

NORTH CAROLINA MECHANICS' LIEN LAW

Chapter Survey...

- ⇒ *What is a Lien?*
- ⇒ *Who is Entitled to a Mechanics' Lien?*
- ⇒ *Notice of Contract*
- ⇒ *Notice of Subcontract*
- ⇒ *Filing a Notice of Claim of Lien*
- ⇒ *Filing a Claim of Lien*
- ⇒ *Monetary Awards*
- ⇒ *Time in Which to File a Lien Foreclosure Petition*
- ⇒ *Sale of Land to Satisfy Lien*



What is a Lien?



Mechanics' and materialmen's liens "cloud" the title to real property but can be an effective method (and sometimes the only method) for securing payment for labor or materials used in the improvement of real property. The lien stops the owner from selling the property with a clear title. The lien may be foreclosed in a lawsuit. The court can order that

property be sold and the proceeds used to pay the contractor, subcontractor, laborer, or material supplier. This may be true even if the owner has already paid a general contractor, meaning that the owner may have to pay twice. This is one of the reasons that a lien can be such a powerful collection tool.

The law governing mechanics' liens is found in Chapter 44A of the General Statutes of North Carolina. The state statutes and court opinions establish a strict procedure to perfect and foreclose a lien. It is strongly recommended that a professional be routinely used to record and foreclose on construction liens.

Who is Entitled to a Mechanics' Lien?

Contracts with the Owner: The state statutes specify that "any person who performs or furnishes labor or professional design or surveying services or furnishes materials or furnishes rental equipment" and who contracted directly with the owner has lien rights against the property where the construction project was performed.

Contracts with the General Contractor: First-tier subcontractors are those who contract with the general contractor. First-tier subcontractors have lien rights against the money owed to the contractor by the owner.

Contracts with First-Tier Subcontractors: Second-tier contractors are those who contract with first-tier contractors. Second-tier subcontractors have lien rights against the money owed to the first-tier contractor by the general contractor.

Contracts with Second-Tier Subcontractors: Third-tier contractors are those who contract with second-tier contractors. Third-tier subcontractors have lien rights against the money owed to the second-tier contractor by the first-tier contractor.

Remote Contracts: Contracts more remote than third-tier have lien rights against the funds owed to the party with whom they contracted with to perform the work.

Notice of Contract

Within 30 days of the building permit issuance, the general contractor can file a notice of contract with the office of the clerk of superior court. The notice must be posted on the property in a visible location adjacent to the posted building permit.

The notice of contract must follow a similar format to the following form:

NOTICE OF CONTRACT

(1) Name and address of the Contractor:

(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:

(3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):

(4) Name and address of the person, firm or corporation filing this Notice of Contract:

Dated: _____

Contractor

Filed this the ____ day of _____, ____.

Clerk of Superior Court

Notice of Subcontract

To preserve lien rights, the second- or third-tier subcontractor must serve upon the contractor who has filed a notice of contract with a completed and signed notice of subcontract form.

The notice of subcontract must follow a similar format to the following form:

NOTICE OF SUBCONTRACT

(1) Name and address of the subcontractor:

(2) General description of the real property where the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

(3)(i) General description of the subcontractor's contract, including the names of the parties thereto:

(ii) General description of the labor and material performed and furnished thereunder:

(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within five 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.

Dated: _____

Subcontractor

Filing a Notice of Claim of Lien

Prior to filing a claim of lien, first-tier, second-tier, third-tier, and remote contractors must file a notice of claim of lien.

Required Information: This notice must contain the following information:

- ✓ name and address of the person claiming the lien upon funds;
- ✓ general description of the real property improved;
- ✓ name and address of the person with whom the lien claimant contracted to improve real property;

- ✓ name and address of each person against or through whom subrogation rights are claimed;
- ✓ general description of the contract and the person against whose interest the lien upon funds is claimed; and
- ✓ amount of the lien upon funds claimed by the lien claimant under the contract.

First, Second and Third-Tier Notice Format: The notice for first, second and third-tier contractors must follow a similar format to the following form:

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)

Remote Contractors Notice Format: The notice for contractors more remote than third-tier must follow a similar format to the following form:

**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)

Filing a Claim of Lien

Time in Which to File: A claim of lien must be filed within 120 days of the last date that labor or materials were furnished.

Required Information: The claim of lien must contain the following information:

- ✓ name and address of the person claiming the claim of lien on real property;
- ✓ 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;
- ✓ description of the real property upon which the claim of lien on real property is claimed: (Street address, tax lot and block number, reference to

recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.);

- ✓ name and address of the person with whom the claimant contracted for the furnishing of labor or materials;
- ✓ date upon which labor or materials were first furnished upon said property by the claimant;
- ✓ date upon which labor or materials were last furnished upon said property by the claimant;
- ✓ general description of the labor performed or materials furnished and the amount claimed; and
- ✓ signature of the lien claimant.

Where to File: All claims of lien must be filed in the office of the clerk of the superior court in each county where the property subject to the claim of lien is located.

Lien Waiver: A waiver of lien rights as part of a contract's provisions is unenforceable.

Monetary Awards

Prorating Liens: If the amount due to the contractor is not sufficient to pay all the lienors, the owner will prorate the amount due to all of those claiming a lien.

If the amount due to the lower-tier contractor is not sufficient, the party claiming the lien will prorate the amount due to all of those claiming a lien.

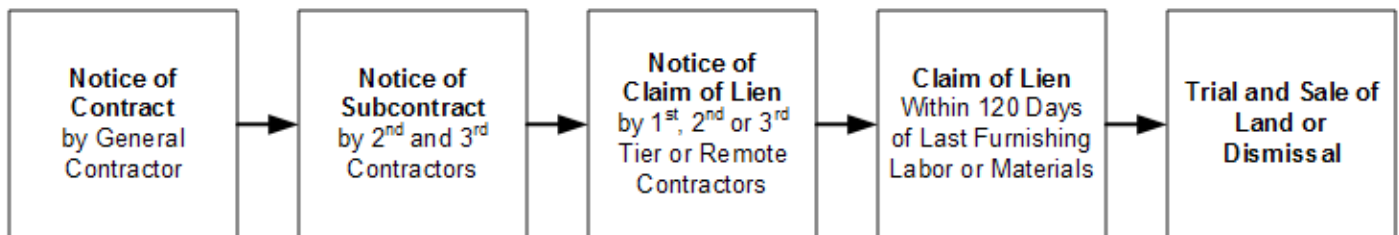
Time in Which to File a Lien Foreclosure Petition

A lawsuit to foreclose on the lien must be filed within 180 days after the lienor last provided materials or labor for the construction project.

Sale of Land to Satisfy Lien

A judge can order the sale of the land to pay the lien or can remove the lien if it is not valid. An owner can also bond around the lien. This allows the sale of the land with a clear title but also makes the bond available to pay the lien-holder and any of the lower-tier contractors if the lawsuit is successful.

Summary of Lien Process



Final Inspection...

What is a Lien? A lien can be a useful tool in securing payment for labor or materials for improvement on real property.

Who is Entitled to a Mechanics' Lien? State statutes give those who contract with the owner and first-tier, second-tier, third-tier, and remote contractors lien rights.

Notice of Contract: The general contractor can file a notice of contract within 30 days of receiving a building permit.

Notice of Subcontract: If the general contractor filed a notice of contract, the second- and third-tier contractors must file a notice of subcontract.

Filing a Notice of Claim of Lien: Before filing a claim of lien, the notice of claim of lien must be filed.

Filing a Claim of Lien: A claim of lien must contain all the required information and be filed within 120 days of last furnishing labor or materials.

Monetary Awards: Monetary awards are prorated if the amount due is not sufficient to pay the lienors.

Time in Which to File a Lien Foreclosure Petition: A lawsuit to foreclose on a lien must be filed within 180 days of last furnishing labor or materials.

Sale of Land to Satisfy Lien: A judge can order the sale of land or remove a lien if it is not valid.