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CONSTRUCTION LIENS ON PROPERTY IN NORTH CAROLINA

In North Carolina, N.C. Gen. Stat. § 44A, et seq. allows companies and individuals who have contracted to improve real property to file a claim of lien on that real property in order to secure payment for money owed. The “companies” or “individuals” noted above include general contractors, subcontractors (first tier, second tier, etc.), graders, landscapers, materials suppliers, architects, engineers, landscape architects, land surveyors, and equipment rental companies. In short, odds are if you have entered into a contract to build some or all of a construction project, or to design some or all of a construction project, you have the right to retain a **construction attorney** and file claims of liens on the subject improved property to secure money owed to you.

Though the construction lien process may seem simple, there are a few hurdles to consider when filing your lien in the public registry. First, the lien statutes require that there be “debts owing for labor done or professional design or surveying services or material furnished or equipment rented pursuant to (your) contract.” Arguably, this means your lien rights only exist up to the amount of money actually owed to you under your contract for work actually performed on (or materials/equipment actually provided to) the project. Second, and perhaps most importantly, are the issues surrounding the timing of giving notice to a lien agent, filing your claim of lien, and commencing your lien enforcement action. If these deadlines aren’t adhered to, you very may well not have a lien and, as a result, you will have decreased your leverage to secure payment.

The simple “rule of thumb” set forth in the lien statute when it comes to maintaining a contractor’s (or subcontractor’s) lien rights is that you have 120 days from the last date on which you furnished labor, materials, equipment, or other services “at the site of the improvement” (i.e., on the real property). Second, you have 180 days from the date on which you last furnished labor, materials, equipment, or other services to commence an action against the necessary parties to enforce your lien. Failure to satisfy either one of these deadlines will mean that you no longer have lien rights in the property that you improved or helped to improve.

Having satisfied those requirements, contractors, subcontractors, and other construction professionals must also know that their lien rights can be affected by not filing a “Notice to Lien Agent” as required by the lien statutes. Under N.C. Gen. Stat. § 44A-11.1, with some exceptions, an owner must designate a “lien agent” for projects costing in excess of \$30,000.00. When a lien agent is designated, all contractors, subcontractors, and other construction professionals on the project should file a “Notice to Lien Agent” in order to ensure that their lien rights “relate back” to the first date on which they furnished services to the project. While best practice is to file the “Notice to Lien Agent”

as soon as possible, the statutes note that one should file the Notice no later than 15 days after their first furnishing of services upon the project. Failure to do so – under certain circumstances – can make your lien subordinate to things like subsequent conveyances of the property or the recording of a subsequent mortgage/deed of trust relating to the property.

The above only discusses the general framework and timing requirements necessary to maintain a contractor's or subcontractor's right to place a lien on the property they have helped to improve. The lien statutes also provide subcontractors the ability to place liens on the funds owed by the project owner to the general contractor, which we will address in a later article. However, the bottom line for claims of liens on real property is that, while the process may seem straight forward, it is fraught with landmines that an experienced **construction attorney** can navigate in order to maximize the construction professional's ability to recover money owed to them. Details matter, and it is almost always better to hire the right person for the job as opposed to risking the loss of some of your best leverage to secure payment.

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