

## House Bill No. 201

An act relating to nonjudicial sale of vessels; amending s. 328.17, F.S.; revising notice requirements of a marina having a possessory lien on a vessel for unpaid costs, charges, or fees prior to nonjudicial sale of the vessel, including expenses for the removal and disposal of certain vessels in a wrecked, junked, or substantially dismantled condition; reducing the time allowed to pay the fees, charges, and costs giving rise to the lien prior to sale of the vessel; providing for suspending application for a certain time after a named storm; revising requirements with respect to perfection of and priority over prior or other liens; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (4), (5), (7), (10), (11), and (12) of section 328.17, Florida Statutes, are amended to read:

328.17 Nonjudicial sale of vessels.—

(4) A marina, as defined in s. 327.02(19), shall have:

(a) 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. However, in the event of default, the marina must give notice to persons who hold perfected security interests against the vessel under the Uniform Commercial Code in which the owner is named as the debtor.

(b) 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. If the funds recovered from the sale of the vessel, or from the 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 excess of 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. 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).

(5) A marina's possessory lien may be satisfied as follows:

(a)1. The marina shall provide written notice to the vessel's owner, delivered in person or by certified mail to the owner's last known address. The

notice shall also be ~~and~~ conspicuously posted at the marina and on the vessel.

2. In addition to notice provided to the vessel owner under subparagraph 1., the marina shall provide written notice to each person or entity that:

a. Holds a security interest on the vessel as shown in the records of the Department of Highway Safety and Motor Vehicles with respect to state-titled vessels.

b. Holds a preferred ship mortgage or has filed a claim of lien with the United States Coast Guard Vessel Documentation Center.

c. Holds a security interest against the vessel under the Uniform Commercial Code.

d. Has perfected a lien against the subject vessel by filing a judgment lien certificate pursuant to ss. 55.201-55.209.

3. When a vessel displays a foreign country identification or displays registration numbers from a state other than Florida, the marina shall conduct a reasonable lien search of the vessel registration records in the jurisdiction of registry to determine if there is a lienholder who is entitled to notice pursuant to subparagraph 2. Failure to discover a foreign national or non-Florida United States lienholder after a good faith effort to conduct such a lien search shall not prevent the sale or removal of a vessel from the marina to satisfy the marina's possessory lien or a purchaser, in good faith, from taking title of the vessel, pursuant to subsections (7) and (11).

4. The requirements of subparagraph 2. shall be satisfied if the marina:

a. Obtains ownership documentation for the vessel and trailer, if applicable, from the Department of Highway Safety and Motor Vehicles or other agency with which the vessel is registered;

b. Obtains an abstract from the United States Coast Guard for a vessel that is documented as defined in 46 U.S.C. s. 30101;

c. Performs a current Uniform Commercial Code lien search;

d. Performs a current Florida judgment lien certificate search; and

e. Complies with subparagraph 3. with regard to vessels registered in a foreign country or in a state other than Florida.

5. The written notice to the vessel owner and lienholders required by this paragraph shall be made at least 60 days prior to any sale of the vessel under this section recorded lienholder of such vessel registered with this state as shown by the records of the Department of Highway Safety and Motor Vehicles, at least 30 days prior to the proposed sale.

(b) The notice shall include:

1. 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.

2. A description of the vessel.
3. A demand for payment.
4. 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.
5. The name, street address, and telephone number of the marina that the owner or lienholder may contact to respond to the notice.

(7) If the fees, ~~and costs, and late payment interest~~ that give rise to such a lien are due and unpaid ~~60~~ 120 days after the vessel owner and lienholder ~~are~~ is given written notice, the marina may sell the vessel, including its machinery, rigging, and accessories as provided for in subsection (8); or the marina may, at its option, remove the vessel from the marina or from the waters of the state at the owner's expense pursuant to paragraph (4)(b).

(10) 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.

(11) 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 ~~the Uniform Commercial Code, despite noncompliance by the marina with the requirements of this section.~~

(12) 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 Uniform Commercial Code.~~ The lien rights of secured lienholders are automatically also attach 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.

Section 2. This act shall take effect July 1, 2006.

Approved by the Governor April 24, 2006.

Filed in Office Secretary of State April 24, 2006.