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The Florida Legislature Passed HB 431, Which Amends the Florida Lien Sale Statutes

BY DENNIS LEVINE

Starting January 1, there will be new rules for repair shops and towing operators to follow to prevent lien sale fraud.

Motor vehicle repair shops may place liens on motor vehicles for labor or services performed on the vehicles to recover the costs of repair and storage. Similarly, the operators of towing and storage companies may place liens on vehicles or vessels to recover the costs of towing and storage. Some repair shops and towing-storage operators exploit existing lien laws to eliminate the security or ownership interest of finance and leasing companies in vehicles upon which liens have been placed. These practices generally take two forms: fraudulent delivery of a required notice of lien, and fraudulent or inflated charges.

To address these abuses, in April 2019 the Florida legislature passed HB 431, which amends the Florida lien sale statutes.

While not as far reaching as hoped, these amendments add protections for lenders and lessors to help stop lien sale fraud. The amendments, which take effect on January 1, 2020, make the following changes:

- Require repair shops to allow the inspection of vehicles subject to a claim of lien;
- For towing and storage liens, at any time before the lien sale, an owner or lienholder may have the vehicle released by posting a bond with the Clerk. This is a very important amendment, as it will no longer be necessary to file a lawsuit before posting a bond to obtain possession of a vehicle for a towing or storage lien.
- Permit administrative fees for the repair, towing, or storage of vehicles, but prohibit fees not expressly authorized, and cap the total amount of fees that may be charged at \$250;
- The repair shop or towing company must use a

third-party vendor approved by the Florida DMV to transmit all certified mail notices required by the statutes. This change hopefully will eliminate the situation where the certified mail envelope is empty or contains a blank piece of paper; and

- Allow a copy of an electronic or paper title to evidence an interest in a vehicle or vessel.

Details of the Statutory Amendments

In addition to the foregoing, the amendments make a number of specific changes:

- a lienor must accept either a copy of an electronic title or a paper title as evidence of the owner or the lender's interest in the vehicle.
- a vehicle may not be sold earlier than 60 days after completion of the repair work.
- the notice of lien must be sent no less than 30 days before the sale of the motor vehicle.
- where the lienor fails to provide notice containing all of the required statutory provisions, the lienor may not charge for more than seven (7) days of storage.
- after posting a bond and the Clerk issues a certificate requiring the release of the vehicle, when the shop fails to make a claim on the bond within 60 days the statute requires "the bond shall be discharged by the Clerk".
- the Florida DMV may not approve an application for transfer of a vehicle title where the application fails to include a copy of the notice of lien and the notice of sale containing all the requirements in the statute.

The lien sale notice must contain the following:

- name of the person or entity that authorized the labor or services on the vehicle

- an itemized statement of the amount claimed to be owed to the lienor, including the dates the vehicle was dropped off for repairs, the repairs were completed, and the customer was notified of the completion of the repairs, plus the amount due for repairs, any administration fees, and any daily storage charges.
- a statement that the lienor will make the vehicle
- available for inspection during regular business hours within three (3) days after receiving a written request. The agent going to inspect the vehicle may present either a copy of an electronic title or a paper title as evidence of its interest in and right to inspect the vehicle.
- the address where a vehicle is physically located.
- the outside of the certified mail envelope must display the following -
 - last eight digits of the VIN
 - repair shop's registration number
 - name and physical address of the repair shop

The amendments to the lien sale statutes take effect on January 1, 2020. Until then, lenders must keep in mind the clock is ticking toward the lien sale date or the date by which a lender can post a bond to obtain possession and stop the sale. In many cases the shop will be intentionally unresponsive or drag its feet. The shop likely will lie, telling you the car has been picked up and the lien sale cancelled. In the event you do not obtain satisfactory documentation of repairs and arrange an inspection within 2 to 3 days of contacting the shop regarding a lien sale notice, we recommend lenders contact counsel to assist in challenging the lien sale and obtaining possession.



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