

North Carolina Lien Law

Article 4.

Self-Service Storage Facilities.

§ 44A-40. Definitions.

As used in this Article, unless the context clearly requires otherwise:

- (1) "Last known address" means that address provided by the occupant in the latest rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.
- (2) "Lienor" means any person entitled to a lien under this Article.
- (3) "Occupant" means a person, his sublessee, successor, or assign, entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.
- (4) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized by him to manage the facility or to receive rent from an occupant under a rental agreement.
- (5) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, merchandise, and household items.
- (6) "Rental agreement" means any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of a self-service storage facility.
- (7) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such for the purpose of storing and removing personal property. No occupant shall use a self-service storage facility for residential purposes. A self-service storage facility is not subject to the provisions of Article 7 of General Statutes Chapter 25. Provided, however, if an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to the provisions of Article 7 of General Statutes Chapter 25 and the provisions of this Article do not apply.

(1981 (Reg. Sess., 1982), c. 1275, s. 1.)

§ 44A-41. Self-service storage facility owner entitled to lien.

The owner of a self-service storage facility has a lien upon all personal property stored at the facility for rent, expenses necessary for the preservation of the personal property, and expenses reasonably incurred in the sale or other disposition of the personal property pursuant to this Article. This lien shall not have priority over any security interest which is perfected at the time the occupant stores the property at the self-service storage facility.

(1981 (Reg. Sess., 1982), c. 1275, s. 1.)

§ 44A-42. When self-service storage facility lien arises and terminates.

The lien conferred under this Article arises only when the owner acquires possession of the property stored in the self-service storage facility; and it shall terminate when the owner relinquishes possession of the property upon which the lien might be claimed, or when the occupant or any other person having a security or other interest in the property tenders prior to sale the amount of the rent, plus the expenses incurred by the owner for the preservation of the property. The reacquisition of possession of the property stored in the self-service storage facility, which was relinquished, shall not reinstate the lien.

(Reg. Sess., 1982), c. 1275, s. 1.)

§ 44A-43. Enforcement of self-service storage facility lien.

(a) If the rent and other charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 15 days following the maturity of the obligation to pay rent, the owner may enforce the lien by a public sale or other disposition of the property as provided in this section. The owner may bring an action to collect rent and other charges in any court of competent jurisdiction at any time following the maturity of the obligation to pay the rent.

The occupant or any other person having a security or other interest in the property stored in the self-service storage facility may bring an action to request the immediate possession of the property, at any time following the assertion of the lien by the owner. Before such possession is granted, the occupant or the person with a security or other interest in the property shall pay the amount of the lien asserted to the clerk of court in which the action is pending, or post a bond for double the amount. The clerk shall then issue an order to the owner to relinquish possession of the property to the occupant or other party.

(b) Notice and Hearing:

(1) If the property upon which the lien is claimed is a motor vehicle, the lienor, following the expiration of the 15-day period provided by subsection (a), shall give notice to the Division of Motor Vehicles that a lien is asserted and that a sale is proposed. The lienor shall remit to the Division a fee of two dollars (\$2.00); and shall also furnish the Division with the last known address of the occupant. The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested to the person having legal title to the vehicle, if reasonably ascertainable, and to the occupant, if different, at his last known address. The notice shall:

a. State: (i) that a lien is being asserted against the specific vehicle by the lienor or owner of the self-service storage facility, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the vehicle in satisfaction of the lien;

b. Inform the person having legal title and the occupant of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place; and

c. State that the legal title holder and the occupant have a period of 10 days from the date of receipt of the notice in which to notify the Division of Motor Vehicles by registered or certified mail, return receipt requested, that a

hearing is desired to contest the sale of the vehicle pursuant to the lien.

The person with legal title or the occupant must, within 10 days of receipt of the notice from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the vehicle pursuant to the lien, and that the Division should so notify lienor.

Failure of the person with legal title or the occupant to notify the Division that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor may proceed to enforce the lien by a public sale as provided by this section; and the Division shall transfer title to the property pursuant to such sale.

If the Division is notified within the 10-day period provided in this section that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

(2) If the property upon which the lien is claimed is other than a motor vehicle, the lienor following the expiration of the 15-day period provided by subsection (a) shall issue notice to the person having a security or other interest in the property, if reasonably ascertainable, and to the occupant, if different, at his last known address by registered or certified mail, return receipt requested.

The notice shall:

- a. State: (i) that a lien is being asserted against the specific property by the lienor, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the property in satisfaction of the lien;
- b. Provide a brief and general description of the personal property subject to the lien. The description shall be reasonably adequate to permit the person notified to identify it, except that any container including, but not limited to, a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents;
- c. Inform the person with a security or other interest in the property and occupant, if different, of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place;
- d. State that the person with a security or other interest in the property or the occupant, if different, has a period of 10 days from the date of receipt of the notice to notify the lienor by registered, or certified mail, return receipt requested, that a hearing is desired, and that if the legal title holder or occupant wishes to contest the sale of his property pursuant to the lien he should notify the lienor that a hearing is desired.

The person with a security or other interest in the property or the occupant must, within 10 days of receipt of the notice from the lienor, notify the lienor of his desire for a hearing, and state whether or not he wishes to contest the sale of the property pursuant to the lien.

Failure of the person with a security or other interest in the property, or the occupant to notify the lienor that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted. Upon such failure the lienor may proceed to enforce the lien by a public sale as provided by

this section.

If the lienor is notified, within the 10-day period as provided by this section, that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section only pursuant to the order of a court of competent jurisdiction.

(c) Public Sale. –

(1) Not less than 20 days prior to sale by public sale the lienor:

a. Shall cause notice to be mailed to the person having legal title to the property if reasonably ascertainable, to the occupant if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (d) hereof; and

b. Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held; and shall publish notice of sale once a week for two consecutive weeks in a newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale.

(2) The sale must be held on a day other than Sunday and between the hours of 10:00 A.M. and 4:00 P.M.:

a. At the self-service storage facility or at the nearest suitable place to where the property is held or stored; or

b. In the county where the obligation secured by the lien was contracted for.

(3) A lienor may purchase at public sale.

(d) Notice of Sale. – The notice of sale shall include:

(1) The name and address of the lienor;

(2) A statement to the effect that various items of personal property are being sold pursuant to the assertion of a lien for rental at the self-service storage facility;

(3) The place, date, and time of the sale.

(1981 (Reg. Sess., 1982), c. 1275, s. 1.

§ 44A-44. Right of redemption; good faith purchaser's right; disposition of proceeds; lienor's liability.

(a) Before the sale authorized by G.S. 44A-43, or other disposition of the property, the occupant may pay the amount necessary to satisfy the lien plus the reasonable expenses incurred by the owner for the preservation of the property and thereby redeem the property. Upon receipt of such payment, the owner shall return the personal property to the occupant; and thereafter shall have no further claim against such personal property on account of

the lien which was asserted.

(b) A purchaser in good faith, and without knowledge of any defect in the sale of the personal property sold to satisfy a lien provided for in this Article takes the property free of any rights of persons against whom the lien was valid.

(c) Proceeds of a sale under this section shall be applied as follows:

(1) Payment of reasonable expenses incurred in connection with the sale;

(2) Payment of the obligation secured by any security interest that was perfected at the time the occupant stored the property at the self-service storage facility;

(3) Payment of the obligation secured by the self-service storage facility lien;

(4) Any balance shall be paid to the occupant or other person lawfully entitled thereto; but if such person cannot be found, the balance shall be paid to the clerk of superior court of the county in which the sale took place, to be held by the clerk for the person entitled thereto.

(d) If the lienor fails to comply substantially with any of the provisions of this section, he shall be liable to the occupant or any other party injured by such noncompliance in the sum of one hundred dollars (\$100.00), together with reasonable attorney's fees as awarded by the court. Damages provided by this section shall be in addition to actual damages to which any party is otherwise entitled.

(1981 (Reg. Sess., 1982), c. 1275, s. 1.)

§ 44A-2. Persons entitled to lien on personal property.

(a) Any person who tows, alters, repairs, stores, services, treats, or improves personal property other than a motor vehicle in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property has a lien upon the property. The amount of the lien shall be the lesser of

(1) The reasonable charges for the services and materials; or

(2) The contract price; or

(3) One hundred dollars (\$100.00) if the lienor has dealt with a legal possessor who is not an owner.

This lien shall have priority over perfected and unperfected security interests.

(b) Any person engaged in the business of operating a hotel, motel, or boardinghouse has a lien upon all baggage, vehicles and other personal property brought upon his premises by a guest or boarder who is an owner thereof to the extent of reasonable charges for the room, accommodations and other items or services furnished at the request of the guest or boarder. This lien shall not have priority over any security interest in the property which is perfected at the time the guest or boarder brings the property to said hotel, motel or boardinghouse.

(c) Any person engaged in the business of boarding animals has a lien on the animals boarded for reasonable charges for such boarding which are contracted for with an owner or legal possessor of the animal. This lien shall have priority over perfected and unperfected security interests.

(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of the person's business pursuant to an express or implied contract with an owner or legal possessor of the motor vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5.

(e) Any lessor of nonresidential demised premises has a lien on all furniture, furnishings, trade fixtures, equipment and other personal property to which the tenant has legal title and which remains on the demised premises if (i) the tenant has vacated the premises for 21 or more days after the paid rental period has expired, and (ii) the lessor has a lawful claim for damages against the tenant. If the tenant has vacated the premises for 21 or more days after the expiration of the paid rental period, or if the lessor has received a judgment for possession of the premises which is executable and the tenant has vacated the premises, then all property remaining on the premises may be removed and placed in storage. If the total value of all property remaining on the premises is less than one hundred dollars (\$100.00), then it shall be deemed abandoned five days after the tenant has vacated the premises, and the lessor may remove it and may donate it to any charitable institution or organization. Provided, the lessor shall not have a lien if there is an agreement between the lessor or his agent and the tenant that the lessor shall not have a lien. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of sale. The lien created by this subsection shall be enforced by sale at public sale pursuant to the provisions of G.S. 44A-4(e). This lien shall not have priority over any security interest in the property which is perfected at the time the lessor acquires this lien.

(e1) This Article shall not apply to liens created by storage of personal property at a self-service storage facility.

(e2) Any lessor of a space for a manufactured home as defined in G.S. 143-143.9(6) has a lien on all furniture, furnishings, and other personal property including the manufactured home titled in the name of the tenant if (i) the manufactured home remains on the demised premises 21 days after the lessor is placed in lawful possession by writ of possession and (ii) the lessor has a lawful claim for damages against the tenant. If the lessor has received a judgment for possession of the premises which has been executed, then all property remaining on the premises may be removed and placed in storage. Prior to the expiration of the 21-day period, the landlord shall release possession of the personal property and manufactured home to the tenant during regular business hours or at a time mutually agreed upon. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of the sale. The lien created by this subsection shall be enforced by public sale under G.S. 44A-4(e). The landlord may begin the advertisement for sale process immediately upon execution of the writ of possession by the sheriff, but may not conduct the sale until the lien has attached. This lien shall not have any priority over any security interest in the property that is perfected at the time the lessor acquires this lien. The lessor shall not have a lien under this subsection if there is an agreement between the lessor

or the lessor's agent and the tenant that the lessor shall not have a lien.

(f) Any person who improves any textile goods in the ordinary course of his business pursuant to an express or implied contract with the owner or legal possessor of such goods shall have a lien upon all goods of such owner or possessor in his possession for improvement. The amount of such lien shall be for the entire unpaid contracted charges owed such person for improvement of said goods including any amount owed for improvement of goods, the possession of which may have been relinquished, and such lien shall have priority over perfected and unperfected security interests. "Goods" as used herein includes any textile goods, yarns or products of natural or man-made fibers or combination thereof. "Improve" as used herein shall be construed to include processing, fabricating or treating by throwing, spinning, knitting, dyeing, finishing, fabricating or otherwise.

(g) Any person who fabricates, casts, or otherwise makes a mold or who uses a mold to manufacture, assemble, or otherwise make a product pursuant to an express or implied contract with the owner of such mold shall have a lien upon the mold. For a lien to arise under this subsection, there must exist written evidence that the parties understood that a lien could be applied against the mold, with the evidence being in the form either of a written contract or a separate written statement provided by the potential holder of the lien under this subsection to the owner of the mold prior to the fabrication or use of the mold. The written contract or separate written statement must describe generally the amount of the potential lien as set forth in this subsection. The amount of the lien under this subsection shall equal the total of (i) any unpaid contracted charges due from the owner of the mold for making the mold, plus (ii) any unpaid contracted charges for all products made with the mold. The lien under this subsection shall not have priority over any security interest in the mold which is perfected at the time the person acquires this lien. As used in this subsection, the word "mold" shall include a mold, die, form, or pattern.

(1967, c. 1029, s. 1; 1971, cc. 261, 403; c. 544, s. 1; c. 1197; 1973, c. 1298, s. 1; 1975, c. 461; 1981, c. 566, s. 2; c. 682, s. 9; 1981 (Reg. Sess., 1982), c. 1275, s. 2; 1995, c. 460, s. 9; c. 480, s. 1; 1995 (Reg. Sess., 1996), c. 744, s. 1; 1998-182, s. 14; 1999-278, s. 5.)

§ 44A-4. Enforcement of lien by sale.

(a) Enforcement by Sale. – If the charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 30 days or, in the case of towing and storage charges on a motor vehicle, 10 days following the maturity of the obligation to pay any such charges, the lienor may enforce the lien by public or private sale as provided in this section. The lienor may bring an action on the debt in any court of competent jurisdiction at any time following maturity of the obligation. Failure of the lienor to bring such action within a 180-day period following the commencement of storage shall constitute a waiver of any right to collect storage charges which accrue after such period. Provided that when property is placed in storage pursuant to an express contract of storage, the lien shall continue and the lienor may bring an action to collect storage charges and enforce his lien at any time within 120 days following default on the obligation to pay storage charges.

The owner or person with whom the lienor dealt may at any time following the maturity of the obligation bring an action in any court of competent jurisdiction as by law provided. If in any such action the owner or other party requests immediate possession of the property and pays the amount of the lien asserted into the clerk of the court in which such action is pending, the clerk shall issue an order to the lienor to relinquish possession of the property to the owner or other party. The request for immediate possession may be made in the complaint, which shall also set forth the amount of the asserted lien and the portion thereof which is not in dispute, if any. If within three days after service of the summons and complaint, as the number of days is computed in G.S. 1A-1, Rule 6, the lienor

does not file a contrary statement of the amount of the lien at the time of the filing of the complaint, the amount set forth in the complaint shall be deemed to be the amount of the asserted lien. The clerk may at any time disburse to the lienor that portion of the cash bond, which the plaintiff says in his complaint is not in dispute, upon application of the lienor. The magistrate or judge shall direct appropriate disbursement of the disputed or undisbursed portion of the bond in the judgment of the court. In the event an action by the owner pursuant to this section is heard in district or superior court, the substantially prevailing party in such court may be awarded a reasonable attorney's fee in the discretion of the judge.

(b) Notice and Hearings. –

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. If the registered or certified mail notice has been returned as undeliverable and the notice of a right to a judicial hearing has been given to the owner of the motor vehicle in accordance with G.S. 20-28.4, no further notice is required. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the registered or certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars (\$800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by

the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall be paid immediately to the Treasurer for disposition pursuant to Chapter 116B of the General Statutes.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-301.2.

(2) If the property upon which the lien is claimed is other than a motor vehicle required to be registered, the lienor following the expiration of the 30-day period provided by subsection (a) shall issue notice to the person having legal title to the property, if reasonably ascertainable, and to the person with whom the lienor dealt if different by registered or certified mail, return receipt requested. Such notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the lienor by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the lienor that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the lienor that a hearing is

desired by the return of such form to the lienor. Failure of the recipient to notify the lienor within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the property against which the lien is asserted and the lienor may proceed to enforce the lien by public or private sale as provided in this section. If the lienor is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section only pursuant to the order of a court of competent jurisdiction.

(c) Private Sale. – Sale by private sale may be made in any manner that is commercially reasonable. If the property upon which the lien is claimed is a motor vehicle, the sale may not be made until notice is given to the Commissioner of Motor Vehicles pursuant to G.S. 20-114(c). Not less than 30 days prior to the date of the proposed private sale, the lienor shall cause notice to be mailed, as provided in subsection (f) hereof, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained. Notices provided pursuant to subsection (b) hereof shall be sufficient for these

purposes if such notices contain the information required by subsection (f) hereof. The lienor shall not purchase, directly or indirectly, the property at private sale and such a sale to the lienor shall be voidable.

(d) Request for Public Sale. – If an owner, the person with whom the lienor dealt, any secured party, or other person claiming an interest in the property notifies the lienor prior to the date upon or after which the sale by private sale is proposed to be made, that public sale is requested, sale by private sale shall not be made. After request for public sale is received, notice of public sale must be given as if no notice of sale by private sale had been given.

(e) Public Sale. –

(1) Not less than 20 days prior to sale by public sale the lienor:

a. Shall notify the Commissioner of Motor Vehicles as provided in G.S. 20-114(c) if the property upon which the lien is claimed is a motor vehicle; and

a1. Shall cause notice to be mailed to the person having legal title to the property if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (f) hereof; and

b. Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held; and shall publish notice of sale once a week for two consecutive weeks in a newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale. The notice of sale need not be published if the vehicle has a market value of less than three thousand five hundred dollars (\$3,500), as determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

(2) A public sale must be held on a day other than Sunday and between the hours of 10:00 A.M. and 4:00 P.M.:

a. In any county where any part of the contract giving rise to the lien was performed, or

b. In the county where the obligation secured by the lien was contracted for.

(3) A lienor may purchase at public sale.

(f) Notice of Sale. – The notice of sale shall include:

(1) The name and address of the lienor;

(2) The name of the person having legal title to the property if such person can be reasonably ascertained and the name of the person with whom the lienor dealt;

(3) A description of the property;

(4) The amount due for which the lien is claimed;

(5) The place of the sale;

(6) If a private sale the date upon or after which the sale is proposed to be made, or if a public sale the date and hour when the sale is to be held.

(g) Damages for Noncompliance. – If the lienor fails to comply substantially with any of the provisions of this section, the lienor shall be liable to the person having legal title to the property or any other party injured by such noncompliance in the sum of one hundred dollars (\$100.00), together with a reasonable attorney's fee as awarded by the court. Damages provided by this section shall be in addition to actual damages to which any party is otherwise entitled.

(1967, c. 1029, s. 1; 1975, c. 438, s. 1; c. 716, s. 5; 1977, c. 74, s. 4; c. 793, s. 1; 1981, c. 690, s. 26; 1983, c. 44, ss. 1, 2; 1985, c. 655, ss. 4, 5; 1989, c. 770, s. 10; 1991, c. 344, s. 1; c. 731, s. 3; 1995 (Reg. Sess., 1996), c. 635, ss. 2-4; 1998-182, s. 15; 1999-216, s. 10; 1999-460, s. 7; 2004-128, s. 5.)

§ 44A-3. When lien arises and terminates.

Liens conferred under this Article arise only when the lienor acquires possession of the property and terminate and become unenforceable when the lienor voluntarily relinquishes the possession of the property upon which a lien might be claimed, or when an owner, his agent, a legal possessor or any other person having a security or other interest in the property tenders prior to sale the amount secured by the lien plus reasonable storage, boarding and other expenses incurred by the lienor. The reacquisition of possession of property voluntarily relinquished shall not reinstate the lien. Liens conferred under this Article do not terminate when the lienor involuntarily relinquishes the possession of the property.

(1967, c. 1029, s. 1; 1991, c. 344, s. 3, c. 731, s. 2.)

§ 44A-5. Proceeds of sale.

The proceeds of the sale shall be applied as follows:

(1) Payment of reasonable expenses incurred in connection with the sale. Expenses of sale include but are not limited to reasonable storage and boarding expenses after giving notice of sale.

(2) Payment of the obligation secured by the lien.

(3) Any surplus shall be paid to the person entitled thereto; but when such person cannot be found, the surplus shall be paid to the clerk of superior court of the county in which the sale took place, to be held by the clerk for the person entitled thereto.

(1967, c. 1029, s. 1; 1971, c. 544, s. 2.)