

Welcome!

North Carolina Construction Lien and Bond Law: *What You Need To Know To Protect Your Business*

Presented by Toby Coleman and Emily C. Yeatts



North Carolina Construction Lien and Bond Law

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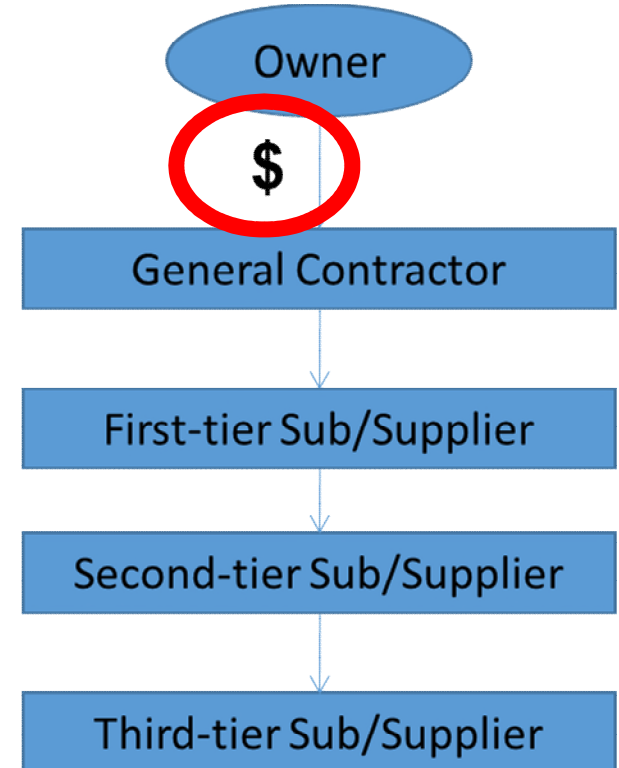
Lien Primer

- What is a lien?
- Why do lien rights matter?
- Who gets lien rights in North Carolina?



Liens on Real Property and Lien upon Funds

North Carolina –
project-based system



Who Can Assert a Lien?

- Contractors/Subcontractors
- Material Suppliers
- Architects/Engineers/Project Designers



Lien on Property— Key Deadlines

- **Remember:** End-of-project deadlines for lien filing and enforcement lawsuit
 - File lien with Superior Court within **120 days** of “last furnishing”
 - Commence lawsuit within **180 days** of “last furnishing”
- **“Use it or Lose it”:** No extensions allowed or given



“Pre-Lien” Notices

- Law now requires owners in most commercial projects to appoint lien agents to receive and track notices from contractors and suppliers
- Subcontractors and suppliers can use www.liensnc.com to notify owner that they are doing work on the Project



“Bonding off” a lien

- Liens can be discharged by posting a bond with the court
 - The bond can either be a cash deposit or a bond provided by a surety company
- Often, liens have to be bonded off



Protecting Your Business

Lien Waivers

- While there is no way for an owner to totally prevent liens from being filed, lien and claims waivers can help owners limit exposure
- For contractors and suppliers, lien waivers need to be reviewed carefully to ensure that pending claims are not being waived



Protecting Your Business

Contractual Provisions

- Contracts often set out parties' responsibilities to address liens once they are asserted
 - Owners often require contractors to remove liens within a certain period of time, and to otherwise indemnify them against such claims
 - Contractors can push similar obligations downstream



Protecting Your Business Documentation

- A number of lien claims arise from disputes over:
 - The scope of work (e.g., is a contractor entitled to a change order?),
 - Responsibility for delays, or
 - The cost of the work.
- Creating and maintaining documentation regarding these issues is important to resolve lien claims efficiently and effectively
- Even if litigation is filed, lien claims are usually resolved by a negotiated settlement. Documentation plays a significant role in many settlement negotiations



Liens on Funds

- A type of lien that can be asserted by subcontractors and suppliers
- Doesn't attach to the land; attaches to the remaining contract funds being held by the parties "upstream"
- No time limit on when it can be asserted, but it has the most impact if asserted during the course of the project, when there are still contract funds to be paid
- These liens can be a "trap for the unwary." If an owner pays over a lien on funds, the owner becomes personally liable. So watch out!



Payment Bonds:

Another Option for Protecting Against Payment Claims

- Payment bonds can provide additional security against lien claims
- Payment bond surety agrees to pay unpaid subcontractors and suppliers
 - Pro: Security against having to pay twice for work
 - Con: Increases contract price



Public Project Bonds Requirements for Subcontractors

- First-tier subs/suppliers
 - Provide contractor's project statement to lower-tier subs/suppliers
- Second-tier and lower subs/suppliers
 - Serve "Notice of Public Subcontract" on GC and owner for total claims over \$20,000
 - 75-day notice period



Special Rules for Payment Bond Claims on Public Jobs

- Subcontractors and suppliers must watch for “traps for the unwary” on government construction jobs where payment bond claims are often the only recourse for nonpayment
- Second tier and lower subs/suppliers need to file notice within **120 days** of last furnishing of materials
- Lawsuit within **1 year** of last furnishing of labor or materials



Questions?

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**Thank you for attending today's
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