

Florida

Department of Highway Safety and Motor Vehicles

Division of Motorist Services

PROCEDURE VSTL-25	SUBJECT: APPLICATION FOR A VESSEL CERTIFICATE OF TITLE UPON DISPOSITION OF PERSONAL PROPERTY UNDER THE NONJUDICIAL PROCEEDINGS FOR NONPAYMENT OF STORAGE CHARGES		
DESCRIPTION AND USE: THIS PROCEDURE PROVIDES <u>INFORMATION AND INSTRUCTIONS</u> TO ASSIST TAX COLLECTOR EMPLOYEES, LICENSE PLATE AGENCY EMPLOYEES, AND THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES IN ESTABLISHING REQUIREMENTS FOR CERTIFICATE OF TITLE TO VESSELS SOLD FOR NONPAYMENT OF STORAGE CHARGES.			
<p>I. PROVISIONS OF LAW:</p> <p>Section 327.02(19), Florida Statutes, defines “Marina” as a licensed commercial facility which provides secured public moorings or dry storage for vessels on a leased basis. A commercial establishment authorized by a licensed vessel manufacturer as a dealership shall be considered a marina for nonjudicial sale purposes.</p> <p><u>Section 328.15(4), Florida Statutes, provides that the Department of Highway Safety and Motor Vehicles under precautionary rules and regulations to be promulgated by it may permit the use, in substitution of the formal satisfaction of lien, of other methods of satisfaction, such as perforation, appropriate stamp, or otherwise, as it deems reasonable and adequate.</u></p> <p>Section 328.17(1), Florida Statutes, provides that any non-judicial sale of any vessel held for unpaid costs, storage charges, or dockage fees, or any vessel held for failure to pay removal costs pursuant to s. 327.53(7), be disposed of pursuant to the provisions of this section.</p> <p>Section 328.17(4)(a), Florida Statutes, provides that a marina, as defined in s. 327.02(19), shall have a possessory lien upon any vessel for storage fees, dockage fees, repairs, improvements, or other work-related storage charges, and for expenses necessary for preservation of the vessel or expenses reasonably incurred in the sale or other disposition of the vessel. The possessory lien shall attach as of the date the vessel is brought to the marina, or as of the date the vessel first occupies rental space at the marina facility.</p> <p><u>Section 328.17(4)(b), Florida Statutes, provides that</u> a possessory lien upon any vessel in a wrecked, junked, or substantially dismantled condition, which has been left abandoned at a marina, for expenses reasonably incurred in the removal and disposal of the vessel. The possessory lien shall attach as of the date the vessel arrives at the marina or as of the date the vessel first occupies rental space at the marina facility.</p>			
<p><i>Revision(s) to this procedure: Added Florida Statute to pg. 1, “Note” about letter of non-interest to pg. 4., new item to Misc. section and relettered, developed new Exhibit B and changed old Exhibit B to Exhibit C.</i></p>			
DIVISION DIRECTOR	EFFECTIVE DATE 01/01/97	REVISION DATE 05/03/10	PAGE # VSTL-25-01

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<p>If the funds recovered from the sale of the vessel, or from scrap or salvage value of the vessel, are insufficient to cover the expenses reasonably incurred by the marina in removing and disposing of the vessel, all costs in the excess of the recovery shall be recoverable against the owner of the vessel. For a vessel damaged as a result of a named storm, the provisions of this paragraph shall be suspended for 60 days following the date the vessel is damaged in the named storm.</p> <p>The operation of the provisions specified in this paragraph run concurrently with, and do not extend, the 60-day notice periods provided in subsections (5) and (7).</p> <p>Section 328.17(7), Florida Statutes, provides if the fees, costs and late payment interest that give rise to such a lien are due and unpaid 60 days after the vessel owner and lienholder are given written notice, the marina may sell the vessel, including its machinery, rigging, and accessories.</p> <p>Section 328.17(10), Florida Statutes, reads: "Before any sale or other disposition of the vessel pursuant to this section, the owner or the lienholder may pay the amount necessary to satisfy the lien and the reasonable expenses and late payment interest incurred under this section and thereby redeem and take possession of the vessel. Upon receipt of such payment, the marina shall return the property to the owner or lienholder making such payment and thereafter shall have no liability to any person with respect to such vessel."</p> <p>Section 328.17(11), Florida Statutes, reads: "Unless otherwise provided by law, a purchaser in good faith of a vessel sold to satisfy a lien provided for in this section takes the property free of any claims other than a prior lien perfected under state or federal law."</p> <p>Section 50.011, Florida Statutes, provides that a newspaper which is printed and published periodically once a week (or more often) is considered to be in general circulation.</p> <p>Section 50.031, Florida Statutes, provides that a newspaper of "general circulation" is a newspaper (business) that (at the time of publication) has been in existence for at least one (1) year.</p> <p>II. DOCUMENTATION REQUIRED AND SPECIAL INSTRUCTIONS:</p> <p>After all statutory requirements have been met, the following documentation should be submitted to the tax collector's office or license plate agency to be screened for completeness and accuracy:</p> <p>A. If the vessel is CURRENTLY TITLED IN FLORIDA:</p> <p>1. A form HSMV 82040, Application for Certificate of Title with/without Registration, or HSMV 82041, Application for Vehicle/Vessel Certificate of Title and/or Registration, accurately completed by the applicant.</p>	
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<p style="text-align:center">2. A copy of the written notice of non-judicial sale (which also includes a statement of default), which was delivered in person or sent registered or certified mail to the vessel owner and each recorded lienholder of said vessel registered with this state at least 60 (calendar) days prior to sale. (See Exhibit A).</p> <p>NOTE: The written notice must be conspicuously posted at the marina and on the vessel.</p> <p style="text-align:center">The notice shall include:</p> <ul style="list-style-type: none">a. An itemized statement of the marina's claim, showing the sum due at the time of the notice and the date upon which the sum became due.b. A <u>complete</u> description of the vessel.c. A demand for payment.d. A conspicuous statement that unless the claim is paid within the time stated in the notice, the vessel will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.e. The name, street address, and telephone number of the marina that the owner or lienholder may contact to respond to the notice. <p>NOTE: The original or copy of the post office returned receipt card for the registered or certified mail or the returned unclaimed and unopened registered or certified letter(s) must be submitted with all other required documentation.</p> <p>NOTE: For a vessel damaged as a result of a named storm, a marina must suspend proceedings for 60 days following the date the vessel is damaged in the named storm. If the fees remain unpaid for 60 days after the damage to the vessel from the named storm, the vessel may be sold.</p> <p style="text-align:center">3. A certified copy of the advertisement that was published once a week for 2 consecutive weeks in a newspaper of general circulation in the area in which the marina is located.</p> <p style="text-align:center">The advertisement shall include:</p> <ul style="list-style-type: none">a. A brief and general description of the vessel.b. The address of the marina facility or the address where the marina is located and the name of the owner and lienholder, if applicable, of the vessel.	
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<p style="text-align: center;">c. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place no sooner than 15 days after the first publication.</p> <p>NOTE: If there is no newspaper of general circulation in the area in which the marina is located, the advertisement shall be posted at least 10 (calendar) days before the date of the sale or other disposition in no fewer than three conspicuous places in the neighborhood in which the marina is located.</p> <p>4. If the vessel is sold, a bill of sale from the marina/business to the purchaser showing the selling price and a complete description of the vessel. If the vessel is not sold at the sale, the marina/business MUST get a title issued in <u>its</u> name.</p> <p>5. Lien satisfaction(s) for any lien(s) as shown on the motor vehicle records of this or any other state, if applicable.</p> <p>NOTE: If the lien satisfaction(s) cannot be obtained, the lien(s) should be carried forward (shown on the completed form HSMV 82040 or 82041) and assumed by the new purchaser.</p> <p><u>NOTE:</u> <u>In some instances, the lending institution will not satisfy the lien although it has no interest in or is willing to abandon the collateral of the vessel. In this case and in lieu of a form HSMV 82260, Lien Satisfaction, the department will accept a letter from the lending institution stating that it has no interest in the collateral or is abandoning the collateral of the vessel.</u></p> <p><u>The letter must be on formal letterhead and signed by an authorized agent of the lending institution. It must include a complete description listing the year, make, and Hull Identification Number (HIN) of the vessel. This letter must be submitted with all the necessary paperwork so the title may be issued free and clear of all liens. See Exhibit B for a sample of an acceptable letter of non-interest.</u></p> <p>6. Florida sales tax or specify the sales tax exemption information on an accurately completed form HSMV 82040, Application for Certificate of Title with/without Registration, or form HSMV 82041, Application for Vehicle/Vessel Certificate of Title and/or Registration.</p> <p>7. The Florida registration number transferred to or issued for the vessel or a non-use affidavit.</p> <p>8. Title fees.</p>	
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<p>B. If the vessel was PREVIOUSLY TITLED OUT-OF-STATE:</p> <ol style="list-style-type: none">1. Verification from the motor vehicle division or similar agency of the state of previous registration showing ownership and lien status. Verification may be one of the following:<ol style="list-style-type: none">a. A computer generated printout from the out-of-state motor vehicle division or similar agency.b. A letter on original letterhead stationery from the out-of-state motor vehicle division or similar agency.c. A copy of the teletype printout or a statement which shows the ownership information, lien status and the name of the law enforcement agency who provided the verification information.d. A photocopy of the current out-of-state title or registration, whichever is applicable.2. When the state in which the vessel was previously registered is unknown, submit a notarized/perjury clause affidavit signed by an authorized representative of the marina stating that fact. The affidavit must state that at the time the vessel was stored at the marina, no registration number or decal was on the vessel. <p>C. Documentation as listed under Section II, A, 1-8, is also required.</p> <p>III. MISCELLANEOUS INFORMATION:</p> <ol style="list-style-type: none">A. Only commercial establishments that provide a secured public mooring or dry storage for vessels or are licensed by a vessel manufacturer as a dealership are considered a marina for non-judicial sale purposes.B. Any sale or other disposition of the vessel shall conform to the terms of the notification as provided for in this section and shall be conducted in a commercially reasonable manner.C. Before any sale or other disposition of the vessel pursuant to this section, the owner or lienholder may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the vessel. Upon receipt of such payment, the marina shall return the property to the owner or lienholder and thereafter shall have no liability to any person with respect to such vessel.D. Unless otherwise provided by law, a purchaser in good faith of a vessel sold to satisfy a lien provided for in this section takes the property free of any claims other than a prior lien perfected under state or federal law.	
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<p>E. The form “Notice of Nonjudicial Sale of a Vessel” (Exhibit A) included in this procedure is a suggested form. It is not a prescribed HSMV form; however, the information contained in the form is required.</p> <p><u>F.</u> <u>A “Sample Letter of Non-Interest” is attached as Exhibit B.</u></p> <p><u>G.</u> A documentation checklist is attached as Exhibit <u>C.</u></p> <p><u>H.</u> See Forms Appendix for a sample of the HSMV forms referred to in this procedure.</p>	
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EXHIBIT A

NOTICE OF NONJUDICIAL SALE OF A VESSEL

DATE _____

TO: REGISTERED OWNER

LIENHOLDER

NAME _____

NAME _____

ADDRESS _____

ADDRESS _____

CITY, STATE, ZIP _____

CITY, STATE, ZIP _____

NAMES AND ADDRESSES OF ANY OTHER PERSONS OR ANY OTHER LIENHOLDERS, CLAIMING AN INTEREST IN THE VESSEL.

Name _____

ADDRESS _____

ADDRESS _____

CITY, STATE, ZIP _____

CITY, STATE, ZIP _____

DESCRIPTION OF VESSEL

LIENOR (NAME OF MARINA)

YEAR _____ MAKE _____

NAME _____

FL # _____ HIN # _____

ADDRESS _____

LOCATION OF VESSEL _____

CITY, STATE, ZIP _____

TELEPHONE _____

Name _____

EACH OF YOU ARE HEREBY NOTIFIED THAT THE ABOVE DESCRIBED VESSEL WAS BROUGHT IN FOR STORAGE/REPAIRS AT THE REQUEST

OF _____ ON _____ AND THE ABOVE NAMED MARINA
(PERSON WHO AUTHORIZED STORAGE) (DATE)

IS IN POSSESSION OF AND CLAIMS A LIEN ON THE ABOVE DESCRIBED VESSEL FOR STORAGE CHARGES ACCUMULATED IN THE AMOUNT OF: (TOTAL) \$ _____ ITEMIZED CHARGES:

(REPAIR CHARGES) \$ _____, (TOTAL STORAGE CHARGES) \$ _____, FOR _____ DAYS, AT \$ _____

PER DAY, (RECOVERY CHARGES, IF APPLICABLE) \$ _____, AND (ADMINISTRATIVE FEES) _____.

THE STORAGE CHARGES WILL CONTINUE TO ACCUMULATE AT THE RATE OF \$ _____ PER DAY.

THE LIEN CLAIMED ABOVE IS A RESULT OF THE DEFAULT OF PAYMENT TO THE ABOVE NAMED MARINA AND IS SUBJECT TO ENFORCEMENT PURSUANT TO SECTION 328.17, FLORIDA STATUTES. UNLESS SAID VESSEL IS REDEEMED FROM THE MARINA BY PAYMENT AS ALLOWED BY LAW. OTHERWISE, THE ABOVE DESCRIBED VESSEL WILL BE SOLD AFTER 60 DAYS TO SATISFY THE LIEN.

A SALE IS TO BE HELD AT _____ COMMENCING AT _____ AM/PM ON THE _____ DAY OF _____, 20_____.

STATEMENT OF OWNER(S) RIGHTS

BEFORE ANY SALE OR OTHER DISPOSITION OF THE VESSEL PURSUANT TO THIS SECTION, THE OWNER OR THE LIENHOLDER MAY PAY THE AMOUNT NECESSARY TO SATISFY THE LIEN AND THE REASONABLE EXPENSES AND LATE PAYMENT INTEREST INCURRED UNDER THIS SECTION AND THEREBY REDEEM AND TAKE POSSESSSION OF THE VESSEL. UPON RECEIPT OF SUCH PAYMENT, THE MARINA SHALL RETURN THE PROPERTY TO THE OWNER OR LIEN HOLDER MAKING SUCH PAYMENT AND THEREAFTER SHALL HAVE NO LIABILITY TO ANY PERSON WITH RESPECT TO SUCH VESSEL.

IN THE EVENT OF A SALE UNDER THIS SECTION, THE MARINA MAY SATISFY ITS LIEN FROM THE PROCEEDS OF THE SALE, PROVIDED THE MARINA'S LIEN HAS PRIORITY OVER ALL OTHER LIENS ON THE VESSEL OTHER THAN A PRIOR LIEN PERFECTED UNDER THE STATE OR FEDERAL LAW. THE LIEN RIGHTS OF SECURED LIENHOLDERS ARE AUTOMATICALLY TRANSFERRED TO THE REMAINING PROCEEDS OF THE SALE. THE BALANCE, IF ANY, SHALL BE HELD BY THE MARINA FOR DELIVERY ON DEMAND TO THE OWNER. A NOTICE OF ANY BALANCE SHALL BE DELIVERED BY THE MARINA TO THE OWNER IN PERSON OR BY CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THE OWNER. IF THE OWNER DOES NOT CLAIM THE BALANCE OF THE PROCEEDS WITHIN 1 YEAR AFTER THE DATE OF SALE, THE PROCEEDS SHALL BE DEEMED ABANDONED, AND THE MARINA SHALL HAVE NO FURTHER OBLIGATION WITH REGARD TO THE PAYMENT OF THE BALANCE. IN THE EVENT THAT THE MARINA'S LIEN DOES NOT HAVE PRIORITY OVER ALL OTHER LIENS, THE SALE PROCEEDS SHALL BE HELD FOR THE BENEFIT OF THE HOLDERS OF THOSE LIENS HAVING PRIORITY. A NOTICE OF THE AMOUNT OF THE SALE PROCEEDS SHALL BE DELIVERED BY THE MARINA TO THE OWNER OR SECURED LIENHOLDER IN PERSON OR BY CERTIFIED MAIL TO THE OWNER'S OR THE SECURED LIENHOLDER'S LAST KNOWN ADDRESS. IF THE OWNER OR THE SECURED LIENHOLDER DOES NOT CLAIM THE SALE PROCEEDS WITHIN 1 YEAR AFTER THE DATE OF SALE, THE PROCEEDS SHALL BE DEEMED ABANDONED, AND THE OWNER OR THE SECURED LIENHOLDER SHALL HAVE NO FURTHER OBLIGATION WITH REGARD TO THE PAYMENT OF THE PROCEEDS.

DATED THIS _____ DAY OF _____, 20____. MARINA _____

(SIGNATURE OF AUTHORIZED AGENT)

EXHIBIT B

Sample Letter of Non-Interest



July 6, 2010

Mr. Sammy Smith
22222 Happy Street
Delightful, Florida 00000

RE: 2008 Viking XLT, with Hull Identification Number VIK0000000000000000

To whom it may concern:

Please be advised that ABC Bank has no interest in the above mentioned vessel.

If you have any questions in reference to this matter, please feel free to contact me at (999)999-9999.

Sincerely,

Daisy Lane
Repossession Specialist
ABC Bank

ABC Bank, 10101 Somewhere Lane, Anywhere, Florida 00000
(999)999-9999 • fax (999)999-0000

EXHIBIT C

STORAGE OR REPAIR LIEN CHECK LIST

FORMS

FLORIDA RECORD

OUT-OF-STATE RECORD

_____ HSMV 82040 or 82041

_____ HSMV 82040 or 82041

_____ Verification of title/lien status or affidavit stating previous state is "unknown"

_____ A copy of the written notice of nonjudicial sale (**which also includes a statement of default**) which was delivered in person or sent registered or certified mail to the vessel owner and each recorded lienholder.

NOTE: The written notice must be conspicuously posted at the marina and on the vessel.

_____ Certified copy of the public notice of intent to sell published in a newspaper of general circulation in the county in which the marina is located.

_____ Copy of each registered/certified letter sent by the marina to the owner of record and lienholder.

_____ The original bill of sale from the marina to the purchaser(s) showing the selling price and a complete description of the vessel.

_____ Lien satisfaction(s)

NOTE: If the lien satisfaction(s) cannot be obtained, the lien(s) should be carried forward (shown on the completed form HSMV 82040 or 82041) and assumed by the new purchaser.

OR

A letter of non-interest from the lending institution. See Exhibit B for example.

_____ Florida sales tax or specify sales tax exemption information on form HSMV 82040 or HSMV 82041.

_____ Florida registration number or a non-use affidavit.

_____ Title fees.