

Article 15.

Liens for Overdue Child Support.

§ 44-86. Lien on real and personal property of person owing past-due child support; definitions; filing required; discharge.

(a) Definitions. – As used in this Article, the terms "designated representative", "obligee", and "obligor" have the meanings given them in G.S. 110-129.

(b) Lien Created. – There is created a general lien upon the real and personal property of any person who is delinquent in the payment of court-ordered child support. For purposes of this section, an obligor is delinquent when arrears under a court-ordered child support obligation equals three months of payments or three thousand dollars (\$3,000), whichever occurs first. The amount of the lien shall be determined by a verified statement of child support delinquency prepared in accordance with subsection (c) of this section.

(c) Contents of Statement; Verification. – A verified statement of child support delinquency shall contain the following information:

- (1) The caption and file docket number of the case in which child support was ordered;
- (2) The date of the order of support;
- (3) The amount of the child support obligation established by the order; and
- (4) The amount of the arrearage as of the date of the statement.

The statement shall be verified by the designated representative in a IV-D case and by the obligee in a non-IV-D case.

(d) Filing and Perfection of Lien. – The verified statement shall be filed in the office of the clerk of superior court in the county in which the child support was ordered. At the time of filing the verified statement, the designated representative in a IV-D case and the obligee in a non-IV-D case shall serve notice on the obligor that the statement has been filed. The notice shall be served and the return of service filed with the clerk of court in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall specify the manners in which the lien may be discharged. Upon perfection of the lien, as set forth herein, the clerk shall docket and index the statement on the judgment docket. The clerk shall issue a transcript of the docketed statement to the clerk of any other county as requested by the designated representative in a IV-D case or the obligee in a non-IV-D case. The clerk receiving the transcript shall docket and index the transcript. A lien on personal property attaches when the property is seized by the sheriff. A lien on real property attaches when the perfected lien is docketed and indexed on the judgment docket.

- (1) IV-D Cases. – In IV-D cases, the filing of a verified statement with the clerk of court by the designated representative shall perfect the lien. The obligor may contest the lien by motion in the cause.
- (2) Non-IV-D Cases. – In a non-IV-D case, the notice to the obligor of the filing of the verified statement shall state that the obligor has 30 days from the date of service to request a hearing before a district court judge to contest the validity of the lien. If the obligor fails to contest the lien after 30 days from the time of service, the obligee may make application to the clerk, and the clerk shall record and index the lien on the judgment docket. If the obligee files a petition contesting the validity of the lien, a hearing shall be held before a district court judge to determine whether the lien is valid and proper. In contested cases, the clerk of court shall record and index the lien on the judgment docket only by

order of the judge. The docketing of a verified statement in a non-IV-D case shall perfect the lien when duly recorded and indexed.

(e) Lien Superior to Subsequent Liens. – Except as otherwise provided by law, a lien established in accordance with this section shall take priority over all other liens subsequently acquired and shall continue from the date of filing until discharged in accordance with G.S. 44-87.

(f) Execution on the Lien. – A designated representative in a IV-D case, after 30 days from the docketing of the perfected lien, or an obligee in a non-IV-D case, after docketing the perfected lien, may enforce the lien in the same manner as for a civil judgment.

(g) Liens Arising Out-of-State. – This State shall accord full faith and credit to child support liens arising in another state when the child support enforcement agency, party, or other entity seeking to enforce the lien complies with the requirements relating to recording and serving child support liens as set forth in this Article and with the requirements relating to the enforcement of foreign judgments as set forth in Chapter 1C of the General Statutes. (1997-433, s. 7; 1998-17, s. 1.)

§ 44-87. Discharge of lien; penalty for failure to discharge.

(a) Liens created by this Article may be discharged as follows:

- (1) By the designated representative in IV-D cases, or by the obligee in non-IV-D cases, filing with the clerk of superior court an acknowledgment that the obligor has satisfied the full amount of the lien;
- (2) By depositing with the clerk of superior court money equal to the amount of the claim and filing a petition in the cause requesting a district court judge to determine the validity of the lien. The money shall not be disbursed except by order of a district court judge following the hearing on the merits; or
- (3) By an entry in the judgment docket book that the action on the part of the lien claimant to enforce the lien has been dismissed, or a judgment has been rendered against the claimant in such action.

(b) An obligee in a non-IV-D case who has received payment in full for a delinquent child support obligation which is the basis for the lien shall, within 30 days of receipt of payment, file with the clerk of court an acknowledgment that the obligor has satisfied the full amount of the lien and that the lien is discharged. If the lienholder fails to timely file the acknowledgment, the obligor may, after serving notice on the obligee, file an action in district court to discharge the lien. If in an action filed by the obligor to discharge the lien, the court discharges the lien and finds that the obligee failed to timely file an acknowledgment discharging the lien, then the court may allow the prevailing party to recover reasonable attorneys' fees to be taxed as court costs against the obligee. (1997-433, s. 7; 1998-17, s. 1.)