



Recent Changes to the North Carolina Mechanic's Lien and Little Miller Acts

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Recent changes to the North Carolina "Little Miller Act" (N.C. Gen. Stat. § 44A-25 – 44A35) and the North Carolina Mechanic's Lien Statute (N.C. Gen. Stat. § 44A-7 – 44A-24.14) have imposed new notice requirements upon contractors working on both public and private projects. Owners, general contractors, and subcontractors should take note of these requirements and follow the procedures set forth below to ensure their lien rights are preserved.

I. Changes to the Little Miller Act

As an initial matter, the Little Miller Act only applies to bonded public projects where the total amount of awarded contracts exceeds \$300,000, and any contractor whose contract exceeds \$50,000 must have the statutory payment and performance bonds. The Act applies to projects for the State, NCDOT, and any county or municipality. Under the new law, a general contractor on such a project must provide all of its subcontractors and suppliers with a "Contractor's Project Statement." This statement must include the following information:

- The name of the project;
- The physical address of the project;
- The name of the owner of the project;
- The name of the general contractor;
- The name, phone number, and mailing address of the contractor's registered agent; and,
- The name and address of the principal place of business of the surety issuing the payment bond.

General contractors are NOT obligated to provide the Contractor's Project Statement to any 2nd tier subcontractors and suppliers. First tier subcontractors are responsible for providing the Statement to any 2nd tier subcontractors and suppliers it hires.

Any subcontractor or supplier providing more than \$20,000 in labor or materials to a public project, must provide the general contractor with a "Notice of Public Subcontract," which must contain that subcontractor/supplier's contact information and a general description of the labor and materials provided to the project. This must be provided to the general contractor within 75 days after the second-tier subcontractor first provides

labor or materials to the job. If it is provided later than that, the subcontractor's bond claim can only encompass the labor and materials provided within 75 days prior to the general contractor's receipt of the Notice of Public Subcontract.

II. Changes to the Mechanic's Lien Law

The mechanic's lien law for private projects has undergone substantial changes. The changes revolve around an owner-designated lien agent, the notices that must be sent to this lien agent, and the contractor's obligations to provide the lien agent's contact information to other parties.

The principal changes to the law are as follows:

1. Retention of a lien agent is the owner's responsibility, and the owner must identify the lien agent to the inspections department as a prerequisite for the building permit.
2. All contractors who provide labor and/or materials to the jobsite – both general contractors and subcontractors – must identify themselves to the lien agent. First, the lien agent's contact information must be obtained. There are two ways to do this:
 - a. Issue a written request to the owner. Upon receipt of the request, the owner must provide the mechanic's lien agent's contact information to the requesting contractor or subcontractor in writing, within 7 days.
 - b. For projects with a building permit, the owner is required to post the permit and lien agent information conspicuously on the jobsite. Contractors can obtain contact information from this posting.
3. After the lien agent's contact information is obtained, the contractor must identify himself to the lien agent. **Potential lien claimants (all contractors, subcontractors, and suppliers) are required to send notice to the designated mechanic's lien agent within 15 days of first providing labor or materials to the job site.** This notice must follow the following format:

NOTICE TO LIEN AGENT

- (1) Potential lien claimant's name, mailing address, telephone number, fax number (if available), and electronic mailing address (if available):
- (2) Name of the party with whom the potential lien claimant has contracted to improve the real property described below:
- (3) A description of the real property sufficient to identify the real property, such as the name of the project, if applicable, the physical address as shown on the building permit or notice received from the owner:
- (4) I give notice of my right subsequently to pursue a claim of lien for improvements to the real property described in this notice.

Dated: _____

Potential Lien Claimant

4. **The notice to the lien agent may be transmitted by any of the following methods:**
 - a. Certified mail, return receipt requested.
 - b. Signature confirmation as provided by the United States Postal Service.
 - c. Physical delivery and obtaining a delivery receipt from the lien agent.
 - d. Facsimile with a facsimile confirmation.
 - e. Depositing with a designated delivery service with tracking information (UPS, FedEx) – we recommend you require a signature when using these methods.
 - f. Electronic mail, with delivery receipt.
5. If, during the course of the project, the lien agent resigns or is removed, a successor must be appointed. This is the owner's responsibility. The owner is required to provide the new agent's contact information to any persons/parties who previously requested lien agent information. **Notices transmitted to the predecessor agent are still effective and do not need to be re-sent.**

The new law makes important distinctions among those subcontractors and suppliers who provide labor and/or materials to the jobsite and those who do not:

6. There are no new notices a general contractor must give its first-tier subcontractors **if those subcontractors are providing labor on the job site**. In that situation, the subcontractor will be responsible for requesting lien agent information from the owner and for providing notice to the lien agent as described in Paragraph #3 above. The subcontractor can also presumably get the lien agent's contact information from the notice posted on the job site.
7. **If you are a general contractor or a subcontractor, you must provide written identification of the lien agent to all your subcontractors and suppliers who do not provide labor or materials to the jobsite. This must be done within 3 days of entering the contract.** This notice may be sent by any of the methods identified in Paragraph #4, above. Failure to provide this notice will expose you to liability to the subcontractor or supplier for all damages incurred by the subcontractor/supplier by virtue of failure to provide the required notice.
8. There is no obligation to send lien agent information to any second-tier subcontractors and suppliers with whom you do not have a contract. The subcontractor or supplier who contracts with the second-tier party is obligated to provide lien agent information to that party. The subcontractor or supplier who fails to provide this notice will be liable to the second-tier party for all damages incurred by the second-tier party by virtue of failure to provide the required notice.

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