

Law enforcement, release of vessel with lien

Number: INFORMAL

Date: October 19, 2004

The Honorable Stan Mayfield
Representative, District 80
Post Office Box 2380
Vero Beach, Florida 32961

Dear Representative Mayfield:

This is in response to your recent request for an opinion as to whether a law enforcement agency may order a boatyard or marina to release a vessel to its owner when the boatyard or marina claims a possessory lien under section 713.58, Florida Statutes. The following informal observations are offered to assist you in your role as a legislator in addressing this matter.

Section 713.58, Florida Statutes, creates liens for labor or services on personal property in favor of the persons performing labor or services on personal property of any other person. The statute further provides:

"It is unlawful for any person, knowingly, willfully, and with intent to defraud, to remove any property upon which a lien has accrued under this section without first making full payment to the person performing labor or services of all sums due and payable for such labor or services or without first having the written consent of such person so performing the labor or services so to remove such property."

Under the circumstances you have described, it would be unlawful for any person to remove the property subject to a possessory lien without first making full payment for labor or services due. The statute does not refer to removal by order of a law enforcement officer. Section 713.585, Florida Statutes, however, prescribes the manner in which the lien may be enforced by sale of a motor vehicle and contemplates that a lienor may institute a judicial proceeding to enforce a lien.[1]

While not applicable to the recovery of a water vessel,[2] section 713.585, Florida Statutes, states that it does not affect the rights and remedies established in section 559.917, Florida Statutes.[3] Section 559.917, Florida Statutes, allows any customer to obtain the release of his or her motor vehicle from a lien under part II, Chapter 713, Florida Statutes, upon the posting of the appropriate bond. This appears instructive in determining appropriate ways in which to recover personal property that is being held under a possessory lien.

There are other sections of Chapter 713, Florida Statutes, relating to liens on vessels and watercraft. Section 713.60, Florida Statutes, creates a lien for labor on or for vessels or watercraft in favor of any person performing any labor or service of any kind, on, to or for the use or benefit of a vessel or watercraft. Liens for recovering, towing, or storing vehicles and vessels are covered in section 713.78, Florida Statutes.

As noted above, there is no reference in Chapter 713, Florida Statutes, to removal of property by order of a law enforcement officer as a means of releasing property subject to a possessory lien. It may be advisable for the Legislature to review this matter and make changes it feels are appropriate to address such situations.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tfl

[1] Section 713.585(6), Fla. Stat.

[2] Section 559.903, Fla. Stat., defines "motor vehicle" for purposes of the act and specifically excludes, among others, watercraft from its operation.

[3] Section 713.585(11), Fla. Stat.