

**§ 75D-5. RICO civil forfeiture proceedings.**

(a) All property of every kind used or intended for use in the course of, derived from, or realized through a racketeering activity or pattern of racketeering activity is subject to forfeiture to the State. Forfeiture shall be had by a civil procedure known as a RICO forfeiture proceeding.

(b) A RICO forfeiture proceeding shall be governed by Chapter 1A of the General Statutes of North Carolina except to the extent that special rules of procedure are stated in this Chapter.

(c) A RICO forfeiture proceeding shall be an in rem proceeding against the property.

(d) A RICO forfeiture proceeding shall be instituted by complaint and prosecuted only by the Attorney General of North Carolina or his designated representative. The proceeding may be commenced and a final judgment rendered thereon before or after seizure of the property and before or after any criminal conviction of any person for violation of those laws set forth in G.S. 75D-3(c).

(e) If the complaint is filed before seizure, it shall state what property is sought to be forfeited, that the property is within the jurisdiction of the court, the grounds for forfeiture, and the names of all persons known to have or claim an interest in the property. The court shall determine ex parte whether there is reasonable ground to believe that the property is subject to forfeiture and, if the State so alleges, whether notice to those persons having or claiming an interest in the property prior to seizure would cause the loss or destruction of the property. If the court finds:

- (1) That reasonable ground does not exist to believe that the property is subject to forfeiture, it shall dismiss the complaint; or
- (2) That reasonable ground does exist to believe the property is subject to forfeiture but there is not reasonable ground to believe that prior notice would result in loss or destruction, it shall order service on all persons known to have or claim an interest in the property prior to a further hearing on whether a writ of seizure should issue; or
- (3) That there is reasonable ground to believe that the property is subject to forfeiture and to believe that prior notice would cause loss or destruction, it shall without any further hearing or notice, issue a writ of seizure directing the sheriff of or any other law enforcement officer in the county where the property is found to seize it.

(f) Seizure may be effected by a law enforcement officer authorized to enforce the penal laws of this State prior to the filing of the complaint and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within 24 hours of the time of seizure, the seizure shall be reported by the officer to the district attorney of the prosecutorial district as defined in G.S. 7A-60 in which the seizure is effected who shall immediately report such seizure to the Attorney General. The Attorney General shall, within 30 days after receiving notice of seizure, examine the evidence surrounding such seizure, and if he believes reasonable ground exists for forfeiture under this Chapter, shall file a complaint for forfeiture. The complaint shall state, in addition to the information required in subsection (e) of this section, the date and place of seizure.

(g) After the complaint is filed or the seizure effected, whichever is later, every person known to have or claim an interest in the property, or in the property or enterprise of which the subject property is a part or represents any interest, shall be served, if not previously served, with a copy of the complaint and a notice of seizure in the manner provided by Chapter 1A of the General Statutes of North Carolina. Service by publication may be ordered upon any party

whose whereabouts cannot be determined with reasonable diligence within 30 days of filing of the complaint.

- (h) (1) Any person claiming an interest in the property, may become a party to the action at any time prior to judgment whether named in the complaint or not. Any party claiming a substantial interest in the property, upon motion may be allowed by the court to take possession of the property upon posting bond with good and sufficient security in double the amount of the property's value conditioned to pay the value of any interest in the property found to be subject to forfeiture or the value of any interest of another not subject to forfeiture.
- (2) The court, upon such terms and conditions as it may prescribe, may order that the property be sold by an innocent party who holds a lien on or security interest in the property at anytime during the proceedings. Any proceeds from such sale over and above the amount necessary to satisfy the lien or security interest shall be paid into court pending final judgment in the forfeiture proceeding. No such sale shall be ordered, however, unless the obligation upon which the lien or security interest is based is in default.
- (3) Pending final judgment in the forfeiture proceeding, the court may make any other disposition of the property necessary to protect it or in the interest of substantial justice, and which adequately protects the interests of innocent parties.

(i) The interest of an innocent party in the property shall not be subject to forfeiture. An innocent party is one who did not have actual or constructive knowledge that the property was subject to forfeiture. An attorney who is paid a fee for representing any person subject to this act, shall be rebuttably presumed to be an innocent party as to that fee transaction.

(j) Subject to the requirement of protecting the interest of all innocent parties, the court may, after judgment of forfeiture, make any of the following orders for disposition of the property:

- (1) Destruction of the property or contraband, the possession of, or use of, which is illegal;
- (2) Retention for official use by a law enforcement agency, the State or any political subdivision thereof. When such agency or political subdivision no longer has use for such property, it shall be disposed of by judicial sale as provided in Article 29A of Chapter 1 of the General Statutes of North Carolina, and the proceeds shall be paid to the State Treasurer;
- (3) Transfer to the Department of Natural and Cultural Resources of property useful for historical or instructional purposes;
- (4) Retention of the property by any innocent party having an interest therein, including the right to restrict sale of an interest to outsiders, such as a right of first refusal, upon payment or approval of a plan for payment into court of the value of any forfeited interest in the property. The plan may include, in the case of an innocent party who holds an interest in the property through an estate by the entirety, or an undivided interest in the property, or a lien on or security interest in the property, the sale of the property by the innocent party under such terms and conditions as may be prescribed by the court and the payment into court of any proceeds from such sale over and above the amount necessary to satisfy the divided ownership value of the innocent party's interest or the lien or security interest. Proceeds paid into the court must then be paid to the State Treasurer;

- (5) Judicial sale of the property as provided in Article 29A of Chapter 1 of the General Statutes of North Carolina, with the proceeds being paid to the State Treasurer;
  - (6) Transfer of the property to any innocent party having an interest therein equal to or greater than the value of the property; or
  - (7) Any other disposition of the property which is in the interest of substantial justice and adequately protects innocent parties, with any proceeds being paid to the State Treasurer.
- (k) In addition to the provisions of subsections (c) through (g) relating to in rem actions, the State may bring an in personam action for the forfeiture of any property subject to forfeiture under subsection (a) of this section.
- (l) Upon the entry of a final civil judgment of forfeiture in favor of the State:
    - (1) The title of the State to the forfeited property shall:
      - a. In the case of real property or beneficial interest, relate back to the date of filing of the RICO lien notice in the official record of the county where the real property or beneficial interest is located and, if no RICO lien notice is filed, then to the date of the filing of any notice of lis pendens in the official records of the county where the real property or beneficial interest is located and, if no RICO lien notice or notice of lis pendens is so filed, then to the date of recording of the final judgment of forfeiture in the official records of the county where the real property or beneficial interest is located; and
      - b. In the case of personal property, relate back to the date the personal property was seized pursuant to the provisions of this Chapter.
    - (2) If property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a RICO lien notice or after the filing of a RICO civil proceeding whichever is earlier, the Attorney General may, on behalf of the State, institute in action in an appropriate court against the person named in the RICO lien notice or the defendant in the civil proceeding and the court shall enter final judgment against the person named in the RICO lien notice or the defendant in the civil proceeding in an amount equal to the fair market value of the property, together with investigative costs and attorney's fees incurred by the Attorney General in the action. (1985 (Reg. Sess., 1986), c. 999, s. 1; 1987 (Reg. Sess., 1988), c. 1037, ss. 98, 99; 1989, c. 489, s. 1; 2015-241, s. 14.30(s).)