

**INSTRUCTIONS FOR COMPLETION OF  
OWNER/CONTRACTOR AFFIDAVIT, INDEMNITY AND LIEN SUBORDINATION AGREEMENT  
(CONSTRUCTION IN PROCESS OR IMMEDIATELY CONTEMPLATED)**

1. This Owner/Contractor Affidavit, Indemnity and Lien Subordination Agreement (the "Agreement") form is for use with any title insurer (the "Company") regarding lender coverage for construction transactions affecting title to particular real estate in North Carolina (the "Property"), a description of which must be included in this Agreement.
2. This form is for obtaining title insurance of priority of the Lender's Deed of Trust regarding liens for Labor, Services or Materials for current or immediately contemplated Improvements (all terms as defined in the Agreement) based on subordination herein by Contractors to:
  - a. Lender's Deed of Trust or for extensions, renewals, modifications, amendments and restatements thereof, and/or
  - b. extensions, renewals, modifications, amendments and restatements of a previously existing loan involving construction in process or immediately contemplated.

It does NOT provide coverage to an Owner who is contracting for Improvements since that is the Owner's contract, excluded by the standard ALTA exclusions from coverage, and is not covered by the policy. With regard to potential protection of a purchaser if the Owner will be conveying the Property to a purchaser mid-construction, it will be important to determine the relationship of both the Owner (now seller) and of the purchaser with any of the Contractors providing Labor, Services or Materials on the Property. The closing attorney should consult with title insurance counsel in order to determine from whom waivers (on Owner-seller's contracts), and if Owner's coverage is available for those potential liens, and from whom subordinations (for purchaser's contracts) will be required.

The closing attorney must *notify underwriting counsel for the Company prior to closing* regarding any filed Claim of Lien on Real Property or Notice of Claim of Lien upon Funds, or any Notice of Claim of Lien upon Funds known by the attorney or Owner to have been delivered to the Owner, whether on the Property or on *any* property in the state of North Carolina, as this may affect the Company's decisions about whether to insure and on what basis.

At the very least, any **filed Claim of Lien on Real Property** must be paid in full and canceled of record. **Any delivered or filed Notice of Claim of Lien upon Funds** (by a subcontractor) must be paid in full and subordination or waiver obtained from the subcontractor. The attorney must discuss any questions or issues regarding these with underwriting counsel for the Company prior to closing.

3. **Contractors** who must sign: This form uses the terminology found in the North Carolina mechanic's lien statute, NCGS Chapter 44A, Article 2 (the "Statute") for liens for Labor, Services or Materials (as defined). The use of the term "General Contractor" has been intentionally *avoided* because the term is not used in the Statute and this lien Statute does *not* follow the same usage as the licensing statute, NCGS Chapter 83. The term General Contractor is commonly used to describe a Contractor who enters into a contract with the Owner to construct Improvements on the Owner's Property and through whom all other Contractors are engaged ("Subcontractors"). The Statute, in defining who is entitled to a lien on real property, does not distinguish between "General Contractors" and "Contractors", but rather draws on the simple distinction of those Contractors who deal directly with the Owner and those who deal with another Contractor as a Subcontractor.

Common scenarios are set forth below with explanation:

**SCENARIO #1 – OWNER HAS ARMS-LENGTH CONSTRUCTION CONTRACT WITH ONLY ONE INDEPENDENT CONTRACTOR PROVIDING/CONTRACTING FOR ALL LABOR, SERVICES OR MATERIALS (as defined in the Definitions, including materials suppliers, services by "subcontractors", survey, architect and engineering services, and lease of rental equipment):**

In the event *all* Improvements to the Property have been and will be made pursuant to a contract with a single party or entity which is not the Owner or an agent or affiliate of the Owner, that person or entity should execute the Agreement as the "Sole Contractor" in the appropriate signature block.

**SCENARIO #2 – OWNER HAS CONTRACTED DIRECTLY WITH MULTIPLE PROVIDERS OF LABOR, SERVICES OR MATERIALS:**

If the Owner is also the builder, even if the Owner is a licensed "General Contractor", the Owner can only sign in the capacity of Owner. **FOR LIEN PURPOSES, THE OWNER OF THE PROPERTY CANNOT BE THE "CONTRACTOR". DO NOT RELY ON CONSTRUCTION LICENSING DEFINITIONS.** The Contractors who must sign this Agreement include all providers of Labor, Services or Materials (as defined in this Agreement) within the 120-Day Lien Period who are considered Contractors for purposes of this Agreement and who have contracted or dealt directly with the Owner or the Owner's agent. These may include those sometimes generically called "subs", such as the framer, mason, electrician and landscaper as well as the surveyor, architect, engineer, rental equipment lessor or supplier of materials.

**SCENARIO #3 – "AGENT" OF OWNER CONTRACTING WITH PROVIDERS OF LABOR, SERVICES OR MATERIALS:**

The Statute includes in the definition of Owner a separate entity acting as agent of the Owner. A party referred to as "Contractor" may actually be acting as an agent of the Owner and again all parties contracting with that entity have dealt directly with the Owner and they must execute this Agreement. For example, if a developer corporation, ABC Land Company, creates a subsidiary corporation, ABC Construction, who in turn hires

all the other Contractors needed to complete construction; then all Contractors who enter into a contract with ABC Construction could be treated as though they have dealt directly with the Owner by having dealt with its “agent” and, if so, they would be required to execute this Agreement.

NOTE: DO NOT ASSUME that affiliated parties may be sufficient sole signatories. The closing attorney must obtain *prior approval* of underwriting counsel for the Company, based on such factors as independently negotiated construction contracts, separate management, separate maintenance of corporate existence, accounting and formalities or other relevant information regarding independence and arms-length negotiation.

**SCENARIO #4 – MULTIPLE PARTIES (“GENERAL CONTRACTOR” & OTHER PROVIDERS OF LABOR, SERVICES OR MATERIALS) HAVE CONTRACTED DIRECTLY WITH OWNER:**

A Contractor that one may refer to as a “General Contractor” may not be the only Contractor dealing directly with the Owner. If the Owner contracts directly with a surveyor, architect, engineer, supplier, and/or equipment lessor as well as an unrelated licensed “General Contractor” and the “General Contractor” then further contracts with Subcontractors such as the framer, mason, electrician and landscaper; then the surveyor, architect and engineer, supplier and equipment lessor (as the case may be) must execute this Agreement, but not the framer, mason, electrician or landscaper, which truly are Subcontractors in this case. As a general rule, the Subcontractors in this scenario are effectively “cut off” by the waiver or subordination of the Contractor with whom the Owner dealt for that Subcontractor’s Labor Services or Materials.

4. The list of potential Contractors provided above is not intended to be exclusive or exact. There may be more than one Contractor in a listed category or there may be Contractors in categories not listed in the Additional Signature Page. Any Contractor providing Labor, Services or Materials pursuant to a *contract with the Owner* must execute this Agreement. Any additional Contractors should be included in the blocks marked Other and the Labor, Services or Materials (as defined in the Agreement) provided should be specified. Additional Contractors might include, but are not limited to, those providing Labor, Services or Materials for:

- Security Systems
- Sound Systems
- Specialty Masonry
- Sewer/Septic Systems
- Appliances
- Water/Well Systems
- Water Softening or Heating Systems
- Termite/Pest Control
- Specialty Fixtures (Lighting, Plumbing, Kitchen)

5. Each Contractor that executes the Agreement must sign in the same legal capacity in which they contracted with the Owner (individual, corporation, LLC, etc.)

6. The name of the entity and the actual signer must be clearly determinable. If the signature is not legible, the name must be printed in the space provided.

7. Any variances in execution of this form or in parties signing must be approved by underwriting counsel for the Company prior to closing.