

Mechanics' Liens and the New "Lien Agent"

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Possibly the single best piece of leverage a general contractor, subcontractor, or supplier has to secure payment on a construction project is the ability to file a claim of lien, either outright or by asserting the rights of one higher up in the construction chain. There are several procedural aspects of filing these liens that require careful attention to the provisions of Chapter 44A of the North Carolina General Statutes, but we now have another wrinkle to make things interesting – the "lien agent." Senate Bill 42 was ratified June 28, 2012, and should be signed by Governor Perdue by the time you read this article.

This new legislation requires the owner to designate a lien agent no later than the time the owner first contracts with any person to improve real property if the original permitted work is \$30,000 or more. This applies to both commercial and residential construction projects; however, there is an exception for improvements made to an existing single-family residential dwelling used by the owner as a residence. **The lien agent will be either a title insurance company or agency that has been approved by the North Carolina Department of Insurance.**

The owner must post a sign on the improved property disclosing the lien agent's contact information, as well as providing the contact information for the lien agent to a potential lien claimant within 7 days after a request for such contact information is made. There is also a requirement that any contractor or subcontractor must provide the lien agent's contact information to their lower-tier subcontractor within 3 business days of contracting with the subcontractor, although this information can be provided in the subcontract. Failure to do so could result in liability on the part of the higher-tier contractor or subcontractor for any actual damages incurred by the lower-tier subcontractor as a result of not having the information.

Under this new system, in order to enforce a lien on real property, a potential lien claimant must do one of the following: serve formal notice of a potential lien on the lien agent within 15 days after first furnishing labor or materials by the potential lien claimant, serve such notice to the lien agent before the sale of real property to a bona fide purchaser, or file a claim of lien on real property before sale of the real property to a bona fide purchaser. Similar timing and

notice requirements will apply in order for the claim of lien to be superior to any mortgage incurred against the improved property.

These changes will not take effect until April 1, 2013, and it is possible that this legislation will see more changes prior to its effective date because of the speed with which it passed during the short legislative session. Regardless, it has always been advisable to obtain legal advice regarding the filing of liens on real property; and these changes will make an even stronger case for the need to move quickly and competently in order to secure payment. If you have questions regarding this new process and how it may affect your situation, we would be happy to talk with you.

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