



New North Carolina Lien Agent & Bond Law

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Effective April 1, 2013 on Private Construction Projects:

Owners of construction projects in excess of \$30,000, which are not an improvement to an existing single family owner-occupied residence, must designate a Lien Agent *at the time of first entering into a contract* to improve the property, from a list of approved Lien Agents and serve the Lien Agent with notice of the designation. G.S. § 44A-7. The list of approved Lien Agents is on the Department of Insurance website: http://www.ncdoi.com/PC/PC_Title_Lien_Agents.aspx. All Lien Agents are title companies.

The new law requires that the Lien Agent's contact information be given to the inspections department as part of the building permit application and, in addition, that a sign disclosing the Lien Agent and contact information be posted on-site, if it is not included in the building permit.

Contractors must provide the information as part of obtaining a building permit and be certain the Lien Agent information is posted on the job site. Failure to do so results in contractor liability for losses incurred by any subcontractor that would otherwise have been notified.

Since off-site subcontractors cannot be expected to look at the building permits or job site postings, a contractor or subcontractor that contracts with a lower-tier subcontractor, *that is not required to furnish labor at the site*, must give such lower-tier subcontractor written notice of the Lien Agent's contact information within three business days of contracting with the lower-tier subcontractor. Failure to provide the Lien Agent's information exposes the contractor or subcontractor to liability for damages incurred by the lower-tier subcontractor. G.S. § 44A-11.2(c).

Contractor, subcontractors and suppliers must serve a "Notice to Lien Agent" to

the Lien Agent within **15 days of first furnishing of labor or materials**. The notice must include the potential claimant's name, its contracted party, the property description, and notice of a right to subsequently pursue a claim of lien. This document is NOT filed. G.S. § 44A-11.2.

Within three business days of receipt of a "Notice to Lien Agent" by a potential lien claimant, the Lien Agent must confirm receipt to the claimant. Thereafter, the Lien Agent is charged with maintaining a record of all notices.

The Lien Agent must provide the requesting party with notice of the potential lien claimants that have served him with a "Notice to Lien Agent" within one business day after receiving a request by an owner, title company, potential lien claimant, purchaser, or closing attorney. If the Lien Agent also received notice from the owner regarding a general contractor on a single family residence, it shall also include the contractor information in its response. G.S. § 58-26-41. Only if specifically requested must the Lien Agent provide copies of notices of lien served.

Closing attorneys must request copies of notices received by the Lien Agent to avoid professional negligence claims - not more than five business days before closing. G.S. § 44A-11.1(f).

Serving the Lien Agent with the "Notice to Lien Agent", or requesting the list of lien claimants from the Lien Agent, is not the end of the process. A lien claimant must still go through the process of serving and/or filing the traditional Notice of Claim of Lien on Funds and Claim of Lien Upon Real Property.

The new scheme seeks to limit claims against the property in the hands of new owners. A Claim of Lien on the property can be perfected against a new purchaser only if: (i) the Lien Agent received notice from the claimant within **15 days after the claimant first furnished labor or materials and (ii) either** the Lien Agent received the notice from the lien claimant prior to the date on which a deed to a bona fide purchaser is recorded; **or** the Claim of Lien is filed prior to the deed being recorded. Even if the Claim of Lien attaches to the new property, if the Claim of Lien is filed **AFTER** a deed of trust is recorded, it will be subordinate to the new deed of trust unless: (i) the Lien Agent received notice within **15 days of first furnishing** and (ii) the Lien Agent received notice prior to the recordation of the deed of trust.

A website for appointing a Lien Agent, serving notices to Lien Agents and making an on-line inquiry has been created at: <http://www.liensnc.com/>.

Effective January 1, 2013 on Bonded Public Projects:

Contractors must provide a "Contractor's Project Statement" to their subcontractors. This document is to include the name of the project, address, name

of contracting body, name of contractor, agent for service, and name and address of the principal place of business of surety.

Subcontractors must deliver a copy of the Contractor's Project Statement to their subcontractors. Subcontractors below the first tier must also serve a "Notice of Public Subcontract" on the contractor, as soon as possible after receiving the Contractor's Project Statement." This "Notice of Public Subcontract" needs to state the name and address, property description, description of subcontract, and description of labor or materials. If the contractor has complied with its obligations, a subcontractor's bond recovery rights are limited to work or material furnished within 75 days prior to giving notice of public subcontract. G.S. § 44A-27. Therefore, the Notice of Public Subcontract should be given as soon as possible. Claims of less than \$20,000 are not subject to the recovery limitation.

Related People

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