

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 43-32, 43-33, 43-34, 46.2-644.01, 46.2-644.02, and 46.2-644.03 of the Code of Virginia, relating to mechanics' liens, amount of lien; nonresident notice requirements.

[H 940]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 43-32, 43-33, 43-34, 46.2-644.01, 46.2-644.02, and 46.2-644.03 of the Code of Virginia are amended and reenacted as follows:

§ 43-32. Lien of keeper of livery stable, marina, etc.

A. Every keeper of a livery stable, hangar, tie-down, or marina, and every person pasturing or keeping any horses or other animals, boats, aircraft, or harness, shall have a lien upon such horses and other animals, boats, aircraft, and harness, for the amount which that may be due him for the towing, storage, recovery, keeping, supporting, and care thereof, until such amount is paid.

B. In the case of any boat or aircraft subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of the marina, hangar, or tie-down shall have a lien thereon for his reasonable charges for storage under this section not to exceed \$500 and for alteration and repair under § 43-33 not to exceed \$800 \$1,000. However, in the case of a storage lien, to obtain the priority for an amount in excess of \$300, the person asserting the lien shall make a reasonable attempt to notify any secured party of record at the Department of Game and Inland Fisheries by telephonic means and shall give written notice by certified mail, return receipt requested, to any secured party of record at the Department of Game and Inland Fisheries within seven business days of taking possession of the boat or aircraft. If the secured party does not, within seven business days of receipt of the notice, take or refuse redelivery to it or its designee, the lienor shall be entitled to priority for the full amount of storage charges, not to exceed \$500. Notwithstanding a redelivery, the watercraft shall be subject to subsection D.

C. In addition, any person furnishing services involving the towing and recovery of a boat or aircraft, shall have a lien for all normal costs incident thereto, if the person asserting the lien gives written notice within seven days of receipt of the boat or aircraft by certified mail, return receipt requested, to all secured parties of record at the Department of Game and Inland Fisheries.

D. In addition, any keeper shall be entitled to a lien against any proceeds remaining after the satisfaction of all prior security interests or liens; and may retain possession of such property until such charges are paid.

§ 43-33. Lien of mechanic for repairs.

Every mechanic, who shall alter or repair any article of personal property at the request of the owner of such property, shall have a lien thereon for his just and reasonable charges therefor and may retain possession of such property until such charges are paid.

And every mechanic, who shall make necessary alterations or repairs on any article of personal property which from its character requires the making of ordinary repairs thereto as a reasonable incident to its reasonable and customary use, at the request of any person legally in possession thereof under a reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money, the person so in possession having authority to use such property, shall have a lien thereon for his just and reasonable charges therefor to the extent of \$800 \$1,000. In addition, such mechanic shall be entitled to a lien against the proceeds, if any, remaining after the satisfaction of all prior security interests or liens; and may retain possession of such property until such charges are paid. In any action to enforce the lien hereby given all persons having an interest in the property sought to be subjected shall be made parties defendant.

If the owner of the property held by the mechanic shall desire to obtain possession thereof, he shall make the mechanic defendant in proceeding in the county or municipal court to recover the property.

The owner may give a bond payable to the court, in a penalty of the amount equal to the lien claimed by the mechanic and court costs, with security to be approved by the clerk, and conditioned for the performance of the final judgment of the court on the trial of the proceeding, and with a further condition to the effect that, if upon the hearing, the judgment of the court be that the lien of the mechanic on such property, or any part thereof, be enforced, judgment may thereupon be entered against the obligors on such bond for the amount due the mechanic and court costs, if assessed against the owner, without further or other proceedings against them thereon. Upon giving of the bond, the property shall be delivered to the owner.

57 **§ 43-34. Enforcement of liens acquired under §§ 43-31 through 43-33 and of liens of bailees.**

58 Any person having a lien under §§ 43-31 through 43-33 and any bailee, except where otherwise
 59 provided, having a lien as such at common law on personal property in his possession ~~which~~ *that* he has
 60 no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within
 61 10 days after it is due and the value of the property affected by the lien does not exceed \$10,000, may
 62 sell such property or so much thereof as may be necessary, by public auction, for cash. The proceeds
 63 shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if any, shall be paid
 64 within 30 days of the sale to any lienholder, and then to the owner of the property. A seller who fails to
 65 remit the surplus as provided shall be liable to the person entitled to the surplus in an amount equal to
 66 \$50 for each day beyond 30 days that the failure continues.

67 Before making the sale, the seller shall advertise the time, place, and terms thereof in a public place.
 68 In the case of property other than a motor vehicle required to be registered in Virginia having a value in
 69 excess of \$600, 10 days' prior notice shall be given to any secured party who has filed a financing
 70 statement against the property, and written notice shall be given to the owner as hereinafter provided.

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

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

92 **§ 46.2-644.01. Lien of keeper of garage.**

93 A. Every keeper of a garage; and every person keeping any vehicles shall have a lien upon such
 94 vehicles for the amount ~~which~~ *that* may be due him for the towing, storage, recovery, and care thereof,
 95 until such amount is paid.

96 B. In the case of any vehicle subject to a chattel mortgage, security agreement, deed of trust, or other
 97 instrument securing money, the keeper of the garage shall have a lien thereon for his reasonable charges
 98 for storage under this section not to exceed \$500 and for alteration and repair under § 46.2-644.02 not to
 99 exceed ~~\$800~~ *\$1,000*. However, in the case of a storage lien, to obtain the priority for an amount in
 100 excess of \$300, the person asserting the lien shall make a reasonable attempt to notify any secured party
 101 of record at the Department of Motor Vehicles by telephonic means and shall give written notice by
 102 certified mail, return receipt requested, to any secured party of record at the Department of Motor
 103 Vehicles within seven business days of taking possession of the vehicle. If the secured party does not,
 104 within seven business days of receipt of the notice, take or refuse redelivery to it or its designee, the
 105 lienor shall be entitled to priority for the full amount of storage charges, not to exceed \$500.
 106 Notwithstanding a redelivery, the vehicle shall be subject to subsection D.

107 C. In addition, any person furnishing services involving the towing and recovery of a vehicle; shall
 108 have a lien for all normal costs incident thereto, if the person asserting the lien gives written notice
 109 within seven days of receipt of the vehicle by certified mail, return receipt requested, to all secured
 110 parties of record at the Department of Motor Vehicles.

111 D. In addition, any keeper shall be entitled to a lien against any proceeds remaining after the
 112 satisfaction of all prior security interests or liens; and may retain possession of such property until such
 113 charges are paid.

114 E. Any lien created under this section shall not extend to any personal property ~~which~~ *that* is not
 115 attached to or considered to be necessary for the proper operation of any motor vehicle, and it shall be
 116 the duty of any keeper of such personal property to return it to the owner if the owner claims the items
 117 prior to auction.

118 F. For the purposes of this section, in the case of a truck or combination of vehicles, the owner, or
 119 in the case of a rented or leased vehicle, the lessee of the truck or tractor truck, shall be liable for the
 120 costs of the towing, recovery, and storage of the cargo and of any trailer or semitrailer in the
 121 combination. Nothing in this subsection, however, shall bar the owner of the truck or tractor truck from
 122 subsequently seeking to recover from the owner of any trailer, semitrailer, or cargo all or any portion of
 123 these towing, recovery, and storage costs.

124 **§ 46.2-644.02. Lien of mechanic for repairs.**

125 Every mechanic, who shall alter or repair any article of personal property at the request of the owner
 126 of such property, shall have a lien thereon for his just and reasonable charges therefor and may retain
 127 possession of such property until such charges are paid.

128 And every mechanic, who shall make necessary alterations or repairs on any article of personal
 129 property which from its character requires the making of ordinary repairs thereto as a reasonable
 130 incident to its reasonable and customary use, at the request of any person legally in possession thereof
 131 under a reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money,
 132 the person so in possession having authority to use such property, shall have a lien thereon for his just
 133 and reasonable charges therefor to the extent of \$800 ~~\$1,000~~. In addition, such mechanic shall be
 134 entitled to a lien against the proceeds, if any, remaining after the satisfaction of all prior security
 135 interests or liens, and may retain possession of such property until such charges are paid. In any action
 136 to enforce the lien hereby given all persons having an interest in the property sought to be subjected
 137 shall be made parties defendant.

138 If the owner of the property held by the mechanic shall desire to obtain possession thereof, he shall
 139 make the mechanic defendant in proceeding in the county or municipal court to recover the property.

140 The owner may give a bond payable to the court, in a penalty of the amount equal to the lien
 141 claimed by the mechanic and court costs, with security to be approved by the clerk, and conditioned for
 142 the performance of the final judgment of the court on the trial of the proceeding, and with a further
 143 condition to the effect that, if upon the hearing, the judgment of the court be that the lien of the
 144 mechanic on such property, or any part thereof, be enforced, judgment may thereupon be entered against
 145 the obligors on such bond for the amount due the mechanic and court costs, if assessed against the
 146 owner, without further or other proceedings against them thereon. Upon giving of the bond, the property
 147 shall be delivered to the owner.

148 **§ 46.2-644.03. Enforcement of liens acquired under §§ 46.2-644.01 and 46.2-644.02 and of liens**
 149 **of bailees.**

150 Any person having a lien under §§ 46.2-644.01 and 46.2-644.02 and any bailee, except where
 151 otherwise provided, having a lien as such at common law on personal property in his possession ~~which~~
 152 *that* he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not
 153 paid within 10 days after it is due and the value of the property affected by the lien does not exceed
 154 \$12,500, may sell such property or so much thereof as may be necessary, by public auction, for cash.
 155 The proceeds shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if
 156 any, shall be paid within 30 days of the sale to any lienholder, and then to the owner of the property. A
 157 seller who fails to remit the surplus as provided shall be liable to the person entitled to the surplus in an
 158 amount equal to \$50 for each day beyond 30 days that the failure continues.

159 Before making the sale, the seller shall advertise the time, place, and terms thereof in a public place.
 160 In the case of property other than a motor vehicle required to be registered in Virginia having a value in
 161 excess of \$600, 10 days' prior notice shall be given to any secured party who has filed a financing
 162 statement against the property, and written notice shall be given to the owner as hereinafter provided. If
 163 the property is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the
 164 person having the lien shall ascertain from the Commissioner of the Department of Motor Vehicles
 165 whether the certificate of title of the motor vehicle shows a lien thereon. At that time, the Commissioner
 166 shall also determine the value of the property and shall communicate it to the bailee. If the certificate of
 167 title shows a lien, the bailee proposing the sale of the motor vehicle shall notify the lienholder of record,
 168 by certified mail, at the address on the certificate of title of the time and place of the proposed sale 10
 169 days prior thereto. If the name of the owner cannot be ascertained, the name of "John Doe" shall be
 170 substituted in any proceedings hereunder and no written notice as to him shall be required to be mailed.
 171 Whenever a vehicle is shown by the Department of Motor Vehicles records to be owned by a person
 172 who has indicated that he is on active military duty or service, the Department shall include such
 173 information in response to requests for vehicle information pursuant to the requirements of this chapter.

174 If the value of the property is more than \$12,500 but does not exceed \$25,000, the party having the
 175 lien, after giving notice as herein provided, may apply by petition to any general district court of the
 176 county or city wherein the property is, or, if the value of the property exceeds \$25,000, to the circuit
 177 court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the
 178 defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court

179 is satisfied that the debt and lien are established and the property should be sold to pay the debt, the
180 court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the
181 same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ
182 of fieri facias.

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

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

197 If the property is a motor vehicle (i) for which neither the owner nor any other lienholder or secured
198 party can be determined by the Department of Motor Vehicles through a diligent search of its records,
199 (ii) manufactured for a model year at least six years prior to the current model year, and (iii) having a
200 value of no more than \$3,000 as determined by the provisions of § 8.01-419.1, a person having a lien
201 on such vehicle may, after showing proof that the vehicle has been in his continuous custody for at least
202 30 days, apply for and receive from the Department of Motor Vehicles title or a nonrepairable certificate
203 to such vehicle, free of all liens and claims of ownership of others, and proceed to sell or otherwise
204 dispose of the vehicle.

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

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

213 Notwithstanding any provisions to the contrary, any person having a lien under § 46.2-644.01 or
214 46.2-644.02 shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C.
215 App. 501 et seq.) when disposing of a vehicle owned by a member of the military duty or service.