

RIGHTS OF REPAIRERS

Liens and Disposal of Uncollected Vehicles

Industry Legal Group has recently received a number of AAAA Member queries resulting from customers failing to return to collect their vehicle and/or pay their invoices. In these circumstances, repairers can exercise what is called a mechanic's lien.

If the owner of a vehicle brings their vehicle to your workshop to have the radiator fixed for example, you have a right to retain possession of the vehicle as a form of security until the customer makes full payment of the agreed fee for service.

This is known as a lien (pronounced 'lean'). It is often referred to as a mechanic's or repairer's lien. There are some important points to remember if you need to exercise a repairer's lien.

The repairer's lien is based in common law, this means it arises automatically once you have done work which improves the vehicle at the request of the customer. You do not have to register your lien as a security interest on the Government's Personal Property Securities Register (PPSR).

The lien is in force for as long as you retain possession of the vehicle. If you release the vehicle to another person or to your customer before they have paid, you waive your lien. This does not mean the customer's debt is no longer enforceable, it just means you lose the vehicle as form of security for payment.

The mechanic's lien does not automatically entitle you to charge storage fees whilst the vehicle remains at your premises. However, you can include a clause in your standard form contract requiring storage and insurance fees to be paid in such circumstances.



Can I sell the customer's vehicle to recover the debt?

The lien does not give you the right to sell the vehicle in order to satisfy the debt but the customer may give you written authorisation.

Depending on the circumstances, you may be able to sell the vehicle in accordance with the uncollected goods legislation in your state or territory.

Please note that eligibility criteria and the requirements that must be complied with in order to sell the vehicle varies depending on the jurisdiction. As such, Industry Legal Group recommends you contact its team prior to taking any action to sell the vehicle for advice specific to your jurisdiction.

For example, in accordance with the *Australian Consumer Law and Fair Trading Act 2012* (Vic), uncollected goods as defined under section 54 of the Act can be disposed of if the following requirements are met:

1. For low-value uncollected vehicles (\$1,000.00 or less):
 - a. Give notice to customer of intention to dispose the uncollected vehicle. There is mandatory information that must be included in the notice.
 - b. Retain the vehicle for a further 28 days after giving notice (60 days if you cannot contact the customer after reasonable attempts).
 - c. Record of disposal must contain required details.
 - d. If sold without court order, give the buyer a receipt with required details.
 - e. Any money left over after you have deducted your costs must be handled in accordance with the Unclaimed Money Act 2008.
 - f. If the money received from the disposal does not cover your costs, you can take legal action against the customer to recover the remainder of the debt.
2. For higher-value uncollected vehicles (\$1,000.00 or more):
 - a. Obtain written search result from the Personal Property Securities Register.
 - b. Give notice to the customer, anyone who has a registered interest, proprietary or secured interest of the good and the owner or registered operator of your intention to dispose of the good.
 - c. Retain the vehicle for a further 28 days after giving notice (180 days if you cannot make contact after reasonable attempts).
 - d. Dispose the good at public auction or private sale. If by private auction, the



auction must be advertised (or held over) at least seven days in advance. If by private sale, give notice to all people required and ensure sold for best price.

- e. Follow steps 1 c.-f. above.

Please note that the vehicle cannot be disposed of if there is a dispute about the debt, an application has been filed or if there was an agreement in place about what would happen in the event the goods were uncollected.

Also, as mentioned above, the requirements vary depending on the jurisdiction and therefore it is vital that you obtain legal advice before you take any action.

Can I charge a fee for storing the vehicle?

The lien does not give you the right to charge a storage fee. You can charge a storage fee for vehicles if you include a clause regarding storage fees in the contract or agreement with the customer. Please contact Industry Legal Group for advice on inserting a storage fee clause into your standard contracts.

You may be able to recover the cost of storage on selling the vehicle in accordance with the uncollected goods legislation in your jurisdiction.

Personal Property Securities

The Personal Property Securities Act 2009 (PPSA) does not apply to liens and therefore there is no requirement to register the interest.

In certain circumstances, the lien may have priority over other registered security interests. This is determined by reference to section 73 (1) of the PPSA. For advice on this issue, please contact Industry Legal Group.

Need assistance?

Industry Legal Group provides AAAA members with legal advice on all business related matters including liens.

Please contact Industry Legal Group on 1300 736 435 or aaaa@industrylegalgroup.com.au if you have any question relating to this article or to discuss any issues that arise in your business.