

## Checklist for Processing Abandoned Motor Vehicles for vehicles acquired after January 1, 2003

O.C.G.A. 40-11-1, et.seq., has been substantially revised. These revisions apply to all motor vehicle deemed abandoned after January 1, 2003.

Please verify that the Department of Motor Vehicles has not published any new documents connected with the new procedures. When those documents are published, they must be utilized.

Owner is defined by O.C.G.A. 40-11-1(3): Owner means registered owner, the owner as recorded on title, lessor, lessee, security interest holders & all lienholders as show on the records of Dept. of Motor Vehicle Safety. All of these persons must be given all the notices required by this statute.

You will find certain requirements that you give notice to the last known owner of the vehicle. Certified mail, registered mail or statutory overnight delivery is defined as follows:

### **9-10-12. Certified mail equivalent to registered mail; sufficient compliance for notice by statutory overnight delivery.**

Statute text

(a) Whenever any law, statute, Code section, ordinance, rule, or regulation of this state or any officer, department, agency, municipality, or governmental subdivision thereof provides that a notice shall be given by "registered mail," the notice may be given by "certified mail."

(b) Whenever any law, statute, Code section, ordinance, rule, or regulation of this state or any officer, department, agency, municipality, or governmental subdivision thereof provides that a notice may be given by "statutory overnight delivery," it shall be sufficient compliance if:

- (1) Such notice is delivered through the United States Postal Service or through a commercial firm which is regularly engaged in the business of document delivery or document and package delivery;
- (2) The terms of the sender's engagement of the services of the United States Postal Service or commercial firm call for the document to be delivered not later than the next business day following the day on which it is received for delivery by the United States Postal Service or the commercial firm; and
- (3) The sender receives from the United States Postal Service or the commercial firm a receipt acknowledging receipt of the document which receipt is signed by the addressee or an agent of the addressee.

### Checklist

Event	Deadline	Date Completed
Vehicle Towed	N/A	
Notify local law enforcement agency of the location of vehicle, the VIN, license number, model, year, and make of vehicle	Within 3 business days of removal of vehicle.	
Owner & Lien info requested from law enforcement 40-11-2(a)(b)	Within 3 business days of removal of vehicle.	

<p>First Notice to All Owners &amp; Lienholders By Certified or Registered Mail or statutory overnight delivery 40-11-2(d).</p> <p>Notice must list:</p> <ol style="list-style-type: none"> <li>1. Date of removal of vehicle;</li> <li>2. all fees connected with removal and storage of such vehicle;</li> <li>3. that such motor vehicle will be deemed abandoned under this chapter unless the owner, security interest holder, or lienholder redeems such motor vehicle within 30 days of the day such vehicle was removed.</li> </ol>	<p>Within 7 calendar days of removal of vehicle <b>(or forfeit storage fees)</b> [ ] 7th day ended on Sat., Sun., or legal holiday and notice was given next day,</p> <p style="text-align: center;"><b>OR</b></p> <p>Within 1 business day after the owner lienholder information is received by the remover or storer from law enforcement,</p> <p><b>WHICHEVER IS LATER.</b></p>	
<p>MV-603. Notice of Abandoned Motor Vehicle and Request for Information + \$2.00 Research fee. Affidavit Filed Within 7 Calendar Days Vehicle Became Abandoned 40-11-2(e).</p> <p><a href="http://www.dmv.ga.gov/forms/pdf/mv-603.pdf">http://www.dmv.ga.gov/forms/pdf/mv-603.pdf</a></p> <p>Research fees &amp; request can be submitted to either the Dept. of Motor Vehicles or to the Tax Commissioner in which the storer's place of business is located.</p> <p>If a person removing or storing the vehicle has knowledge of facts which reasonably indicate that the vehicle is registered or titled in a certain other state, such person shall check the motor vehicle records of that other state in the attempt to ascertain the identity of the owner of the vehicle.</p>	<p>Within 7 calendar days of the 30 day deadline from date vehicle removed</p>	
<p>Information Received from DMV or Tax Commissioner's office</p> <p>As of this time, the DMV had indicated that they will generate a form notice to be mailed to all registered owners &amp; lien holders. Keep a copy for your records and to later be filed with the court.</p>	<p>(No deadline)</p>	
<p><b><u>This notice applies ONLY when owner/lienholder ascertained solely thru DMV:</u></b> Notice(s) to Owner &amp; Lienholder By Certified or Registered Mail or statutory overnight delivery of vehicle location and the fact such vehicle is deemed abandoned and shall be disposed of if not redeemed. 40-11-2(f) You must make a demand upon owners for payment of all reasonable fees for removal or storage of vehicle and attach an itemized statement of charges. This must be made at least ten (10) days prior to filing lien affidavit with court. See Lien Foreclosure procedure, below.</p>	<p>Within 5 calendar days of receipt of DMV info, excluding Sat., Sun., &amp; legal holidays.</p>	

<p>If owner/lienholder <b>CANNOT</b> be ascertained: 40-11-2-(g).</p> <p>Sample Notice: 40-11-2(g). Newspaper notice: NOTICE OF ABANDONED MOTOR VEHICLE</p> <p>Re: _____ automobile, (give year, model, make) Mfr. ID No. _____ License No. _____ Color _____; _____ Door Body Style: _____</p> <p><b>TO WHOM IT MAY CONCERN:</b> The above automobile was initially removed from (address of that location). It is presently located at (address where it is now stored), in possession of (your business name.) Attempts to locate the owner have been unsuccessful. The vehicle is deemed abandoned under O.C.G.A. 40-11-2 and will be disposed of if not redeemed. This notice is given pursuant to Georgia law.</p>	<p>Immediately place an advertisement in a newspaper of general circulation in the county where such vehicle was obtained. Such advertisement shall run in the newspaper once a week for two consecutive weeks. (In counties which do not have a general circulation newspaper, the notice must be posted in the courthouse for two consecutive weeks.) The advertisement shall contain a complete description of the motor vehicle, its license and manufacturer's vehicle identification numbers, the location from where such vehicle was initially removed, the present location of such vehicle, and the fact that such vehicle is deemed abandoned and shall be disposed of if not redeemed. (No precise time period is prescribed.)</p>	
<p>Vehicle is recovered, claimed by owner, determined to be stolen, or for any reason is no longer an abandoned motor vehicle. 40-11-2(i).</p>	<p>Send notice to DMV, form 603R. Notice of Abandoned Motor Vehicle Release.</p> <p><a href="http://www.dmv.ga.gov/forms/pdf/mv-603r.pdf">http://www.dmv.ga.gov/forms/pdf/mv-603r.pdf</a></p>	
<p><b>Please create a calendar deadline system -- The law requires compliance with all time deadlines set forth in O.C.G.A. 40-11-2 &amp; 40-11-5. The failure to comply with the time deadlines of O.C.G.A. 40-11-2 may subject the person to a misdemeanor prosecution and the person shall not be entitled to any storage fees. Missing statutory deadlines can be costly.</b></p>		

## Lien Foreclosure Procedure

<p>Filing with Court.</p>	<p>All proceedings to foreclose a lien must be instituted within one year from the time the lien is recorded or is asserted by retention. (In most instances, this will be the date of towing.)</p>
<p>Please create a calendar deadline system -- Compliance with all time deadlines set forth in O.C.G.A. 40-11-2 &amp; 40-11-5. The failure to comply with the time deadlines of O.C.G.A. 40-11-2 may subject the person to a misdemeanor prosecution and the person shall not be entitled to any storage fees. Missing statutory deadlines can be costly.</p>	<p>Create an internal checklist for each vehicle. Make certain all time deadlines are met.</p>
<p>Demand upon last known owner: This can be combined with notice under O.C.G.A. 40-11-2; 40-11-5(2)</p>	<p>Demand for payment of the reasonable fees for removal and storage plus the costs of any notification or advertisement.</p> <p>Such written demand shall include an itemized statement of all charges and may be made concurrent with the notice required by subsection (f) of Code Section 40-11-2.</p> <p>Such demand shall be made on a form prescribed by rule or regulation of the Department of Motor Vehicle Safety and shall notify the owner of his or her right to a judicial hearing to determine the validity of the lien. The demand shall further state that failure to return the written demand to the lien claimant, file with a court of competent jurisdiction a petition for a judicial hearing, and provide the lien claimant with a copy of such petition, all within ten days of delivery of the lien claimant's written demand, shall effect a waiver of the owner's right to such a hearing prior to sale. The form shall also provide the suspected owner with the option of disclaiming any ownership of the vehicle, and his or her affidavit to that effect shall control over anything contrary in the records of the Department of Motor Vehicle</p>
<p>If last known owner is unknown. 40-11-5(2)</p>	<p>Newspaper advertisement must have been run once a week for two consecutive weeks. See O.C.G.A. 40-11-2(G), listed above.</p>
<p>Verify with the clerks of courts that a petition for judicial hearing has not been filed within the ten day period as you may not have been served with notice of such petition. 40-11-5(3)(A). The code does not specify which court, so you should confirm the lack of filing of a petition with the clerk of superior, state and magistrate court.</p>	<p>Call clerk, 770.822.8100 for each respective court, or utilize the website, <a href="http://www.gwinnettcourts.com">www.gwinnettcourts.com</a></p>

<p>Filing Lien Affidavit for Foreclosure with Court. (As of this time, the DMV, states that they will provide this document to persons desiring to foreclose a lien. They expect to generate this form when MV - 603 is filed with their office. No form has yet been provided as of 01-03-02. If the DMV fails to provide a form, our court will create one in the near future. 40-11-5(2)</p>	<p>The time period to file is <b>NO SOONER THAN</b> ten days from:</p> <p><b>If owner known: DELIVERY</b> to the appropriate address of the above demand for payment + attachment of itemized bill, an affidavit of foreclosure can be filed <b>IF</b> the owner of the abandoned motor vehicle fails to pay or file with the court a petition for a judicial hearing with a copy to the lien claimant in accordance with the notice provided pursuant to paragraph (2) of this Code section.</p> <p>Please note that you must prove <b>delivery</b> to the address, not the person. We suggest you consider using the postal service's <b>certified</b> mail which permits you to print out delivery record. Or, you can use the more traditional <b>green</b> card receipt and envelope return when certified mail is not claimed. Attach copies to your lien affidavit.</p> <p><b>Owner Unknown:</b> Publication of the second consecutive notice published in newspaper. Attach copies to your lien affidavit.</p>
<p>Foreclosure allowed if all time requirements have been met and no petition has been filed by owner. 40-11-5(4).</p>	<p>If no timely petition for a hearing has been filed with a court of competent jurisdiction, then, upon such affidavit being filed by the lien claimant pursuant to paragraph (3) of this Code section, the lien will conclusively be deemed a valid one and foreclosure thereof allowed.</p>
<p>IF A PETITION IS FILED BY THE OWNER 40-11-5(6)</p>	<p>Must be filed within ten days <b>AFTER</b> receipt of the lien claimant's demand. The court shall set a hearing within ten days of the filing the petition.</p>
<p>The vehicle must not be sold pending the hearing. 40-11-5(6).</p>	<p>Possession of the vehicle may be retained by lien claimant.</p>
<p>If court finds a valid debt exists: 40-11-5(7), 40-11-5(9)</p>	<p>The court shall authorize foreclosure upon and sale of the motor vehicle subject to the lien to satisfy the debt if such debt is not otherwise immediately paid.</p> <p>The holder of a security interest in or a lien on the vehicle, other than the holder of a lien created by Code Section 40-11-4, shall have the right, in the order of priority of such security interest or lien, to pay the debt and court costs. If the holder of a security interest or lien does so pay the debt and court costs, he or she shall have the right to possession of the vehicle, and his or her security interest in or lien on such vehicle shall be increased by the amount so paid. A court order shall be issued to this effect, and in this instance there shall not be</p>

	a sale of the vehicle.
If the court finds the actions of the person asserting the lien in retaining possession of the motor vehicle were not taken in good faith:	The Court, in its discretion, may award damages to the owner, any party which has been deprived of the rightful use of the vehicle, or the lessee due to the deprivation of the use of the motor vehicle.

**Sale of Vehicle Pursuant to Foreclosure  
40-11-6**

(a) Upon order of the court, the person holding the lien on the abandoned motor vehicle shall be authorized to sell such motor vehicle at public sale, as defined by Code Section 11-1-201.

**Submit a copy of bill of sale of the motor vehicle to the clerk of court.**

(b) After satisfaction of the lien, the person selling such motor vehicle shall, not later than 30 days after the date of such sale, provide the clerk of the court with a copy of the bill of sale as provided to the purchaser and pay the remaining proceeds, which is any amount over the total amount awarded by the court's judgment, of such sale, if any, to the clerk of the court. Any person who fails to comply with the requirements of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor.

O.C.G.A. 11-1-201 (31.1)

"Public sale" means a sale:

- (A) Held at a place reasonably available to persons who might desire to attend and submit bids; and
- (B) At which those attending shall be given the opportunity to bid on a competitive basis; and
- (C) At which the sale, if made, shall be made to the highest and best bidder; and
- (D) Except as otherwise provided in this title for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspaper in which the sheriff's advertisements are published in the county where the sale is to be held, and which notice shall state the day and hour, between 10:00 A.M. and 4:00 P.M., and the place of sale and shall briefly identify the goods to be sold.

The provisions of this paragraph shall not be in derogation of any additional requirements relating to notice of and conduct of any such public sale as may be contained in other provisions of this title but shall be supplementary thereto.

## Disposition of Proceeds

Clerk of Court is required to pay balance of proceeds of a sale after holding that sum in the registry of the court for a period of twelve months. 40-11-8

The clerk of the court shall retain the remaining balance of the proceeds of a sale under Code Section 40-11-6, after satisfaction of liens, security interests, and debts, for a period of 12 months; and, if no claim has been filed against such proceeds by the owner of the abandoned motor vehicle or any interested party, then he or she shall pay such remaining balance as follows:

(1) If the abandoned motor vehicle came into the possession of the person creating the lien other than at the request of a peace officer, the proceeds of the sale shall be divided equally and paid into the general fund of the county in which the sale was made and into the general fund of the municipality, if any, in which the sale was made;

(2) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a police officer of a municipality, the proceeds of the sale shall be paid into the general fund of the municipality;

(3) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a county sheriff, deputy sheriff, or county police officer, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made;

(4) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a member of the Georgia State Patrol or other employee of the State of Georgia, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made.