

## Liens for Care of Horses

Liens are rights in property to secure the payment of a debt. If you are purchasing a home or vehicle "on installments" the bank or finance company has a lien on the property you are buying. If you do not make your payments on time, the creditor can execute on the lien by repossessing the car or foreclosing on the house mortgage. The creditor can seize the property, sell it at a public sale, apply the proceeds of the sale to pay off the loan balance and expenses of enforcing the lien, and return the remainder (if any) of the sale proceeds to you.

Possessory liens are liens on property that is already in the possession of the creditor. For example, if you take your automobile to a repair shop, the shop has a possessory lien on your car to secure payment of the repair bill. That means it can keep your car until you pay the bill and, if it becomes necessary, can have the car sold to obtain its money.

An agisters lien is a special type of possessory lien that applies when one person takes care of the livestock of another by providing board or sometimes training for the horse or other livestock. If you run a stable or train horses, you have possession of the horse and under the laws of most states can keep possession of that horse until your board or training bill is paid by the horse's owner. If the nonpayment persists, you can have the horse sold to collect the amount owed.

This segment consists of the agisters liens in 49 states (none could be found for Rhode Island). These laws spell out the rights and duties of the lien holder (stables or trainer) and the debtor (horse owner). The laws in each of these states are the same in that they create a possessory lien but the procedures required to sell the horse to pay the debt vary greatly from state to state.

In addition to the liens that are the subject of this segment, there are three types of special liens that apply to horse transactions: (1) in many states, veterinarians have a lien on the horse or other animal treated to secure payment of the vet bill, (2) farriers in many states have a lien on a horse he or she has shod to secure payment of the shoeing bill, and (2) in many states, stallion owners have a lien on the get or sometimes on bred mares to secure payment of breeding fees. These specialty liens are not included in this segment. Those statutes are collected in the segment Liens for Services to Horses in this website.

As in the other statutory compilations in our web site, there are sometimes gaps in statutory numbering. These gaps may reflect statutes that are not applicable to horse transactions or statutes that have been repealed.

Every effort has been made to make this compilation accurate and comprehensive. However, no warranty or guarantee is provided and the reader is urged to consult an attorney knowledgeable in equine law in his or her state before making important decisions. These materials are provided for information only and not as legal advice; no attorney-client relationship is created or intended.

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All statutes were reviewed and updated as needed during June and July 2001.

New York Liens for the Care of Horses

CONSOLIDATED LAWS OF NEW YORK

LIEN LAW CHAPTER 33

ARTICLE 8--OTHER LIENS ON PERSONAL PROPERTY

§ 183. Lien of bailee of animals

Any veterinarian, duly licensed to practice under the laws of this state, who in connection with such practice renders professional services in the treatment of any dog, cat, or other domestic animal or boards any such animal on his premises, or a person keeping a livery stable, or boarding stable for animals, or pasturing or boarding one or more animals, or who in connection therewith keeps or stores any wagon, truck, cart, carriage, vehicle or harness, has a lien dependent upon the possession upon each dog, cat or other animal kept, pastured or boarded by him, and upon any wagon, truck, cart, carriage, vehicle or harness, of any kind or description, stored or kept provided an express or implied agreement is made with the owners thereof, whether such owner be a mortgagor remaining in possession or otherwise, for the sum due him for the professional service rendered, care, keeping, boarding or pasturing of the animal, or for the keeping or storing of any wagon, truck, cart, carriage, vehicle and harness, under the agreement, and may detain the dog, cat or other animal or wagon, truck, cart, carriage, vehicle and harness accordingly, until such sum is paid.

ARTICLE 9--ENFORCEMENT OF LIENS ON PERSONAL PROPERTY

§ 200. Sale of personal property to satisfy a lien

A lien against personal property, other than the lien of a warehouseman pursuant to section 7-209 of the uniform commercial code, the lien of a carrier pursuant to section 7-307 of the uniform commercial code, a security interest in goods and the lien of a keeper of a hotel, apartment hotel, inn, boarding-house or lodging-house, except an immigrant lodging-house, if in the legal possession of the lienor, may be satisfied by the sale of such property according to the provisions of this article.

§ 201. Notice of sale

Before such sale is held the lienor shall serve a notice upon the owner with due diligence within such county, if such owner can be found where such lien arose, if not then to the

person for whose account the same is then held personally, provided such service can be made with due diligence within the county where such lien arose, but if such owner or person cannot with due diligence be found within such county, or if the property affected, other than a security, is of a value of less than one hundred dollars, then such notice shall be served by mailing it to the owner at his last known place of residence, or to his last known post-office address or if the owner's place of residence or post-office address is not known, then to the last known place of residence or last known post-office address of the person for whose account the same is then held personally. Any notice permitted herein to be served by mail shall be sent by certified mail, or by first-class mail if the lienor has obtained from the United States post office department a certificate of mailing. A like notice shall be served in the same way upon any person who shall have given to the lienor notice of an interest in the property subject to the lien and upon any person who has perfected a security interest in the property by filing a financing statement pursuant to the provisions of the uniform commercial code or who is listed as lienholder upon the certificate of title of the property pursuant to the provisions of the vehicle and traffic law. Such notice shall contain a statement of the following facts:

1. The nature of the debt or the agreement under which the lien arose, with an itemized statement of the claim and the time when due;
2. A brief description of the personal property against which the lien exists;
3. The estimated value of such property;
4. The amount of such lien, at the date of the notice.

It shall also require such owner or any such person to pay the amount of such lien, on or before a day mentioned therein, not less than ten days from the service thereof, and shall state the time when and place where such property will be sold, if such amount is not paid; and it shall state that the owner or any such person is entitled to bring a proceeding under section two hundred one-a of this article within ten days of the service of notice if he disputes the validity of the lien or the amount claimed. If the agreement on which the lien is based provides for the continuous care of property the lienor is also entitled to receive all sums which may accrue under the agreement, subsequent to the notice and prior to payment or a sale of the property; and the notice shall contain a statement that such additional sum is demanded. Such notice shall be verified by the lienor to the effect that the lien upon such property is valid, that the debt upon which such lien is founded is due and has not been paid and that the facts stated in such notice are true to the best of his knowledge and belief.

#### § 201-a. Proceeding to determine validity of liens

Within ten days after service of the notice of sale, the owner or any person entitled to notice pursuant to section two hundred one of this article may commence a special

proceeding to determine the validity of the lien. The special proceeding may be brought in any court which would have jurisdiction to render a judgment for a sum equal to the amount of the lien. If the owner or any such person shall show that the lienor is not entitled to claim a lien in the property, or that all or part of the amount claimed by the lienor has not been properly charged to the account of such owner or such person, or, as the case may be, that all or part of such amount exceeds the fair and reasonable value of the services performed by the lienor, the court shall direct the entry of judgment cancelling the lien or reducing the amount claimed thereunder accordingly. If the lienor shall establish the validity of the lien, in whole or in part, the judgment shall fix the amount thereof, and shall provide that the sale may proceed upon the expiration of five days after service of a copy of the judgment together with notice of entry thereof upon the owner or such person, unless the property is redeemed prior thereto pursuant to section two hundred three of this article. If the lien is cancelled, the judgment shall provide that, upon service of a copy of the judgment together with notice of entry thereof upon the lienor, the owner or such person shall be entitled to possession of the property.

#### § 202. Sale to be advertised; exception

1. Each sale of personal property of a value of one hundred dollars or more, or of any security, to satisfy a lien thereon shall be at public auction to the highest bidder, and shall be held in the city or town where the lien was acquired. After the time for the payment of the amount of the lien specified in the notice required to be served by section two hundred one or two hundred one-a of this article, notice of such sale shall be published once a week, for two consecutive weeks, in a newspaper published in the town or city where such sale is to be held, and such sale shall be held not less than fifteen days from the first publication; if there be no newspaper published in such town, such notice shall be posted at least ten days before such sale in not less than six conspicuous places therein. Such notice shall describe the property to be sold and shall state the name of the person for whose account the same is then held and the time and place of such sale, provided, that if the property to be sold is a security, the description in such notice shall consist of a statement of the name of the issuer or obligor, the state of incorporation or organization of the issuer or obligor, the amount and class of the security and the address of the issuer or obligor last known to the lienor. For the purpose of this article, the term "security" shall include common and preferred stocks and bonds, debentures, notes and other obligations, corporate or otherwise, for the payment of money.

2. Each sale of personal property of a value of less than one hundred dollars, other than a security, to satisfy a lien thereon, shall be made pursuant to the provisions of subdivision one hereof, or at a bona fide private sale in the city or town where the lien was acquired. A bona fide private sale pursuant to this section shall not be made until the expiration of six months after the time for the payment of the amount of the lien specified in the notice required to be served by section two hundred one or two hundred one-a of this article. Notice of the bona fide private sale shall be posted at least twenty days before such sale in a conspicuous place on the premises where the personal property was left or delivered

by the owner. Such notice shall either (a) contain the name and address of the owner and a brief description of the property, or (b) provide that all property left on or before a specified date will be subject to sale, and shall also specify the time and place of sale.

#### § 202-a. Sale of a security

A description of a security, as such term is defined in section two hundred two, substantially similar to the description specified in said section shall, in the absence of agreement to the contrary and unless otherwise provided by statute, be deemed sufficient for the purposes of a notice of sale of such security at public auction to satisfy a lien thereon although such sale is not made pursuant to the provisions of this article. Nothing in this section or in section two hundred two or in section two hundred two-b shall be construed to invalidate any sale of such a security made in accordance with the provisions of an applicable agreement.

#### § 202-b. Pledgee may buy at public sale

Unless the pledge agreement otherwise provides, in all cases where a pledgee may lawfully sell pledged property and the property is sold at public sale, the pledgee, or his assignee or the legal representative of either, may fairly and in good faith purchase the pledged property or any part thereof at the sale. This section does not apply to a sale of property pawned or pledged with a collateral loan broker.

#### § 203. Redemption before sale

At any time before such property is so sold, the owner thereof or any person entitled to notice of sale pursuant to section two hundred one of this article may redeem the property by paying to the lienor the amount due on account of the lien, and whatever legitimate expenses have been incurred at the time of such payment in serving the notice and advertising the sale as required in this article. Upon making such payment, any of such persons are entitled to the possession thereof.

#### § 204. Disposition of proceeds

Of the proceeds of such sale, the lienor shall retain an amount sufficient to satisfy his lien, and the expenses of advertisement and sale. The balance of such proceeds, if any, shall be held by the lienor subject to the demand of the owner, or his assignee or legal representative, or any person entitled to notice of sale pursuant to section two hundred

one of this article. A notice that such balance is so held shall be served personally or by mail upon all such persons. If such balance is not claimed by any of such persons within thirty days from the day of sale, such balance shall be deposited with the treasurer or chamberlain of the city or village, or the commissioner of finance in the city of New York, or the supervisor of the town, where such sale was held. There shall be filed with such deposit, the affidavit of the lienor, stating the name and place of business or residence of such persons, if known, the articles sold, the prices obtained therefor, that the notice required by this article was duly served and how served upon such persons, and that such sale was legally and how advertised. There shall also be filed therewith a copy of the notice or judgment served upon such persons and the notice of sale published or posted as required by this article. The officer with whom such balance is deposited shall credit the same to such persons, and pay the same to such persons on demand and satisfactory evidence of identity. If such balance remains in the possession of such officer for a period of five years, unclaimed by a person legally entitled thereto, it shall be transferred to the general funds of the town, village or city, and be applied and used as other moneys belonging to such town, village or city.

#### § 205. Remedy not exclusive

The preceding provisions of this article do not preclude any other remedy by action or otherwise, now existing, for the enforcement of a lien against personal property, or bar the right to recover so much of the debt as shall not be paid by the proceeds of the sale of the property.

#### § 206. Enforcement by action; when and in what courts; procedure in action to foreclose real property mortgage applicable in actions to foreclose a mortgage or other lien

An action may be maintained to foreclose a lien upon a chattel, for a sum of money, in any case where such a lien exists at the commencement of the action. The action may be brought in any court, of record or not of record, which would have jurisdiction to render a judgment, in an action founded upon a contract, for a sum equal to the amount of the lien. For the purposes of this section and of sections two hundred seven to two hundred ten inclusive a chattel mortgage to secure the payment of a loan of money or other debt, or the purchase price of chattels, a contract of conditional sale of personal property, a hiring of personal property where title is not to vest in the person hiring until payment of a certain sum and a security interest created by a security agreement in personal property, shall be deemed a lien upon a chattel. The procedure in an action to foreclose a mortgage on real property, in so far as it may be applicable, shall apply in actions to foreclose a mortgage or other lien on chattels or other personal property.

#### § 207. Warrant to seize chattel; proceedings thereupon

If the plaintiff is not in possession of the chattel, a warrant may be granted by the court, or a judge thereof, commanding the sheriff, or such enforcement officer as is provided by law to execute the mandates of the particular court, to seize the chattel and safely keep it to abide the final judgment in the action. The provisions of the civil practice law and rules, and the provisions of the court act of the particular court, relating to an order of attachment shall apply to such warrant of seizure, and to the proceedings to procure it, and after it has been issued, except as otherwise expressly prescribed in this article.

#### § 208. Judgment

In an action brought in a court specified in the last section, final judgment, in favor of the plaintiff, must specify the amount of the lien or the monetary obligation secured by the security interest, and direct a sale of the chattel to satisfy the same and the costs, if any, by a referee appointed thereby, or an officer designated therein, in like manner as where a sheriff sells personal property by virtue of an execution; and the application by him of the proceeds of the sale, less his fees and expenses, to the payment of the amount of the lien or the monetary obligation secured by the security interest, and the costs of the action. It must also provide for the payment of the surplus to the owner of the chattel, and for the safe keeping of the surplus, if necessary, until it is claimed by him. If a defendant, upon whom the summons is personally served, is liable for the amount of the lien or the monetary obligation secured by the security interest, or for any part thereof, it may also award payment accordingly.

#### § 209. Action in inferior court

Where the action is brought in a court, other than one of those specified in section two hundred and seven, if the plaintiff is not in possession of the chattel, a warrant, commanding the proper officer to seize the chattel, and safely keep it to abide the judgment, may be issued, in like manner as a warrant of attachment may be issued in an action founded upon a contract, brought in the same court; and the provisions of law, applicable to a warrant of attachment, issued out of that court, apply to a warrant, issued as prescribed in this section, and to the proceedings to procure it, and after it has been issued; except as otherwise specified in the judgment. A judgment in favor of the plaintiff, in such an action, must correspond to a judgment, rendered as prescribed in the last section, except that it must direct the sale of the chattel by an officer to whom an execution, issued out of the court, may be directed; and the payment of the surplus, if its safekeeping is necessary, to the county treasurer, for the benefit of the owner.

§ 210. Application

Sections two hundred and six to two hundred nine inclusive do not affect any existing right or remedy to foreclose or satisfy a lien upon, or a security interest in a chattel, without action; and they do not apply to a case, where another mode of enforcing a lien upon a chattel is specially prescribed by law.