

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 26: RICO

§ 1412. Lien notice—Fees—Contents—Procedure

Cite as: 22 CNCA § 1412

A. At any time after the institution of any civil proceeding or at any time after the filing of an indictment or information pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, the Nation may file a lien notice in the official records as may be required for perfecting a security interest for any given property. A filing fee in the amount as required by law for the filing of a mechanic's or materialmen's lien shall be required as a condition for filing the lien notice, and any county clerk, upon the presentation of such lien notice, shall immediately record it in the official records.

B. The lien notice shall be signed by the Attorney General and shall be in such form as the Attorney General prescribes and shall set forth the following information:

1. The name of the person against whom the proceeding has been brought or who has been charged or indicted for a violation of this act and any other names under which the person may be known. The Attorney General may also name in the lien notice any enterprise that is either controlled by or entirely owned by the person;
2. If known to the Attorney General, the present residence and business addresses of the persons named in the lien notice;
3. A reference to the criminal or civil proceeding stating that a proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act has been brought against the person named in the lien notice or that the person has been charged or indicted for a violation of this act, the name of the court where the proceeding has been brought or the conviction was made and any other lien notices filed, and, if known to the Attorney General at the time of filing the lien notice, the case number of the proceeding;
4. A statement that the notice is being filed pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act; and
5. The name and address of the Attorney General filing the lien notice.

A lien notice shall apply only to one person and, to the extent applicable, the names of enterprises, to the extent permitted in this section. A separate lien notice shall be filed for

any other person against whom the Attorney General desires to file a lien notice pursuant to the provisions of this section.

C. Within ten (10) days after filing of each lien notice, the Attorney General shall furnish to the person named in the notice by certified mail, return receipt requested, to the last known business or residential address, a copy of the recorded notice. In the event the person cannot be served by certified mail, service may be by publication pursuant to the Federal Rules of Civil Procedure.

D. From the time of its filing, a lien notice creates a lien in favor of the Nation on the following property of the person named in the notice:

1. Any personal or real property owned by the person under any name set forth in the lien notice which is situated in the county where the notice is filed; and
2. Any beneficial interest of said property owned by the person under any name located in the county where the notice is filed.

The lien shall commence and attach as of the time of filing of the lien notice and shall continue thereafter until expiration, termination, or release of the lien. The lien created in favor of the Nation shall be superior and prior to the interest of any other person in the personal or real property or beneficial interest in said property, if the interest is acquired subsequent to the filing of the notice.

E. In conjunction with any civil proceeding:

1. The Attorney General may file without prior court order in any county a lis pendens pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act. In that event, any person acquiring an interest in the subject real property or beneficial interest in it after the filing of the lis pendens, shall take the interest subject to the civil proceeding and any subsequent judgment of forfeiture; and
2. If a lien notice has been filed, the Attorney General may name as defendants, in addition to the person named in the notice, any person acquiring an interest in the personal or real property or beneficial interest in it subsequent to the filing of the notice. If a judgment of forfeiture is entered in the proceeding in favor of the Nation, the interest of any person in the property that was acquired subsequent to the filing of the notice and judgment of forfeiture shall be subject to the notice and judgment of forfeiture.

F. Upon the entry of a final judgment of forfeiture in favor of the Nation, the title to the forfeited real property shall be transferred to the Nation and shall be recorded in the official records of the county where the real property or a beneficial interest in it is located.

In the case of personal property or a beneficial interest in it, the property shall be seized if not already in possession of the Nation and disposed of in accordance with the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

G. If personal or real property or a beneficial interest in it subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a lien notice, the Nation may treat it as a fraudulent and preferential conveyance and may institute an action in the Cherokee Nation courts against the person named in the lien notice, the defendant in the civil proceeding or the person convicted in the criminal proceeding; and the court shall enter final judgment against such person or any beneficial interest in it together with investigative costs and attorney's fees incurred by the Nation in the action. If a civil proceeding is pending, such action shall be filed only in the court where such civil proceeding is pending.

H. The filing of a lien notice shall not affect the use to which personal or real property or a beneficial interest in it owned by the person named in the racketeering lien may be entitled to or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership of the property, except for the conveyance of said property, until a judgment of forfeiture is entered.

I. The term of a lien notice shall be for a period of six (6) years from the date of filing unless a renewal lien notice has been filed by the Attorney General. In this event, the term of the renewal lien notice shall be for a period of six (6) years from the date of its filing. The Attorney General shall be entitled to only one renewal of the lien notice.

J. The Attorney General may release in whole or in part any lien notice or may release any personal or real property or beneficial interest in it from the lien notice upon such terms and conditions as the Attorney General may determine. Any release of a lien notice executed by the Attorney General may be filed in the official records of any county. No charge or fee shall be imposed for the filing of any release of a lien notice.

K. If no civil proceeding has been instituted by the Attorney General seeking a forfeiture of any property owned by the person named in the lien notice, the acquittal in the criminal proceeding of the person named in the lien notice or the dismissal of the criminal proceeding, shall terminate the lien notice. If the civil proceeding has been instituted, in the event the criminal proceeding has been dismissed or the person named in the lien notice has been acquitted in the criminal proceeding, the lien notice shall continue for the duration of the civil proceeding.

L. If no civil proceeding or criminal proceeding is then pending against the person named in the lien notice, any person named in a lien notice may apply to the district court in the

county where the notice has been filed for the release or extinguishment of the notice and the district court shall enter a judgment extinguishing the lien notice or releasing the personal or real property or beneficial interest in it from the lien notice.

M. In the event a civil proceeding is pending against a person named in a lien notice, the court upon motion by the person may grant the relief provided for in this section at a hearing held for that purpose:

1. If a sale of the personal or real property or beneficial interest in it is pending and the filing of the notice prevents the sale of the property or interest, the court shall immediately enter its order releasing from the lien notice any specific personal or real property or beneficial interest in it. The proceeds resulting from the sale of the personal or real property or beneficial interest in it shall be deposited with the clerk of the court, subject to the further order of the court; and

2. At the hearing, the court may release from the lien notice any personal or real property or beneficial interest in it upon the posting by such person of such security as is equal to the value of the personal or real property or beneficial interest in it owned by such person.

Historical Data

LA 30-21, eff. June 18, 2021.