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THE LEGALPAD

News You Can Use
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Editor's Note: I am pleased to publish the third issue of the second volume of "The Legal Pad," a quarterly newsletter for clients, associates, and friends of THE LAW OFFICE OF WESLEY SCOTT JONES, P.C.

This newsletter is intended to address basic aspects of the ever-changing and often complex topics of law that affect our everyday lives. I hope that you will enjoy this newsletter, and hopefully it will be "news you can use."

This quarter's legal focus is on STATUTORY LIENS ON REAL PROPERTY (Part I).

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Introduction.

Under North Carolina law, certain persons who furnish labor or materials for the improvement of real property may have the right to file a claim of lien against the real property improved to secure payment of amounts dues for the labor or materials furnished.

The rights of those persons who are entitled to file such liens are embodied in the North Carolina Constitution, and are set forth in Chapter 44A of the North Carolina General Statutes. In determining the potential lien rights of those who improve real property, it is necessary to distinguish between those who contract directly with the owner of the real property, such as a general contractor, and those who deal indirectly with the owner, such as the subcontractors or material suppliers.

This issue of The Legal Pad, Part I, will discuss the basic lien rights of those persons who deal directly with the owner of the real property.

The next issue of The Legal Pad, Part II, will discuss the basic lien rights of those who deal indirectly with the owner of real property.

The Claim of Lien Against Real Property.

Any person who performs labor or furnishes materials pursuant to contract with the owner of real

property for the purposes of improving the real property, will have a lien on such real property to secure payment of all debts owing for the labor performed or materials furnished.

To be entitled to a lien against real property, the person who improves real property, as defined above, must contract directly with the owner of the real property. Although the contract does not have to be in writing, a written contract will be much easier to enforce. The term "owner" includes one who holds a leasehold interest in the property.

"Improve" means to build, alter, repair or demolish any improvement to the real property. This includes the excavation, grading, clearing and landscaping of the real property, as well as the providing of utility poles and services, and the providing of architectural, engineering, and surveying services. Also, the rental of equipment directly utilized on the real property is considered the making of an improvement to real property. Finally, the providing of materials and/or supplies for any of the above stated purposes is considered the making of an improvement to real property.

Scope of the Lien.

The lien arises to secure payment of all debts owing for the labor undertaken or materials furnished in connection with the

improvement of the real property. The lien attaches to the actual improvement made upon the real property and extends to the lot or tract of land on which the improvement is situated, and to such surrounding areas as is reasonably necessary for the convenient use of the improvement.

The lien takes effect upon the first furnishing of labor or materials by the lien holder at the work site. The matter of determining when a lien first takes effect can be very important in determining who will get paid first, usually from limited funds, as among competing lien holders. Usually, those who improve real property early in the construction process will take priority over those who improve real property later in the construction process.

Establishing the Lien on the Public Records.

To establish the lien on the public records, the lienholder must file a written claim of lien in the office of the clerk of court of the county where the property is located. The claim of lien must be filed no later than 120 days after the last furnishing of labor or materials. The clerk of court will note the claim of lien on the judgement docket and index the lien under the name of the record owner of the real property at the time the claim of lien is filed.

The claim of lien filed with the clerk must contain specific information, including the name and address of the lien claimant, the correct name and address of the record owner of the property, a description of the property, a description of the labor or services furnished, the date the work commenced, the date work was last performed, and the amount of money owed. Finally, the claim of lien must

be signed by the lien claimant, and filed with the clerk.

It is imperative that the information required in the claim of lien be correct. Attached to this newsletter is a sample checklist that you should use to gather and record the correct information.

Enforcement of the Lien.

To enforce the lien, i.e., to collect payment of all sums due the lien holder from the owner of the real property improved, the lien holder must commence and file a civil action, and must prevail on the merits of her case. The civil action must be filed in the same county in which the claim of lien was filed, and must be filed within 180 days of the last furnishing of labor or materials at the site of improvement by the person claiming the lien.

If the lien holder obtains a judgement against the owner for all sums due on the contract, the improved real property will be sold at a public sale by the sheriff. The proceeds derived from the sale will be used to pay the lien holder.

Cancellation of the Lien.

Once all amounts secured by the lien have been paid, the lien claimant should remove the claim of lien from the public record. The lien claimant may do this by appearing before the clerk of court and acknowledging the satisfaction of the lien indebtedness, whereupon the clerk of court shall cancel the lien of record. The owner may do this by exhibiting an instrument of satisfaction signed by the lien claimant which instrument states that the lien indebtedness has been paid or satisfied, whereupon the clerk of court shall cancel the lien of record. The owner, or some other interested party, may also have the lien canceled by paying cash or posting a

bond with the clerk of court. The cash or bond amount must be equal to the amount stated in the claim of lien. Finally, failure to enforce the lien, i.e. failure to file the required civil action, within the 180 day period, will cause the lien to expire and be unenforceable.

Final Thoughts.

The information contained in this newsletter is a only a brief summary of potential lien rights in North Carolina.

The law relating to the filing and enforcement of real property liens can be extremely complicated depending upon the circumstances. Failure to comply with the statutory requirements can, and often does, cause the potential lien claimant to lose valuable lien enforcement rights.

Unless you can afford to do without the money you are owed for improvements made to real property, you should not attempt to file a claim of lien on your own. If you think you have potential lien rights to enforce, or if you have a claim of lien filed against you, I highly recommend that you contact me, or some other attorney, for assistance.

Previous topics covered in The Legal Pad:

- 1) Corporations
- 2) Small Claims Actions
- 3) Social Host Liability
- 4) Landlord-Tenant Law

Note: To request free copies of previous issues, please call to leave your name and mailing address.

LIEN INFORMATION CHECKLIST

- (1) Correct legal name and address of the person or entity making the improvement:

- (2) On this job site, I am the: ___ General Contractor, ___ First Tier Subcontractor (those who deal directly with General Contractor), ___ Second Tier Subcontractor (those who deal with a First Tier Subcontractor), ___ Third Tier Subcontractor, ___ Other/Unknown - explain: _____

- (3) With whom do I have a direct contract to improve real property - give correct legal name and address:
_____ Owner GC
_____ 1st Tier 2nd Tier

- (4) Name and address of the record Owner of the real property improved:

- (5) If I am not the General Contractor, who are the contractors in the chain between me and the Owner?
G C - _____ First Tier - _____ 2nd Tier - _____

- (6) Description of the real property upon which the improvements are made:
(Street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)

- (7) General description of the labor performed or materials furnished: (Attach copy of Contract/Invoices)

- (8) The date I first furnished labor or materials to the work site was _____. The date I last furnished labor or materials to the work site was _____.
- (9) The date the general contractor first furnished labor or materials to the work site was _____.
The date the general contractor last furnished labor or materials to the work site was _____.
- (10) I am owed the following amount of money on this project: \$_____.
- (11) Has the general contractor posted a notice of contract on the job site? _____, If yes, what is the date of the notice of contract _____, and what was the date the building permit was issued _____? If, yes, date I filed a notice of subcontract _____?

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My greatest source of clients is from referrals by past and present clients, associates and friends such as yourself. Therefore, any referral from you would be greatly appreciated. I accept cases in the following areas:

- | | | |
|------------------------------------|--|------------------------------|
| - Construction Law | - Corporate Representation | - Collections |
| - Lien Filings and Defense | - Corporate Formation | - Overdue Accounts |
| - Collection of Overdue Accounts | - Shareholder Agreements | - Promissory Notes |
| - Building Disputes and Litigation | - Homeowner and Condominium Associations | - Homeowner Association Dues |
| - Foreclosure | | - Foreclosures |
| - Criminal Law | - Civil Litigation | - General Advice and Counsel |
| - DWI | - Business and Commercial Litigation | - Professional Service |
| - Drug Charges | - Serious Accidents or Injuries | - Reasonable Fees |
| - Traffic Violations | - District or Superior Court | - Caring Advice |
| - Juveniles | - Small Claims Court | - Solutions to Problems |

DISCLAIMER

This newsletter was prepared by THE LAW OFFICE OF WESLEY SCOTT JONES, P.C. as a courtesy for my clients, associates and friends and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and such changes could affect the information in the newsletter. If you have specific questions with regard to any matter contained in this newsletter, I encourage you to consult with me or another attorney. An attorney-client relationship will be created only by individualized and personalized advice from me to a current or prospective client, and only after the signing of a Contract for Legal Services by all parties affected thereby.

If you do not wish to receive this quarterly newsletter, or if you know of a friend or associate who would like to receive a copy of this newsletter, please contact my office either by phone, fax or mail. Thank you.

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