§ 44A-13. Action to enforce claim of lien on real property.

(a) Where and When Action Commenced. – An action to enforce a claim of lien on real property may be commenced in any county where venue is otherwise proper. No such action may be commenced later than 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property. If the title to the real property against which the claim of lien on real property is asserted is by law vested in a receiver or is subject to the control of the bankruptcy court, the claim of lien on real property shall be enforced in accordance with the orders of the court having jurisdiction over said real property. The filing of a proof of claim with a receiver or in bankruptcy and the filing of a notice of lis pendens in each county where the real property subject to the claim of lien on real property is located within the time required by this section satisfies the requirement for the commencement of a civil action.

(b) Judgment. – A judgment enforcing a lien under this Article may be entered for the principal amount shown to be due, not exceeding the principal amount stated in the claim of lien enforced thereby. The judgment shall direct a sale of the real property subject to the lien thereby enforced.

(c) Notice of Action. – In order for the sale under G.S. 44A-14(a) to pass all title and interest of the owner to the purchaser good against all claims or interests recorded, filed or arising after the first furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property, a notice of lis pendens shall be filed in each county in which the real property subject to the claim of lien on real property is located except the county in which the action is commenced. The notice of lis pendens shall be filed within the time provided in subsection (a) of this section for the commencement of the action by the lien claimant. If neither an action nor a notice of lis pendens is filed in accordance with this section, the judgment entered in the action enforcing the claim of lien on real property shall not direct a sale of the real property subject to the claim of lien on real property enforced thereby nor be entitled to any priority under the provisions of G.S. 44A-14(a), but shall be entitled only to those priorities accorded by law to money judgments.

(d) Former Owner Not a Necessary Party to Action. – In an action brought under this section, a former owner of the improved property at the time the lien arose, who holds no ownership interest in the property at the time the action is commenced and against whom the plaintiff seeks no relief, is not a necessary party to the action.

(e) Subsequent Purchaser and Lender Not Necessary or Proper Parties to Action Filed After Claim of Lien Is Discharged. – If a claim of lien on real property filed under this Article is discharged pursuant to G.S. 44A-16(a)(5) or G.S. 44A-16(a)(6) prior to the filing of an action to enforce the claim of lien under this section, then neither a subsequent purchaser of the real property upon which the lien is claimed nor the subsequent purchaser's lender shall be a necessary or proper party to the action. However, nothing herein precludes the lien claimant from asserting any claims against any party that are separate and distinct from enforcement of the lien.

(f) Subsequent Purchaser and Lender No Longer Necessary or Proper Parties Upon Discharge of Claim of Lien After Action Is Filed. – If an action to enforce a lien under this section is commenced before the claim of lien is discharged pursuant to G.S. 44A-16(a)(5) or G.S. 44A-16(a)(6), a subsequent purchaser of the real property upon which the lien is claimed and the subsequent purchaser's lender shall cease to be a necessary or proper party to the action, and any claim for lien enforcement asserted against the subsequent purchaser of the real property upon which the lien is claimed or the subsequent purchaser's lender shall be dismissed upon motion of any party upon a showing that the claim of lien was discharged pursuant to G.S. 44A-16. However, nothing herein precludes the lien claimant from continuing to pursue any claims against any party that are separate and distinct from enforcement of the lien.

(g) Bonds Prohibited From Requiring Subsequent Purchaser or Lender to Remain Parties to Action After Discharge of Claim of Lien. – The fact that a subsequent purchaser of the real property upon which the lien is claimed or the subsequent purchaser's lender is not a party to an action to enforce a claim of lien on real property subsequent to discharge of that claim of lien by the contractor under G.S. 44A-16 shall not invalidate the claim of lien under this Chapter, nor shall it invalidate any bond filed under G.S. 44A-16 to discharge the claim of lien. Further, a bond filed under G.S. 44A-16(a)(6) shall not require that a subsequent purchaser of the real property upon which the lien is claimed or the subsequent purchaser's lender remain a party to an action to enforce a claim of lien after the claim of lien has been discharged pursuant to G.S. 44A-16.

(h) Definition of "Subsequent Purchaser." – For purposes of this section, a "subsequent purchaser" means a party whose record interest is protected under G.S. 47-18, including any beneficiary of a deed of trust or mortgagee of that party, the priority of whose interest is protected under the provisions of G.S. 47-20, and who was not the owner of the real property at the time of the improvements giving rise to the lien claim as defined in G.S. 44A-7(6). (1969, c. 1112, s. 1; 1977, c. 883; 2005-229, s. 1; 2012-175, s. 4.)