

CONSTRUCTION, LIEN AGENTS, & LiensNC: *Protecting All Parties & Avoiding Litigation*

Chicago Title

Thanks to: Kim Tanner, @ LiensNC

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LIEN LAW BASICS

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N.C.G.S. Chapter 44A

Article 2 – Liens & Lien Agents

- Part One—Liens by Persons who Deal with Owner
- Part Two—Liens by Persons who Deal with Someone other than Owner

Article 3 – Public Projects

- “... Act”
- ... and ... Bonds
- ... ENTS OR ... ENTS



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“Hidden Lien”

- “Claim” relates back to *first furnishing*
- “Claim of lien” does not have to be filed until 120 days after *last furnishing*



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“Hidden Lien”

- “Claim of Lien on Funds” by subcontractor:
 - Served on owner
 - Not filed in Clerk’s office
 - Can be enforced by Claim of Lien against Property if owner makes future payment without addressing the sub’s interest
 - Can relate back to first furnishing of Contractor
 - Does not have to be filed until 120 days after *last* furnishing
 - *Cannot be waived by Contractor!!*



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“Property” or “Land”

The real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

ADVISE YOUR DEVELOPER CLIENTS:

LIMIT CONTRACTS & APPOINTMENTS TO THE SPECIFIC PROJECT –

- PHASE OR SECTION
- LOT
- CLUB HOUSE
- GOLF COURSE
- BUILDING NUMBER



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Mechanics' Lien Agent Law Effective April 1, 2013

Projects:

- First contracted after April 1, 2013
- Cost \$30,000 and over
- Residential or commercial property
- NOT renovation to property used by Owner as a residence (no matter price)
- Whether or not a building permit is needed
- NOT “public” projects (not lienable, bonded under Article 3)

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STEP 1:

Owner (or their Rep)
MUST Appoint Lien Agent
AND Post at Job Site

STEP 2:

Contractor or Subcontractor
MAY File Notice To Lien Agent

- Preserves their ability to enforce lien rights (if any) against Property vis-à-vis purchasers and lenders
- Does not affect their contract rights (if any) with higher tier contractors, subs or owner

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Critical Dates

- “First Contracting”
 - Lien Agent must be appointed in LiensNC
- “First Furnishing”
 - Contractor (date of relation back)
 - Subcontractor (Potential Lien Claimant)
 - Relation back
 - 15 additional days to file Notice in LiensNC
- Last Furnishing
 - 120 days claim; 180 days civil action

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**NCLTA FORMS –
FOR EVERY
OCCASION**

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NCLTA Lien Forms

Non MLA Forms

- Form 1 – Lien Waiver – no new construction
- Form 2 - Construction recently completed
- Form 3 – Construction in Process or Immediately Contemplated

MLA forms

- Form 5 – Owner Affidavit
- Form 6 -- MLA appointed and Construction Recently Completed (WAIVER)
- Form 7 – MLA appointed and Construction in Process or Immediately Contemplated (SUBORDINATION)

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NCLTA Forms – Contractors

NON- MLA Transactions

- Traditionally underwritten
- Contractors will continue to sign NCLTA Forms 2 or 3

MLA Transactions

- Contractor must waive or subordinate
- New Forms:
 - NCLTA Form 6 – Single Page Waiver of Claim of Lien
 - NCLTA Form 7 – Single Page Subordination

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Commitment Requirement: Definitions

“Non-MLA Projects”: Improvements are (1) first contracted before April 1, 2013, (2) for a value less than \$30,000 OR (3) solely for improvements to owner’s existing residence. All other projects (other than public projects) are **MLA projects**.

“Owner” is holder of any interest in the Land, including leasehold owner or contract purchaser.

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Commitment Requirement: Definitions

“Potential Lien Claimant” (or “PLC - MLA”)

- person (or entity) entitled to file a claim of lien on real property
- for providing labor, services, (including design professionals such as surveyors, architects, engineers and landscape engineers), materials or rental equipment provided
- for improvements to the Land
- AND who either:
 - has filed a Notice to Lien Agent*, OR
 - was identified in the original Appointment*, OR
 - is a Design Professional* OR
 - is a PLC whose first furnishing was within 15 days prior to closing OR
 - (for waivers) delivered a claim of lien upon funds on the Owner.

*See LiensNC search

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Commitment Requirement: Definitions

“Contractor” Any person or entity who

- has performed or furnished or has contracted to perform or furnish Labor, Services or Materials pursuant to a
- **contract**, either express or implied, **with the Owner of real property** for the making of an Improvement thereon

OR

- who has delivered a **claim of lien upon funds** to the Owner.



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Commitment Requirement: No Recent or Contemplated Construction

NCLTA FORM I (Owner Affidavit) from every seller (on sale) or borrower (on refinance)

Have not contracted for recent or contemplated improvements on the Land or for a construction loan

BE AWARE!!! If BUYER has contracted for or is contemplating improvements, BUYER must comply with “CONSTRUCTION CONTEMPLATED OR IN PROCESS” requirements, appointment, posting.

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NCLTA Lien Forms: NO New / Recent Construction

Form 1 – Owner Affidavit and Indemnity Agreement

**OWNER AFFIDAVIT AND INDEMNITY AGREEMENT
(NO RECENT IMPROVEMENTS AND NO EXECUTORY CONTRACTS FOR IMPROVEMENTS)**

PARTIES: All parties identified in this section must execute this Agreement.

Owner: _____

NOTE: A separate Agreement is required for each successive owner in the 120-Day Lien Period.

PROPERTY: _____

Street street address or brief description and/or attach a description as Exhibit A. Include here any real estate that is a portion of a larger, previously unsegregated tract when that area is reasonably necessary for the convenient use and occupation of improvements on the larger tract.

DEFINITIONS: The following capitalized terms as used in this Agreement shall have the following meanings:

- LABOR, SERVICES OR MATERIALS:** All labor, services, materials for which a lien can be claimed under NCCS Chapter 44A, Article 2, including but not limited to professional design services (including architectural, engineering, landscaping and surveying) and/or rental equipment.
- CONTRACTOR:** Any person or entity who has performed or furnished or has contracted to perform or furnish Labor, Services or Materials pursuant to a contract, either express or implied, with the Owner of real property for the making of an improvement thereon. (Note that services by architects, engineers, landscapers, surveyors, furnishers of rental equipment and contractors for construction on Property of improvements are often provided before there is visible evidence of construction.)
- 120-Day Lien Period:** The 120 days immediately preceding the date of recordation of the latter of the deed to purchase or deed of trust to lender in the Office of the Register of Deeds of the county in which the Property is located.
- Owner:** Any person or entity, as defined in NCCS Chapter 44A, Article 2, who has or has had any interest in the Property within the 120-Day Lien Period. For the purposes of this Agreement, the term Owner includes: (i) a seller of the Property or a borrower under a loan agreement secured by the Property; (ii) a person with rights to purchase the Property under a contract and for whom an improvement is made and who ordered the improvement to be made; and (iii) the Owner's successors in interest and agents of the Owner acting within their authority.
- Contract:** The file insurance coverage providing the title policy for the transaction contemplated by the parties herein.
- Property:** The real estate described above or on Exhibit A and any leaseholds, tenements, hereditaments, and improvements placed thereon.

All defined terms shall include the singular or plural as required by context.

AGREEMENT: For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and as an inducement to the purchase of the Property by a purchaser and/or the making of a loan by a lender secured by a deed of trust encumbering the Property and the issuance of a title insurance policy or policies by Company insuring title to the Property without exception to liens for Labor, Services or Materials, Owner first being duly sworn, deposes, says and agrees:

- Contingencies:** Owner certifies that on no time during the 120-Day Lien Period have any Labor, Services or Materials been furnished in connection with a contract, express or implied, for improvements to the Property (including architectural, engineering, landscaping or surveying services or materials or rental equipment for which a lien can be claimed under NCCS Chapter 44A) nor have any Labor, Services or Materials been furnished on the Property prior to the 120-Day Lien Period that will or may be completed after the date of this affidavit OR any minor repairs and/or alterations to pre-existing improvements have been made and Owner certifies such repairs and/or alterations have been completed and those providing Labor, Services or Materials for the repairs have been paid in full. The Owner further certifies that no Mechanics Lien Agent has been appointed.
- Balance and Identification:** This Agreement may be relied upon by the purchaser in the purchase of the Property, a lender to make a loan secured by a deed of trust encumbering the Property and by Company in issuance of a title insurance policy or policies insuring title to the Property without exception to notices certified in this Agreement. The provisions of this Agreement shall survive the disbursement of funds and closing of this transaction and shall be binding upon Owner and anyone claiming by, through or under Owner. Owner agrees to indemnify and hold purchaser, lender, and Company harmless of and from any and all loss, cost, damage and expense of every kind, and attorney's fees, costs and expenses, which the purchaser, lender or Company shall or may incur or become liable for, directly or indirectly, as a result of reliance on the certifications of Owner made herein or an enforcement of the Company's rights hereunder.
- NCLTA Copyright and Entire Agreement:** This Agreement and any attachments hereto represent the entire agreement between the Owner and the Company, and no prior or contemporaneous agreement or understanding inconsistent herewith (whether oral or written) pertaining to such matters is effective. THIS IS A COPYRIGHTED FORM and any variations in the form provisions hereof must be specifically noted in the blank below and agreed to in writing by the Company.

No modification of this Agreement, and no waiver of any of its terms or conditions, shall be effective unless made in writing and approved by the Company.

| PROVIDING A FALSE AFFIDAVIT IS A CRIMINAL OFFENSE | |
|---|--|
| EXECUTION BY OWNER | |
| By: _____ Printed or Typed Name Title _____ | State of _____ County of _____ Signed and sworn to (or affirmed) before me this day by _____ (print name(s) of principal(s)) |
| By: _____ Printed or Typed Name Title _____ | City _____ Notary Public _____ My Commission Expires _____ |

© North Carolina Land Title Association, March 2013
Form No. 1. OWNER AFFIDAVIT AND INDEMNITY AGREEMENT (NO RECENT IMPROVEMENTS)

Commitment Requirement Recently Completed Improvements

Non-MLA project: NCLTA FORM 2 (Owner/Contractor Affidavit, Lien Waiver, and Indemnity) from every Owner & PLC

MLA project: Receipt of proof satisfactory to the Company that prior to closing or prior to first contracting for construction (whichever occurs first)

- A Lien Agent was designated on the LiensNC.com website &
- The Appointment of Lien Agent was posted at the Land

NCLTA FORM 5 (Owner Affidavit) from every Owner; AND

NCLTA FORM 6 (MLA Lien Waiver) from every PLC-MLA

NCLTA Lien Forms: Recently Completed Construction

Non MLA: Form 2

MLA: Forms 5 (Owner) AND Form 6 (each "Potential Lien Claimant")

**OWNER/CONTRACTOR AFFIDAVIT, WAIVER OF LIENS AND INDEMNITY AGREEMENT
(NO MECHANIC LIEN AGENT APPOINTED - CONSTRUCTION RECENTLY COMPLETED)**

PURPOSE: A purpose specified in this section may require the Agreement, including the Contractor, to sign Additional Release Pages which may include but are not limited to the following: releases and other lien and/or assignment of interests in the subject property.

OWNER: A person who is a party to the Agreement.

CONTRACTOR: A person who is a party to the Agreement.

PURPOSE: A purpose specified in this section may require the Agreement, including the Contractor, to sign Additional Release Pages which may include but are not limited to the following: releases and other lien and/or assignment of interests in the subject property.

**OWNER AFFIDAVIT AND INDEMNITY AGREEMENT
(MLA - CONSTRUCTION COMPLETED, CONTEMPLATED OR UNDER WAY)**

OWNER: A person who is a party to the Agreement.

CONTRACTOR: A person who is a party to the Agreement.

PURPOSE: A purpose specified in this section may require the Agreement, including the Contractor, to sign Additional Release Pages which may include but are not limited to the following: releases and other lien and/or assignment of interests in the subject property.

**WAIVER AND RELEASE OF LIENS
(NO APPOINTED)**

POTENTIAL LIEN CLAIMANT: _____

PURPOSE: A purpose specified in this section may require the Agreement, including the Contractor, to sign Additional Release Pages which may include but are not limited to the following: releases and other lien and/or assignment of interests in the subject property.

Commitment Requirement Construction Contemplated or In Process

Non-MLA project: NCLTA FORM 3 (Owner/Contractor Affidavit, Indemnity and Lien Subordination) (for lender coverage only) from every Owner and every Potential Lien Claimant

MLA project: Receipt of proof satisfactory to the Company that prior to closing or prior to first contracting for construction (whichever occurs first)

- A Lien Agent was designated on the LiensNC.com website, &
- The Appointment of Lien Agent was posted at the Land;

NCLTA FORM 5 (Owner Affidavit) from every Owner; AND

NCLTA FORM 6 (MLA Lien Waiver) or NCLTA FORM 7 (MLA Subordination of Liens) from every PLC

NCLTA Lien Forms: Construction Contemplated or In Process

Non MLA: Form 3

**MLA: Forms 5 (Owner) AND
Form 7 (each “Potential Lien
Claimants”)**

OWNER/CONTRACTOR AFFIDAVIT, INDEMNITY AND LIEN SUBORDINATION AGREEMENT
(NO MECHANICS LIEN AGENY APPOINTED - CONSTRUCTION IN PROCESS OR IMMEDIATELY CONTEMPLATED)

LIENOR COVERAGE ONLY

LEGALS: All parties identified in this section must execute this Agreement, including any Contractor required to sign. Additional Signature Pages which must be attached hereto and are hereby incorporated herein and made a part hereof by reference, as indicated therein by the Agreement.

Owner:
NOTE: A separate Agreement is required for each successive owner in the 120-Day Lien Period and the Contractor who has contracted or shall contract with Owner. An OWNER CANNOT BE A CONTRACTOR in a subsequent project.

Contractor:
NOTE: All Contractors dealing with an Owner must be bonded and licensed by Agreement. A CONTRACTOR CANNOT BE THE OWNER.

Attached ADDITIONAL REMITTANCE PARAGRAPHS for all Construction providing who have provided Labor, Services or Materials within the 120-Day Lien Period.

PROPERTY:
Identify the address or brief description and attach a description as Exhibit A. Include here any notations that a portion of a larger project is being completed but when that area is reasonably necessary for the convenient use and occupation of improvements on the larger tract.

DEFINITIONS: The following capitalized terms as used in this Agreement shall have the following meanings:

- CONTRACTOR:** All or any part of a building, structure, erection, alteration, demolition, excavation, retaining, grading, filling, or landscaping, including trees and shrubs, and/or any other work on the Property as defined in the 120-Day Lien Period.
- LABORER, SERVICE PROVIDER:** All labor, services, materials for which a Lien may be claimed under NCESD Chapter 40A, Article 2, including but not limited to professional design services (including architectural, engineering, land surveying and planning) and consulting and advisory work.
- CONTRACT:** Any contract or agreement, written or oral, for the construction or improvement of a building, structure, erection, alteration, demolition, excavation, retaining, grading, filling, or landscaping, including trees and shrubs, and/or any other work on the Property as defined in the 120-Day Lien Period.
- CAUTION:** If a CONTRACTOR IS ALSO AN OWNER OF AN OWNER, THEN ALL OTHER CONTRACTORS SHALL ENTER INTO A CONTRACT WITH THAT SUBCONTRACTOR DIRECTLY OR THROUGH SUCH OWNER. THIS AGREEMENT SHALL BE SUBORDINATED TO SUCH CONTRACTS. A CONTRACTOR IS SUBSTANTIALLY RELATED TO THE OWNER, CONSOLE UNDER THIS CHANGE, WITH THE TITLE INSURANCE PREVIOUS TO CLOSURE. (SEE ALSO THE CONSTRUCTION LENDING OPERATIONS).
- 120-DAY LIEN PERIOD:** The 120 days immediately preceding the date of recording of the Deed of Trust in the Office of the Register of Deeds of the county in which the Property is located.
- DEED:** Any conveyance instrument, as defined in NCESD Chapter 40A, Article 2, which conveys an interest in the Property within the 120-Day Lien Period. For the purposes of this Agreement, the term Deed includes: (a) a Deed of Trust or a mortgage under a loan agreement recorded by the Property; (b) a grant or a deed of gift to a transferee by the Property under a contract and to whom an improvement is made and who retained the improvement in fee; and (c) the Deed or the instrument of transfer and agents of the Deed only when that authority.
- LIENOR:** The lien insurance company providing the title policy for the transaction contemplated by the parties herein.
- LIENOR'S RIGHTS:** The rights of the Lienor as defined in the NCESD Chapter 40A, Article 2, including but not limited to the right of the Lienor to file a Lien against the Property in the county contemplated transaction and any security interest in the improvement, retention, modification, abandonment or replacement thereof.
- CONTRACT:** The contract or agreement, written or oral, for the construction or improvement of a building, structure, erection, alteration, demolition, excavation, retaining, grading, filling, or landscaping, including trees and shrubs, and/or any other work on the Property as defined in the 120-Day Lien Period.

AGREEMENT: Consideration of all requirements that Property is contemplated or in process. Owner(s) shall obtain an all-in-one Lien (including pre-transaction with the Lienor or Deed of Trust) as defined above and shall file and execute the Deed of Trust underwriting the Property which Deed of Trust is to be recorded in the Office of the Register of Deeds of the county in which the Property is located.

For good and valuable consideration, the grant and authority of the parties, individually and as an inducement to the holding of a Lien under the Deed of Trust on the improvement on the Property and the issuance of this insurance policy and policies by Company issuing the Deed of Trust as an inducement on the Property without exception to be taken later, Services or Materials, Owner and Contractor(s), for being duly aware, advised, read and agree respectively.

OWNER AFFIDAVIT AND INDEMNITY AGREEMENT
(MLA - CONSTRUCTION COMPLETED, CONTEMPLATED OR UNDER WAY)

OWNER:
NOTE: A separate Agreement is required for each successive owner in the 120-Day Lien Period.

LIENOR:
NOTE: All Contractors dealing with an Owner must be bonded and licensed by Agreement. A CONTRACTOR CANNOT BE THE OWNER.

MLA Entry Number:

DEFINITIONS: The following capitalized terms as used in this Agreement shall have the following meanings:

- CONTRACTOR:** All or any part of a building, structure, erection, alteration, demolition, excavation, retaining, grading, filling, or landscaping, including trees and shrubs, and/or any other work on the Property as defined in the 120-Day Lien Period.
- LABORER, SERVICE PROVIDER:** All labor, services, materials for which a Lien may be claimed under NCESD Chapter 40A, Article 2, including but not limited to professional design services (including architectural, engineering, land surveying and planning) and consulting and advisory work.
- CONTRACT:** Any contract or agreement, written or oral, for the construction or improvement of a building, structure, erection, alteration, demolition, excavation, retaining, grading, filling, or landscaping, including trees and shrubs, and/or any other work on the Property as defined in the 120-Day Lien Period.
- CAUTION:** If a CONTRACTOR IS ALSO AN OWNER OF AN OWNER, THEN ALL OTHER CONTRACTORS SHALL ENTER INTO A CONTRACT WITH THAT SUBCONTRACTOR DIRECTLY OR THROUGH SUCH OWNER. THIS AGREEMENT SHALL BE SUBORDINATED TO SUCH CONTRACTS. A CONTRACTOR IS SUBSTANTIALLY RELATED TO THE OWNER, CONSOLE UNDER THIS CHANGE, WITH THE TITLE INSURANCE PREVIOUS TO CLOSURE. (SEE ALSO THE CONSTRUCTION LENDING OPERATIONS).
- 120-DAY LIEN PERIOD:** The 120 days immediately preceding the date of recording of the Deed of Trust in the Office of the Register of Deeds of the county in which the Property is located.
- DEED:** Any conveyance instrument, as defined in NCESD Chapter 40A, Article 2, which conveys an interest in the Property within the 120-Day Lien Period. For the purposes of this Agreement, the term Deed includes: (a) a Deed of Trust or a mortgage under a loan agreement recorded by the Property; (b) a grant or a deed of gift to a transferee by the Property under a contract and to whom an improvement is made and who retained the improvement in fee; and (c) the Deed or the instrument of transfer and agents of the Deed only when that authority.
- LIENOR:** The lien insurance company providing the title policy for the transaction contemplated by the parties herein.
- LIENOR'S RIGHTS:** The rights of the Lienor as defined in the NCESD Chapter 40A, Article 2, including but not limited to the right of the Lienor to file a Lien against the Property in the county contemplated transaction and any security interest in the improvement, retention, modification, abandonment or replacement thereof.
- CONTRACT:** The contract or agreement, written or oral, for the construction or improvement of a building, structure, erection, alteration, demolition, excavation, retaining, grading, filling, or landscaping, including trees and shrubs, and/or any other work on the Property as defined in the 120-Day Lien Period.

AGREEMENT: For good and valuable consideration, the grant and authority of the parties, individually and as an inducement to the holding of a Lien under the Deed of Trust on the improvement on the Property and the issuance of this insurance policy and policies by Company issuing the Deed of Trust as an inducement on the Property without exception to be taken later, Services or Materials, Owner and Contractor(s), for being duly aware, advised, read and agree respectively.

SUBORDINATION OF LIENS
(MLA AFFIDAVIT)
(Lienor's Coverage Only)

POTENTIAL LIEN CLAIMANT: _____ (PRINT NAME, PRINTED LAST NAME ONLY)

PROPERTY (Required): _____

(Identify the address or brief description under which a description as Exhibit A.)

DEFINITIONS: The following capitalized terms as used in this Subordination or Lien Subordination shall have the following meanings:

- CONTRACTOR:** All or any part of a building, structure, erection, alteration, demolition, excavation, retaining, grading, filling, or landscaping, including trees and shrubs, and/or any other work on the Property as defined in the 120-Day Lien Period.
- LABORER, SERVICE PROVIDER:** All labor, services, materials for which a Lien may be claimed under NCESD Chapter 40A, Article 2, including but not limited to professional design services (including architectural, engineering, land surveying and planning) and consulting and advisory work.
- CONTRACT:** Any contract or agreement, written or oral, for the construction or improvement of a building, structure, erection, alteration, demolition, excavation, retaining, grading, filling, or landscaping, including trees and shrubs, and/or any other work on the Property as defined in the 120-Day Lien Period.
- CAUTION:** If a CONTRACTOR IS ALSO AN OWNER OF AN OWNER, THEN ALL OTHER CONTRACTORS SHALL ENTER INTO A CONTRACT WITH THAT SUBCONTRACTOR DIRECTLY OR THROUGH SUCH OWNER. THIS AGREEMENT SHALL BE SUBORDINATED TO SUCH CONTRACTS. A CONTRACTOR IS SUBSTANTIALLY RELATED TO THE OWNER, CONSOLE UNDER THIS CHANGE, WITH THE TITLE INSURANCE PREVIOUS TO CLOSURE. (SEE ALSO THE CONSTRUCTION LENDING OPERATIONS).
- 120-DAY LIEN PERIOD:** The 120 days immediately preceding the date of recording of the Deed of Trust in the Office of the Register of Deeds of the county in which the Property is located.
- DEED:** Any conveyance instrument, as defined in NCESD Chapter 40A, Article 2, which conveys an interest in the Property within the 120-Day Lien Period. For the purposes of this Agreement, the term Deed includes: (a) a Deed of Trust or a mortgage under a loan agreement recorded by the Property; (b) a grant or a deed of gift to a transferee by the Property under a contract and to whom an improvement is made and who retained the improvement in fee; and (c) the Deed or the instrument of transfer and agents of the Deed only when that authority.
- LIENOR:** The lien insurance company providing the title policy for the transaction contemplated by the parties herein.
- LIENOR'S RIGHTS:** The rights of the Lienor as defined in the NCESD Chapter 40A, Article 2, including but not limited to the right of the Lienor to file a Lien against the Property in the county contemplated transaction and any security interest in the improvement, retention, modification, abandonment or replacement thereof.
- CONTRACT:** The contract or agreement, written or oral, for the construction or improvement of a building, structure, erection, alteration, demolition, excavation, retaining, grading, filling, or landscaping, including trees and shrubs, and/or any other work on the Property as defined in the 120-Day Lien Period.

AGREEMENT: For good and valuable consideration, the grant and authority of the parties, individually and as an inducement to the holding of a Lien under the Deed of Trust on the improvement on the Property and the issuance of this insurance policy and policies by Company issuing the Deed of Trust as an inducement on the Property without exception to be taken later, Services or Materials, Owner and Contractor(s), for being duly aware, advised, read and agree respectively.

1. Certifications and Waiver
I, the undersigned, certify that I am not a contractor, subcontractor, or other provider of services, materials, or equipment on the Property and I do not have any claim against the Property or the improvement thereon. I agree to waive any claim against the Property or the improvement thereon that I may have or may acquire in the future.

2. Release
I, the undersigned, hereby release, defend, hold harmless, and defend the Lienor and its successors, agents, and assigns from and against all claims, damages, and expenses, including reasonable attorneys' fees, that may be asserted against or incurred by the Lienor or its successors, agents, and assigns in connection with the Subordination or Lien Subordination, including the costs of defending against any such claims, damages, and expenses.

3. No Recourse
I, the undersigned, agree to release, defend, hold harmless, and defend the Lienor and its successors, agents, and assigns from and against all claims, damages, and expenses, including reasonable attorneys' fees, that may be asserted against or incurred by the Lienor or its successors, agents, and assigns in connection with the Subordination or Lien Subordination, including the costs of defending against any such claims, damages, and expenses.

4. No Recourse
I, the undersigned, agree to release, defend, hold harmless, and defend the Lienor and its successors, agents, and assigns from and against all claims, damages, and expenses, including reasonable attorneys' fees, that may be asserted against or incurred by the Lienor or its successors, agents, and assigns in connection with the Subordination or Lien Subordination, including the costs of defending against any such claims, damages, and expenses.

POTENTIAL LIEN CLAIMANT: _____

Print Name _____
Printed Last Name Only _____
Date _____

By: _____
Print Name _____
Printed Last Name Only _____
Date _____

By: _____
Print Name _____
Printed Last Name Only _____
Date _____

By: _____
Print Name _____
Printed Last Name Only _____
Date _____

By: _____
Print Name _____
Printed Last Name Only _____
Date _____

By: _____
Print Name _____
Printed Last Name Only _____
Date _____

By: _____
Print Name _____
Printed Last Name Only _____
Date _____

Commitment Requirement Construction Contemplated or In Process



NOTE: If buyer has contracted for or is contemplating improvements, see “NO RECENT IMPROVEMENTS” above regarding seller lien affidavits as well.

Commitment Requirement

Construction Contemplated or In Process



- **NOTE:** In all cases in which an MLA was required but not (timely) appointed, prior approval and terms of coverage (if any) by Company underwriting counsel is required.

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Mechanics' Liens

| <i>If No Lien Agent</i> | <i>If Lien Agent Appointed</i> |
|--|--|
| <ul style="list-style-type: none">• Construction Loan<ul style="list-style-type: none">– Form 3 –<ul style="list-style-type: none">• Owner• ALL contractors• Completed Construction<ul style="list-style-type: none">– Form 2 –<ul style="list-style-type: none">• Owner• ALL contractors | <ul style="list-style-type: none">• Form 5 – Owner• Construction Loan<ul style="list-style-type: none">– Form 7 (or 6)<ul style="list-style-type: none">• Notice filers• First furnishers in last 15 days• Completed Construction<ul style="list-style-type: none">– Form 6<ul style="list-style-type: none">• Notice filers• First furnishers in last 15 days |

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LiensNC: One Stop The ONLY NC Lien Agent Registry

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Registered Address for all Authorized Lien Agents & LiensNC Customer Support



WEBSITE:
www.liensnc.com

PHYSICAL/MAILING ADDRESS:
19 W Hargett Street, STE 507, Raleigh
NC 27601

PHONE:
888-690-7384

EMAIL:
support@liensnc.com

FAX:
913-489-5231

OFFICE HOURS:
8:00 am – 4:00 pm M-F (Closed from
12:00-1:00 pm for lunch)

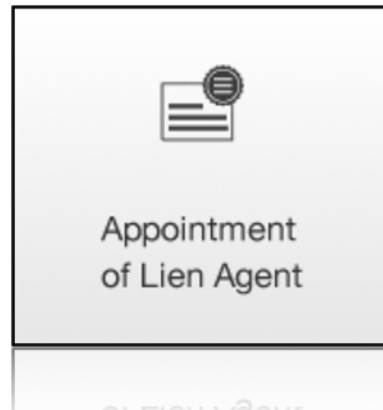
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STEP 1: Appoint Lien Agent

Lien Agent must be a title insurance underwriter
or agent registered with NC Dept. of Insurance

ALL registered lien
agents operate
exclusively through
LiensNC.com!



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OWNER: Definition

A person who...

- *Has an interest in the real property improved*
- *For whom an improvement is made, and*
- *Ordered the improvement to be made*

Includes successors in interest of the owner and
agents of the owner acting within their authority

G.S. 44A-7(6)

Includes “contract purchaser” who is planning
construction – purchase/construction loan

Dalton Moran Shook vs. Pitt Dev. Co. (1992)

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OWNER: Responsibilities

- Appoint lien agent
- Provide copy to inspections/permitting office (if applicable)
- Post at job site
- Provide info to contractors & subs

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Design Professionals –

Classic “First Furnishers” Starting the Project

- Architects, engineers, surveyors
 - Owner must provide name and contact info of MLA to design professional within 15 days of appointment of lien agent
 - May designate lien agent in contract with design professional

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STEP 2: Send Notice To Lien Agent

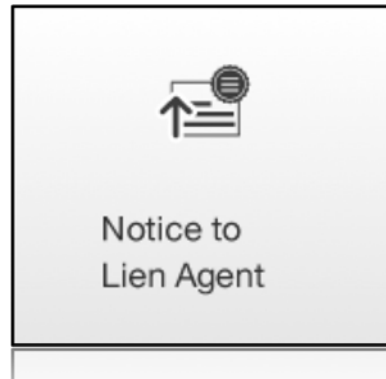
Preserving Priority of PLC's Lien Rights

Must be filed with MLA before the later of:

- Deed or deed of trust recording (or)
- Within 15 days of first furnishing labor or materials at the site

OR...

By filing traditional Claim of Lien on Real Property prior to deed or deed of trust recording



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Contractor: Definition

A person who...

- *Contracts with an owner to improve real property*

§44A-7(3)

Has nothing to do with whether they are a “general contractor” or licensed under Ch. 87!!



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Preparing for Closing

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Preparing for Closing

- Check public record
- Review Offer to Purchase and Contract
- Check LiensNC.com website
- Enter “Closing Notice” on the Appointment for this property to receive:
 - Related Filings Report
 - Notice of any future filings
- Consider 15-day window
 - Landscaping, cleaning, commissioning, seal coating, line painting, other painting
 - “Finish” contractors



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Analyze LiensNC Related Filings Report: Priority & Rights under existing Ch. 44A

- Determine which of the PLCs on the LiensNC Related Filings Report have either direct or subrogation lien rights
- SALE: Obtain waivers/releases from all PLCs with either direct or subrogation lien rights
- FINANCING: Obtain waivers/subordinations from all PLCs with direct or subrogation lien rights
- Discuss with the title insurer insuring the property any situations where waivers/releases from Potential Lien Claimants will not/cannot be obtained



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Peeling back the onion: Developer infrastructure

In a new or ongoing development, it will be necessary to *also research any filings against the developer* since:

- they may relate back to the beginning of the project
- “last furnishing” may still not have happened if ongoing paving, water, sewer, amenities
- Potential claim may far exceed value of the individual lot
- Builders buying lots may not be able to sell, even if they pay *their* debts, because of Developer liabilities !!!

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REMINDER TO DEVELOPERS & COUNSEL

ADVISE YOUR DEVELOPER CLIENTS:

LIMIT CONTRACTS & APPOINTMENTS TO THE SPECIFIC PROJECT –

- **PHASE OR SECTION**
- **LOT**
- **CLUB HOUSE**
- **GOLF COURSE**
- **BUILDING NUMBER**

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Addressing the 15-day “last provider”... The risk decision

- The “15-day” provision:
 - PLC’s whose *first* furnishing just prior to closing
 - Still a “hidden lien” but much more limited
 - Typically, -- appliances, landscaping, driveway, fencing, upgrades / change orders, cleanup
- Questions to ask Owner, BFP, Lender?
 - Who was there?
- Underwriting decisions

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Offer to Purchase and Contract Form 2T, rev 7/2013

(d) **Affidavit and Indemnification Agreement:** Seller shall furnish at Settlement an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyer and Buyer's title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Property as described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom.

(e) **Designation of Lien Agent, Payment and Satisfaction of Liens:** If required by N.C.G.S. §44A-11.1, Seller shall have designated a Lien Agent, and Seller shall deliver to Buyer as soon as reasonably possible a copy of the appointment of Lien Agent. All deeds of trust, deferred ad valorem taxes, liens and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Seller prior to or at Settlement such that cancellation may be promptly obtained following Closing. Seller shall remain obligated to obtain any such cancellations following Closing.

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**LiensNC –
SEARCH &
REPORT**

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02/2015



STEP 3: Search

- Search Period
- Smart Searching Tips (Advanced and Entry #)
- The Search Process
- Example Searches



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Search Period

FROM: “FIRST CONTRACTING”

- Before the survey
- Before the plat (for developer)
- Before the architectural drawings (for new condo)
- Before the purchase (for acquisition/construction loan)

THROUGH: “LAST 15 DAYS PRIOR TO CLOSING”
(so search to date of closing & Form 5, 6 & 7 include latest providers)

- PLC’s can file 15 days after *first* furnishing, -- which may be post-closing if first furnishing is just before closing

Remember: Work often “starts” before they own the property. See Pitt Dev. V. Dalton Moran Shook

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Search Tips

- No wild card
- Start simple and literal
- DO USE
 - Distinctive words (Owner, street name)
 - Connectors (ALL CAPS) → AND, OR, NOT
 - Quotation marks “ ” around multiple words that have to appear together precisely
- DO **NOT** USE
 - Common words (North or Smith)
 - Abbreviated words or initials
 - Avoid: “St” or “Rd” or “Dr”)
 - Avoid: “D.R.” or “DR” or “D R ”
 - Plurals: Builder vs. Builders
 - Punctuation and spaces (they are ignored in search query)

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CHICAGO BULL
VOLUME 1, EDITION 49

LIENSNC – Pointers on Searching

http://www.liensnc.com/Search_Tips.html

In October of 2013, the LIENSNC website was enhanced to improve many of the features. Below are some key pointers to help you locate what you need when searching. Review the Search Tips section of the website for additional information.

1. SEARCH PERIOD UNDER MECHANICS' LIEN LAH:

FROM: "FIRST CONTRACTING"

Before the survey

Before the plat (for developer)

Before the architectural drawings (for new condos)

Before the purchase (for acquisition/construction loan)

THROUGH: "LAST 15 DAYS PRIOR TO CLOSING" (so search to date of closing & Form 5, 6 & 7 include latest providers)

PLC's can file 15 days after first furnishing - which may be post-closing if first furnishing is just before closing

2. WHICH PROJECTS ARE ON LIENSNC? Should be only:

- "FIRST CONTRACTING" after April 1, 2013
- Over \$30,000
- Not renovation or addition to owner's primary residence
- Not public project (owned by governmental entity)

3. SEARCH BASICS

- Use more distinctive words (owner, street name) of search, such as unusual name
- DO NOT USE:
 - words often abbreviated (such as Road vs Rd)
 - plurals – "Trust Builder" is not the same as "Trust Builders" and the results will be dramatically different because the actual filing is under Trust Builder Group (not plural)
 - numbers standing alone → not 336 or 252 (which are in phone numbers), instead use: "Lot 336"
- Quotation marks " " around multiple words that have to appear together precisely
- Connectors in ALL CAPS →
 - AND → if all of the terms must appear in the Appointment, so only the limited list with all of these search terms will appear
 - OR → if either of the terms must appear in the Appointment, so any appointment with either of the terms or both of the terms will appear
 - NOT → so Appointment would not come up if this term was in it
- Punctuation and capitalization are ignored → "Lot 34" is the same as "LOT 34" is the same as "Lot #34"

4. Search Results are just Appointments for which the keywords appear in any related filing. Each Appointment has a unique entry number. It's a quick look to run down the "Project Property" column for your potential property or properties, even if it's a couple of pages (50 Appointments per page).

SEARCH KEYWORD: DOUGHTYMEWS

| Filing | Project Property | Owner | Related Filings? | Action |
|---|---|--|------------------|---|
| Appointment of Lien Agent 2012/02/01 Entry #: 88821 | Lot 14 High Grove Subdivision 5120 Doughtymews Lane, Fuquay-Varina, NC 27326 | Michael Stockland 5025 Shinnery Pl., Fuquay-Varina, 27326 Phone: 919-815-2043 mike.stockland@jayside.com/stocklandm.com | Yes | Copy To New... Notice to Lien Agent Appointment of Lien Agent Track This Related Filings Report Closing Notice |
| Appointment of Lien Agent 2010/02/01 Entry #: 84822 | 5143 Doughtymews Lane, Fuquay-Varina, NC 27326 | Chris Wier Homes, LLC 2403 Lullwater Drive, Raleigh, 27609 Phone: 919-819-9143 CW@chriswierhomes.com | Yes | |
| Appointment of Lien Agent 02/06/2012 Entry #: 8668 | 5122 Doughtymews Lane, Fuquay-Varina, NC 27326 | Janet Boyard 5121 Doughtymews Lane, Fuquay-Varina, 27326 Phone: 919-205-4369 | No | |

5. Related Filings Report (far right arrow, in drop-down menu) shows EVERYTHING related to the selected Appointment including all Notices to Lien Agent and all contact information. Options are provided to print, download or email.

6. The Attorney may select Closing Notice from the far right drop-down menu which will:

- immediately email the Related Filings Report, and
- forward immediately any future filings on that Appointment.

7. SOME KEYWORD EXAMPLES (though may eventually limit by date range as well per 1. above):

Dickerson AND "Emar Chapel"

NVR AND Raleigh
[Prolific developer, but narrowed to one market, and could add - AND KIT - shorter portion of development, Kitts Creek, to narrow further still]

"Clark Home" AND RALEIGH

"Brunswick Forest"

"Trust Builder" AND "Stone Moss"
[NOTE: Builder not typed to avoid risk that plural is not their actual name.]

SAVVY AND "BRAXTON VILLAGE"
[Prolific developer, but very limited number in this subdivision]

"Dells crossing"
[For the subdivision as well as the street address]

2916 AND Main
[For the address, whether North or South Main, and could add - AND SALISBURY - if needed]

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Search Process

Results Include:

- Appointment filing details
- Notice filing details
- Comments

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Related Filings Report

- Look at “Related Filings” Column
- Available to Print and/or Download
- Closing Notice Notification Option

Print or Download

NO DOCUMENTS TO REVIEW!

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Related Filings Report Cont.

The keyword(s) was found 6 time(s). Viewing Appointment(s) 1 through 3

| | |
|-------------------------|---|
| Filing Type | Appointment of Lien Agent 05/24/2013 Entry #: 13539 |
| Project Property | 1002 Garden Web Road Indian Trail, NC 28079 |
| Claimant / Owner | PulteGroup 11121 Carmel Commons Blvd. Ste. 450, Charlotte, 28226 Phone: 704-414-7019 nakia.felder@pulte.com |
| Related Filings? | Yes |
| Action | |
| Filing Type | Appointment of Lien Agent 04/11/2013 Entry #: 2809 |

- Copy To New...
- Notice to Lien Agent
- Appointment of Lien Agent
- Track This
- Related Filings Report**
- Closing Notice

Advanced Search: QUERY 1

LiensNC
Account ▾
Log Out

25771 Appointments found - View

| Filing | Owner | No | Action |
|---|---|----|--------|
| Appointment of Lien Agent 01/08/2015 Entry #: 234784 | SHUGART ENTERPRISES, LLC 221 JONESTOWN RD, WINSTON-SALEM, 27104 | No | ✉ ▾ |
| Comments: No comments have been | | | |
| Appointment of Lien Agent 01/08/2015 Entry #: 234775 | SHUGART ENTERPRISES, LLC 221 JONESTOWN RD, WINSTON-SALEM, 27104 Phone: | No | ✉ ▾ |

Advanced Search: QUERY 2

LiensNC

Account - Log Out

90 Appointments found - Viewing

| Filing | Project Property | Owner | Related Filings? | Action |
|--|------------------|---|------------------|----------------|
| Appointment of Lien Agent 11/14/2014 Entry #: 215876 | 57 n lane p | DR Horton Inc 2000 Aerial Center Parkway, Morrisville, nc | No | [Action icons] |
| Appointment of Lien Agent 11/14/2014 Entry #: 215875 | san winston | DR Horton Inc 2000 Aerial Center Park Suite 110A, Morrisville, 27560 | | [Action icons] |

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Advanced Search: QUERY 3

LiensNC

Home Search - History Cart Guide

Account - Log Out

1 Appointments found - Viewing 1-1

| Filing | Project Property | Owner | Related Filings? | Action |
|--|--|---|------------------|----------------|
| Appointment of Lien Agent 06/12/2014 Entry #: 149223 | Bear Pond Solar Project 1587 Bearpond Rd Henderson, NC 27536 Vance County | NVT Licenses LLC 44 Montgomery Street, Suite 2200, San Francisco, 94104 Phone: 410-533-9058 scottedwards@sunedison.com | Yes | [Action icons] |

Comments:
06/13/2014 by: droach@vaughnindustries.com - Incorrect Project prop address noted. Correct street address to be... 1689 Bearpond Road
06/13/2014 by: droach@vaughnindustries.com - Refer to new Entry #149700 to be in conjunction with this old Entry #

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Entry # Search



LiensNC Home Search - History Cart Guide Account - Log Out

1 Appointment(s) found.

| Filing | Project Property | Owner |
|--|--|--|
| Appointment of Lien Agent 06/13/2014 Entry #: 149700 | Bear Pond Solar Project 1689 Bearpond Rd Henderson, NC 27537 Vance County | NVT Licenses LLC 44 Montgomery Street, Suite 2200, San Francisco, CA 94104 Phone: 410-533-9058 scotttedwards@sunedison.com |

Comments:
06/13/2014 by: droach@vaughnindustries.com - Corrected appointment. Refer to old entry #1

Copy To New...
 Notice to Lien Agent
 Appointment of Lien Agent
 Track This
Related Filings Report
 Closing Notice

Look at Related Filings for BOTH PROJECTS!!!!

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Related Filings Report

LiensNC Home Search - History Cart Guide

Appointment of Lien Agent Related Filings Report

Appointment of Lien Agent

| Filing | Project Property | Owner | Related Filings? | Action |
|--|--|--|------------------|--------|
| Appointment of Lien Agent 06/13/2014 Entry #: 149700 | Bear Pond Solar Project 1689 Bearpond Rd Henderson, NC 27537 Vance County | NVT Licenses LLC 44 Montgomery Street, Suite 2200, San Francisco, CA 94104 Phone: 410-533-9058 scotttedwards@sunedison.com | Yes | |

Related Filings Report for Entry #149700, - Address: 1689 Bearpond Rd, Henderson, 27537

Message

Delete Reply Reply All Forward Move Rules* Unread Categorize Follow Up

Related Filings Report for Entry #149700, - Address: 1689 Bearpond Rd, Henderson, 27537

Sent:
To:

Related Filings

| Filing | Project Property | Potential Lien Claimant | Contracted Through |
|--|---|---|--------------------|
| Notice 06/13/2014 Entry #: 149700 | Bear Pond Solar Project 1689 Bearpond Rd Henderson, NC 27537 | Vaughn Industries LLC 1201 E Findlay Street, Carey, OH 43316 Phone: 419-396-3900 droach@vaughnindustries.com | NVT Licenses LLC |
| Comments: No comments have been made. | | | |
| Notice 07/21/2014 Entry #: 165211 | Bear Pond Solar Project 1689 Bearpond Rd Henderson, NC 27537 | SUNBELT RENTALS INC 3316 CAPITAL BLVD , LONG BRANCH , NC 07740 Phone: 919-790-1344 Fax: 919-431-9397 angela.russ@sunbeltrentals.com | TE... STS PV LLC |
| Comments: No comments have been made. | | | |

This report was generated by user "jane.doe" on Feb 14 12:00 EST 2015.



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Analyze Results

Owner

Contractor

Design Professionals

Potential Lien Claimants

Design Professionals (earlier filings)

Closing Attorney, Settlement Agent, Lender

Lien Agent



Be sure to use the “Closing Notice” option to stay alerted of future filings on your Appointments!

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We Welcome Your Input!
support@liensnc.com



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