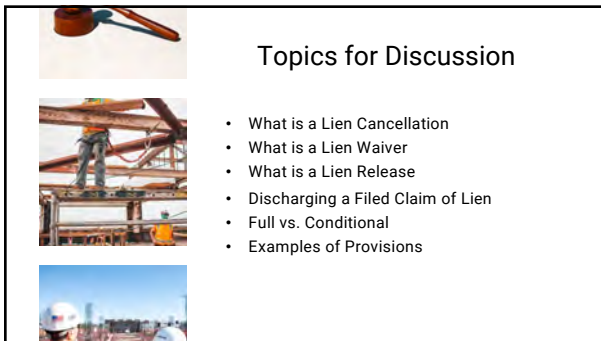




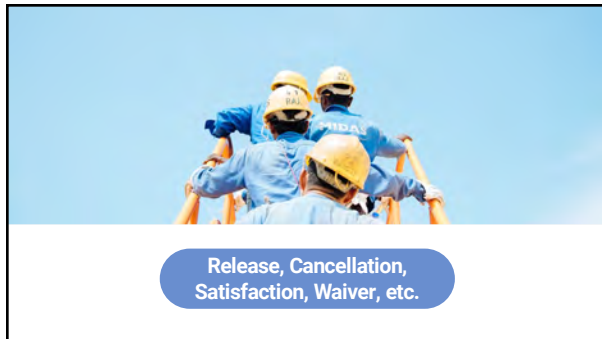
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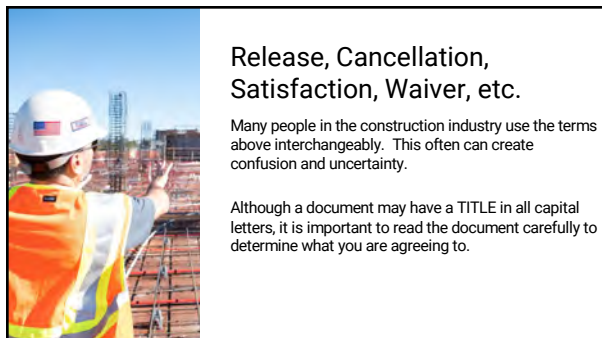
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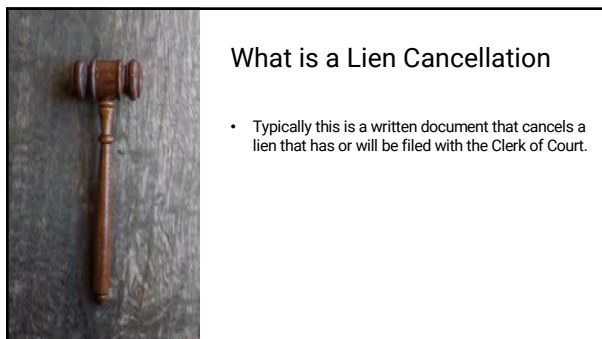
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What is a Lien Waiver

Generally, this is a written document that a lien claimant signs that waives a legal right to a claim of lien on the real property and/or funds.
Generally used to waive rights.
They can be:

- Partial Payment
- Final Payment
- Unconditional or
- Conditional


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What is a Lien Release

Typically this is a document that releases or cancels a mechanics lien and/or that purports to release lien rights going forward.

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Waiver of Subcontractor Lien Rights

- No action of the contractor shall be effective to prejudice the rights of the subcontractor without their written consent, upon the occurrence of the following:
- Subcontractor has given notice to the lien agent;
- Subcontractor has served a notice of claim on lien upon fund on the owner; and
- Subcontractor has delivered a copy of the notice of claim on lien on funds served on the owner to the lien agent.

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Protection of Lien Rights

- NCGS 44A-23 (a1): No action of the contractor shall be effective to prejudice the rights of a first tier subcontractor without its written consent once the first tier subcontractor has perfected its claim of lien on real property in accordance with the general statutes.
- Perfected=Filing of a lawsuit to enforce the lien.

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Discharge of a Recorded Claim of Lien 44A-16

- Any claim of lien filed may be discharged by:
- Lien claimant's acknowledgement of the satisfaction of the lien, in writing submitted to the Clerk of Court.
- The owner may exhibit a lien claimant's written acknowledgment of the satisfaction in writing.
- Failure to enforce the lien claim within 180 days of the last day of providing labor or materials.
- Payment of the amount to the Clerk.
- Bonding off of the lien claim.


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Waiver of Lien Rights To Get A Contract

- NCGS 44A-12(f)
- An agreement to waive lien rights on real property or funds in order to receive the awarding of a contract for the improvement of real property is against public policy and is unenforceable.


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Lien Waivers

- Signing a false lien waiver constitutes "deceit and misconduct" subject to disciplinary action by licensing boards.
- False lien waiver remains a criminal misdemeanor, but liability expands beyond just the person who signs waiver but also includes anyone who directs that a false lien waiver be signed


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Criminal Sanctions for Furnishing False Statement NCGS 44A-24

- If a contractor or other person
- Receiving payment from an Obligor for improvement to real property
- Shall knowingly furnish to the Obligor/Purchaser/Lender/Title Insurance Co.
- A false written statement of the sums due or claimed to be due
- Such person shall be guilty of a Class 1 Misdemeanor


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What Document Are You Being Asked To Sign?

- Lien Waivers can be:
 - Conditional upon funds clearing
 - Conditional upon a certain date or dollar amount
 - Full and Final Payment
 - Partial Payment
 - Unconditional
 - Etc.


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What If...

- A 1st Tier Subcontractor asks 2nd Tiers Subs to sign a Power of Attorney giving the 1st Subcontractor the ability to waive lien rights for the 2nd Tier Sub. What happens?


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What If...

- A Supplier receives a Lien Waiver dated September 30, 2023 that waives lien rights through November 30, 2023 and the supplier is still providing materials on the job? What happens?


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What If...

- The Lien Waiver is titled PARTIAL CONDITIONAL LIEN WAIVER and the body of the lien waiver states "the lien claimant hereby waives all lien rights on the project upon execution of this Agreement". What happens?

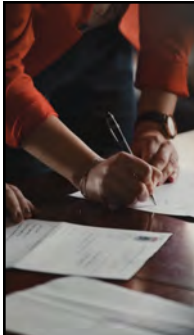
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What If...

- The Subcontractor receives a lien waiver that says the Lien Claimant/Subcontract certifies that all subcontractors and suppliers have been paid for the labor and materials included in the Subcontractor's pay application. Fact is that the materials have not been paid for. What happens?

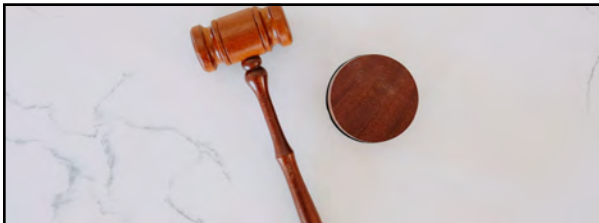
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What If...

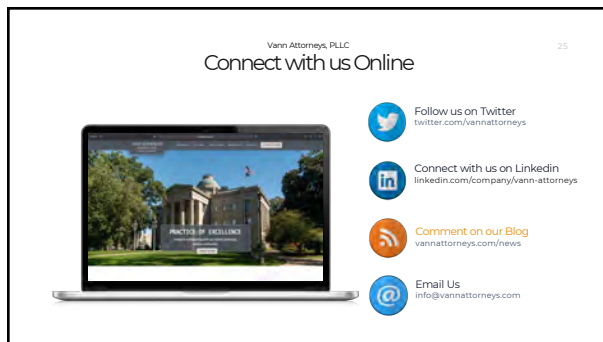
- You are required to sign a AIA Application for Payment that has the following language:
- "The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and the current payment shown herein is now due." What happens?

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A Look at A Few Provisions...

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