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GENERAL STATUTES OF NORTH CAROLINA
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*** Statutes current through the 2008 Regular Session ***
*** Annotations are current through January 12, 2009 ***

CHAPTER 44A. STATUTORY LIENS AND CHARGES
ARTICLE 2. STATUTORY LIENS ON REAL PROPERTY
PART 2. LIENS OF MECHANICS, LABORERS, AND MATERIALMEN DEALING WITH ONE OTHER THAN
OWNER

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N.C. Gen. Stat. § 44A-19 (2009)

§ 44A-19. Notice of claim of lien upon funds

(a) Notice of a claim of lien upon funds shall set forth all of the following information:

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

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

NOTICE OF CLAIM OF LIEN UPON FUNDS BY
FIRST, SECOND, OR THIRD TIER SUBCONTRACTOR

To:

1. _____, owner of property involved.

(Name and address)

2. _____, general contractor.

(Name and address)

3. _____, first tier subcontractor against or through

(Name and address) _____ whom subrogation is claimed, if any.

4. _____, second tier subcontractor against or through

(Name and address) _____ whom subrogation is claimed, if any.

General description of real property where labor performed or material furnished:

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

The amount of lien upon funds claimed pursuant to the above described contract: _____ \$

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

Dated

_____, Lien Claimant

(Address)

(c) All notices of claims of liens upon funds by subcontractors more remote than the third tier must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR
MORE REMOTE THAN THE THIRD TIER

To:

, person holding funds against which lien

(Name and Address)

upon funds is claimed.

General description of real property where labor performed or material
furnished:

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

The amount of lien upon funds claimed pursuant to the above described
contract: \$

The undersigned lien claimant gives this notice of claim of lien upon funds
pursuant to North Carolina law and claims all rights to which he or she is
entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of

North Carolina.

Dated:

, Lien Claimant

(Address)

(d) Notices of claims of lien upon funds under this section shall be served upon the obligor by personal delivery or in any manner authorized by Rule 4 of the North Carolina Rules of Civil Procedure. A copy of the notice of claim of lien upon funds shall be attached to any claim of lien on real property filed pursuant to *G.S. 44A-20(d)* or *G.S. 44A-23*.

(e) Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real property, except a notice of a claim of lien upon funds may be filed with the clerk of superior court under either of the following circumstances:

(1) When the notice of claim of lien upon funds is attached to a claim of lien on real property filed pursuant to *G.S. 44A-20(d)* or *G.S. 44A-23*.

(2) When the notice of claim of lien upon funds is filed by the obligor for the purpose of discharging the claim of lien upon funds in accordance with *G.S. 44A-20(e)*.

(f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section is not a violation of *G.S. 44A-12.1*.

HISTORY: 1971, c. 880, s. 1; 1985, c. 702, s. 1; 2005-229, s. 1.

NOTES: EDITOR'S NOTE. --The North Carolina Rules of Civil Procedure, referred to in subsection (d), are codified in *G.S. 1A-1*.

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Mechanic & Contractor Liens

CASE NOTES

PURPOSE OF NOTICE. --The notice of claim of lien filed by the subcontractor is for the purpose of giving the owner obligor notice; the notice is not intended to protect innocent third parties and does not affect the title to the real property being improved. *Contract Steel Sales, Inc. v. Freedom Constr. Co.*, 84 N.C. App. 460, 353 S.E.2d 418, aff'd, 321 N.C. 215, 362 S.E.2d 547 (1987).

FILING IS ALSO REQUIRED. --Although a second tier subcontractor must notice its claim of lien using a format substantially similar to that provided in this section, perfection of this lien is not achieved merely upon proper notice; the claim of lien must also be filed pursuant to *G.S. 44A-12* before it is considered perfected. *Cameron & Barkley Co. v. American Ins. Co.*, 112 N.C. App. 36, 434 S.E.2d 632 (1993).

DEVIATION FROM THE STATUTORY FORM IS PERMISSIBLE so long as all of the information set out in the

statutory form is contained in the notice. *Contract Steel Sales, Inc. v. Freedom Constr. Co.*, 321 N.C. 215, 362 S.E.2d 547 (1987).

SUFFICIENT COMPLIANCE. --The subcontractor's letter to the property owner was held, as a matter of law, to substantially comply with the notice requirements set forth in this section. *Contract Steel Sales, Inc. v. Freedom Constr. Co.*, 84 N.C. App. 460, 353 S.E.2d 418, aff'd, 321 N.C. 215, 362 S.E.2d 547 (1987).

Appellate court erred in reversing the trial court's grant of summary judgment to the product supplier that found the product supplier was entitled to judgment in the amount specified in its notice of lien sent to the manufacturer; the state constitution and statutory law provided that a materialman was entitled to an adequate lien on the subject matter of the materials supplied, the product supplier sent a notice of lien for a certain amount to the manufacturer after the product supplier became aware that the contractor with whom the manufacturer had contracted was having financial difficulties, the manufacturer nevertheless paid the contractor, instead of the product supplier, shortly before the contractor went bankrupt, and the manufacturer's receipt of notice obligated it to pay the product supplier's claimed lien amount. *O & M Indus. v. Smith Eng'g Co.*, 360 N.C. 263, 624 S.E.2d 345 (2006).

CLAIM OF LIEN INSUFFICIENT. --A claim of lien may not serve as a notice of claim of lien because a notice of claim of lien must identify all the parties in the "contractual chain" between the claimant and the owner. *Universal Mechanical, Inc. v. Hunt*, 114 N.C. App. 484, 442 S.E.2d 130 (1994).

A claim of lien need only identify the owner, the claimant, and the party with which the claimant contracted. Thus, while plaintiff's claim of lien met the requirements of G.S. 44A-12, the claim of lien did not meet the requirements of this section, because the claim of lien did not name defendant or assert rights available to plaintiff via a notice of claim of lien. *Universal Mechanical, Inc. v. Hunt*, 114 N.C. App. 484, 442 S.E.2d 130 (1994).

APPLIED in *Interior Distribs., Inc. v. Promac, Inc.*, 27 N.C. App. 418, 219 S.E.2d 281 (1975); *Lewis-Brady Bldrs. Supply, Inc. v. Bedros*, 32 N.C. App. 209, 231 S.E.2d 199 (1977); *Martin Architectural Prods. v. Meridian Constr. Co.*, 155 N.C. App. 176, 574 S.E.2d 189 (2002).

CITED in *Outer Banks Contractors v. Forbes*, 47 N.C. App. 371, 267 S.E.2d 63 (1980); *Carolina Bldg. Servs.' Windows & Doors, Inc. v. Boardwalk, LLC*, 362 N.C. 262, 658 S.E.2d 924 (2008).