



### **Continuing with LiensNC**

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It has been four years since the creation of LiensNC. While its benefits have saved builders, homeowners, title companies and suppliers much money and grief, its real testament cannot be made until our state experiences another recession or economic downturn where builders or others face cash crunches causing delays or avoidance of payments to suppliers and subcontractors. Although LiensNC has been a benefit to everyone involved in the home buying and construction loan process, there are still several pitfalls concerning ones interaction with, and interpretation of, LiensNC.

One issue with ones interaction with LiensNC is the appointment of the lien agent. While it is the owner's responsibility to make this appointment, contractors will normally file the appointment on the owner's behalf when the builder is not the owner. This is a beneficial service to the owner, who may not have the experience or know how to file the appointment. It is common for these appointments to not have all the required information. Pre-permit worker's lien rights are not affected by the appointment of the lien agent. While this creates an urgency to list them on the appointment, many times these pre-permit workers are omitted from the appointment. This is an inherent weakness in the LiensNC system, and one which title insurance underwriters are aware and accept. Likewise, many appointments omit the general contractor even though it may be the general contractor that has filed the appointment. Sometimes, it may not be apparent that a general contractor filed the appointment for the owner, so there is nothing to indicate the presence of a general contractor. Other times, however, it may be apparent that there is a general contractor even though one is not listed; a builder's e-mail address or name as the person filing, or contact information, is a good clue. When a general contractor is not listed on the appointment although their presence can be assumed from the appointment, their signature should be obtained on the appropriate form 6 or 7, notwithstanding the fact that they are not listed as a general contractor. This is distinguishable from the situation where a subcontractor files a notice to lien agent and lists the person they contracted with as someone that should have filed a notice but has not filed their own notice to the lien agent.

Another issue with filing the appointment is a double filing for the same property. When this happens, each entry will contain a statement to see the other entry number. Please click there as well. This mistake may cause another mistake; not checking the related filings for both. When you run across a double filing, it is important to get signatures from everyone on both appointments and their related filings.

When the entry number for the appointment is located, it is a good idea to make sure it was not filed twice. If you do not locate the entry number of the appointment, you have the task of searching for the appointment. This step can trip up the most careful of us. Just because you didn't find an appointment, doesn't mean it is not in the system. The connecting words for the advanced search are

“AND”, “OR” and “NOT.” These words must be in all capital letters. It is best to check several different ways if you do not find an appointment on your first try. Many times, the closing attorney's office will have produced the wrong lien waiver forms because they did not find the appointment. Due to time constraints of Best Practices, the title company will often need to issue the policy with a mechanic lien exception and then delete the exception by endorsement, either after 120 days from closing if no liens have been filed, or after receipt of the correct lien forms.

A simple mistake that is still being made is not checking the related filings. Not only must the general contractor and pre-permit workers sign the form 6 or 7 but so must the suppliers or subcontractors that file a notice to lien agent. The link to these notices are under related filings.

Similar mistakes include not getting all of the signatures necessary or having the parties sign the wrong form. The instructions for who needs to sign and what form needs to be signed are on the requirement page of all title insurance binders. A brief overview is that if a lien agent has been appointed, the owner signs the form 5. If an appointment has been made and your transaction is a construction loan, the general contractor and pre-permit workers listed on the appointment, as well as anyone who filed a notice to lien agent, signs the form 7. If an appointment has been made and your transaction is a sale, the general contractor and pre-permit workers listed on the appointment and anyone who filed a notice to lien agent, signs the form 6.

Another problem with the interpretation of LiensNC is older filings. Currently, there is no mechanism for the removal of outdated filings. The problem this creates is that contractors' and suppliers' lien rights may have expired some time ago, but the filing creates the impression that there may be ongoing activity and lien rights. Generally, if the owner in the appointment has sold the property several months after the appointment and related filings, it may be assumed that the construction was completed and the correct forms were gathered for the sale and that any lien rights have expired. The removal of these outdated appointments is an issue that is being discussed, but currently these situations are looked at on a case by case basis.

In fact, several of the mistakes mentioned above are looked at on a case by case basis by the underwriter to determine if lien coverage is available. While LiensNC has not removed all of the subjectivity from providing mechanic lien coverage, it has provided a valuable framework to better analyze risk.

As our economy and builders' financial health continues to improve, there could be the temptation for a title insurance company to lower their underwriting standards in an attempt to gain market share. It is important to remember, however, that LiensNC was created after great monetary loss during the last downturn, and its creation was to prevent a similar loss in the next downturn. Only time will tell if we will allow history to be our teacher.