

**NORTH CAROLINA SUPERIOR COURT JUDGES'
FALL CONFERENCE**

October 20, 2010

**CONSTRUCTION LIEN AND BOND LAW
BASICS FOR THE TRIAL JUDGE**

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LIEN RIGHTS FOR THOSE CONTRACTING WITH THE OWNER

I. PERFECTION OF A CLAIM OF LIEN

- A. A “Claim of Lien” must be filed no later than **120 days** after the last furnishing of labor or materials in the county where the real property subject to the lien is located. (N.C. Gen. Stat. § 44A-12).
 - 1. Note – 120 days does not equal 4 months.
 - 2. The GC’s last date of furnishing must be made in good faith. GC cannot extend the last date of furnishing by performing work in an attempt to extend the deadline.
- B. Lawsuit must be filed no later than **180 days** after the last furnishing. (N.C. Gen. Stat. § 44A-13)

II. AMOUNT AND EXTENT OF LIEN

- A. GC can only lien for “debts owing for labor done or . . . services or materials furnished.” (N.C. Gen. Stat. § 44A-8)
- B. The “prevailing party” can recover attorneys’ fees upon showing of unreasonable refusal to resolve. (N.C. Gen. Stat. § 44A-35)

III. THE CLAIM OF LIEN MUST CONTAIN (N.C. GEN. STAT. § 44A-12(C)):

- A. The name and address of the person claiming the lien;
- B. The name and address of the record owner(s) of the real property;
- C. A description of the real property upon which the lien is claimed;
- D. The name and address of the person with whom claimant contracted;
- E. The date upon which labor or materials were first furnished;
- F. The date upon which labor or materials were last furnished; and
- G. A general description of the labor performed or materials furnished and the amount claimed therefore.

IV. ERRORS AND AMENDMENTS TO THE CLAIM OF LIEN

- A. A Claim of Lien may not be amended. (N.C. Gen. Stat. § 44A-12(d))
- B. A Revised Claim of Lien may be substituted within the time provided for the original filing. (N.C. Gen. Stat. § 44A-12(d))

V. LIEN WAIVER AND DISCHARGE

- A. In North Carolina, lien waivers that are pre-conditions to the award of contracts are unenforceable.
- B. A filed lien can be discharged either by depositing with the Clerk of Court a sum equal to the amount of the lien, or by depositing with the Clerk of Court a corporate surety bond equal to 125% of the amount of the lien.

LIEN RIGHTS FOR SUBCONTRACTORS AND SUPPLIERS

I. TYPES OF LIENS

A. Lien on funds. (N.C. Gen. Stat. § 44A-18)

Liens on funds can be direct or subrogated.

1. “Subrogated” lien rights are rights asserted through another party.
2. Subrogated liens on funds are extinguished by payment.

B. Lien on real property. (N.C. Gen. Stat. § 44A-23)

Subcontractor liens on real property are achieved via subrogation to GC’s lien rights. (N.C. Gen. Stat. § 44A-18)

II. DIRECT AND SUBROGATED LIENS ON FUNDS

A. Who can assert a lien on funds?

1. All subcontractors have a direct lien on funds owed to the party the subcontractor contracted with.
2. 2nd and 3rd tier subcontractors are also entitled to a subrogated lien on the funds owed to entities above the party they contracted with.
3. **Example:** If the owner owes the GC \$20,000, and the GC owes \$15,000 to the 1st tier sub, and the 1st tier sub owes \$10,000 to the 2nd tier sub, then the 2nd tier sub has a direct lien on funds for \$10,000 against the funds owed from the GC to the 1st tier and a subrogated lien on funds for \$10,000.00 against the funds owed from the owner to the GC.

B. Perfection of a lien on funds. (N.C. Gen. Stat. § 44A-19)

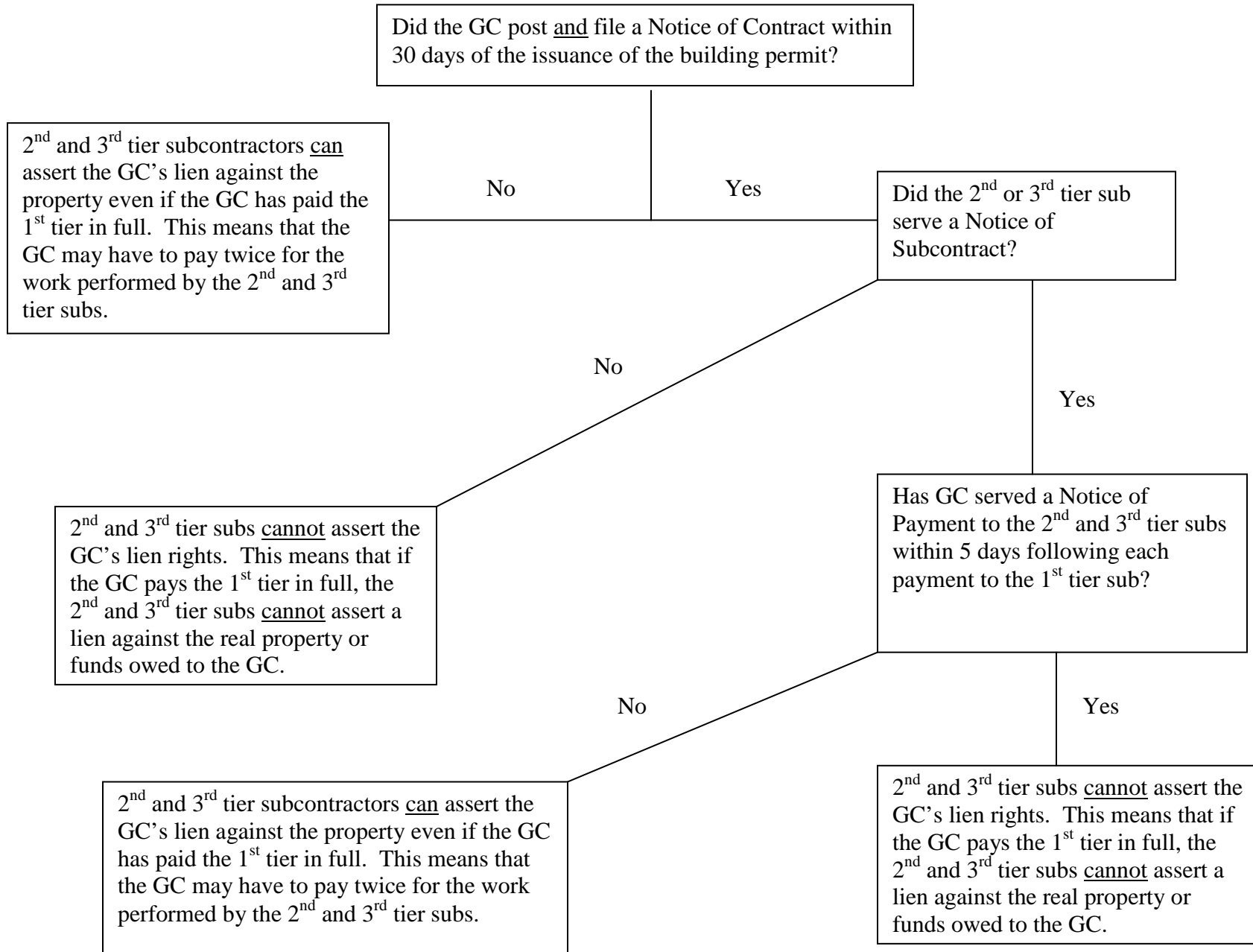
1. Service: To perfect a lien on funds, a “Notice of Claim of Lien Upon Funds” must be served on all “obligors.” The Notice of Claim of Lien Upon Funds does not have to be filed.
 - a. Notice of Claim of Lien Upon Funds must be served in person or by per N.C. R. Civ. P. 4.
 - b. Notice of Claim of Lien Upon Funds becomes effective upon receipt by obligor.
2. A Notice of Claim of Lien Upon Funds must contain:
 - a. The name and address of the owner of the real property;
 - b. The name and address of the general contractor;
 - c. The name and address of the 1st tier subcontractor through whom subrogation is claimed;
 - d. The name and address of the 2nd tier subcontractor through whom subrogation is claimed;

- e. A general description of the real property;
 - f. A general description of the contract including the names of the parties; and
 - g. The amount claimed.
- C. Effect of a Notice of Claim of Lien Upon Funds. (N.C. Gen. Stat. § 44A-20)
- 1. The lien on funds is only valid if the obligor is still holding funds.
 - 2. Upon receipt of the Notice of Claim of Lien Upon Funds, the obligor must retain funds up to the amount of the lien and distribute pro rata in case of insufficient funds.
 - 3. If the obligor releases the lien funds after receipt of the Notice of Claim of Lien Upon Funds, the obligor becomes personally liable for the amount claimed.
 - 4. If the obligor is the owner of the real property, then the lien applies to the owner's interest in the real property.

III. SUBROGATED LIENS ON REAL PROPERTY (N.C. GEN. STAT. § 44A-23)

- A. Who can assert a subrogated lien on real property?
- 1. 1st, 2nd, and 3rd tier subs are subrogated to the GC's lien rights on the real property.
 - 2. A subcontractor's lien on the real property is only as good as the GC's lien.
 - 3. A subcontractor's lien is subject to any defenses the owner has against the GC.
- B. Pre-lien notice requirements.
- 1. See the attached "Knowing Your Swain Lien Rights And N.C. Gen. Stat. §44A-23"
- C. Perfection of a subrogated lien against real property.
- 1. To perfect a subrogated lien against real property claimant should:
 - a. serve a Notice of Claim of Lien Upon Funds, and
 - b. file a Claim of Lien on Real Property within **120 days** of last date of furnishing labor or materials,
 - c. file suit within **180 days** of last date of furnishing labor or materials.

KNOWING YOUR SWAIN LIEN RIGHTS AND N.C. GEN. STAT. § 44A-23



PAYMENT BOND CLAIMS

	North Carolina State Projects	Federal Projects	Private Payment Bonds
1 st Tier Subs	<ol style="list-style-type: none"> 1. No notice required 2. File suit no later than 1 year from last furnishing or final settlement 	<ol style="list-style-type: none"> 1. No notice required 2. File suit no later than 1 year from last furnishing 	The terms of the bond control and time limits can be shorter than on public projects.
2 nd Tier Subs	<ol style="list-style-type: none"> 1. Serve notice of claim within 120 days of last furnishing 2. File suit no later than 1 year from last furnishing or final settlement 	<ol style="list-style-type: none"> 1. Serve Notice of claim on bond within 90 days of last furnishing 2. File suit no later than 1 year from last furnishing 	The terms of the bond control and time limits can be shorter than on public projects.
3 rd Tier Subs	<ol style="list-style-type: none"> 1. Serve notice of claim within 120 days of last furnishing 2. File suit no later than 1 year from last furnishing or final settlement 	No bond rights	The terms of the bond control and time limits can be shorter than on public projects.
Material Suppliers	<ol style="list-style-type: none"> 1. Serve notice of claim within 120 days of last furnishing 2. File suit no later than 1 year from last furnishing or final settlement 	<ol style="list-style-type: none"> 1. Serve notice of claim within 90 days of last furnishing 2. File suit no later than 1 year from last furnishing 3. There are no bond rights for “supplier” to “supplier” 	The terms of the bond control and time limits can be shorter than on public projects.