

# VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

## CHAPTER 560

*An Act to amend and reenact §§ 43-34 and 46.2-644.03 of the Code of Virginia, relating to mechanics' liens; notice of sale.*

[S 1336]

Approved March 18, 2019

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 43-34 and 46.2-644.03 of the Code of Virginia are amended and reenacted as follows:**

**§ 43-34. Enforcement of liens acquired under §§ 43-31 through 43-33 and of liens of bailees.**

*For the purposes of this section, "public place" means a premises owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.*

Any person having a lien under §§ 43-31 through 43-33 and any bailee, except where otherwise provided, having a lien as such at common law on personal property in his possession that he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within 10 days after it is due and the value of the property affected by the lien does not exceed \$10,000, may sell such property or so much thereof as may be necessary, by public auction, for cash. The proceeds shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if any, shall be paid within 30 days of the sale to any lienholder, and then to the owner of the property. A seller who fails to remit the surplus as provided shall be liable to the person entitled to the surplus in an amount equal to \$50 for each day beyond 30 days that the failure continues.

Before making the sale, the seller shall advertise the time, place, and terms thereof in *any of the following places: (i) a public place in the county or city where the property is located; (ii) a website operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) a newspaper of general circulation in the county or city where the property is located, either in print or on its website.* In the case of property other than a motor vehicle required to be registered in Virginia having a value in excess of \$600, 10 days' prior notice shall be given to any secured party who has filed a financing statement against the property, and written notice shall be given to the owner as hereinafter provided.

If the value of the property is more than \$10,000 but does not exceed \$25,000, the party having the lien, after giving notice as herein provided, may apply by petition to any general district court of the county or city wherein the property is, or, if the value of the property exceeds \$25,000, to the circuit court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court is satisfied that the debt and lien are established and the property should be sold to pay the debt, the court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ of fieri facias.

If the owner of the property is a resident of the Commonwealth, any notice required by this section may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the courts, by personal delivery or by certified or registered mail delivered to the present owner of the property to be sold at his last known address at least 10 days prior to the date of sale. If the owner of the property is a nonresident or if his address is unknown, any notice required by this section may be served by posting a copy thereof in three of any of the following places in any combination: (i) one or more public places in the county or city where the property is located; (ii) one or more websites operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) one or more newspapers of general circulation in the county or city where the property is located, either in print or on their websites. ~~For purposes of this section, "public place" means a premises owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.~~

**§ 46.2-644.03. Enforcement of liens acquired under §§ 46.2-644.01 and 46.2-644.02 and of liens of bailees.**

*For the purposes of this section, "public place" means a premises owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.*

Any person having a lien under §§ 46.2-644.01 and 46.2-644.02 and any bailee, except where otherwise provided, having a lien as such at common law on personal property in his possession that he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within 10 days after it is due and the value of the property affected by the lien does not exceed \$12,500, may sell such property or so much thereof as may be necessary, by public auction, for cash. The proceeds shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if

any, shall be paid within 30 days of the sale to any lienholder, and then to the owner of the property. A seller who fails to remit the surplus as provided shall be liable to the person entitled to the surplus in an amount equal to \$50 for each day beyond 30 days that the failure continues.

Before making the sale, the seller shall advertise the time, place, and terms thereof in *any of the following places*: (i) a public place in the county or city where the property is located; (ii) a website operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) a newspaper of general circulation in the county or city where the property is located, either in print or on its website. In the case of property other than a motor vehicle required to be registered in Virginia having a value in excess of \$600, 10 days' prior notice shall be given to any secured party who has filed a financing statement against the property, and written notice shall be given to the owner as hereinafter provided. If the property is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the person having the lien shall ascertain from the Commissioner of the Department of Motor Vehicles whether the certificate of title of the motor vehicle shows a lien thereon. At that time, the Commissioner shall also determine the value of the property and shall communicate it to the bailee. If the certificate of title shows a lien, the bailee proposing the sale of the motor vehicle shall notify the lienholder of record, by certified mail, at the address on the certificate of title of the time and place of the proposed sale 10 days prior thereto. If the name of the owner cannot be ascertained, the name of "John Doe" shall be substituted in any proceedings hereunder and no written notice as to him shall be required to be mailed. Whenever a vehicle is shown by the Department of Motor Vehicles records to be owned by a person who has indicated that he is on active military duty or service, the Department shall include such information in response to requests for vehicle information pursuant to the requirements of this chapter.

If the value of the property is more than \$12,500 but does not exceed \$25,000, the party having the lien, after giving notice as herein provided, may apply by petition to any general district court of the county or city wherein the property is, or, if the value of the property exceeds \$25,000, to the circuit court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court is satisfied that the debt and lien are established and the property should be sold to pay the debt, the court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ of fieri facias.

In determining the value of the property as required by this section, the Commissioner shall use a recognized pricing guide and, in using such guide, shall use the trade-in value specified in such guide.

If the owner of the property is a resident of the Commonwealth, any notice required by this section may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the courts, by personal delivery or by certified or registered mail delivered to the present owner of the property to be sold at his last known address at least 10 days prior to the date of sale. If the owner of the property is a nonresident or if his address is unknown, any notice required by this section may be served by posting a copy thereof in three of any of the following places in any combination: (i) one or more public places in the county or city where the property is located; (ii) one or more websites operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) one or more newspapers of general circulation in the county or city where the property is located, either in print or on their websites. ~~For purposes of this section, "public place" means a premises owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.~~

If the property is a motor vehicle (i) for which neither the owner nor any other lienholder or secured party can be determined by the Department of Motor Vehicles through a diligent search of its records, (ii) manufactured for a model year at least six years prior to the current model year, and (iii) having a value of no more than \$3,000 as determined by the provisions of § 8.01-419.1, a person having a lien on such vehicle may, after showing proof that the vehicle has been in his continuous custody for at least 30 days, apply for and receive from the Department of Motor Vehicles title or a nonrepairable certificate to such vehicle, free of all liens and claims of ownership of others, and proceed to sell or otherwise dispose of the vehicle.

Whenever a motor vehicle is sold hereunder, the Department of Motor Vehicles shall issue a certificate of title and registration or a nonrepairable certificate to the purchaser thereof upon his application containing the serial or motor number of the vehicle purchased together with an affidavit of the lienholder that he has complied with the provisions hereof, or by the sheriff conducting a sale that he has complied with said order.

Any garage keeper to whom a motor vehicle has been delivered pursuant to § 46.2-1209, 46.2-1213, or 46.2-1215 may after 30 days from the date of delivery proceed under this section, provided that action has not been taken pursuant to such sections for the sale of such motor vehicle.

Notwithstanding any provisions to the contrary, any person having a lien under § 46.2-644.01 or 46.2-644.02 shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.) when disposing of a vehicle owned by a member of the military duty or service.