

## Lien & Bond Law Changes Introduced in North Carolina Legislature

As reported by [North Carolina Construction News](#), NC House Bill 489 ([read full text](#)) has been recently introduced to the state's General Assembly. It is titled "Mechanics Lien and Bond Law Revisions," and aims to make some important amendments to the lien laws in North Carolina.

We'll monitor the progress of this bill here on the Construction Lien Blog. Here is a summary of the changes proposed by the original text:

### **Off-Site Prefabricated Material Suppliers Protected**

The new law would allow parties to lien for the "off-site design, fabrication and related labor and materials in connection with noncommodity prefabricated materials, product systems or equipment customized for the use and benefit of improving particular real property *whether delivered to the real property or not.*" There are only few instances in lien laws across the country when folks can obtain lien rights without having their materials or labor installed into the jobsite. Specially fabricated materials is one of those instances in some states...and North Carolina is looking to add themselves to the mix.

### **Notice of Commencement Filing Requirement**

A Notice of Commencement must be filed for all North Carolina projects with the county clerk. While initially the owner is required to file the notice, if the owner fails to do so, the contractor may file the notice. In addition to the filing requirement, the notice must also be displayed on the job site, and a copy distributed to anyone who requests the same within 5 days of the request. Building inspections will not go forward on the project unless the notice of commencement is properly filed, and displayed on-site.

A special type of notice is required when an owner is acting as the general contractor to build a residential structure that is a four family residential building or less. In this instance, a Notice of Owner Built Project must be filed and displayed on site.

## Effective Date of Lien Filing

This particular proposed legislative change is in direct response to a case pending with the North Carolina Appeals Court, previously discussed here on the Construction Lien Blog: [Preserve Holdings LLC v. Superior Construction Corp.](#)

Preserve Holdings is a lien priority case, with a lien claimant contractor pitted against a construction lender, fighting over whose claim has priority over the other's. The contractor argues its lien claim starts when materials and labor were first delivered, and the construction lender argues that each time the contractor got paid (and executed a lien waiver), the lien claim for that period was waived and the claim only related back to the last unpaid portion of work.

§44A-10 used to read very simply: "A claim of lien on real property....shall relate to and take effect from the time of the first furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property."

The proposed amendment complicates things a bit, but is certainly more specific:

A claim of lien on real property...shall relate to and take effect from the earlier of (i) the time that the claimant files its claim of lien on real property with the clerk of superior court; (ii) the time that a notice of commencement is filed with the clerk of superior court; or (iii) for a first, second or third tier subcontractor, the date of filing its notice to owner if there has been no notice of commencement previously filed for the contractor through which the subcontractor has provided labor and materials for the improvement of property. In the event there are insufficient proceeds to satisfy all claims of lien on real property, claims of lien shall be satisfied as follows:

(1) Claims of lien on real property shall be satisfied in full by the priority of their effective dates.

(2) Claims of lien on real property with the same effective date shall be satisfied on a pro rata basis with the other claims of lien on real property with the same effective date.

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## Lien Waiver Policy More Fully Explained

In Another nod to the pending appeals case ([Preserve Holdings](#)), the bill proposes some changes to the lien laws treatment of lien waivers.

We've discussed lien waivers on this blog in the past: [No Lien Clauses - Are They Valid?](#)

This article was written quite some time ago (2007), but remains completely accurate. Some states allow parties to waive their lien rights before any work begins, and others consider this type of waiver to be against public policy. North Carolina has always been a state that considered such waivers to be against public policy.

But, as the Preserve Holdings case is demonstrating, there is a blur between a pre-work lien waiver, and those partial lien waivers that are executed throughout the course of a project in every state, and understanding what the limits are upon these routine partial lien waivers can be difficult.

The proposed law makes it clear that partial lien waivers (i) do not alter or waive the lien's effective date; and (ii) are conditional upon the claimant's actual receipt of funds. Additionally, the proposed law also gives a partial lien waiver form that must be used.

## Subcontractor Notices

Currently, North Carolina subcontractors are only required to deliver notices if the general contractor has filed a notice of contract. House Bill 489 proposes that all subcontractors must serve a notice to owner upon the owner, and file the notice with the superior court clerk. Subcontractors more remote than the first tier must also serve the notice upon the property owner. This notice will be required within 30 days from when labor and/or materials are first provided.

## Conclusion

All in all, House Bill 489 proposes some substantial changes to the North Carolina Mechanic Lien system. We'll watch it closely here at the Construction Lien Blog, and report on any changes and progress. Remember, for now, these new laws are not effective...but merely proposed.

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