

TRANSFER OF OWNERSHIP BY FORECLOSURE OF A LIEN

- A. Foreclosure of a lien upon a motor vehicle shall be governed by the laws pertaining to foreclosure of chattel mortgages.
- B. Filing of such lien shall not be required as a condition precedent to foreclosure.
- C. The register of deeds shall require the surrender of the certificate of title covering the vehicle(s) involved, along with an affidavit of publication or public posting of such notice of sale, bill of sale executed by a person authorized to hold such a sale, certified copy of the lien instrument upon which foreclosure action is based, a properly completed Damage Disclosure Statement form, if applicable, a title fee, application for certificate of title signed by the purchaser, and any applicable 3% excise tax.
- D. If a notation of lien has been made on the title or MSO by the seller, buyer, owner or holder of the instrument, it shall be valid against the creditors of the debtor, whether armed with process or not, and subsequent purchasers and other lienholders or claimants, but otherwise is not valid against them.

TRANSFER OF OWNERSHIP BY AFFIDAVIT OF REPOSSESSION

- A. The county treasurer shall require the surrender of the South Dakota certificate of title (if available) showing the proper notation of the lien on which repossession is based. If the motor vehicle records indicate that the title is lienholder-held and the title is not available, a statement indicating why the title is not available should be submitted with the other required documentation.
- B. The lien should be properly noted on the certificate of title. Other documents required are a photostatic copy of lien instrument, application for certificate of title signed by the lienholder, the Lienholder's Notice of Filing form or an affidavit of repossession and the title fee.
- C. The lien noted on the certificate of title shall not have been released by the county treasurer. Cancellation of the lien, however, does not prohibit obtaining title by repossession.
- D. No Damage Disclosure Statement is required.
- E. A Dealer Car Auction Agency may accept a vehicle for sale by a financial institution chartered or licensed in another jurisdiction in which the title is in the name of the entity, provided the title is in the name of the customer and has the proper documentation required supporting a repossession transaction.
 - 1. The out-of-state title must be provided.
 - 2. The affidavit form or other such document that is required by the customer's or lienholder's title state that allows the lienholder to assign the out-of-state title without obtaining a repossession title, must be submitted.
 - 3. A lienholder is required to obtain a repossession title, if from a state that requires a lienholder to obtain a repossession title prior to selling a repossessed vehicle.

NOTATION OF LIEN ON TITLE

- A. A lien against a vehicle that is covered by a valid South Dakota certificate of title shall be noted on the original certificate of title to be operative under the certificate of title law.
1. If a notation of lien has been made on the title or MSO by the seller, buyer, owner or holder of the instrument, or an agent of the secretary, it shall be valid against the creditors of the debtor, whether armed with process or not, and subsequent purchasers and other lienholders or claimants, but otherwise is not valid against them.
- B. Prior to January 1, 1991, a certificate of title denoting a lien was forwarded to the lienholder.
- C. Effective January 1, 1991, a certificate of title denoting a lien is returned to the owner upon issuance by the Division of Motor Vehicles, unless otherwise directed by the owner. The lienholder(s) receives a Lienholder's Notice of Filing Certificate. The owner is required to indicate on the application (MV-608) if the title is to be returned to the lienholder. If no notation is made, the title is returned to the owner. No changes denoting who receives the certificate of title are allowed once an application is accepted by the county treasurer.
- D. No lien shall be noted on the file with the county treasurer, unless the lien is noted on the original certificate of title, or a valid lawfully issued duplicate title.
- E. The county treasurer shall not be required to file or record a chattel mortgage or similar instrument covering a motor vehicle only. Notation of such instrument shall be made on the certificate of title.
- F. In case of a mixed mortgage where the security includes a motor vehicle and other chattel property, the county treasurer shall not refuse to file or record such mixed mortgage. The filing of such mortgage against the car shall have no effectiveness.
- G. On a mixed mortgage, the lien on the motor vehicle shall be noted on the certificate of title in order to be effective, and the notation fee collected. No lien amount will be shown on the title; instead a lien code between 10 and 99 is to be assigned.
- H. The county treasurer shall accept a title for transmittal to the Division of Motor Vehicles for reissuance of a new certificate of title when all spaces provided for notation of liens have been filed and such liens have been properly released. A title fee shall be assessed, along with a lien notation fee, if additional lien(s) are to be noted.
1. The county treasurer shall submit the title, along with the lien notation form, on any additional lien(s) to be noted. The Division of Motor Vehicles will issue a new title noting the additional liens and return the title to the owner unless otherwise directed.
- I. On an assigned South Dakota certificate of title, all liens to be shown on the new certificate of title to be issued by the Division of Motor Vehicles shall be noted in the proper space provided in the assignment blank on the reverse side of the certificate of title.
1. The name of the purchaser, complete address and lien information shall be either typewritten or printed.
 2. A lien notation fee shall be assessed for each lien noted thereon.
 3. It shall be the responsibility of the recorded owner to institute action to have a corrected certificate of title issued in case of an error in issuance.

- J. To have a lien noted, the owner or lienholder shall present the original South Dakota certificate of title or valid duplicate to the county treasurer of the county of record. A lien notation fee is collected.
1. The lien shall be noted on the original certificate of title or a valid duplicate by the county treasurer.
 2. The lien shall be noted on the file by the county treasurer.
 3. The original certificate of title shall be returned to the owner, unless otherwise directed by the owner. The owner is required to specify to the county treasurer if the title is to be returned to the lienholder.
 4. On certificates of title issued by the State of South Dakota, the date of issuance of the certificate of title shall be construed to mean the date of notation of any liens shown at the time of issue.
 5. On liens noted on certificates of titles by the county treasurer, the date so entered by such official shall be the date of notation of lien.

NOTIFICATION FOR NOTATION OF LIEN

- A. The title shall be presented to the county treasurer of the county of record.
 - 1. When the certificate of title or a valid duplicate is presented, the lien shall be noted by the county treasurer on the certificate of title and the certificate returned to the owner, unless the records indicate the title is lienholder held.
 - 2. The lien shall then be entered on the file.
 - 3. If the certificate of title is not presented, the lienholder shall complete the "Intent to Notify Owner" (DMV:305). The county treasurer shall then notify the owner or the lienholder (in those instances where the lienholder is holding title) by "Notification to Submit Title" (DMV:306), retaining a copy of such notice, to surrender the certificate of title within fifteen days for the purpose of noting a lien or an additional lien.
 - 4. The certificate of title shall be returned by the county treasurer to the owner, unless otherwise previously directed by the owner and indicated on the motor vehicle computer system.
 - 5. The lien shall be entered on the file. A lien notation fee is assessed.
- B. If the owner, or in the case of an already existing lien, the first lienholder, in those instances where the title is being held by the lienholder, does not comply with the county treasurer request to surrender the certificate of title within fifteen days for notation of a lien or an additional lien, the county treasurer shall inform the lienholder by "Intent to Notify Owner" (DMV:305).
- C. The holder of a certificate of title who refuses to deliver a certificate of title shall be liable for damages to such subsequent lienholder for the amount of damages suffered by reason of the holder of the certificate of title refusing to permit the showing of the lien on the certificate of title.
- D. No lien shall be noted on the file, unless the lien is properly noted on the original certificate of title, or a valid duplicate.

DISCHARGE OF LIENS

- A. On titles that are lienholder held, it is the responsibility of the lienholder, within 20 days after final payment is received, to have the lien against the recorded holder discharged by the county treasurer. The certificate of title and lien release shall be forwarded by the lienholder to any county treasurer. No fee is assessed for release of the lien.
- B. On titles that are owner held, it is the responsibility of the lienholder to execute a release within 20 days after final payment is received. The lienholder shall mail or deliver the release to the owner, who shall then be responsible for having the lien discharged by any county treasurer. The certificate of title and lien release shall be forwarded by the owner to any county treasurer. No fee is assessed for release of the lien.
 - 1. No lien shall be considered canceled or discharged of record until the date of cancellation is entered over the signature of the county treasurer or his employee on the certificate of title.
 - 2. The signature of the lienholder on the face of the certificate of title shall not be due notice of the satisfaction on any lien noted on a South Dakota certificate of title.
 - 3. A separate Notice of Lien Filing form or an Order to County Treasurer to Cancel Lien form shall be completed and mailed by the lienholder to the owner; or if the title is being held by the lienholder, to any county treasurer, along with the certificate of title. No fee is assessed for cancellation of a lien.
- C. If a person trades in a vehicle to a dealer or enters into a consignment agreement with a dealer and the vehicle has a lien noted on the title, the parties may agree that the dealer will satisfy the lien.
 - 1. Failure to satisfy a lien constitutes theft.
 - 2. The dealer must satisfy the lien within 10 business days after receipt of the funds.
 - a. Proof of payment of the lien shall be the confirmation number when payment is made on-line or a copy of the check and the certified return receipt mail card, if payment is not made on-line.
- D. No discharge of lien shall be noted on the file, unless the county treasurer shall first receive the certificate of title and the separate release order form, properly completed and shall make such cancellation on the certificate of title.
- E. The county treasurer may complete and forward to the Division of Motor Vehicles a cancellation of lien slip on a lien listed on a certificate of title for which an application for duplicate certificate of title is being made. The lien shall be canceled by the Division of Motor Vehicles and the duplicate title issued without the lien.
 - 1. The application for duplicate certificate of title, along with the lien release, shall be forwarded to the Division of Motor Vehicles with the proper fee. The duplicate shall be issued without the lien.
 - 2. Disposition of the duplicate certificate of title shall be to the owner (unless otherwise directed).
- F. The county treasurer shall, upon the cancellation of the lien, deliver the certificate of title to the owner, unless otherwise directed.

ASSIGNMENT OF LIENS

Below are procedures to be followed in assigning a lien from one bank to another:

- A. The bank that the lien has been assigned to or the owner of the vehicle should present the following to the county treasurer of the county the vehicle is registered in:
 - 1. Lien assignment agreement signed by representatives of each bank;
 - 2. Certificate of title.
- B. The county treasurer will note in the lien notation area on the title beside the original lienholder the name of the bank the reassignment is being made to, the date the reassignment is being made, and the signature of the county treasurer. As set out in statute, the lien notation fee should be assessed.

The county treasurer should provide the following to the Division of Motor Vehicles:

- 1. A photocopy of each title (in-lieu-of the lien notation slip) showing the assignment;
 - 2. A copy of the lien assignment agreement.
- C. The Division of Motor Vehicles, upon receipt of the information from the county treasurer, will change their computer file to reflect the name of the bank the reassignment was made to. (When the lien is satisfied, the lien cancellation slip should be in the name of the bank the lien reassignment was made to.)

MECHANICS LIEN PROCEDURE

- A. Property that is unclaimed by owner for a period of 90 days after written notice of intent to sell the property is given to the owner and lienholder(s) by certified mail.
 - 1. Refer to Unclaimed Vehicle Due to Unpaid Repair Bills section, for vehicles left unclaimed as the result of an unpaid repair bill.
- B. If lien not on file with the register of deeds, must file a sworn lien statement with the register of deeds. The statement must contain the following: name and address of owner and any lienholders; description of property sufficient to identify it; approximate location of property; date the lien is claimed to have arisen; amount claimed as a lien; circumstances out of which lien is claimed.
- C. Sworn statement and post office receipt for mailing filed with register of deeds in county in which property located.
- D. No title is issued before the public sale.
- E. Notice of sale containing the following information: name and address of owner and any lienholders; description of property sufficient to identify it; location of property; statement of grounds for which lien claimed and reference to its filing with the register of deeds; nature of the default; amount claimed to be due at date of notice; time and place of sale mailed to property owner and any lienholders.
- F. Publication of notice of sale in at least one issue of newspaper published in county at least 10 days before the sale.
- G. Sale:
 - 1. Sale must be held at public place. If held elsewhere, must set out all facts for not holding the sale in a public place and give a description of place at which sale will be held;
 - 2. Sale cannot be held on Sunday or other legal holidays and must be held between 10:00 AM and 5:00 PM;
 - 3. Sale must be made at public auction to highest bidder for cash. It is not necessary to use an actual "auctioneer" to conduct the sale.
 - 4. Purchaser receives a bill of sale from the party making the sale or a report of the sale that is filed with the register of deeds within 5 days of sale.
- H. The lienholder or his agent shall make a sworn report of the proceedings to the register of deeds within 5 days of the sale. The report must contain the following: proof by affidavits of giving notice of the sale, including a copy of the notice; an account of the sale, showing items sold, amounts bid and paid and names and addresses of purchasers; amount due on the lien, together with costs and disbursements of the sale and the surplus or deficiency remaining, if any.

**TRANSFER OF OWNERSHIP ON AN UNPAID REPAIR BILL VEHICLE/BOAT -
UNCLAIMED VEHICLE/BOAT**

- A. A person may apply for a title on a vehicle/boat that is left unclaimed, as the result of an unpaid repair bill on private property for a period of 30 days.
 - 1. Written notice of intent to apply for a title must be given the owner at the last known address, and any lienholder or identifiable insurer by certified mail.
 - 2. The notice shall be on a form prescribed by the department.
- B. If an owner cannot be identified, a notice must be published once in a newspaper where the vehicle/boat was left for repair.
- C. Title will vest with the person to whom the unpaid repair bill is payable and who has complied with all the requirements after 30 days from the date the notice was sent.
- D. If the owner, insurer, or lienholder intends to reclaim the vehicle/boat, notification of intent to reclaim the vehicle/boat must be sent to the department and the repair facility within 30 days of receipt of the notice.
 - 1. If the vehicle/boat is not reclaimed or removed within 30 days after mailing of the notice of intent to reclaim the vehicle/boat, title irrevocably vests in the person to whom the repair bill is payable and who has complied with the requirements.
- E. The vehicle/boat must be sold at public auction and any excess money above settlement of the debt must be forwarded to the prior owner, insurer, and any other party with a legal interest in the vehicle/boat. It is not necessary to use an actual "auctioneer" to conduct the sale.
- F. If the owner, insurer, and any lienholders are unidentifiable or not able to be contacted, the excess money shall be sent to the state treasurer and treated as unclaimed property.