

LIEN ON ME

There are several different types of liens in the law. Generally, a lien is the right that is created by law, or sometimes by express contract, to retain lawful possession of property of another under that person fulfills a legal duty to the person holding the lien. A mortgage on your house is one kind of lien.

A mechanic's lien, also called a contractor's lien or materialman's lien, is a particular type of lien that allows a person who furnishes materials or work to the construction of a building or other large project to have a lien on the building or on funds for the building. In North Carolina, these liens are set forth in Chapter 44A of the North Carolina General Statutes. In North Carolina, there are actually two different broad types of mechanic's liens. The first is a property lien and the second is a lien on funds. The property lien can arise when the owner of the land is the one who owes the money. For example, a general contractor is hired and signs a contract to build a house. The homeowner then doesn't pay. The general contractor can then put a mechanic's lien on the house. To do this, he files a notice with his name and the owner's name, the property address, the work he did, the money owed, and the date of the last work done. This notice must be filed within 120 days of the work, or the lien right is gone. After the lien is filed, it is extinguished unless the builder were to file a lawsuit to enforce the lien within 180 days from the last work done. The effect of the lien is that the homeowner would have to satisfy the lien before he could sell or convey the building. Even if the homeowner disputes the amount owed, the lien still remains until the matter is resolved by the courts. If the homeowner needs to sell the property prior to that, he can deposit the amount of the lien with the clerk of court who will hold the money pending a resolution. That way, the builder is assured of there being money to pay him if he is correct.

The second type of mechanic's lien is the lien on funds. This lien arises when the person who is supposed to pay for the work, and the owner of the property are different. For example, a subcontractor is hired by the general contractor who is in turn hired by the homeowner. The subcontractor doesn't have a contract with the homeowner; the general contractor was the one who was supposed to pay him, so the subcontractor can't attach a lien to the actual property. What he does is to make a claim of lien on funds. The time periods and deadlines are the same, but rather than put a claim on the property, what he is doing is giving notice to the homeowner not to pay the general contractor. That money is what the lien is on, not the property. Only if the homeowner gets notice of the lien and pays anyway, or the general contractor has his own lien against the property that the lienholder can piggyback on, can the subcontractor put a lien on the property. If the homeowner has paid the contractor all that he is entitled to, and he hasn't paid the subcontractors, there is no restriction against the homeowner in selling the property.

Even without a lien, a claim for breach of contract arises, so that a general contractor can get a judgment from a court for money either way. However, all that a judgment gives you is a chance to collect. With a valid lien, the general contractor can preserve what assets there are, and get a priority over them, which gives the lienholder a much better chance of actually getting paid.