

# Mechanic's Liens in Practice (Contractor Rights) (NC)

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

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

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

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

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

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

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

This Note does not address:

- Claims arising out of subcontractor work (N.C.G.S. §§ 44A-18 to 44A-23; see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC) ([W-016-4869](#))).
- Claims arising out of a broker services agreement for commercial real estate under the Commercial Real Estate Broker Lien Act (N.C.G.S. §§ 44A-24.1 to 44A-24.14).
- Claims arising out of a construction contract with the state or other political subdivision for the construction, reconstruction, alteration, or repair of a public improvement (N.C.G.S. §§ 44A-25 to 44A-35).

## PERSONS ENTITLED TO A MECHANIC'S LIEN

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

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

(N.C.G.S. § 44A-7(3).)

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

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

- labor;
- services;
- materials; or
- equipment.

(N.C.G.S. § 44A-7(6a).)

In general, only contractors that contract directly with the owner of real property may assert a direct statutory lien on real property (see [Creating a Lien on Real Property](#)).

An owner is a person:

- Holding an interest in the real property.
- For which an improvement is made.
- Ordering the improvement to be made.

An owner includes successors in interest of the owner and agents of the owner acting within their authority (for example, a project manager) (N.C.G.S. § 44A-7(6)).

For more information on subcontractors and suppliers entitled to a mechanic's lien, see Practice Note, [Mechanic's Liens in Practice \(Subcontractor Rights\) \(NC\): Persons Entitled to a Mechanic's Lien \(W-016-4869\)](#).

## PROPERTY INTERESTS SUBJECT TO A MECHANIC'S LIEN

The right to file a lien on real property (a claim of lien on real property) is available to any person that:

- Performs or furnishes:
  - labor;
  - professional design or surveying services;
  - materials; or
  - rental equipment.
- Under a contract:
  - either express or implied;
  - with the owner of real property; and
  - for the improvement of real property.
- Improves the real property under the contract.

(N.C.G.S. § 44A-8.)

For information on a subcontractor or supplier's right to assert a lien on real property or a lien on funds, see Practice Note, [Mechanic's Liens in Practice \(Subcontractor Rights\) \(NC\): Lien on Real Property \(W-016-4869\)](#) and [Lien on Funds \(W-016-4869\)](#).

## WHAT IS COVERED BY A MECHANIC'S LIEN

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

## LIMITATIONS ON LIENS ON REAL PROPERTY

A lien on real property extends to the improvement and to the improved lot or tract, but only "to the extent of the interest of the owner" (N.C.G.S. § 44A-9). When asserting a lien on real property, a lien claimant should:

- Review the contract to identify the contracting party.
- Order a title report to determine the extent of the interest held by the contracting party.

A lien claimant may not be able to assert a lien on real property if the contracting party does not qualify as an owner of the real property.

## Tenants and Optionees

A lien claimant's right to assert a lien on real property is limited to:

- A tenant's leasehold interest if the claimant contracted with a tenant of the real property. Absent an agreement between the owner of the property and the tenant, the owner has no obligation to pay a contractor for improvements made under a contract between the contractor and the tenant (*Weathers & Perry v. Cox*, 76 S.E. 7, 8 (N.C. 1912)).
- An optionee's interest in the real property if the claimant contracted with an optionee, rather than the owner, to perform labor on real property subject to an option to purchase that is not exercised (*Gentry Bros., Inc. v. Byron Dev. Corp.*, 192 S.E.2d 100, 101-02 (N.C. Ct. App. 1972)).

## Husband and Wife

In North Carolina, real property owned jointly by a husband and wife is typically held in a "tenancy by the entirety." A lien claimant may not assert a lien on the property unless both the husband and wife are parties to the construction contract (*H & B Co. of Statesville v. Hammond*, 195 S.E.2d 58, 61-62 (N.C. Ct. App. 1973)).

## Adjoining Land

A lien on real property only extends to the area of an improved lot or tract that is reasonably necessary for the convenient use and occupation of a constructed building when:

- The owner owns adjoining land at the time the contract is entered into.
- The adjoining land is not separated from the improved real property by an enclosure.

The area subject to the lien does not include a building, structure, or improvement that is not normally used or occupied, or intended to be used or occupied, with the constructed building. (N.C.G.S. § 44A-9.)

## PRE-LIEN NOTICE REQUIREMENTS

### DESIGNATION OF LIEN AGENT

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

- Designate a lien agent from the list of registered lien agents on the North Carolina Lien Agent System (N.C.G.S. § 44A-11.1(a)-(b)). Currently, only title insurance companies and title insurance agencies authorized to do business in North Carolina qualify as lien agents (N.C.G.S. § 58-26-45(a)).
- Notify the lien agent in writing that the owner has designated it as the owner's agent by one of the following methods:
  - certified mail, return receipt requested;
  - signature confirmation as provided by the US Postal Service;
  - physical delivery with delivery receipt;

- facsimile with confirmation;
- depositing with a federally authorized and designated delivery service (for example, DHL Express, Federal Express, or UPS) (26 U.S.C. § 7502(f)(2));
- electronic mail with delivery receipt; or
- using a website approved for that use by the designated lien agent to transmit to the designed lien agent, with delivery receipt, all information required to notify the lien agent of its designation.

(N.C.G.S. § 44A-11.2(f).)

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

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

(N.C.G.S. § 44A-11.1(a).)

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

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

(N.C.G.S. § 44A-11.1(a).)

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

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

(N.C.G.S. § 44A-11.1(a).)

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

### Resignation, Revocation, or Removal

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

- Resigns.
- Is no longer licensed to serve as a lien agent.
- Revokes its consent to serve as lien agent.

- Is removed by the owner.
- Otherwise cannot or is unwilling to serve before completion of all improvements to the real property.

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

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

(N.C.G.S. § 44A-11.1(d).)

### IDENTIFICATION OF LIEN AGENT

#### Posting Contact Information

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

#### Request for Contact Information

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

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

(N.C.G.S. § 44A-11.2(b).)

#### Duty to Provide Contact Information

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

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

- Receives written notice of the lien agent's contact information from:
  - the building permit;
  - the inspections office;
  - a notice from the owner, contractor, or subcontractor; or
  - any other means.

- Fails to provide the lien agent's contact information to the lower-tier subcontractor within three business days of contracting with the lower-tier subcontractor.

(N.C.G.S. § 44A-11.2(c).)

### NOTICE TO LIEN AGENT

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

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

### Form of Notice to Lien Agent

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

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

(N.C.G.S. § 44A-11.2(i).)

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

### Service of Notice to Lien Agent

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

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

### Exceptions to Notice Requirement

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

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

(N.C.G.S. § 44A-11.2(n).)

### Expiration, Renewal, and Cancellation of Notice to Lien Agent

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

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

(N.C.G.S. § 44A-11.2(s)-(t).)

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

### CREATING A LIEN ON REAL PROPERTY

A lien claimant must prepare a claim of lien on real property using a form substantially similar to the statutory form prescribed by North Carolina law (N.C.G.S. § 44A-12(c)).

A claim of lien on real property must include:

- The lien claimant's name and address.
- The record owner's name and address.
- The contractor's name, if the claimant is a subcontractor of any tier asserting a subrogated lien on real property (N.C.G.S. § 44A-23). For information on a subcontractor's right to a subrogated lien on real property, see Practice Note, Mechanic's Liens in Practice (Subcontractor Rights) (NC): Lien on Real Property by Subrogation ([W-016-4869](#)).
- A description of the real property sufficient to identify the real property, such as:
  - street address;
  - tax lot and block number;
  - reference to recorded instrument; or
  - any other description that reasonably identifies the real property.
- The name and address of the person that contracted with the claimant to furnish labor or materials.

- The date the claimant first furnished labor or materials on the real property.
- The date the claimant last furnished labor or materials on the real property.
- A general description of the labor performed or materials furnished and the amount claimed.
- A certification from the claimant that all parties have been properly served.
- The claimant's signature.

(N.C.G.S. § 44A-12(c).)

The caption of a claim of lien on real property should contain the name of the county where the lien is filed. A lien claimant should also consider including the following introductory language:

"PLEASE TAKE NOTICE that the undersigned lienor, being a contractor as defined by N.C. Gen. Stat. § 44A-7 or a subcontractor asserting rights under N.C. Gen. Stat. § 44A-20(d) or N.C. Gen. Stat. § 44A-23, claims a lien on the real property described herein."

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

## PERFECTING A LIEN ON REAL PROPERTY

A lien on real property attaches when the lien claimant both:

- Serves the claim of lien on:
  - the property owner; and
  - the contractor, if the lien claimant is a subcontractor of any tier asserting a subrogated lien on real property.
- Files the claim of lien in the office of the clerk of superior court in each county where the real property is located.

(N.C.G.S. § 44A-11(a).)

## SERVING THE CLAIM OF LIEN

Serve the claim of lien on real property:

- By any of the following methods:
  - personal or hand delivery; or
  - depositing a copy of the claim of lien in a postpaid, properly addressed envelope in either the US Mail or a federally authorized and designated delivery service (for example, DHL Express, Federal Express, or UPS) (26 U.S.C. § 7502(f)(2)).

(N.C.G.S. § 44A-11(b).)

- Addressed to the party at one of the following addresses:
  - the address listed on the permit issued for the improvement, if any;
  - the address listed with the tax rolls for any county in North Carolina; or
  - the registered agent's address listed with the North Carolina Secretary of State's office.

(N.C.G.S. § 44A-11(c).)

## FILING THE CLAIM OF LIEN

File the claim of lien on real property with the clerk of superior court in each county where the property is located within 120 days after the last date of furnishing labor or materials to the project site (N.C.G.S. § 44A-12(a)-(b)). The 120-day limitations period is strictly construed. The deadline means 120 calendar days, not four months.

After filing the claim of lien on real property, the clerk affixes an acknowledgment, including:

- The date the claim of lien is filed.
- The clerk's signature.

(N.C.G.S. § 44A-12(c).)

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

## AMENDING THE CLAIM OF LIEN

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

- Cancel the prior lien.
- Serve and file a new claim of lien on real property.

(N.C.G.S. § 44A-12(d).)

The claimant must serve and file the new (replacement) claim of lien on real property within the original 120-day limitations period (*Gaston Grading & Landscaping v. Young*, 449 S.E.2d 475, 477 (N.C. Ct. App. 1994)). The replacement claim of lien relates back to the date of first furnishing of labor or materials under the contract (N.C.G.S. § 44A-10; see *Priority of a Lien on Real Property*).

## ASSIGNING THE CLAIM OF LIEN

A lien claimant may assign its claim of lien on real property after the claimant files the lien with the clerk of superior court. The clerk of superior court should note the assignment in the margin of the judgment docket containing the claim of lien on real property. The assignee becomes the lien claimant of record. (N.C.G.S. § 44A-12(e).)

## WAIVER OF LIEN RIGHTS

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

However, a claimant may:

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

Partial lien waivers are common as part of the payment process. A contractor may waive its lien rights periodically as payments are made. A partial lien waiver does not affect the priority date of a claim of lien on real property (*Wachovia Bank Nat. Ass'n v. Superior Const. Corp.*, 718 S.E.2d 160, 163-67 (N.C. Ct. App. 2011)).

## ENFORCING A LIEN ON REAL PROPERTY

A lien claimant seeking to enforce a lien on real property must:

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

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

### FILING THE ACTION

File an action to enforce a lien on real property in the county where any of the parties to the action reside within 180 days of the last furnishing of labor or materials at the project site (N.C.G.S. § 44A-13(a)). The 180-day limitations period is strictly construed. The deadline means 180 calendar days, not six months.

A lien claimant may extend the duration of a lien on real property indirectly by:

- Filing a civil action to enforce the lien within 180 days after the last furnishing of labor or materials at the project site.
- Filing a notice of voluntary dismissal of the enforcement action without prejudice (N.C. R. Civ. P. 41(a)).
- Filing a new civil action to enforce the lien within one year after the date of dismissal.

(*Newberry Metal Masters Fabricators, Inc. v. Mitek Indus., Inc.*, 424 S.E.2d 383, 384 (N.C. 1993).)

Failure to enforce a lien on real property within the statutory limitations period results in a discharge of the lien by operation of law (N.C.G.S. § 44A-16(a)(3); see *Discharging a Lien on Real Property*). A discharge of the lien does not affect the lien claimant's underlying breach of contract claim.

### NOTICE OF THE ACTION

File a notice of lis pendens (also called a notice of action) with the clerk of the court if the lien claimant files the civil action to enforce the lien in either:

- Federal court.
- State court in a county other than the county where the real property is located.

If a notice of lis pendens is required, file and serve the notice:

- In each county where the real property is located except the county where the civil action is filed.
- Within the same time period required for commencing the action.

(N.C.G.S. § 44A-13(c).)

For more information on filing a notice of lis pendens, see State Q&A, Provisional Remedies: North Carolina: Question 10 ([W-000-5472](#)).

### PARTIES TO THE ACTION

The owner of the real property is the only necessary party to a lien enforcement action. Other proper parties include adverse lien claimants that have an interest in the property, such as:

- The contractor.
- Other subcontractors or suppliers.
- Third-party lenders.

(*Equitable Life Assurance Soc'y of U.S. v. Basnight*, 67 S.E.2d 390, 395 (N.C. 1951); *Miller v. Lemon Tree Inn of Roanoke Rapids, Inc.*, 233 S.E.2d 69, 72 (N.C. Ct. App. 1977).)

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

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

### JUDGMENT

A judgment in an action to enforce a lien on real property:

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

(N.C.G.S. § 44A-13(b).)

The judgment is limited to the principal amount stated in the claim of lien on real property (N.C.G.S. § 44A-13(b)). North Carolina law does not define the term "principal amount." The term generally means the amount of debt owed to the lien claimant, exclusive of:

- Interest.
- Attorneys' fees.

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

### Sale of Real Property in Satisfaction of Judgment

A judgment in an action to enforce a lien on real property typically results in a sale of the improved real property. A sale of the improved real property and distribution of proceeds are governed by the execution sale provisions under North Carolina law (N.C.G.S. §§ 1-339.41 to 1-339.76).

The sale of improved real property in satisfaction of a claim of lien on real property passes all title and interest to the purchaser, good against all claims or interests recorded, filed, or arising after the first furnishing of labor or materials at the project site by the lien claimant. (N.C.G.S. § 44A-14(a).)

### Pre-Judgment Sale

The court may order a pre-judgment sale of the improved real property in limited circumstances. After a hearing in which all interested parties are given notice, the court may determine that a pre-order judgment sale is necessary to prevent:

- Substantial waste.
- Destruction.
- Depreciation or other damage to the improved real property.

The execution sale must be conducted in a commercially reasonable manner determined by the court. Following the sale, the rights of all the parties in the improved real property are transferred to the proceeds of the sale. (N.C.G.S. § 44A-14(b).)

### Pre-Judgment Attachment

The remedy of pre-judgment attachment may also be available in limited circumstances where the owner removes or attempts or threatens to remove an improvement from the property subject to a claim of lien on real property either:

- Without the written permission of the lien claimant.
- With the intent to deprive the lien claimant of their lien rights.

(N.C.G.S. § 44A-15.)

### ATTORNEYS' FEES

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

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

An award of attorneys' fees is:

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

(N.C.G.S. § 44A-35.)

### PRIORITY OF A LIEN ON REAL PROPERTY

A perfected claim of lien on real property relates back to and takes priority from the date of first furnishing labor or materials at the project site (N.C.G.S. § 44A-10).

Any lien or judgment that attaches after the priority date of the claim of lien on real property is junior in priority. This includes a deed of trust securing the construction financing for the project. As a result, owners and owners' lenders typically require contractors and subcontractors to subordinate their lien rights to the rights of the lender in the improved real property.

If a lien on real property is not perfected before the recording date of a mortgage or deed of trust benefitting a party that is not an affiliate, relative, or insider of an owner, a claimant's lien on real property is subordinated to a previously recorded mortgage or deed of trust, unless:

- The owner's designated lien agent receives a notice to lien agent from the lien claimant either:
  - no later than 15 days after the first furnishing of labor or materials to a project; or
  - before the recording date of the mortgage or deed of trust.

(N.C.G.S. § 44A-11.2(m).)

For more information on priority of mechanic's liens, see State Q&A, Real Estate Finance: North Carolina: Question 6 ([2-567-4906](#)).

### DISCHARGING A LIEN ON REAL PROPERTY

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

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

(N.C.G.S. § 44A-16(a).)

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

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

(N.C.G.S. § 44A-16(b).)

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