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How the New NC Lien Law Affects Lenders

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INSIDE THIS ISSUE

- 1 Hidden Liens
- 1 The New Lien Law
- 2 What To Do Now?
- 2 Continuation of: Hidden Liens
- 3 Continuation of: The New Lien Law
- 3 Continuation of: What To Do Now?
- 4 Knowledgeable & Efficient
- 4 Service Focused

"If an owner does not designate a MLA for a project or comply with notice requirements, then the old system kicks in and contractors retain their hidden lien rights."

Hidden Liens

On April 1, 2013, a significant new lien law went into effect for construction projects in North Carolina. The law supplements Article 2 of Chapter 44A of the NC General Statutes, which discusses liens on real property. The new law helps avoid "hidden" contractor liens, so it will ultimately provide more protection to lenders on construction projects, but only if lenders mandate their borrowers to follow certain statutory requirements.

If a contractor (or engineer, or architect, or any other person who contracted directly with the owner of land to improve the land) isn't paid in full on a construction project, the contractor can file a Claim of Lien against the property and then a Lien Enforcement lawsuit seeking a judgment that would give the contractor the right to sell

Please see *Hidden Liens* on page 2

The New Lien Law

The new lien law introduces the concept of a **Mechanic's Lien Agent (MLA)**. Beginning April 1, 2013, owners are required to identify a MLA for every construction project with a contract price greater than \$30,000.00 (except for an owner's home) before entering into any contracts for improvements to the property. The owner must notify others of the MLA's contact information by posting it at the project site or on the building permit, and if anyone makes a written request for it, the owner must provide the information within 7 days of the request. If an owner does not designate a MLA for a project or comply with notice requirements, then the old system kicks in

Please see *The New Lien Law* on page 3

What to Do Now?

So how can a lender use the new lien law to help ensure its Deed of Trust is in first position on a project?

1. **Get title coverage over liens.** When ordering or reviewing Title Insurance Commitment/Binder, make sure that there are no exceptions for mechanic's or materialman's liens. If there is such an exception, ask for it to be deleted. By doing so, you're not only increasing your insurance coverage, you're also increasing the changes that the borrower will follow the lien law, because it will likely be something that the title insurance company requires in order to delete the lien exception.
2. **Require owners to name a MLA.** Include in your Construction Loan Agreement an additional requirement prior to the first disbursement of the loan proceeds that the borrower identify a MLA, follow all owner obligations of the amended statutes, and report the MLA identity to the lender. This greatly reduces the chance that contractors will have hidden liens with priority over the lender's Deed of Trust.
3. **Check www.liensnc.com for your project.** Once you have

Please see *What To Do Now?* on page 3

Hidden Liens from page 1

the property in order to get paid. Previously, by following the particulars of Chapter 44A, the contractor's Claim of Lien automatically related back to the contractor's first date of work on the project. The problem with this system is that neither lenders nor title companies could be sure who was already performing work on a project so they could never be 100% confident that the lender's Deed of Trust was a superior lien on the property.

While both title companies and lenders attempted to limit the force of hidden liens by requiring owners to report all contractors who were performing work on projects and/or swearing that no construction had begun yet, hidden liens persisted mainly because owners didn't always know who could and couldn't lien property and therefore they didn't (or couldn't) report accurate information back to title companies and lenders.



The New Lien Law from page 1

and contractors retain their hidden lien rights. If an owner names a Lien Agent, then in order for contractors (including architects and engineers) to preserve their lien rights, they must provide written notice of their existence to the MLA within 15 days of first furnishing labor or materials for the project. If contractors provide correct notice, their lien rights will still relate back to their first date of work, but lenders and title companies can check with the MLA to determine what contractors have performed work on a project and obtain lien subordination or waiver agreements from them prior to making a loan or insuring title. To increase the accessibility of information, all Mechanic Lien Agent and contractor information about a project will be available online at www.liensnc.com.

“... obtain lien subordination or waiver agreements prior to making a loan or insuring title”

What To Do Now? from page 2

located the project on the website, you can see a list of all potential lien claimants who have contracted with the owner to improve the property. Make sure you have obtained all lien subordination or lien waivers that you need from these contractors in order to put your Deed of Trust in first Position on the on the Property.

4. Require borrowers to warranty no contracts within 15 days of closing.

A contractor has 15 days from the date it first provides labor or materials to a project to file its notice with the MLA, so just checking the website and getting waivers or subordination agreements does not completely eliminate the risk of liens with priority, but it does reduce the risk a great deal. In order to protect against the 15 day window, have the borrower warrant in the loan documents and/or sign an affidavit at closing confirming that the borrower has not entered into any construction contracts within 15 days prior to the closing date.

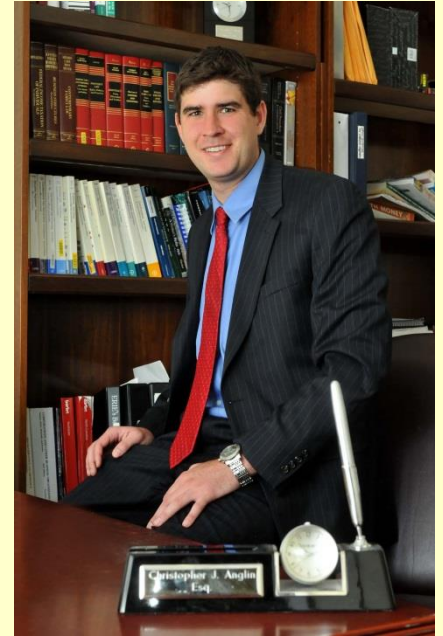
There are a number of other changes recently made to the lien and bond laws in North Carolina, but this is the one most likely to affect lenders on construction loans. If you have any questions or would like any additional information about this or the other new lien laws, please feel free to contact the Anglin Law Firm.



Knowledgeable & Efficient

Christopher Anglin is the owner and counsel for Anglin Law Firm, PLLC. Anglin Law Firm settles residential real estate transactions throughout all 100 counties of North Carolina.

At Anglin Law Firm, our number one priority is to ensure customer satisfaction. Our friendly, knowledgeable and efficient staff strives to provide the best possible service to our clients. We continually update and educate our staff on any changes in every jurisdiction in which we conduct business. Whether you are purchasing a new home or investment property, or refinancing your current residence, allow our staff of knowledgeable employees to help serve the needs of you and your company!



Service Focused

Unmatched Turnaround Time

Anglin Law Firm will provide courteous professional service, excellent communication, speedy title searches (24-48 hours in most cases), accurate documentation and timely disbursements.

Loan Disbursement Options

All parties have the option of having their funds wired or sent via overnight carrier when disbursement occurs.

Problem Resolution

With Anglin Law Firm, you never need to worry. We will assist you by getting all the necessary payoffs and clearing any title problems. Anglin Law Firm is a company that will resolve problems, not create them!

No Cancellation Fee

Anglin Law Firm assures you that no cancellation fees for title services will be passed on to you. We will never jeopardize a loan because of our fees; we recognize the opportunity for volume as we develop a long term-relationship.

Convenient Settlement Services

We currently offer settlement services before, during, and after hours in all 100 counties of North Carolina. Our closers and notaries can travel to the lender's office, the realtor's office, the borrower's residence or the borrower's work place.



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