

Part 4. Relating to Attached Property.

§ 1-440.33. When lien of attachment begins; priority of liens.

(a) Upon securing the issuance of an order of attachment, a plaintiff may cause notice of the issuance of the order to be filed with the clerk of the court of any county in which the plaintiff believes that the defendant has real property which is subject to levy pursuant to such order of attachment. Upon receipt of such notice the clerk shall promptly docket the same on the lis pendens docket.

(b) When the clerk receives from the sheriff a certificate of levy on real property as provided by G.S. 1-440.17, the clerk shall promptly note the levy on his judgment docket and index the same. When the levy is thus docketed and indexed,

- (1) The lien attaches and relates back to the time of the filing of the notice of lis pendens if the plaintiff has prior to the levy caused notice of the issuance of the order of attachment to be properly entered on the lis pendens docket of the county in which the land lies, as provided by subsection (a) of this section.
- (2) The lien attaches only from the time of the docketing of the certificate of levy if no entry of the issuance of the order of attachment has been made prior to the levy on the lis pendens docket of the county in which the land lies.

(c) A levy on tangible personal property of the defendant in the hands of the garnishee, when made in the manner provided by G.S. 1-440.25, creates a lien on the property thus levied on from the time of such levy.

(d) If more than one order of attachment is served with respect to property in possession of the defendant or is served upon a garnishee, the priority of the order of the liens is the same as the order in which the attachments were levied, subject to the provisions of subsection (b) of this section, relating to the time when a lien of attachment begins with respect to real property.

(e) If two or more orders of attachment are served simultaneously, liens attach simultaneously, subject to the provisions of subsection (b) of this section, relating to the time when a lien of attachment begins with respect to real property.

(f) If the funds derived from the attachment of property on which liens become effective simultaneously are insufficient to pay the judgments in full of the simultaneously attaching creditors who have liens which begin simultaneously, such funds are prorated among such creditors according to the amount of the indebtedness of the defendant to each of them, respectively, as established upon the trial.

(g) If more than one order of attachment is served on a garnishee, the court from which the first order of attachment was issued shall, upon motion of the garnishee or of any of the attaching creditors, make parties to the action all of the attaching creditors, who are not already parties thereto in order that any questions of priority among the attaching creditors may be determined in that action and in that court. (1947, c. 693, § 1.)