

**MEMORANDUM  
CALIFORNIA REPAIRMAN'S LIEN LAW  
PRACTICAL ASPECTS**

As a general comment, the California statute is a good one. Foreclosure does not require a lawsuit and is fairly quick, there is no time limit on foreclosure, and the dealer's lien is superior to the bank. The main problem I see with the California statute is the dealer loses its lien once the equipment is released. The dealer and the owner can agree the lien is still valid following release, but in this event the dealer will lose its priority over the bank and any good faith purchaser of the equipment. The statute also fails to protect dealers that make repairs in the field.

**Lien by Possession**

In California a repairman's lien may arise when the work is performed at the request of the owner or the "legal possessor." The term "legal possessor" is not defined by the California statute, but has been interpreted to include any person in lawful possession of the property.

**Does the Dealer Retain a Lien if the Equipment is Released?**

No. Although the California statute does not specifically require possession to obtain the lien, the courts have interpreted the repairman's lien as a lien "dependent upon possession." Once the equipment is released, the dealer's lien is extinguished.

There is one exception to this rule. Under the California statute, release of the equipment does not extinguish the lien if the parties agree otherwise. For example, cases in California have applied this statute in instances where release of the equipment is conditioned upon return of the equipment and revival of the lien. However, once the property is released, the lien (even though valid between the dealer and the owner) is extinguished with respect to creditors of the owner and any person that subsequently acquires title to the equipment, or a lien thereon, in good faith and for value.

As a side note, the California statute does not apply to any "vehicle" that is subject to registration. The term "vehicle" is defined very broadly to include any device by which any person or property may be propelled, moved or drawn upon a highway. California courts have held tractors constitute vehicles. However, vehicles used exclusively in agricultural operations (referred to as "implements of husbandry") and that are only incidentally operated on highways are exempt from registration. Therefore, the repairman's lien statute still applies to tractors, combines and similar agricultural items.

**How Does a Dealer Foreclose on a Repairman's Lien?**

There are two different foreclosure processes in California, depending upon the amount of repair charges creating the lien.

If dealer has not been paid for repair charges of any amount within 10 days after payment is due, the dealer may proceed to sell the equipment. The dealer must give at least 10, but no more than 20 days prior notice that the equipment will be sold at a public auction by advertising the sale in a newspaper published in the county where the equipment is located. However, within 20 days following the sale, the owner of the equipment may buy back or redeem the equipment by making full payment of the amount of the lien, all costs and expenses of the sale and interest at 12% per year from the date payment was due until repayment. The actual sale process in California is fairly similar to the sale process typically

employed when using the UCC procedures as permitted in Kansas, but UCC procedures also permit other types of sales (e.g., private sales) as long as all aspects of the sale are “commercially reasonable”.

If repair charges are equal to or less than \$150 (exclusive of interest and other charges), an alternative and more onerous foreclosure process is available. Please note this is an alternative process and is not required.

First, at the time of entering the transaction from which the lien arises (i.e., when the customer brings in the equipment for repair), the dealer must: provide the customer with an accurate written summary of the statute describing this alternative foreclosure process (notice #1); obtain the equipment owner’s address, phone number and a signed written declaration indicating the owner has read and understands the summary; and post notice in a location clearly visible to the public informing them of this foreclosure process (notice #2). Next, the dealer must provide written notice by first-class mail to the equipment owner upon completion of the work that a lien is claimed (notice #3). If payment is not received within 30 days of this notice, the dealer may charge \$2 per day for storing the property (these charges are added to the lien). Third, within 30 days following notice #3, the dealer must notify the owner by first-class mail that the equipment will be sold to satisfy the lien unless all charges are paid within 30 days from the mailing of the notice (notice #4). Finally, if the dealer has complied with the foregoing procedure, at least 30 days have passed following notice #4 and the owner has not made full payment of the charges, the dealer may sell the property at a public or bona fide private sale to satisfy the lien. However, within 20 days following the sale, the owner of the equipment may buy back or redeem the equipment by making full payment of the amount of the lien, all costs and expenses of the sale and interest at 12% per year from 30 days following notice #3 until repayment.

The benefits of this alternative foreclosure process are that a dealer may sell the equipment by a private sale, obtain \$2 per day storage and obtain interest. However, dealers may not be willing to jump through all of the procedural hoops, especially when the original lien is \$150 or less.

### **Are There Time Limits on Foreclosure?**

No. The California statute authorizes the dealer to keep the equipment until the bill is paid. Both foreclosure procedures also provide the dealer “may” proceed to sell the equipment by following the procedures described above. However, to get the best price for the equipment, dealers should be advised to sell the equipment as soon as possible.

### **Can the Dealer Retain Costs of Sale from the Sale Proceeds?**

Yes. The lien expressly covers the “costs of keeping and selling the property.” The costs of the sale and storage of the equipment is covered by the California statute.

### **Is the Dealer’s Lien Superior to the Bank’s Lien?**

Yes. California has adopted the standard UCC provision (Section 9-333) that states that a “possessory lien” will be superior to the bank’s security interest unless the lien statute provides otherwise. However, if the dealer releases the equipment pursuant to an agreement with the owner that the lien will remain valid, the dealer loses priority to the bank’s security interest and to any person that purchases the equipment in good faith and for value.