

Inside Georgia's Abandoned Motor Vehicle Act

September 21, 2022

Many states have laws that provide “super liens” to facilities that tow, repair, and store vehicles. Georgia’s current abandoned motor vehicle statute is an example of how these statutes can put the secured party financing source’s lien in jeopardy.

In April 2019, the Georgia Legislature passed the current form of its Abandoned Motor Vehicle Act to provide “a comprehensive and streamlined process” for these facilities to recover their costs and remove a vehicle that has been abandoned and unclaimed. In practice, the Act provides facilities with a channel to extinguish prior-existing, perfected lienholders. The Act’s stated intent is to balance the rights of these facilities with those of the motor vehicle owner and the lienholder. However, financial institutions may doubt whether the rights of lienholders were even considered.

Work liens and creditor priorities

Mechanics who perform repair work on motor vehicles in Georgia have a lien for the work performed and the materials furnished. This lien, often referred to as a “super lien,” is superior to all liens except, in part, liens of which the mechanic had notice before the work was performed or the materials furnished. When a security interest is perfected on the certificate of title to a vehicle, the title provides constructive notice to future creditors, including mechanics.

Simply put, a company that performs repairs is subject to any lien listed on the certificate of title before the repairs were performed. In order for a mechanic to acquire a superior interest to a vehicle with a prior-existing lien — or for a tow and storage company to create a lien for tow and storage fees — the procedures detailed in the act must be strictly followed.

Notices and procedures required under the Act

To proceed under the Act, a facility that tows, repairs, and/or stores vehicles must send notice to all owners, lienholders, and any parties with a legal interest in the vehicle within 15 days from the date the vehicle was towed or left at the facility. For example, if notice is mailed May 1, the clock begins to run although the notice may not be received for several days — May 9, for example. This is often the first time the lienholder learns that the vehicle is located at a facility. Depending on the lienholder’s policies and procedures, the notice could require several days to be processed and assigned to a recovery specialist. Meanwhile, the facility has an abandoned motor vehicle lien on the vehicle, and storage fees have already begun to accrue.

Once the notice is mailed, the facility will have a lien on the vehicle for the lawful fees incurred for the tow or repair, plus attorney's fees, court costs, and interest. The storage fees begin to accrue on the date the vehicle was towed, or the repairs were completed, and continue for 25 days after the date of judgment.

Foreclosing on the lien

The facility may file an action to foreclose on the lien after 10 days from the date the notice is mailed. The interested parties have 10 days after receipt of the petition to file an answer. If no answer is filed, the facility may request foreclosure through a judgment.

In the previous example, the facility may file suit as early as May 11. The facility is not required to provide the lienholder with a case number or repair orders. The lienholder could receive the petition as early as May 12, and must answer by May 22 despite receiving very little information. This is significant because the first notice was only received May 9.

Although the court must issue an order for the disposition of the vehicle after no more than 20 days, courts can — and do, in fact — sign orders within a day after a request is filed. If our sample lienholder does not retain counsel and file an answer, the facility may move to foreclose and secure an order as soon as May 23.

The vehicle is then permitted to be sold within two weeks from the date of the order, which may be less time than necessary for the lienholder to petition to set aside the order. Once issued, the order can be overturned, but time is extremely limited before the vehicle is sold to a third party. The purchaser of a vehicle sold through the act will receive a certificate of title free and clear of all liens and encumbrances, and the prior-existing lien is extinguished.

Every day counts

Although the **Georgia Legislature** expedited the process for abandoned motor vehicles, it seems this may be at the peril of financial institutions.

The time between the date the first notice is mailed and an order of foreclosure issued may be as little as 20 days. Further delay in receipt of the notice could result in less time for the lienholder to investigate the repairs. Financial institutions often attempt to recover the vehicle before retaining counsel but, in this instance, that can be fatal to a lienholder's interest. If the lienholder does not take immediate action in response to Georgia repair, tow, or storage notices, the lienholder is at risk of their interest in the vehicle being extinguished.

However, if there is even a minor flaw in the process, the lienholder may be able to re-affix its lien on the title. The lienholder will be required to litigate, and the time and expense incurred often exceeds the vehicle's value.

This article was first published in [Auto Finance Magazine](#), published by Auto Finance News. McGlinchey is pleased to serve as the official Compliance partner of [Auto Finance Excellence](#), providing insights and thought leadership through webinars, podcasts, and monthly columns.

Related people

Nicholas O'Conner

John T. Rouse