**White Paper on the Judgment Lien Clarification Act**

**I. Background**

The Judgment Lien Clarification Act, a glitch bill, resolves unintended ambiguity as to lien priorities created by enactment of the Judgment Lien Improvement Act during the 2023 legislative session. (2023 H.B. 27 and 2023 S.B. 1574).

1. **UCC Article 9—Florida Statutes chapter 679**

Article 9 of the Uniform Commercial Code (UCC), (codified at chapter 679, Florida Statutes), governs liens, *i.e*., security interests in personal property. Since the 1960s, all 50 states have adopted Article 9 (with major revisions in 1998 and 2010).

When two secured parties have a lien in the same collateral securing debts to each of them, Article 9 provides well-settled, universally accepted rules establishing whose lien has priority. The general rule under Article 9 is that the first creditor to properly record their lien in the public records has priority. In other words, in this “race-notice” statute, the first to record wins, and is entitled to the collateral to mitigate their loss on unpaid debt.

Article 9 generally gives a purchase-money creditor, that is, a creditor that loans funds for purchasing the collateral, including inventory, priority over non-purchase money creditors so long as the purchase money lien is recorded or “perfected.” Florida Statutes § 679.324. A common purchase money loan is a revolving line of credit extended by a floorplan lender to a retailer to buy inventory. The retailer repays the debt when selling the inventory to a consumer. The retailer then purchases more inventory using the revolving line of credit. The lien priority given for purchase money loans encourages lenders to extend credit, which consequently generates economic activity in the wholesale and consumer retail sectors.

Possessory liens, established in Florida Statutes § 679.333, are common when a seller or auction holds possession of the collateral until receipt of payment.

Unpaid debt to a creditor may include debt created by a court judgment. A judgment creditor, that is, the prevailing party who has won a monetary judgment in court, can record a Judgment Lien Certificate with the Florida Secretary of State to establish a lien in the judgment debtor’s personal property, including in any motor vehicles. In 2000, the Florida legislature enacted Florida Statutes § 55.202(a) and § 55.203, which created a central database for judgment liens on personal property, thereby simplifying searches for judgment liens, previously conducted in multiple local government records.

1. **Florida Certificates of Title on Motor Vehicles and Mobile Homes**

In 2005, the Florida Legislature modified the state’s motor vehicle Certificate of Title statute, Florida Statutes § 319.27, making judgment liens on motor vehicles and mobile homes unenforceable against creditors or subsequent purchasers for value “unless a sworn notice of such lien has been filed in the [Department of Motor Vehicles and Highway Safety (the “DMV”)] and such lien has been noted upon the certificate of title of the motor vehicle or mobile home.” Judgment debtors could sell their titled motor vehicles free of a judgment lien if the certificate of title omitted the judgment lien on the vehicle. Critically, the statute did not establish a process for the DMV to notate such liens. Some viewed 391.27 as undermining the intention of having a centralized database of judgment liens.

1. **The Judgment Lien Improvement Act**

Enacted in 2023, the Judgment Lien Improvement Act established a process whereby a judgment lienholder could have a court order DMV to notate, *i.e.* record, their lien on the judgment debtor’s certificate of title. Florida Statutes § 56.29 now reads:

(b) If the personal property of the judgment debtor includes a motor vehicle or vessel that is nonexempt to any extent from execution and for which a Florida certificate of title has been issued, upon presentation of a copy of a valid judgment lien certificate acquired under s. 55.202, the court must order the Department of Highway Safety and Motor Vehicles to note the liens of the judgment creditor on the certificate of title and in the records of the department.

Florida Statutes § 319.24(4)(a) now reads:

2. If the holder of a judgment lien acquired under s. 55.202(2) on personal property of the owner desires to place a lien on the motor vehicle or a vessel, the judgment lienholder must send a written request to the department together with a copy of the lienholder's judgment lien certificate. The department shall add the name of the judgment lienholder to the records of the department. The judgment lienholder must also send a written request to the person in possession of the title certificate by certified mail, and that person shall forward the certificate to the department for endorsement.

Further, “If the first lienholder or owner fails, neglects, or refuses to return the certificate to the department as requested, the department must void the certificate of title and issue a replacement certificate showing the notation of the subsequent lien or encumbrance.” Florida Statutes § 319.24(4)(a)2.(b).

The Judgment Lien Improvement Act did not address the priority of judgment liens notated on a certificate of title with other, potentially competing types of liens, including purchase money liens securing the purchase of inventory or possessory liens. Without an express reference to Article 9, a judgment lienholder could erroneously assert in court that Chapter 319 establishes priority over other liens without regard to Article 9, in an attempt to undermine the well-established priority rules in Article 9, an intention never expressed during the 2023 legislative session.

Further, the Judgment Lien Improvement Act did not address existing language in section 319.27(2) that the lien intended for recording on a certificate of title, “shall be effective as constructive notice when filed.” Any delay between the filing and DMV’s notating on a certificate of title could result in unfairness to an innocent purchaser who had no actual notice of the lien.

1. **The Judgment Lien Clarification Act**

The Judgment Lien Clarification Act confirms that Article 9 determines the priority of conflicting liens by adding to Florida Statutes § 55.202(3): “The priority of conflicting rights between a judgment lienholder under this section and a secured party, as defined in s. 679.1021(1), shall be determined as provided under chapter 679.” Further, the Clarification Act adds that enforceability of a judgment lien not yet notated on a certificate of title “is determined as provided under…chapter 679, as applicable.”

The Clarification Act also corrects an unintended drafting error in the Judgement Lien Improvement Act that requires those who claim a lien in the judgment debtor’s payment intangibles, accounts, or the proceeds thereof, to litigate with an account debtor owing monies to the judgment debtor to “final order or judgment.” The Improvement Act did not allow parties to resolve these disputes by settlement to terminate litigation. The Clarification Act would amend Florida Statutes § 55.205(7) to allow the account debtor to discharge its obligation in accordance with “a settlement agreement” in addition to a “final order or judgment issued in such judicial process that complies with this section.”

The Judgment Lien Clarification Act further would eliminate the unfairness of “constructive notice” of a judgment lien based merely on “when filed” with the DMV, not taking into account potential delays between the filing and the DMV’s actual notation of the lien on the certificate of title. The Act would amend Florida Statutes § 319.27(2) to establish that notice “shall be effective as constructive notice when notated by the department on the certificate of title.” This would resolve potential conflicts between judgment lienholders themselves. A lien notated on a certificate of title on January 10, 2024, would have priority over a lien notated on the certificate of title for the same vehicle on January 11, 2024, without regard to the filing date of either.

Finally, the Judgment Lien Clarification Act replaces the colloquial term, “primed” in Florida Statutes § 55.208(1), not found or defined in Article 9 or the certificate of title statute, with the clearer phrase, “take priority over.”

**II. Interested Stakeholders**

In addition to those who hold judgment liens, interested stakeholders in the Judgement Lien Clarification Act include floorplan finance lenders that loan funds secured by motor vehicle or other wholesale or retail inventory. Floorplan lenders include banks, the in-house financing arms of motor vehicle manufacturers, and private commercial lenders.

**III. Financial Impact/Benefit to Florida Citizens and Businesses**

The Judgement Lien Clarification Act will likely have no financial impact to the State of Florida. However, its adoption would eliminate uncertainty in lending relationships, confirm Article 9’s predictability for establishing the priority of liens, and ensure the availability of credit in wholesale and retail markets.

The failure to adopt the Judgement Lien Clarification Act could result in unnecessary attorney’s fees and costs by forcing judgment creditors and account debtors, that is, those who owe money to judgment debtors, to continue litigation to obtain a final order or judgment as required by Florida Statutes § 55.207(7), instead of settling the lawsuit.

\\FISHDATA1\users\RSG\CLIENTS\NextGear Capital, Inc\HB 27 & SB 1574\White paper -- Glitch bill\Glitch Bill - White Paper - RSG EDITS (CLEAN) -- 5 29 23.docx