

The Florida Creditor's Insider

Towing/Repair Facilities May be Taking YOU for a Ride!

Lienholders may be losing thousands of dollars each year as the result of two misunderstood and overlooked Florida State Statutes. Florida Statutes, Sections 713.78 and 713.585 permit towing companies and auto repair facilities to publicly auction-off unclaimed vehicles to recover unpaid towing, storage and/or repair bills that are owed by non-paying vehicle owners. Moreover, so long as the towing company or repair facility follows the procedures set forth in 713.78 or 713.585, the vehicle is sold free and clear of any and all prior liens. **This includes the prior lien of the finance company that financed the vehicle.**



Although some of the towing and repair facilities appropriately follow the procedures of the aforementioned statutes, many do not. Since many lienholders are unfamiliar with how the towing/repair statutes work, each year lienholders blindly pay thousands of dollars on inflated or unwarranted fees/charges to get their vehicle(s) back

To ensure that the rights of the lienholders under the towing and repair statutes are being protected, here are a few things that a lienholder should consider the next time it is confronted with a towing/repair lien.

First, the towing or repair facility has a deadline to send lienholders notice of the unpaid bill. Pursuant to F.S. 713.78 (Towing and Storage Statute), a tow company cannot charge the lienholder for *any* of its storage fees unless it sends to the lienholder, via certified mail, a Claim of Lien Notice within 7 business days [from the date storage fees begin to accrue]. Pursuant to F.S. 713.585 (Auto Repair Statute), an auto repair shop has only 15 business days, from the first day that it first begins assessing storage fees, to send the lienholder a Claim of Lien Notice. If the repair shop fails to provide notice within 15 days, the repair shop cannot charge more than 15 days worth of storage (no matter how long the vehicle has been stored at its facility).

Second, the storage fees charged by the towing/repair facility must be reasonable. Lienholders should be very wary of paying more than \$25/day storage rates. Although none of the Florida Statutes define “reasonable storage rates”, several Florida County Ordinances have taken the initiative to cap daily storage rates at \$25/day. Therefore, a storage rate exceeding \$25/day is presumptively *unreasonable*, and should be immediately addressed with the tow/repair facility. Should the tow/repair facility fail to reduce the storage rate to a reasonable rate, a lienholder is justified in seeking relief from the appropriate Florida Court for a reduction of the storage rate.

Third, a minimum of 35 days must pass before the sale/auction can take place.

Under both the Towing and Repair Statutes, the towing/repair facility cannot auction a vehicle for a minimum of 35 days if the vehicle is more than 3 years old. If the vehicle is 3 years old or newer, the vehicle cannot be sold prior to 50 days. For each of these time frames, the clock begins the tick on the first date that tow/repair facility begins to charge for storage.

Should the sale occur prior to the aforementioned time frames, the sale is deemed void.

If a lienholder fails to take into account the three above referenced considerations, that lienholder stands the possibility of losing a lot of money to the tow/repair facilities.

For more information on how to avoid and protect your company from the potential pitfalls associated with Towing/Repair Liens, contact Walter L. Sanders, Esq., at the Law Offices of Walter L. Sanders, P.A. for additional tips and insight.

You Can Eliminate the Florida Head of Family Exemption and Start Garnishing Wages!

Florida is considered one of the toughest states to collect against debtors. Why? The “Head of Family Exemption”. As most of us are aware, Florida Statute 222.11 exempts any and all wages from being garnished from the head of family. A debtor is deemed the head of family if he or she is paying more than half



[50%] of the support for a child or other dependent.

Although F.S. 222.11 is written to essentially protect the debtor, many creditors are unaware that this Statute additionally permits creditors to control whether or not a debtor can claim the head of family exemption. Pursuant to F.S. 222.11, the disposable earnings of a head of family, which are greater than \$500 a week, may be attached or garnished if the debtor has agreed to permit this in writing. Therefore, even if the judgment debtor is head of family, the creditor can eliminate the debtor’s head of family exemption by simply adding a clause in its initial retail installment contract. So long as the clause clearly advises the debtor that he or she waives the head of family exemption [for the purposes of garnishment], the head of family exemption is unavailable to the debtor as a matter of law.

Should your current retail installment contract lack this provision — put it in!

It’s Time to Rummage Through Your Attic!

With customer defaults on the rise, many creditors are pouring all of their focus and energy on trying to come up with innovative ways to induce their current customers to “keep on paying”. With only their current customers in mind, many creditors are forgetting that they still have several uncollected judgments or deficiency receivables at their disposable. If you



fall into this category, keep in mind that although your current customers may be having difficulty paying; however, some of your debtors with aged accounts may not. It certainly can't hurt for you to take a look at some of your old judgments and/or uncollectible receivables to see if you can rejuvenate some new revenues from your older debt!

Florida Court Fees Are Going Up

The rumor has been confirmed.

Florida Court Fees are increasing effective July 1, 2008. Governor Charlie Crist approved the increase(s) on June 10, 2008. Based upon the passage of Senate Bill 1790, the filing fees for cases \$500.01 - \$2,500 will rise from \$155.00 to \$175.00, and filing fees for cases \$2,500.01 and up will increase from \$255.00 to \$300.00.



Word to the wise file your Complaints now!!!

Independence Day, July 4th

On July 4, 1776



the Declaration of Independence was signed, and we

claimed our independence from Britain.

Although many of us may be concerned with the high price of gas and/or the increase in our grocery bills, we cannot be too quick to forget that we truly live in "the land of the free and the home of the brave!"

On behalf of Walter L. Sanders, Esq., and his staff, please have a safe and happy holiday for the up and coming Fourth of July! ■

Walter L. Sanders, P.A. is a Florida based Creditor's Rights Law Firm centrally located in Tampa, Florida. We are committed to solely representing Creditors in the areas of replevin, garnishment, commercial/retail litigation, lien foreclosures and judgment collections. We are equipped to service the entire State of Florida, and are dedicated to maximizing results without maximizing your costs.

For more information on how Walter L. Sanders, P.A. can service your collection needs, please feel free to contact us at:
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