

Bankruptcy / Lien Perfection Laws

Background: Federal law governs bankruptcy generally; however, state law governs the precise timing of when a lien is perfected in reference to a bankruptcy filing.

FEDERAL LAW – BANKRUPTCY

Federal: Federal law allows a bankruptcy trustee to void any liens that occur within 90-days of a consumer filing bankruptcy. The way federal law is currently interpreted, if an automobile lien is perfected under state law within 90-days of the consumer filing bankruptcy, the secured lien can be voided—with a narrow exception (“safe harbor”) for liens that were perfected within thirty days of the sale.

In 2005, NADA worked on a major bankruptcy reform bill (S. 256; Bankruptcy Abuse Prevention and Consumer Protection Act of 2005) at the federal level to protect dealers by obtaining a provision that expanded from 20 days to 30 days the amount of time dealers have to complete the lien perfection during the title application process.

→ That revised federal bankruptcy law went into effect October 17th, 2005.

Under the federal 90-day preferential transfer window:

- If any transfer occurs 90 days before the consumer filed bankruptcy, then that transfer is subject to being voided. *Perfecting a lien on a car purchase is considered a “transfer.”*
- So, if either the car purchase (i.e. when customer took possession of the car) occurred within the 90-day period, or the perfection of the lien occurred within 90 days of the bankruptcy filing, then the lien must have been “timely perfected” as follows:
 - For bankruptcies filed BEFORE October 17, 2005, dealers had 20 days from the date of purchase (or when customer took possession of the car) to complete the lien perfection.
 - For bankruptcies filed AFTER October 17, 2005, dealers have 30 days from the date of purchase (or when customer took possession of the car) to complete the lien perfection.

Others points on Federal law:

- The federal 30-day window is calendar days; it does not accommodate weekends, holidays, or other reasons that counties may not be able to process paperwork.

STATE LAW – LIEN PERFECTION

→ **As of July 1, 2006, by SB06-163 = “date RECEIVED”**

Additional legislation was obtained in the 2006 legislative session that modified the state lien perfection timing under **42-6-121. Filing of mortgage**, to the following:

(1) [...] THE mortgage or refinancing of a LOAN SECURED BY A mortgage shall state the name and address of the debtor; the name AND ADDRESS of the secured party MORTGAGEE or name of the secured party's MORTGAGEE'S assignee; a complete description of the vehicle, including THE MAKE, MODEL, vehicle identification number, and color OF THE MORTGAGED VEHICLE; and the DATE AND amount of the LOAN SECURED BY THE mortgage.

(5) THE LIEN OR MORTGAGE SHALL BE PERFECTED PURSUANT TO SECTION 42-6-120 ON THE DATE ALL DOCUMENTS REQUIRED BY SUBSECTION (1) OF THIS SECTION, INCLUDING, WITHOUT LIMITATION, THE SIGNED ORIGINAL OR SIGNED DUPLICATE OF THE MORTGAGE OR A COPY CONTAINING THE INFORMATION REQUIRED BY SUBSECTION (1) OF THIS

SECTION, **ARE RECEIVED BY THE AUTHORIZED AGENT AND PAYMENT IS TENDERED ON THE FEE IMPOSED BY SECTION 42-6-137 (2) [filing fees; \$7.20].**

→ **As of August 8, 2005, by SB05-038 = “date accepted”**

A motor vehicle lien in Colorado was perfected at the time the title/registration paperwork was deemed “*accepted*” by the county clerk:

- Based on CADA meetings with various county staff, in practice, “date accepted” in Colorado counties is the date the county determines the paperwork has been sufficiently audited/reviewed to be accurate enough to enter into the state computer system.
 - Prior to that time, it may be rejected/returned, forwarded to another county, or be placed on ‘hold’ while additional information is obtained. The point at which the title paperwork is “accepted” and entered into the computer system is somewhat discretionary with each county.
 - CADA obtained a change to state law (amendment to Senate Bill 05-038, a motor vehicle titling bill), effective August 8, 2005. This change clarified that a motor vehicle lien is perfected at the time the lien perfection paperwork is *accepted* by the county clerk, as noted on the certificate of title. The purpose was to prevent bankruptcy trustees from arguing that a lien is not perfected until even later dates, such as when it is filed with the state by the county, or when the title is actually issued. [This loophole was created when some Colorado bankruptcy trustees determined that a lien is not perfected until the lien was actually filed by the county with the state or recorded on the actual certificate of title.]

42-6-120. Security interests upon motor vehicles. (1) ...The filing of A mortgage with AN authorized agent substantially in the manner provided in section 42-6-121 shall constitute notice to the world of each and every right of the person secured by such mortgage. **SUCH NOTICE SHALL BE EFFECTIVE ON THE DATE ACCEPTED AS NOTED ON THE CERTIFICATE OF TITLE.**