

RESOLUTION 01-01-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 3071, to read as follows:

1 § 3071

2 (a) A lienholder shall apply to the department for the issuance of an authorization to
3 conduct a lien sale pursuant to this section for any vehicle with a value determined to be over
4 four thousand dollars (\$4,000). A filing fee shall be charged by the department and may be
5 recovered by the lienholder if a lien sale is conducted or if the vehicle is redeemed. The
6 application shall be executed under penalty of perjury and shall include all of the following
7 information:

8 (1) A description of the vehicle, including make, year model, identification number,
9 license number, and state of registration. For motorcycles, the engine number also shall be
10 included. If the vehicle identification number is not available, the department shall request an
11 inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee
12 before accepting the application.

13 (2) The names and addresses of the registered and legal owners of the vehicle, if
14 ascertainable from the registration certificates within the vehicle, and the name and address of
15 any person whom the lienholder knows, or reasonably should know, claims an interest in the
16 vehicle.

17 (3) A statement of the amount of the lien and the facts that give rise to the lien.

18 (b) Upon receipt of an application made pursuant to subdivision (a), the department shall
19 do all of the following:

20 (1) Notify the vehicle registry agency of a foreign state of the pending lien sale, if the
21 vehicle bears indicia of registration in that state.

22 (2) By certified mail, send a notice, a copy of the application, and a return envelope
23 preaddressed to the department to the registered and legal owners at their addresses of record
24 with the department, and to any other person whose name and address is listed in the application.

25 (c) The notice required pursuant to subdivision (b) shall include all of the following
26 statements and information:

27 (1) An application has been made with the department for authorization to conduct a lien
28 sale.

29 (2) The person has a right to a hearing in court.

30 (3) If a hearing in court is desired, a Declaration of Opposition form, signed under
31 penalty of perjury, shall be signed and returned to the department within ~~20~~ days of the date
32 that the notice required pursuant to subdivision (b) was mailed.

33 (4) If the Declaration of Opposition form is signed and returned to the department, the
34 lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment, if he or
35 she obtains a subsequent release from the declarant or if the declarant, cannot be served as
36 described in subdivision (e).

37 (5) If a court action is filed, the declarant shall be notified of the lawsuit at the address
38 shown on the Declaration of Opposition form and may appear to contest the claim.

39 (6) The person may be liable for court costs if a judgment is entered in favor of the
40 lienholder.

41 (d) If the department receives the Declaration of Opposition form in the time specified,
42 the department shall notify the lienholder within 16 days of the receipt of the form that a lien sale
43 shall not be conducted unless the lienholder files an action in court within 30 days of the
44 department's notice under this subdivision. A lien sale of the vehicle shall not be conducted
45 unless judgment is subsequently entered in favor of the lienholder or the declarant subsequently
46 releases his or her interest in the vehicle. If a money judgment is entered in favor of the
47 lienholder and the judgment is not paid within five days after becoming final, then the judgment
48 may be enforced by lien sale proceedings conducted pursuant to subdivision (f).

49 (e) Service on the declarant in person or by certified mail with return receipt requested,
50 signed by the declarant or an authorized agent of the declarant at the address shown on the
51 Declaration of Opposition form, shall be effective for the serving of process. If the lienholder has
52 served the declarant by certified mail at the address shown on the Declaration of Opposition
53 form and the mail has been returned unclaimed, or if the lienholder has attempted to effect
54 service on the declarant in person with a marshal, sheriff, or licensed process server and the
55 marshal, sheriff, or licensed process server has been unable to effect service on the declarant, the
56 lienholder may proceed with the judicial proceeding or proceed with the lien sale without a
57 judicial proceeding. The lienholder shall notify the department of the inability to effect service
58 on the declarant and shall provide the department with a copy of the documents with which
59 service on the declarant was attempted. Upon receipt of the notification of unsuccessful service,
60 the department shall send authorization of the sale to the lienholder and send notification of the
61 authorization to the declarant.

62 (f) Upon receipt of authorization to conduct the lien sale from the department, the
63 lienholder shall immediately do all of the following:

64 (1) At least five days, but not more than 20 days, prior to the lien sale, not counting the
65 day of the sale, give notice of the sale by advertising once in a newspaper of general circulation
66 published in the county in which the vehicle is located. If there is no newspaper published in the
67 county, notice shall be given by posting a Notice of Sale form in three of the most public places
68 in the town in which the vehicle is located and at the place where the vehicle is to be sold for 10
69 consecutive days prior to and including the day of the sale.

70 (2) Send a Notice of Pending Lien Sale form 20 days prior to the sale but not counting the
71 day of sale, by certified mail with return receipt requested, to each of the following:

72 (A) The registered and legal owners of the vehicle, if registered in this state.

73 (B) All persons known to have an interest in the vehicle.

74 (C) The department.

75 (g) All notices required by this section, including the notice forms prescribed by the
76 department, shall specify the make, year model, vehicle identification number, license number,
77 and state of registration, if available, and the specific date, exact time, and place of sale. For
78 motorcycles, the engine number shall also be included.

79 (h) Following the sale of a vehicle, the person who conducts the sale shall do both of the
80 following:

81 (1) Remove and destroy the vehicle's license plates.

82 (2) Within five days of the sale, submit a completed "Notice of Release of Liability" form
83 to the Department of Motor Vehicles.

84 (i) The Department of Motor Vehicles shall retain all submitted forms described in
85 paragraph (2) of subdivision (h) for two years.

86 (j) No lien sale shall be undertaken pursuant to this section unless the vehicle has been
87 available for inspection at a location easily accessible to the public for at least one hour before
88 the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids
89 shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable
90 manner.

91 (k) Within 10 days after the sale of any vehicle pursuant to this section, the legal or
92 registered owner may redeem the vehicle upon the payment of the amount of the sale, all costs
93 and expenses of the sale, together with interest on the sum at the rate of 12 percent per annum
94 from the due date thereof or the date when that sum was advanced until the repayment. If the
95 vehicle is not redeemed, all lien sale documents required by the department shall then be
96 completed and delivered to the buyer.

97 (l) Any lien sale pursuant to this section shall be void if the lienholder does not comply
98 with this chapter. Any lien for fees or storage charges for parking and storage of a motor vehicle
99 shall be subject to Section 10652.5 of the Vehicle Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Automobile lenders are losing millions of dollars each year in lost liens to its vehicles, due to the unconscionable short notice period for body shop lien sales. A registered owner, lienholder, or legal owner of a vehicle has only 10 days from the date of the notice to oppose a body shop lien sale mailed by the DMV, and if not opposed timely, the DMV authorizes a lien sale of its vehicle that can be worth tens of thousands of dollars. Even luxury vehicles worth hundreds of thousands of dollars are being lost to fraudulent body shops that have identified the flaw in the lien sale process.

The process currently allows an unscrupulous body shop or even an upright one, to wash a lien to a vehicle as the result of slow mail or an unreasonable short time period to allow a consumer or institutional lienholder to receive and forward the lien sale notice to the responsible representative to timely oppose. Some body shops have created a title wash business using the lien sale process to basically “steal” the vehicle knowing that a certain percentage of lienholders will not timely oppose the lien sale, and fraud is now rampant in the industry. People are losing liens in vehicles because lien notices are arriving on the 8th and 9th day, or even after the 10-day period.

If an opposition is not timely returned within 10 days, the DMV authorizes the lien sale, and the lienholder’s remedies after that are very limited, but mostly require costly legal action with no guaranty of relief or having to attend the lien sale to repurchase its own vehicle back.

Unscrupulous body shops know about the short time to oppose, and are being unjustly enriched, while this administrative process severely prejudices lienholders or any registered owners who

are losing its legal and possessory rights to a vehicle that can have great value, especially in the current market.

The Solution: The response time should be extended from 10 to 20 days after notice is provided. This will allow necessary additional time for the mode of service, and the DMV to send these notices by certified mail.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None.

AUTHOR AND/OR PERMANENT CONTACT

Rebecca A. Caley, Caley & Associates, 265 S. Randolph Ave., Ste. 270 Brea, CA 92821; (714) 529-1400; rcaley@caleylaw.com

RESPONSIBLE FLOOR DELEGATE

Rebecca A. Caley