

## ***Fraudsters Using Other Florida Statutes on Vehicle Lien Sales For Unpaid Storage Charges***

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In response to abuses and fraud in the automobile repair, towing, and storage industry, the Florida Legislature amended Fla. Stat. 713 in 2019. These statutory changes, effective January 1, 2020, have had an impact in reducing fraud. The fraudsters, however, have been quick to adapt. We now are seeing shops attempting to utilize statutes other than Fla. Stat. 713 to fraudulently impose liens and eliminate a lien holder/lessor's interest in a vehicle. **Warehouse Liens** Some shady operators have sought to impose storage liens on vehicles through a "warehouse lien" under Fla. Stat. 677.201. This statute does not refer to vehicles and appears designed to protect mini-warehouses and storage facilities. The lien sale notice for a warehouse lien may look like a standard lien sale notice under Fla. Stat. 713, but there are significant differences, including no right for the lender or owner to post a bond, and no right to inspection. Unfortunately, the Florida DMV currently recognizes that the warehouse lien statute can be used to conduct a lien sale on a vehicle for unpaid storage charges. See DMV Reg. TL-27. We contacted the Florida DMV and suggested that the warehouse lien statute is inapplicable to impose a lien for vehicle storage charges. We pointed out that Fla. Stat. 713.78 specifically refers to vehicles, sets out requirements to impose and foreclose a lien on vehicles for unpaid storage and towing fees, and contains significant due process protections for owners and lenders (e.g. the right to post a bond prior to a lien sale to take possession of a vehicle, right to inspection, and requirements for publication of notice of a lien sale). We requested the DMV withdraw TL-27 to make it clear the warehouse lien statute is inapplicable to vehicles. The Florida DMV recently responded to our inquiry. The DMV declined to withdraw TL-27. Nevertheless, the DMV did take our concerns seriously and advised they have circulated a fraud alert to all title issuing agencies and clerks. All title applications under TL-27 and Fla. Stat. 677 now must be sent to the DMV's office in Tallahassee for review. Where fraud is suspected or the documents are not in compliance with the statute or TL-27, the application for title will be denied. Titles will not be issued by the local agencies until they receive approval from the DMV's main office. Further, administrative stops will be placed on those titles found to be non-compliant/fraudulent. **Landlord Lien on Abandoned Personal Property** Fla. Sta. 715.10 et seq, allows a landlord to sell personal property that is "abandoned" by a tenant. "Personal property" is not defined in this statute; however, we have seen this statute used to impose a storage lien on a vehicle. Again, the lien sale notice sent under this statute may look like a standard lien sale notice, but there are significant differences. Fla. Stat. 715.10 does not contemplate or provide for notice to lien holders on the personal property. Any sale is subject to an existing lien. As such, a new title would be issued to the successful bidder, subject to a lien holder's lien; however, the car may disappear. We have asked the Fla. DMV whether Fla. Stat. 715 can be used to conduct a lien sale on a motor vehicle. We recently had a case where someone alleged they were a landlord and the lender's customer was the tenant who left a vehicle at the premises. The landlord sent a lien sale notice under Fla. Stat. 715. One indication of fraud was that the vehicle was titled in Texas and the customer was from Texas, with no apparent connection to Florida. **Proposed Solution -- Amend Fla. Stat. 713** We believe the best solution to stop fraudulent use of these storage statutes would be for the Legislature to amend Fla. Stat. 713.78 to clearly designate this statute – with its bond, notice, and inspection protections – as the exclusive provision under Florida law to impose and foreclose a lien for storage of a vehicle. In the meantime, we urge auto lenders (and dealers that finance vehicles they sell) to set up procedures to guard against losing a car through a lien sale. Auto lenders must act quickly to protect their security interest when dealing with lien sales. Upon receipt of a lien sale notice containing the sale date, remember – DO NOT DELAY – the clock is ticking toward the lien sale date or the date by which a lender can take steps to stop the sale. In many cases the shop will be intentionally unresponsive or drag its feet. In the event you do not obtain documentation of storage or repairs and arrange an inspection of the vehicle within 2 - 3 days of contacting the shop regarding a lien sale notice you should contact your counsel. ###

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