

# THE COMMON LAWYER

## Repair & Storage Liens...You've Taken Possession of a Vehicle, Now What?



By Justin M. Jakubiak

I WOULD LIKE TO START by wishing every *Ontario Dealer* reader a healthy and prosperous 2019. While not hoping to be perceived as a doomsayer, there are signs that the economy is changing. As a nerdy lawyer, I strongly believe that knowledge and preparation is the greatest protector against adversity.

For that reason, I thought I would revisit Ontario's *Repair and Storage Liens Act* and discuss the next steps when a repairer or storer is in possession of a vehicle and has been unable to secure payment from their consumer.

The RSLA is a great tool and is used regularly by dealers and mechanics



throughout Ontario. That said, it is not always the easiest act to navigate and I hope this article (and my previous articles on the topic) will help demystify the process.

In a previous *Ontario Dealer* column, *Repair and Storage Liens ... Great Tools, if Used Correctly* (Volume 4, Issue 1, page 31), I outlined the process to secure and enforce liens under the RSLA. Many readers were left wondering, however, what the required steps were to take the next step and sell a vehicle to satisfy their debt. This column provides readers a high-level guide on how to sell such vehicles.

To help illustrate, let's assume the following facts: An owner drops off her vehicle at a body shop and authorizes the completion of \$5,000 worth of repairs. Unfortunately, at the time the work is completed, the owner does not have the financial means to pay the body shop. In response, the body shop secures itself by exercising its rights under the RSLA and maintains possession of the vehicle pending payment.

Time passes and, unfortunately, it becomes apparent that the owner will be unable to pay for the repairs in the foreseeable future. The body shop has no interest in keeping the vehicle and decides to take the necessary steps to sell it to recover the monies owed to it.

Upon review of a lien search, it is clear there are no other parties with an interest in the vehicle (lienholders).

## ServiceOntario

### Ownership Transfer:

To sell the vehicle, the body shop (repairer or storer) must take steps to transfer the vehicle's ownership to itself. The transfer of ownership can be completed at any ServiceOntario location (without the Owner) with the following documentation and information:

- A sworn affidavit;
- A copy of the Notice of Sale;
- A copy of the *Personal Property Security Act* search (PPSA Search) for the Vehicle, which was used for the purposes of the Notice of Sale and determining who was required to receive notice under the Act;
- A copy of the registered mail receipt showing that the Notice of Sale was delivered to the required parties; and
- The legal name and address of the new owner (whether a corporation or an individual in the case of a sole proprietorship).

### Contents of the Affidavit

Unfortunately, ServiceOntario does not provide an easy to complete template for the affidavit required to effect the transfer from the owner to the repairer. In order to be effective, the affidavit must include the following information: A statement that all requirements under Part III of the RSLA have been met; the



full legal name, address and signature of the person making the declaration; a statement explaining how the vehicle was obtained; the name of the owner; the Vehicle Identification Number; the make, model, colour and year of the vehicle; and the type (e.g. 2-door or 4-door) and class of the vehicle (e.g. passenger, truck etc.).

The affidavit must also attach a copy of the Notice of Sale. It is good practice to also include as exhibits the PPSA search results for the vehicle, and the registered mail receipts to demonstrate proper notice was provided. Less is not more when preparing the affidavit.

It is important to note that an affidavit is a document in which you are swearing or affirming to tell the truth. It is a serious offence to intentionally lie in an affidavit, so it is important to ensure that your affidavit is complete and truthful. Before submitting the affidavit to ServiceOntario, it must be sworn or affirmed before a commissioner for taking affidavits, such as a lawyer, law clerk or a paralegal. There are certain ServiceOntario locations where commissioners are available to commission affidavits.

## UVIP

In Ontario, a private seller (i.e. a non-dealer) of a used vehicle is required to provide the buyer of the vehicle with a Used Vehicle Information Package (with certain exceptions). A UVIP provides a description of the vehicle, its Ontario registration history, odometer information, outstanding debts registered against the vehicle and in certain cases, the wholesale and retail values for the vehicle's model and year.

The repairer may purchase the UVIP from ServiceOntario for \$20. The

repairer is required to show the UVIP to any potential buyers of the vehicle, unless the repairer is a registered dealer. It should be noted that it takes 24 hours after a lien on a vehicle has been discharged for the UVIP to be updated to show a lien is no longer active.

## Sale

When you sell the vehicle, it must be sold for a "commercially reasonable" amount. If a court subsequently finds that you sold it for below a reasonable price, you could owe the owner the difference.

## Completing the UVIP and Application for Transfer

Included within the UVIP is a bill of sale which is straight forward to complete. The repairer must also fill in and sign the Application for Transfer, found on the back of the "vehicle portion" of the vehicle registration permit. Once the Bill of Sale and Application for Transfer are filled in, these documents are given to the buyer of the vehicle.

In the event the repairer is a registered dealer, it is important to note that it would be required to sell the vehicle using its standard bill of sale and to comply with all of the required vehicle disclosures and material facts mandated by the MVDA.

## Leftover Proceeds

If the repairer sells the vehicle for more than what is owed under the Notice of Sale, the repairer is obligated to give the balance to the Owner (or distribute same to the other lienholders as the case may be).

## A Few Other Important Things to Note

It is recommended that the seller of the

vehicle attend at ServiceOntario with the buyer to ensure the buyer registers the vehicle in their name on the same day of the physical transfer of the vehicle. If not, the vehicle remains in the seller's name until the vehicle is registered to the buyer at ServiceOntario. During this time, the seller may be liable for any infractions involving the vehicle, and it can pose insurance issues for the seller in the event of an accident.

If it is not possible to attend ServiceOntario with the buyer, the buyer is legally obligated to register their ownership of the vehicle within six days of the sale.

The seller should keep the licence plates and the "plate portion" of the vehicle registration permit after the vehicle is sold.

## Conclusion

The RSLA is a powerful remedy for repairers and storers to protect themselves and to recover money which is lawfully due and owing to them.

In the coming year I hope everyone has positive business relationships and that monies owing are paid quickly. In the meantime, it provides peace of mind to prepare yourself and ensure that you are ready for the various trials and tribulations which may be experienced by your dealership from time to time.

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