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THE Construct

Your Guide to Law in the Construction Industry



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Simplifying the Mechanic's Lien Agent Process: NC's New Online Clearinghouse

Effective April 1, 2013, project owners in North Carolina are now required to designate a Mechanic's Lien Agent (MLA) for the vast majority of construction projects, and contractors or other potential lien claimants must now identify themselves through written notice to the MLA if they want to ensure their lien priority against lenders or purchasers.

The requirement for designating an MLA applies to all new private construction projects -- residential or commercial -- where the total cost of the improvements is \$30,000 or more (but excluding improvements to existing family residences). The owner (or contractor on its behalf) must designate the MLA at the time of contracting and then post the MLA's information at the project, typically on the building permit itself. With few exceptions, potential lien claimants must then provide notice to the MLA within 15 days after first furnishing labor or materials to the project to preserve their lien

The Complexities of Mechanic's Liens in West Virginia

by [Travis H. Eckley](#)

West Virginia has seven "mechanic's and materialman's lien" statutes to protect the interests of those performing or supplying construction-related work in the state. Although these statutes are interpreted by the courts to be inclusive in their application to protect a wide range of those performing services or supplying materials, they specifically provide protection to specific persons, firms or corporations.

[Read more.](#)

I Did The Work -- Where Is My Check?

by [Joseph V. Schaeffer](#)

Imagine you are a materialman, selling indoor carpet to the contractors. You are approached by a West Virginia developer that wants you to supply carpet and flooring for several houses in a new development. The contract represents \$50,000 in new business for your company - and you hope it marks the establishment of a productive relationship with the developer. Over the course of several months, you supply the developer with carpeting and flooring, which are installed in the new construction. The developer is late on paying the first invoice and it doesn't get any better. In fact, you never get paid for any of your

priority in the event the owner conveys any interest in the property.

The new MLA requirements will significantly benefit title insurers, who lobbied hard for their adoption to address so-called "hidden liens" that only come to light after closing. Many contractors and even some owners, however, have expressed significant concern over the increased administrative burden required by the new scheme. In a bid to allay these concerns, the title industry developed a useful new website to simplify the MLA process for owners and contractors alike.

The new [NC Online Lien Agent System](#) (LiensNC) is intended "to make the filing of MLA notices as simple and fast as possible for all users." It succeeds. Intuitive forms provide a remarkably simple method for owners (or contractors on their behalf) to select an MLA from a dropdown menu and enter pertinent information about their project. The LiensNC system then automatically notifies the selected MLA and generates an Appointment of Lien Agent form, which must be submitted to the local permitting office and posted at the site with the building permit as required by statute. Lien claimants can easily search for and associate their Notice to Lien Agent filings with a particular project, prefill project information into the notice, and automatically deliver it to the lien agent and other registered users. After filing, the system delivers a receipt to the potential lien claimant for its records. All filed notices are easily searchable through the application, providing a quick index to activity on the project for interested parties like lenders or title insurers.

A [topical guide](#) with more information and step-by-step [instructions](#) for the MLA appointment and notice processes assist users in completing the forms. In addition, a useful overview video of the online application prepared in anticipation of the launch is still available for download as a [PowerPoint](#).

Fees for using the LiensNC application are modest. It costs \$25 to file an Appointment of Lien Agent on one- to two-family dwellings and \$50 for all other projects. There is no fee for potential lien claimants to file a Notice to Lien Agent.

Another particularly useful feature of the application is its use of unique Quick Response (QR) codes-special square bar codes that can be read by a smartphone camera-for each registered project. All LiensNC filings contain these QR codes, which link back to the details of the filing and construction project. When the QR code is posted at the project site, potential lien claimants can scan the QR code with their iPhone, Android phone, or other similar smartphone device to easily file a Notice to Lien Agent with the key information pre-populated into the form. Although potential lien claimants are always free to manually complete their own forms, the QR code can significantly streamline the process as contractors and subcontractors adjust to the new technology.

product used in this construction. What do you do?

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So, You're Having a Pennsylvania Mechanic's Lien Type of Day?

by [Michael J. Tarutis](#)

Three months ago, the general contractor (GC) showed up driving a brand new, fire-engine-red, extended cab, turbo-charged 425-horsepower diesel dually that set him back sixty-five grand. The final invoice for your foundation work should have been paid that day-it's still unpaid. Payday is tomorrow, your cash is low, your stomach aches, and the material supplier is calling twice a day now. A month later, the job is deserted, and the GC's phone is disconnected. In the short-term, it's a cash-flow pickle. You are scrambling to preserve your good credit and to pay your employees. You seek guidance.

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A Virginia Mechanic's Lien Refresher, Courtesy of **Jack Bays**

by [Douglas T. Stark](#)

In February 2013 the Supreme Court of Virginia handed down its decision in *Jack Bays*, a mechanic's lien lawsuit involving the landowner, several lenders, the general contractor and no fewer than eleven subcontractors. Although the decision broke no new ground with respect to the Virginia mechanic's lien statutes, it is a good review of procedural issues and a reminder of the importance of thoroughly documenting work progress and communications with other parties in a construction project.

[Read more.](#)

Lien on Me? A Synopsis of South Carolina Lien Law

by [Stephanie U. Roberts](#)
& [Casey H. Howard](#)

In South Carolina, construction liens, called mechanic's liens, are automatically created by statute to protect anyone "to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate or the boring and equipping of wells." S.C. Code Ann. § 29-5-10. People and entities subject to the statute's protection "shall have a lien

The new lien laws don't mandate use of the online LiensNC application. Nevertheless, most construction participants expect the website to become the preferred clearinghouse for MLA information and notices in North Carolina. So far, it appears this will be the case. The online LiensNC application officially launched on April 1 and already contains well over 20,000 filings for projects across the state.

[View the full article on our website.](#)

upon the building or structure and upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure the payment of the debt due to him." *Id.* If work or materials are not connected to the erection, alteration or repair of a building or structure, there is no lien.

[Read more.](#)

Featured Construction Team Member

[Stephanie U. Roberts](#)

Ms. Roberts is co-chair of Spilman's construction practice group. She has extensive experience in a wide variety of legal matters relating to the construction industry. She advises and defends commercial property owners, developers, home inspectors, contractors, prime subcontractors and other construction industry clients regarding construction contracts, project management, mechanic's liens, construction defect claims, class action lawsuits and other matters. She serves the North Carolina Bar Association Construction Law Section as Council Treasurer and co-chair of its Diversity and Membership Committee.



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