



HOUSE BILL 707: Lien Agent/Notice of Cancellation.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2017-2018 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	May 30, 2017
Introduced by:	Reps. Jordan, Stevens, B. Turner	Prepared by:	Bill Patterson
Analysis of:	Second Edition		Committee Co-Counsel

OVERVIEW: House Bill 707 would provide for automatic expiration of a notice given to preserve the lien rights of a person providing labor or materials under a contract for improvements to real property if the notice is not cancelled or renewed within five years after being given. The bill would also provide a procedure by which the contractor could cancel the notice or renew it for one additional five-year period, and in the case of improvements to a one- or two-family dwelling, the bill would require cancellation of the notice within a reasonable time after the contractor's receipt of final payment for the work. The bill would also increase the fee paid by an owner to its designated lien agent from \$25.00 to \$30.00.

[As introduced, this bill was identical to S602, as introduced by Sen. Lee, which is currently in Senate Judiciary.]

CURRENT LAW: Persons providing labor or materials under a contract for the improvement of privately-owned real property are granted a lien to secure payment of debts owing for their labor, professional design or surveying services, or materials or rental equipment furnished to improve the real property. To preserve their lien rights, however, potential lien claimants must follow certain statutorily prescribed procedures. For improvements costing \$30,000 or more, one of the things that a potential lien claimant must do to preserve its lien rights is to give notice of its involvement on the project to an agent designated by the owner to receive such notices (the "lien agent").

There currently is no procedure by which a potential lien claimant can cancel or renew a notice given to the lien agent, nor is there any requirement to cancel such a notice upon receipt of full payment due under the contract.

BILL ANALYSIS:

Section 1 would amend G.S. 44A-11.1 to provide that if a closing attorney asks the owner's lien agent for copies of all lien agent notices or their cancellations no more than five business days prior to recording a deed or deed of trust on the real property, the attorney will have fulfilled the attorney's professional obligation as a closing attorney to check for such notices and cancellations, and will have no further duty to ask for notices or cancellations subsequently received by the lien agent.

Section 2 would amend G.S. 44A-11.2 to add a new:

- Subsection (q), which would permit a potential lien claimant to cancel a notice by utilizing an Internet Web site approved for such use by the owner's designated lien agent. If the notice relates to improvements to a one- or two-family dwelling, the potential lien claimant would be required to cancel it within a reasonable time after receiving final payment for the work.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 707

Page 2

- Subsection (r), which would provide that the cancellation of a notice by a potential lien claimant would cancel and discharge the lien and any protections arising from it, but would not cancel a filed claim of lien on real property or affect the priority of lien rights pursuant to this section.
- Subsection (s), which would provide that a notice to lien agent would expire and be discharged five years from the date of filing if not cancelled or renewed before then.
- Subsection (t), which would provide that a notice to lien agent could be renewed prior to its cancellation or expiration for one additional five-year period.
- Subsection (u), which would provide that a notice to lien agent timely renewed before cancellation or expiration would maintain and relate back to the notice's original filing date.
- Subsection (v), which would provide that if a notice to lien agent is cancelled or automatically expires, a later notice given by the potential lien claimant for improvements to same real property would provide protections only from that later date and would not relate back to or renew the previously cancelled or expired notice.

Section 3 would make conforming changes to G.S. 58-26-45 by requiring a designated lien agent to be responsible for receiving cancellations and renewals of notices previously received by the lien agent. Section 3 would also increase from \$25.00 to \$30.00 the fee paid to the lien agent by the owner.

EFFECTIVE DATE: This act becomes effective October 1, 2018.

Brad Krehely, counsel to House Judiciary III, substantially contributed to this summary.