

# Foreclosing on a Possessory Lien on a Motor Vehicle

(August 2014)



Minnesota law contains a valuable feature permitting dealers and other repair shops to retain repaired property – including motor vehicles - until the bill is paid. It's called a possessory lien – sometimes a shop lien. The possessory lien is based solely upon possession of a vehicle which a dealer repairs and exists only so long as possession is maintained. There are no filing requirements nor other legal formalities necessary to establish the lien.

However, be careful: if the dealer gives up possession of the vehicle, the lien goes away.

## Expedited sale procedures effective August 1, 2014

- Prior to August 1, the only way to foreclose on a possessory lien and obtain a Minnesota certificate of title was to have a “sheriff’s sale.” These sales require complex and legalese-filled disclosures and notices prior to the sheriff’s auctioning the vehicle and the dealer applying for title. Many dealers hired lawyers to work through the process. Because legal fees add up fast, many times it didn’t make economic sense for dealers to go through the sheriff’s sale procedure to obtain title. Instead dealers often ended up scrapping such vehicles without a title.
- Effective August 1, 2014 a streamlined alternative is available for licensed new and used vehicle dealers. It allows dealers to sell vehicles held for a shop lien in the ordinary course of business to either a retail or a wholesale buyer. This alternative procedure is only available to licensed new and used vehicle dealers and is described fully below.

Even though a simpler sales mechanism is now available to dealers, there are still formalities to follow. They are laid out in Minnesota Statutes Sections 514.18 – 514.21.

## Hold the Vehicle for 90 Days

The statute requires the vehicle to be held for at least 90 days after the repair bill becomes due before it can be sold.

## Lawful Charges

Dealers may hold a vehicle for the following charges which are due the dealer directly or the dealer paid to others:

- Vehicle towing
- Storage charges – (Not more than 15 days storage charges may accrue until any secured creditor shown on Driver & Vehicle Services records is notified as described below)
- Repairing or servicing the vehicle – parts and labor
- Charges for a replacement vehicle while the retained vehicle was serviced or repaired
- Reasonable disbursements occasioned by the retention and sale of the vehicle

## Notify Secured Creditors

If the vehicle has a Minnesota title and registration, the law requires that all secured creditors listed on the title must be provided a written notice by certified mail. This notice must be provided at least 45 days before the vehicle may be sold. The notice must state the name, address and telephone number of the dealer, the amount of money owed and the rate which any storage charges on the vehicle are accruing.

MADA Counsel drafted the attached Notice to Secured Creditors for dealers to use to satisfy this requirement. It is the only notice required to be given to secured creditors.

**Important:** The dealer's possessory lien is superior to the lien of a listed creditor unless the secured creditor is not notified of the sale.

## Notify the Owner and Sell the Vehicle

**New procedure available August 1, 2014.** A licensed new or used vehicle dealer may sell the vehicle at wholesale or retail in the ordinary course of business after notice to the owner by certified mail.

MADA Counsel drafted the attached Notice of Sale which dealers may use to fulfill the requirements of notifying the owner.

The dealer must send the completed Notice of Sale by certified mail to the last known address of the owner of the vehicle according to the records of the dealer at least three weeks prior to sale. If the vehicle is registered in Minnesota and subject to a certificate of title and the name of the owner or the address of the owner is different than shown on the records of the dealer, the dealer must also send the Notice to the registered owner by certified mail at the address shown in the DVS record.

Note that the law does not require the dealer to seek or obtain a receipt that the customer picked up the certified mail. The dealer is only required to prove that the Notice was mailed.

The Notice of Sale must contain a description of the vehicle, the grounds of the lien, the name, address, and telephone number of the dealer, the total amount owed including any accrued storage charges, the date after which the vehicle will be sold, and a statement that the owner may reclaim the vehicle prior to sale by paying the full amount due.

**Important:** A dealer who sells a vehicle using the new certified mail procedure waives any further claim against the vehicle owner for a deficiency or other charges secured by the lien. Therefore, dealers seeking recourse from a customer over and above the proceeds of the sale must proceed through a sheriff's sale in order to preserve their deficiency claim.

**Have a sheriff's sale.** The old alternative is still available to dealers and might need to be used if the dealer has no address information for the vehicle owner or if the dealer wishes to seek additional recourse against the vehicle owner.

According to the statute, if the customer lives ("can be found") in the dealer's county, a notice containing the information described below must be personally served. If the customer does

not live in the dealer's county, then the notice must be given in two ways. It must be mailed and it must be published in a county newspaper once in each of three successive weeks. The last of the three notices must be published at least one week prior to the date of sale. The notice, whether personally served or published, must contain the following information: the time and place of sale, the amount of the debt excluding expenses of advertising and sale, grounds for the lien and a general description of the vehicle.

A sheriff's sale must be held between 9:00 a.m. and 5:00 p.m. and must be by auction. The sales are typically quite informal. Generally, the only people there are the deputy and the dealer lienholder and, in most cases, the dealer purchases the vehicle for the amount of the lien plus expenses. The sheriff charges a flat fee and upon completion of the sale, the deputy will supply a written report of the results of the sale.

### **Disposition of the Sale Proceeds**

From the proceeds of either type of sale, first pay off any expenses incurred (sheriff's fees, expenses of publication, etc.) and then the amount of the dealer's lien. If there are any funds left over, they must be paid over upon demand to the customer or other person such as a secured creditor entitled to them.

### **Obtain a New Certificate of Title**

**Vehicle sold after notice by certified mail.** New or used car dealers who retail or wholesale a vehicle under the expedited process must submit the following documents to Driver & Vehicle Services plus applicable taxes and fees:

1. Motor Vehicle Possessory Lien - Notice of Sale  
(The Notice to Secured Creditors – even if it was used – is not required to be submitted)
2. Originals of the postal receipt(s) showing proof of mailing of the Notice of Sale to the vehicle owner. (Only proof of mailing is required – not proof of receipt)
3. Application for certificate of title in the name of the dealer's retail or wholesale purchaser

**Vehicle sold at sheriff's sale.** In order to transfer title to the purchaser at the sheriff's sale, these documents must be submitted to Driver & Vehicle Services plus applicable taxes and fees:

1. Notice of Sale
2. Affidavit of Service of Process or an Affidavit of Publication
3. Sheriff's report of the results of the sale
4. Application for certificate of title in the name of the purchaser at the sheriff's sale

**Questions:** If you're a MADA member, contact MADA Counsel, Jim Schutjer.

# Motor Vehicle Possessory Lien Notice to Secured Creditors

Send by CERTIFIED MAIL

The dealership is retaining the vehicle described below for charges due. This Notice is provided to secured creditors under Minnesota Statutes Sections 514.19 and 514.20.

**Date this Notice to Secured Creditors is mailed by certified mail:**

Vehicle Description	Year	Make	Model	VIN
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Dealership Information	First Secured Creditor	2 <sup>nd</sup> Secured Creditor (if any)
Name	Name	Name
Address	Address	Address
City, State, Zip	City, State, Zip	City, State, Zip
Contact Person and Phone Number		

<p style="text-align: center;"><b>Grounds for lien and amounts owed</b></p> <p>Repair and/or service charges: \$</p> <p style="padding-left: 40px;">Towing charges: \$</p> <p>Storage charges (15 or fewer days): \$</p> <p style="padding-left: 40px;">Rate at which additional Storage charges will accrue:</p> <p>Rental charges for replacement vehicle: \$</p> <p>Other charges and disbursements (specify): \$</p> <p style="text-align: center;"><b>Total Amount Due: \$</b></p> <p style="text-align: center;">(As of the mailing date of this Notice)</p>	<p style="text-align: center;"><b>IMPORTANT NOTICE PERIODS</b></p> <p><b>Dealer's lien for storage charges for a period of more than 15 days accrues only after this Notice is sent by certified mail to all secured creditors listed with Minnesota Driver &amp; Vehicle Services.</b></p> <p><b>This Notice must be sent by certified mail to all secured creditors listed with Minnesota Driver &amp; Vehicle Services at least 45 days before the dealer's right to sell the vehicle is considered effective.</b></p>
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# Motor Vehicle Possessory Lien - Notice of Sale

Send by CERTIFIED MAIL

The dealership intends to sell the vehicle described below to satisfy its possessory lien.  
This notice is provided under Minnesota Statutes Section 514.21, Subd 2.

Vehicle description	Year	Make	Model	VIN
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<p style="text-align: center;">Owner information from dealership records</p> <p><b>Name:</b></p> <p><b>Address:</b></p> <p><b>City, State, Zip:</b></p> <p><b>NO Dealership Address</b> Check here if no address shows on dealership records <input type="checkbox"/></p>	<p style="text-align: center;">Owner information from Driver &amp; Vehicle Services (DVS) records</p> <p><b>Name:</b></p> <p><b>Address:</b></p> <p><b>City, State, Zip:</b></p> <p><b>NO DVS Record</b> Check here if the vehicle is not titled and registered in Minnesota <input type="checkbox"/></p>	<p style="text-align: center;">Dealership information</p> <p><b>Name:</b></p> <p><b>Address:</b></p> <p><b>City, State, Zip:</b></p> <p><b>Phone Number and Contact Person:</b></p>
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If a Minnesota DVS record exists and the name and/or address of the owner is different than shown on dealership records, this Notice must be sent by certified mail to **BOTH** the DVS address of record and to the dealership address of record if there is one. This Notice of Sale may **NOT** be used if **BOTH** boxes above are checked.  
This Notice of Sale and proof of its mailing must accompany the title application to obtain vehicle title in the purchaser's name.

<p style="text-align: center;">Grounds for lien and amounts owed</p> <p style="text-align: right;">Repair and/or service charges: \$</p> <p style="text-align: right;">Towing charges: \$</p> <p style="text-align: right;">Storage charges: \$</p> <p style="text-align: right;">Rental charges for replacement vehicle: \$</p> <p style="text-align: right;">Other charges and disbursements (specify): \$</p> <p style="text-align: right;"><b>Total amount due: \$</b></p>	<p><b>IMPORTANT: Vehicle owner may reclaim the vehicle prior to its sale as provided in this Notice of Sale by paying the total amount due.</b></p>
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<p><b>Date service or repair completed:</b></p> <p><b>Date this Notice of Sale mailed by certified mail:</b></p> <p><b>Date after which the vehicle will be sold:</b></p>	<p>“Date after which the vehicle will be sold” must be at least 90 days after “Date service or repair completed” AND at least 3 weeks after the “Date this Notice of Sale mailed by certified mail”</p> <p>Note: If there are lienholders of record, dealership must provide notice under Minnesota Statutes Sections 514.19 &amp; 514.20.</p>
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