



ATTORNEYS AT LAW

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**NORTH CAROLINA MECHANICS' LIENS:
PROTECTING YOUR LIEN RIGHTS AS A CONTRACTOR OR SUBCONTRACTOR**

North Carolina law provides certain statutory lien rights to contractors and subcontractors in order to provide protection against the risk of nonpayment. The mechanics' liens created by North Carolina statute can be powerful tools for a contractor or subcontractor who has provide labor or materials and has not been paid. However, as every contractor knows, in order to get the most out of your tools, you have to know how to use them correctly. In order to ensure that you are able to exercise your lien rights if necessary, you need to understand when a lien arises, how to preserve your lien rights, how to file a lien, and how to perfect a lien.

What is a Lien on Real Property?

A mechanics' lien is a legal claim that a contractor or subcontractor has to title of privately-owned real property based on the value of the labor or materials supplied to improve the property. Under North Carolina law, a mechanics' lien exists only on privately owned projects – not on publicly owned projects.

Important Steps for Preserving Lien Rights to the Extent Possible

Certain basic steps must be followed in order to ensure that lien rights are preserved. Failure to follow these steps may result in a reduction of the value of lien rights, or even a complete loss of all lien rights. These steps include the following:

1. Determine where you are in the hierarchy of contractors and subcontractors (i.e., whether you are the general contractor, a first-tier subcontractor, a second-tier subcontractor, a third-tier subcontractor, or further down the line).
2. File Notice to Lien Agent via NC Liens.
3. Serve Notice of Subcontract.

Determining Your Place in Line Determines Your Rights and Obligations

Where you fall in line determines what lien rights are available to you, and what obligations exist under North Carolina law in order to comply with the mechanics' lien statutes. A general contractor – one who contracts directly with the owner of the private property – has a statutory right to file a claim of lien on the real property of the owner. This powerful lien right can ultimately allow a general contractor to force the sale of the property to obtain payment. Accordingly, a property owner has a strong incentive to make payment to the general contractor in order to avoid this outcome.

Subcontractors have different lien rights which vary based on how far removed they are from the property owner in the hierarchy of contractors and subcontractors. Subcontractors may also have a right to a claim of lien on real property through subrogation. This claim of lien on real property is available only to first, second, and third-tier subcontractors. This right exists through subrogation – essentially stepping into the shoes of a contractor ahead of you in line and exercising that contractor's lien rights. For example, where a first-tier subcontractor has not been paid, it may exercise a claim of lien on real property through subrogation to the lien rights

of the general contractor, and file a claim of lien on real property to the extent that the general contractor has the right to do so. This detail is important – because this right exists only through subrogation, subcontractors’ rights to claims of lien on real property exist only to the extent that the contractors above them have lien rights.

Filing Notice to Lien Agent

In order to protect its lien rights, a subcontractor must give notice within fifteen (15) days of first furnishing labor or materials to a project. Failure to file a notice to lien agent may compromise a subcontractor’s lien rights. This requirement applies to most projects with costs totaling at least \$30,000.00, though some exceptions apply for residential projects. North Carolina has created a designated website in order to simplify this process, and notice can be filed through www.liensnc.com. Lien agents are typically either title insurance companies or title insurance agencies, and the purpose of this requirement is to create a mechanism through which lenders and title companies may identify potential lien claimants.

Serving Notice of Subcontract

Under North Carolina law, if the owner posts a Notice of Contract on the worksite within thirty (30) days of the issuance of the building permit, second and third-tier subcontractors can be barred from filing subrogated claims of lien on real property. However, a second or third-tier subcontractor can preserve their lien rights if they properly serve a notice of subcontract. Service of a notice of subcontract must comply with specific legal requirements by providing numerous required pieces of information, and must be served by Certified Mail.

Even where a second or third-tier subcontractor properly serves a notice of subcontract, its right to file a claim of lien on real property may still be cut off by the contractor serving a written notice of payment to the subcontractor within five days following each subsequent payment to the first-tier subcontractor through which the lower-tiered subcontractor's lien rights would flow. The notice of payment must set forth the date of payment to the first-tier subcontractor and the period for which payment is made.

Filing the Claim of Lien and Filing Suit by the Deadline

Even if all of the above-described steps are complied with, lien rights may be lost if too much time passes after the last date on which you have provided services or materials. A claim of lien on real property must be filed within 120 days of the last date on which goods or services are provided. A lawsuit to enforce these claims of lien must be filed within 180 days of the last date on which goods or services are provided.

Conclusion

As this article makes clear, the process of preserving and enforcing lien rights can be complicated. However, this should not discourage contractors and subcontractors from doing everything in their power to preserve their lien rights – lien rights are one of a contractor's most important tools in securing payment on a construction project. The best way to ensure that lien rights are preserved and that all legal requirements are satisfied is by contacting an attorney. An experienced attorney can guide you not only through one specific problematic project with nonpayment issues, but can also ensure that practices and policies are put in place to help preserve your lien rights to the extent possible.



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