

MEMORANDUM

TO: Alliance of Automotive Service Providers of Minnesota
FROM: Kevin Walli, Fryberger, Buchanan, Smith & Frederick, P. A.
RE: Lien Foreclosure Procedures
DATE: February 9, 1999 (Updated August 3, 2010)

Who can have a lien? (M.S.A. 514.18)

- If a person or business, at the request of the owner or legal possessor of a vehicle, stores, cares for or in any way enhances the vehicle's value, that person or business shall have a lien on that vehicle for the value of the storage, care or contribution, and the right to retain possession of the vehicle until the lien is lawfully discharged; or
- Any person who tows or stores a motor vehicle at the request of a law enforcement officer can have a lien on the vehicle for the value of the storage and towing and has the right to retain possession of the vehicle until the lien is lawfully discharged.

When can a lien be foreclosed on? (M.S.A. 514.20)

If any sum secured by a lien is not paid within 90 days after it becomes due, the lienholder may sell the vehicle and out of the proceeds of such a sale the following will be paid:

- The disbursements/charges for the sale;
- All charges against the property paid by such person or any other person; and
- The total indebtedness secured by the lien.

The remainder, if any, shall be paid to the owner of the vehicle or other persons entitled to money.

Does the shop owner or the financial institution have "first position" with respect to its interest in a vehicle? (UCC 9.310)

The Uniform Commercial Code provides that a statutory lien takes priority over a perfected security interest. The statutory personalty in possession lien provides the shop owner "first position" with respect to the property over the financial institution.

Who gets notice of the sale and where/when is the sale held? (M.S.A. 514.21)

- The notice must be personally served on the owner of the vehicle if the owner can be found within the county where the vehicle is stored, and if not, then it shall be mailed to the owner at least three weeks before the sale date if the address is known (must use due diligence to locate owner).
- The notice must be published once a week for three successive weeks in a newspaper printed and published in the county where the property is situated. The last publication must occur at least one week prior to the date of the sale. If there is no newspaper printed and published in the county, then the notice shall be posted in three of the most public places in the county at least three weeks before the time of sale.
- The notice of the sale must state: 1) the time and place of sale, 2) the amount which will be due at the date of sale, and 3) the grounds of the lien, giving a description of the property to be sold. Shop owners are advised to be extremely precise in their description of the property—including the vehicle identification number—in order to avoid challenges to their purchase of the property in the sheriff's sale process.
- If the vehicle is registered in this state and is subject to a certificate of title, then the lienholder must provide written notice, by *certified* mail, to all secured creditors listed on the certificate within 45 days before the lienholder's right to sell the motor vehicle is considered effective.
- The notice to lienholders must state the name, address and charges, if any, that are accruing.
- Failure to comply with the notice provision in this section renders any lien ineffective against any secured party listed on the certificate of title of the vehicle involved.
- The sale of the vehicle must occur at a public auction between 9:00 a.m. and 5:00 p.m. in the county where the property is located.

What happens at and after the Sheriff's Sale? (M.S.A. 514.22)

- The sheriff sells the vehicle at the place where the vehicle is stored and the vehicle shall be in view at the time of the sale.
- The lienholder or its representatives or assigns, may fairly and in good faith purchase the property vehicle.
- A Bill of Sale is executed by the sheriff at the Sheriff's Sale.
- The sheriff provides the purchaser with an acknowledged report of sale.

- The purchaser then brings the Bill of Sale and the acknowledged report of sale to the County Auditor or Department of Motor Vehicles (whichever applies to that particular county) and files an application for title.
- A new title will be issued into the name of the purchaser at the Sheriff's Sale.
- The purchaser is then entitled to sell the property if he or she wishes.