

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 620
Apr 9, 2013
HOUSE PRINCIPAL CLERK

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HOUSE DRH70255-MD-61 (03/14)

Short Title: Streamline Sales for Mechanics Liens. (Public)

Sponsors: Representative McManus.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO STREAMLINE THE PROCESS OF SELLING MOTOR VEHICLES THAT
3 ARE SUBJECT TO A MECHANICS LIEN.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 44A-4 reads as rewritten:
6 "§ 44A-4. Enforcement of lien by sale.

7 ...

8 (b) Notice and Hearings. –

9 (1) If the property upon which the lien is claimed is a motor vehicle that is
10 required to be registered, the lienor following the expiration of the relevant
11 time period provided by subsection (a) shall give notice to the Division of
12 Motor Vehicles that a lien is asserted and sale is proposed and shall remit to
13 the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles
14 shall issue notice by certified mail, return receipt requested, to the person
15 having legal title to the property, if reasonably ascertainable, to the person
16 with whom the lienor dealt if different, and to each secured party and other
17 person claiming an interest in the property who is actually known to the
18 Division or who can be reasonably ascertained. The notice shall state that a
19 lien has been asserted against specific property and shall identify the lienor,
20 the date that the lien arose, the general nature of the services performed and
21 materials used or sold for which the lien is asserted, the amount of the lien,
22 and that the lienor intends to sell the property in satisfaction of the lien. The
23 notice shall inform the recipient that the recipient has the right to a judicial
24 hearing at which time a determination will be made as to the validity of the
25 lien prior to a sale taking ~~place~~ place, except that the notice shall further
26 inform the recipient that the property may be sold pursuant to this section
27 without a judicial hearing if the certified mail notice is returned as
28 undeliverable or if the person having legal title to the vehicle cannot
29 reasonably be ascertained. The notice shall further state that the recipient has
30 a period of 10 days from the date of receipt in which to notify the Division
31 by certified mail, return receipt requested, that a hearing is desired and that if
32 the recipient wishes to contest the sale of his property pursuant to such lien,
33 the recipient should notify the Division that a hearing is desired. The notice
34 shall state the required information in simplified terms and shall contain a
35 form whereby the recipient may notify the Division that a hearing is desired
36 by the return of such form to the Division. The Division shall notify the



1 lienor whether such notice is timely received by the Division. In lieu of the
2 notice by the lienor to the Division and the notices issued by the Division
3 described above, the lienor may issue notice on a form approved by the
4 Division pursuant to the notice requirements above. If notice is issued by the
5 lienor, the recipient shall return the form requesting a hearing to the lienor,
6 and not the Division, within 10 days from the date the recipient receives the
7 notice if a judicial hearing is requested. If the certified mail notice has been
8 returned as undeliverable and the notice of a right to a judicial hearing has
9 been given to the owner of the motor vehicle in accordance with
10 G.S. 20-28.4, no further notice is required. Failure of the recipient to notify
11 the Division or lienor, as specified in the notice, within 10 days of the receipt
12 of such notice that a hearing is desired shall be deemed a waiver of the right
13 to a hearing prior to the sale of the property against which the lien is
14 asserted, and the lienor may proceed to enforce the lien by public or private
15 sale as provided in this section and the Division shall transfer title to the
16 property pursuant to such sale. If the Division or lienor, as specified in the
17 notice, is notified within the 10-day period provided above that a hearing is
18 desired prior to sale, the lien may be enforced by sale as provided in this
19 section and the Division will transfer title only pursuant to the order of a
20 court of competent jurisdiction.

21 If the certified mail notice has been returned as undeliverable, or if the
22 name of the person having legal title to the vehicle cannot reasonably be
23 ascertained and the fair market value of the vehicle is less than eight hundred
24 dollars (\$800.00), ascertained, the lienor may institute a special proceeding in
25 the county where the vehicle is being held, for authorization to sell that
26 vehicle. sell the vehicle in accordance with this section and no hearing or
27 judicial action shall be required. Market value shall be determined by the
28 schedule of values adopted by the Commissioner under G.S. 105-187.3.
29 Upon completion, any excess proceeds of the sale shall be paid immediately
30 to the Treasurer for disposition pursuant to Chapter 116B of the General
31 Statutes and the lienor shall notify the Division of the sale. Upon receipt of
32 this notice, the Division shall transfer title accordingly.

33 ~~In such a proceeding a lienor may include more than one vehicle, but the~~
34 ~~proceeds of the sale of each shall be subject only to valid claims against that~~
35 ~~vehicle, and any excess proceeds of the sale shall be paid immediately to the~~
36 ~~Treasurer for disposition pursuant to Chapter 116B of the General Statutes.~~

37 ~~The application to the clerk in such a special proceeding shall contain the~~
38 ~~notice of sale information set out in subsection (f) hereof. If the application~~
39 ~~is in proper form the clerk shall enter an order authorizing the sale on a date~~
40 ~~not less than 14 days therefrom, and the lienor shall cause the application~~
41 ~~and order to be sent immediately by first class mail pursuant to G.S. 1A-1,~~
42 ~~Rule 5, to each person to whom notice was mailed pursuant to this~~
43 ~~subsection. Following the authorized sale the lienor shall file with the clerk a~~
44 ~~report in the form of an affidavit, stating that the lienor has complied with~~
45 ~~the public or private sale provisions of G.S. 44A-4, the name, address, and~~
46 ~~bid of the high bidder or person buying at a private sale, and a statement of~~
47 ~~the disposition of the sale proceeds. The clerk then shall enter an order~~
48 ~~directing the Division to transfer title accordingly.~~

49 ~~If prior to the sale the owner or legal possessor contests the sale or lien in~~
50 ~~a writing filed with the clerk, the proceeding shall be handled in accordance~~
51 ~~with G.S. 1-301.2.~~

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SECTION 2. This act becomes effective October 1, 2013, and applies to liens created on or after that date.