligor at the time the claim of lien is served, a subcontractor should be advised to **serve their claim of lien on funds** (and their claim of lien on real property) **as soon as possible**, even as a preventative measure to ensure payment.

ADDITIONAL RESOURCE

[Critical Construction Law Cases in NC](#)

This resource draws together in one place 12 years of major NC construction law cases (2002–2013). The mid-length case summaries:

- are grouped by research topic
- present a quick but thorough overview
- facilitate more efficient, focused research
- cover an array of major construction law issues

For more information or to purchase, visit www.ncbar.org/CLEBookstore.

STEP-BY-STEP SUMMARY

Step 1: Determine whether the lien claimant is seeking recovery for unpaid labor/materials provided to a public project or a private project.

Step 2: Ensure that the lien claimant is still within the appropriate timeframe to pursue a claim under the lien statute (must be filed within 120 days of last furnishing).

Step 3: Determine whether the lien claimant is a contractor or a subcontractor.

Step 4: Based on the information acquired in steps 1-3 above, identify the claimant's scenario below:

- (a) Contractor on a private project; within 120-day filing period — **Continue to step 5(a).**
- (b) Subcontractor on a private project; within 120-day filing period — **Claim right of subrogation to general contractor and continue to step 5.**
- (c) Contractor on a private project; outside 120-day filing period — **File for breach of contract** (*may be filed up to three years after date on which contract was breached*).
- (d) Subcontractor on a private project; outside 120-day filing period — **Continue to step 5(b).**
- (e) Contractor OR Subcontractor on a public project — **Bring claim under payment bond for project.**

Step 5: Complete the statutory form for the appropriate claim:

- (a) Claim of lien on real property (N.C. Gen. Stat. § 44A-12(c) / [Sample Form 2](#)) — **Once completed, continue to step 6(a).**
- (b) Claim of lien on funds (N.C. Gen. Stat. § 44A-19 / [Sample Form 3](#)) — **Once completed, continue to step 6(b).**

Step 6: File/serve the claim with the appropriate party:

- (a) (i) File the claim of lien on real property with the Clerk of Superior Court in the county (or counties) in which the property is located (not the Register of Deeds!);
-AND-
- (ii) serve obligor by certified mail or designated delivery service. — **If the obligor still refuses payment, continue to step 7(a).**
- (b) Serve the claim of lien on funds on any obligor by certified mail/designated delivery service. — **If obligor gives wrongful payment to contractor, continue to step 7(b).**

Step 7: (a) Within 180 days of last date of furnishing, bring lawsuit to foreclose the claim of lien on real property.

- (b) (i) Bring lawsuit to foreclose lien on funds (and a prayer for relief that the court order payment of funds to subcontractor);
-OR-
- (ii) Claim that the owner violated the claim of lien on funds, whereby the subcontractor is entitled to claim a lien on real property.



Check out the other
QUICK REFERENCE GUIDES
in this series!

- How to File a Civil Lawsuit (*Litigation Guide*)
- How to Probate a Will & Obtain Letters Testamentary (*Estate Planning Guide*)

For more information and to download, visit www.ncbar.org/CLEBookstore.

SAMPLE STATUTORY FORMS

- **Form 1:** Notice of Subcontract (N.C. Gen. Stat. § 44A-23)
- **Form 2:** Claim of Lien on Real Property (N.C. Gen. Stat. § 44A-12(c))
- **Form 3:** Claim of Lien on Funds (N.C. Gen. Stat. § 44A-19)
- **Form 4:** Notice to Lien Agent (N.C. Gen. Stat. § 44A-11.2(i))

Sample Form 1

STATE OF NORTH CAROLINA

NOTICE OF SUBCONTRACT

COUNTY OF _____

1. Name and Address of Subcontractor:
2. General description of the real property on which the labor was performed or the material was furnished:
3.
 - (i) General description of the subcontractor's contract, including the names of the parties thereto:
 - (ii) General description of the labor and materials performed and furnished thereunder:
4. Request is hereby made by the undersigned subcontractor that it be notified in writing by the contractor of, and within five (5) 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.

This, the ____ day of _____, 20__.

SUBCONTRACTOR

By: _____
Attorney for Subcontractor

STATE OF NORTH CAROLINA

AFFIDAVIT OF SERVICE

COUNTY OF _____

_____ being duly sworn, deposes and says that:

1. I am the attorney for the Subcontractor.
2. On _____, 20__, copies of the Notice of Subcontract, attached hereto, were deposited in the United States mail, postage prepaid, marked for certified mail, return receipt requested, or sent for delivery via UPS Delivery Service, "Signature Confirmation," addressed to each of the following:

Attorney for Subcontractor

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF _____

I, _____ a Notary Public for _____, North Carolina, do hereby certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____.

Sample Form 2

STATE OF NORTH CAROLINA

CLAIM OF LIEN ON REAL PROPERTY

COUNTY OF _____

1. Name and address of the person claiming the lien:
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:
Name of the contractor pursuant to N.C. Gen. Stat. § 44A-23 through which subrogation is asserted:
3. Description of the real property upon which the claim of lien on real property is claimed:
4. Name and address of the person with whom the Lien Claimant contracted for the furnishing of labor or materials:
5. Date upon which labor or materials were last furnished upon said property:
7. General description of the labor performed or material furnished:
8. The amount of lien claimed pursuant to the above described contract:

LIEN CLAIMANT CLAIMS A RIGHT OF SUBROGATION TO THE LIEN HELD BY THE GENERAL CONTRACTOR ON THE REAL PROPERTY. IN ADDITION, A COPY OF THE NOTICE OF CLAIM OF LIEN ON FUNDS SERVED ON THE OWNER PURSUANT TO N.C.G.S. § 44A-18, ET SEQ., WITH ACCOMPANYING AFFIDAVIT OR PROOF OF SERVICE IS ATTACHED HERETO AS EXHIBIT B, AND LIEN CLAIMANT BELIEVES THAT THE OWNER HAS OR MAY BECOME PERSONALLY LIABLE TO LIEN CLAIMANT BY PAYING FUNDS TO THE GENERAL CONTRACTOR FOLLOWING RECEIPT OF THE NOTICE OF LIEN ON FUNDS.

This, the ____ day of _____, 20__.

LIEN CLAIMANT

By: _____

STATE OF NORTH CAROLINA

AFFIDAVIT OF SERVICE

COUNTY OF _____

_____ being first duly sworn, deposes and says that:

1. I am the attorney for lien claimant _____.
2. On _____, 20__, copies of the Claim of Lien on Real Property, attached hereto, were deposited in the United States mail, postage prepaid, marked for certified mail, return receipt requested, or sent for delivery via UPS Delivery Service, "Signature Confirmation," addressed to each of the following:

Attorney for Lien Claimant

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF _____

I, _____ a Notary Public for _____, North Carolina, do hereby certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____.

Sample Form 3

STATE OF NORTH CAROLINA

CLAIM OF LIEN ON FUNDS

COUNTY OF _____

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

- TO: 1. Owner of Property Involved:
- TO: 2. General Contractor of Project:
3. General description of real property where labor was performed or materials furnished:
4. General description of the undersigned Lien Claimant's contract, including the names of the parties thereto:
5. The amount of lien on funds claimed pursuant to the above-described contract:

LIEN CLAIMANT CLAIMS A RIGHT OF SUBROGATION TO THE LIEN HELD BY THE GENERAL CONTRACTOR. IN ADDITION, A COPY OF THE CLAIM OF LIEN ON REAL PROPERTY SERVED ON THE OWNER AND GENERAL CONTRACTOR PURUSANT TO N.C.G.S. § 44-A-12, *ET SEQ.*, WITH ACCOMPANYING AFFIDAVIT OF PROOF OF SERVICE IS ATTACHED HERETO.

This, the ____ day of _____, 20____.

LIEN CLAIMANT
Lien Claimant

By: _____
Attorney for Lien Claimant

STATE OF NORTH CAROLINA

AFFIDAVIT OF SERVICE

COUNTY OF _____

_____, being first duly sworn, deposes and says that:

1. I am the attorney for lien claimant _____.
2. On _____, 20____, copies of the *Claim of Lien on Funds*, attached hereto, were deposited in the United States mail, postage prepaid, marked for certified mail, return receipt requested, or sent for delivery via UPS Delivery Service, "Signature Confirmation," addressed to each of the following:

Attorney for Lien Claimant

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF _____

I, _____ a Notary Public for _____, North Carolina, do hereby certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this ____ day of _____, 20____.

Notary Public

My Commission Expires: _____.

Sample Form 4

STATE OF NORTH CAROLINA

NOTICE TO LIEN AGENT

COUNTY OF _____

1. Potential lien claimant's name, mailing address, telephone number, fax number (if available), and electronic mailing address (if available):
2. Name of the party with whom the potential lien claimant has contracted to improve the real property described below:
3. A description of the real property sufficient to identify the real property, such as the name of the project, if applicable, the physical address as shown on the building permit or notice received from the owner:
4. I give notice of my right to subsequently pursue a claim of lien for improvements to the real property described in the notice.

This, the ____ day of _____, 20____.

POTENTIAL LIEN CLAIMANT

By: _____

ADDITIONAL RESOURCE

NC Construction Law Deskbook

Considered the "bible" for practitioners serving the NC construction industry, this comprehensive deskbook:

- discusses frequently occurring issues and their effects (such as liens, bankruptcy, insurance, the environment, state building code, and employment and immigration)
- addresses systematic procedures
- references relevant case law
- includes pertinent forms

For more information about the forthcoming 7th Edition release (Oct. 2016), visit www.ncbar.org/CLEBookstore.



AUTHOR | R. Lee Robertson, Jr.
Robertson & Associates
lee.robertson@rlrobertson.com