

## 5th September 2014      Mechanics' Liens - Smarter Lawyering means Smarter Clients means Smoother Closings!!

Scenario: Your client comes to you excited about her own new construction project of her dreams. No longer will she be just a contractor on other people's projects. All of the due diligence is done (except your title opinion, of course). Her lender is ready to make the construction loan. She is hot to start signing up her architect, graders, brick-layers, custom suppliers, -- everybody she always deals with as subcontractors, but this time on her very own project! SHE'S ALMOST READY TO COMMIT HER DAYS AND NIGHTS TO THE PROJECT — after she gets back from a pre-project 3 week celebratory cruise of the Mediterranean!

### ***What do you advise her to do?***

**Appoint a lien agent and Post it on the property!** For her construction project, she is *already the "owner"* -- the person who ordered for the labor, services or materials. GS 44A-7(6). Under the lien law, she is no longer the "general contractor" contracting with "subs." Instead, everyone she contracts with from here on -- the architect, the graders, the bricklayers, the suppliers, *everyone* -- is a "contractor" on her project under the lien law. GS 44A-7(1)

*Even if she has not closed on purchasing the land yet*, once she is past due diligence, she is ready to contract for improvements, which means NOW is the time to appoint the lien agent on [LiensNC \[http://liensnc.com/\]](http://liensnc.com/). So, at closing you can quickly generate the Related Filings Report from LiensNC.

### ***Why not wait? Because ...***

1. *It's the law – owner must comply.* The appointment and posting are required to be completed by the time of the *first "contracting" for "improvements"* -- *not* just first shovel and *not* just visible improvements. GS 44A-11.1(a)
2. *Lender Protection.* The lender obtains the protection of the lien agent act by assuring the appointment and posting are prior to closing and recording of their deed of trust. GS 44A-11.2(m)
3. *Faster permitting.* When your client goes for permits, she will already have the appointment to provide to the permitting office. GS87-14(a)(3), GS 160A-417 and GS 153A-357
4. *Fewer signers on subordinations.* At the construction loan closing, the NCLTA Form 7 subordinations will only be needed from contractors, subcontractors and suppliers (a) who have actually filed a Notice to Lien Agent on [LiensNC \[http://liensnc.com/\]](http://liensnc.com/) (your Related Filings Report), and (b) whose "*first* furnishing" is within *15 days* prior to closing (rather than *all* providers within last 120 days). This can be critical if any part of the "improvements" are begun and the closing gets delayed.
5. *Fewer signers on waivers.* As she starts selling parcels, NCLTA Form 6 waivers will only be needed from contractors, subcontractors and suppliers who (a) have actually filed a Notice to Lien Agent on [LiensNC \[http://liensnc.com/\]](http://liensnc.com/) (your Related Filings Report), and (b) are "last furnishers" -- *i.e.* those providing "*first*

furnishing” within 15 days prior to closing of the sale (rather than everyone whose last furnishing was within the last 120 days, and may have started many months or years before).

**So the smartest lawyers will advise the smarter clients to spend a few minutes on [LiensNC.com \[http://liensnc.com/\]](http://liensnc.com/) to Appoint the lien agent and Post the Appointment at the site timely.**

## THE GOAL: SMOOTHER CLOSINGS!!

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