

The Law Office of Wesley Scott Jones, P.C.  
1442 Military Cutoff Road, Suite 28  
Wilmington, North Carolina 28403  
Tel: (910) 256-5800 Fax: (910) 256-5801

# THE LEGALPAD

News You Can Use  
Vol. III No. 1  
March 15, 2000

**Editor's Note: I am pleased to publish the first issue of the third 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 that it will be "news you can use."**

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

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## Introduction.

In the last issue of The Legal Pad, Part I, I discussed the basic lien rights of those who provide labor and services to improve real property and who deal directly with the owner of the real property.

In this issue of The Legal Pad, Part II, I will discuss the basic lien rights of those who provide labor and services to improve real property but who do not deal directly with the owner of real property.

Not all those who furnish labor or materials deal directly with the owner of real property. Usually, several "tiers" of subcontractors exist. In a typical construction project for instance, the owner may contract with a general contractor who then contracts with various construction specialists such as plumbing, electrical, framing, and roofing subcontractors. These subcontractors, called first tier subcontractors, may in turn contract with their own subcontractors, such as material suppliers. The material supplier in this example would be called a second tier subcontractor. North Carolina law recognizes this "tier" system of subcontracts and allocates rights accordingly.

Unlike those who deal directly with the owners of real property, subcontractors *do not* have direct lien rights against the owner's real property. Subcontractors may either have a direct lien against funds owed to those in the chain above

them, if any; or they may have the right to enforce the direct lien on real property of those in the chain above them.

## The Claim of Lien on Funds.

A first tier subcontractor has a lien on the money owed by the owner of the real property to the general contractor. A second tier subcontractor has a lien on the money owed by the general contractor to the first tier subcontractor with whom they dealt. A third tier subcontractor has a lien on the money owed by the first tier subcontractor to the second tier subcontractor with whom they dealt, and so forth.

To establish this lien upon funds owed, the subcontractor must follow very specific requirements, as discussed below.

## Notice of Claim of Lien.

To preserve the funds to which the above liens will attach, the lien claimant must give "notice" to the person who owes the money that is being claimed. For instance a first tier subcontractor would give notice to the owner claiming a lien on the funds owed to the general contractor. A second tier subcontractor would give notice to the owner, general contractor and first tier subcontractor with whom

they dealt, claiming a lien on funds owed from the owner to the general contractor, and claiming a lien on the funds owed from the general contractor to the first tier subcontractor. The party who owes money to a party lower in the chain is called an *obligor*.

The notice requirements and procedures are set out in the general statutes and must be strictly followed. The Notice of Claim of Lien must identify the parties, describe the real property, describe the contract upon which the lien is based, and state the amount owed. A sample Notice of Claim of Lien is attached to this newsletter

Finally, the Notice of Claim of Lien must be served upon the obligor in person, by certified mail, or other means allowed by statute. Typically, the Notice of Claim of Lien will be served by certified mail to everyone in the chain above the lien claimant.

### The Obligor's Duties Upon Receipt of the Notice of Claim of Lien.

When an obligor receives a proper Notice of Claim of Lien, he is under a duty to retain any funds subject to the lien or liens to which notice has been received. If, after receipt of the notice to the obligor, the obligor makes further payments to a contractor or subcontractor against whose interest the lien or liens are claimed, the lien will continue upon the funds in the hands of the contractor or subcontractor who received the payment, and in addition the obligor shall be personally liable to the person or persons entitled to liens up to the amount of such wrongful payment.

### The Subcontractor's Lien Upon the Real Estate.

There are two situations that may entitle a subcontractor to get a lien upon the owner's real estate even though the subcontractor has not dealt directly with the owner. The first situation that might entitle a subcontractor to have a lien against the real property of the owner would be that in which the owner-obligor paid funds to others in the chain after receipt of a proper Notice of Claim of Lien (as discussed above). For instance, if a first tier subcontractor notifies the owner-obligor that she claims a lien on the funds owed to the general contractor, and if the owner-obligor thereafter pays money to the general contractor without paying the first tier subcontractor, then the first tier subcontractor will have a direct liability lien against the owner's improved real property.

The second situation that entitles a subcontractor to have a direct lien against the property of the owner arises due to the fact that first, second, and third tier subcontractors are subrogated to the lien rights of the general contractor. If the general contractor has dealt directly with the owner of the improved real property, then she may have direct lien rights against the real property. Since the subcontractors will have whatever rights the general contractor may have against the property, the subcontractors may enforce the general contractor's lien rights, if any, by the filing of their own Claim of Lien by Subrogation. Thus a lien against the owner's real property can be asserted even if the owner properly retains funds following receipt of notice of the subcontractor's claim of lien on funds (as discussed above). Although the subcontractors can independently take action to enforce

this lien, they must follow the steps for filing and enforcement of the lien that would be required of the general contractor.

Because this type of lien arises by subrogation, the subcontractors have no greater rights than the general contractors had. Thus if the general contractor has been fully paid, or has otherwise released his lien, the subcontractors would lose whatever rights they had.

### Final Thoughts.

The information contained in this newsletter is 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 statutory requirements can, and often does, cause potential lien claimants to lose valuable lien enforcement rights.

If you think you have potential lien rights to enforce, or if you have a Claim of Lien filed against you or receive a Notice of Claim of Lien on Funds, I highly recommend that you contact me, or some other attorney, for assistance.

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#### Previous topics covered in The Legal Pad:

- 1) Corporations;
- 2) Small Claims Actions;
- 3) Social Host Liability; and
- 4) Landlord-Tenant Law, Parts I & II.

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

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**NOTICE OF CLAIM OF LIEN BY FIRST,  
SECOND OR THIRD TIER SUBCONTRACTOR**

To:

- 1. \_\_\_\_\_ (Name and address), owners of property involved.
- 2. \_\_\_\_\_ (Name and address), general contractor.
- 3. \_\_\_\_\_ (Name and address), first tier subcontractor against or through whom subrogation is claimed, if any.
- 4. \_\_\_\_\_ (Name and address), second tier subcontractor against or through whom subrogation is claimed, if any.
- 5. General description of real property where labor performed or material furnished:  
\_\_\_\_\_  
\_\_\_\_\_
- 6. General description of undersigned lien claimant's contract including the names of the parties thereto: \_\_\_\_\_  
\_\_\_\_\_
- 7. The amount of lien claimed pursuant to the above described contract: \$ \_\_\_\_\_

The undersigned lien claimant gives this notice of claim of lien pursuant to North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated: \_\_\_\_\_

\_\_\_\_\_, Lien Claimant  
 \_\_\_\_\_ (Address)  
 \_\_\_\_\_

\*\*\*Notices under this section shall be served upon the obligor in person or by certified mail in any manner authorized by the North Carolina Rules of Civil Procedure. A copy of the notice shall be attached to any claim of lien filed pursuant to G.S. 44A-20(d).

THE LAW OFFICE OF WESLEY SCOTT JONES, P.C.  
1442 MILITARY CUTOFF ROAD - SUITE 28  
WILMINGTON, NORTH CAROLINA 28403

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**My greatest source of clients is from referrals by past and present clients, associates and friends such as you. 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 |
| - Foreclosures                     |  | - 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.