

**FRAUDULENT USE OF WAREHOUSE LIENS FOR UNPAID STORAGE
CHARGES BEING USED TO FORECLOSE A LIEN
ON MOTOR VEHICLES**

Dennis J. LeVine

Partner

1511 N. Westshore Blvd. | Suite 400

Tampa | FL 33607

813. 223. 1697 | Office (x1947)

813. 601. 0683 | After hours

877. 222. 9529 | Toll Free

Website | Email – dlevine@kklaw.com



In response to abuses and fraud in the automobile repair and towing industry, the Florida Legislature amended Fla. Stat. 713 in 2019 with regard to automobile towing and storage liens and repair liens. These statutory changes, effective on January 1, 2020, have had an impact on preventing fraud. Nevertheless, we now are seeing towing and storage shops attempt to utilize other statutes to fraudulently impose liens and eliminate a lien holder/lessor's interest in a vehicle

Some shady operators have attempted 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 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 storage charges on a vehicle. We requested the Florida DMV withdraw TL-27 to make it clear the warehouse lien statute is inapplicable to vehicles. We pointed out that Fla. Stat. 713.78 establishes specific requirements to impose and foreclose a lien on vehicles for unpaid storage and towing fees, and sets out detailed requirements to impose and

foreclose a storage lien 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).

The Florida DMV recently responded to our inquiry. At this time, the DMV's position continues to be that warehouse lien statute is applicable to storage of vehicle and declined to withdraw TL-27. Nevertheless, the Florida 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 must be sent to the DMV's office in Tallahassee. 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 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.

In addition, we have seen parties attempt to use a landlord lien on abandoned personal property to foreclose a lien on a vehicle. 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. This statute does not contemplate or provide for notice to lien holders on the personal property, and any sale is subject to an existing lien. As such, a new title would be issued to the successful bidder, subject to a lien holders's lien; however, the car likely will disappear. We recently had a case where someone alleged they were the landlord and the lender's customer was the tenant who left the car at the premises. Ironically, the customer was from Texas, and appeared to have no connection to Florida.

The best solution to stop fraudulent use of these statutes is to amend Fla. Stat. 713.78 to clearly state this statute, with its notice and inspection protections, is the exclusive provision under Florida law to impose and foreclose a lien for unpaid storage of a vehicle or vessel. This can be done by adding the following provision -

713.78 (18). Fla. Stat. 713.78 is the exclusive provision to foreclose a storage lien on a vehicle or vessel.