

SUMMARY OF SUGGESTED AMENDMENTS TO F.S. 713.78

1. Make Fla. Stat. 713.78 the exclusive Florida statute to foreclose a storage lien

The warehouse lien statute in Fla. Stat. 677.210, and the “**SELF-SERVICE STORAGE SPACE**” statute in Fla. Stat.83.801, have been abused to impose liens on vehicles. Warehouse liens generally relate to personal property storage facilities. I met with the DMV and suggested these statutes should not apply to liens on vehicles, since there is a very specific statute for storage liens related to vehicles (e.g. Fla. Stat. 713.78). The DMV disagreed, pointing to their regulations (Warehouse lien – TL 27 - <https://www3.flhsmv.gov/dmv/Proc/tl/tl-27.pdf>). Nevertheless, due to my urging, the DMV put out an alert in July 2020 advising tag offices to closely scrutinize warehouse lien transactions involving vehicles.

There are very few protections for vehicle or vessel owners or lienholders under Fla. Stat. 677.210 and 83.801 *et seq.* – certainly not to the extent found in Fla. Stat. 713.78 and 713.585 which specifically relate to liens on vehicles (e.g. notice provisions, time between the notice and sale date, and procedure to post a bond). **Our suggestion is to amend Fla. Stat. 713.78 to make clear it is the sole procedure to place a lien for storage on a vessel or motor vehicle.** This can easily be done by adding the following provision to Fla. Stat. 78.78 -

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

2. **Clarify the Rights of an Owner or Lender related to Posting a Bond on a Storage/Towing Lien**

The Legislature changed Fla. Stat. 713.78 last year so a lawsuit does not have to be filed prior to posting a bond for towing/storage liens. That is a good thing. **BUT**, 713.78 was not changed to reference Fla. Stat 559.917 regarding the procedure to post a bond, the 60 day time limit for the shop to file a claim on the bond, or releasing the bond when a claim is not timely filed. Simply stated, as highlighted below it appears clear that under the existing storage and towing statute, the 60 day time period in 559.917 for a claim to be made on a bond is currently limited to just repair liens, and does not apply to towing/storage liens --

559.917 Bond to release possessory lien claimed by motor vehicle repair shop.—

(1)(a) A customer or a person of record claiming a lien against a motor vehicle may obtain the release of the motor vehicle from **any lien claimed under part II of chapter 713 by a motor vehicle repair shop for repair work performed under a written repair estimate** by filing with the clerk of the court in the circuit in which the disputed transaction occurred a cash or surety bond, payable to the person claiming the lien and conditioned for the payment of any judgment which may be entered on the lien....

(b) The lienor shall have 60 days to file suit to recover the bond. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorney fees. If the lienor fails to file suit within 60 days after the posting of such bond, the bond shall be discharged by the clerk.

Thus under 713.78 there is no procedure to get the bond released when posted for a towing/storage lien and the car is recovered where the shop never files a claim on the bond. Actually, there is no procedure at all

in the towing/storage statute either for the shop to make a claim on the bond, or how to obtain release of the bond. This clearly appears to be an oversight when the statute was amended in 2019. **Our suggestion is to amend 559.917 to also reference liens for towing and storage so the 60 day time limit will apply to both repair liens, and towing/storage liens, and amend 713.78 to reference the bond process under 559.917.**

3. Clarify the Rights of an Owner or Lender to Inspect a Vehicle

In most cases, an owner or Lender may want to inspect the vehicle before paying any money demanded. The Legislature amended Fla. Stat. 713.585 related to repair liens, and now an owner or lender is entitled to inspect a vehicle held for a repair lien upon 3 business days written notice to the repair shop. See Fla. Stat. 713.585(14). BUT, no similar amendment was made in the towing and storage statute. While the towing and storage statute does provide for a right to inspect any vehicle being held pursuant to an unpaid towing or storage bill, it does not contain the same language as in the repair lien statute in Fla. Stat. 713.78(10) and is much more restrictive. The current language for inspections requires the owner or Lender to present a notarized document signed by the customer to be authorized to inspect the vehicle:

“(10) Persons who provides services pursuant to this section shall permit vehicle or vessel owners, lienholders ... or their agents, which agency is evidenced by an original writing acknowledged by the owner before a notary public... to inspect the towed vehicle.”

Our proposal is to amend Fla. Stat. 713.78(10) so that it mirrors the right to inspection language of a vehicle in the repair lien statute, Fla. Stat. 713.585(14):

“(10) Persons who provide services pursuant to this section shall permit vehicle or vessel owners, lienholders, insurance company representatives, or their agents, ~~which agency is evidenced by an original writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths,~~ **to inspect the vehicle. The lienor must make the vehicle available for inspection during regular business hours within 3 business days after receiving a written request to inspect the vehicle,** ~~to inspect the towed vehicle or vessel~~ and shall release to the owner, lienholder, or agent the vehicle, vessel, or all personal property not affixed to the vehicle or vessel which was in the vehicle or vessel at the time the vehicle or vessel came into the custody of the person providing such services.”

Dennis J. LeVine

Kelley Kronenberg

1511 N. Westshore Blvd. | Suite 400

Tampa | FL 33607

813. 223. 1697|Office (x1947)

813.601.0683 |Cell

813. 433. 5275|Fax

877. 222. 9529 |Toll Free

Website | Email – dlevine@kklaw.com



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