

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR

[Frank Drake](#) has more than 30 years of legal experience, with a concentration in bankruptcy and commercial litigation. Frank represents credit unions, banking and financial institutions, consumer and commercial lenders, and student loan agencies. Frank has taught classes on bankruptcy and commercial law for various Bankers Associations as well as the National Association of State-Chartered Credit Union Supervisors and various states' Credit Union Leagues.



## How to Avoid the Risky Business of an Unrecorded Lien on a Titled Vehicle

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My secured lender clients sometimes contact me in desperation because they believe they cannot get their liens recorded on NC car titles. Their borrowers are not cooperating. Sometimes borrowers will fail to complete the necessary paperwork to obtain a car title in their names. Sometimes “clear” titles somehow get issued, without recordation of the lenders’ liens on them. When these things happen, lenders cannot get their liens properly recorded with the NC Department of Motor Vehicles. And, having an unrecorded lien on a titled vehicle is risky territory. Unlike real estate mortgages, an unrecorded lien on a titled vehicle can be defeated by sale to subsequent purchasers who gain ownership of the vehicle.

### THE HEADACHE

The problem arises when the collateral for the loan bears a title, like a car or truck. These are conditional sales. It does not occur when the collateral is non-titled “chattels” (like office equipment) or when the collateral is a piece of real property such as land.

When land is the collateral, lenders will not usually disburse loan proceeds until the mortgage or deed of trust is filed. When the collateral is non-titled chattels, the borrower’s cooperation is just not needed because:

- For consumer goods without a title (*e.*, for personal property, family, or household use), no new certificate of title exists, and no other filing is needed to perfect the lien because lien perfection is automatic.
- For non-consumer goods without a title (*g.*, office equipment), lender can simply e-file a UCC-1 financing statement with the NC Secretary of State since borrowers’ signatures on UCC-1s are not required and haven’t been since 2001.

### THE CAUSE

New titles mean highway use taxes, title issuance fees, and troublesome lines at the Department of Motor Vehicles (DMV). Per NC lien law, the DMV will not mail new titles with liens recorded to borrowers. Instead, these titles go directly to the Lenders.

Sometimes, the Lender's lien is somehow "left off" the NC DMV title application. As a result, the lender discovers that a "clear" title has been issued to the borrower, with no such lien recorded on it. Worse, the borrower fails or refuses to hand over the "clear" title or to sign the NC DMV Form MVR-6 **Lien Recording Application** or sign a new NC DMV Form MVR-1 **Title Application**.

However the omission occurred, Lenders can spend months trying to remedy the situation, hindered by encumbrances – with little to no recourse. Thankfully in most cases, there is another solution.

## **THE REMEDY**

The solution lies in the state law NC General Statute Sec. 20-58(a)(2).

Here's what you do:

- First things first: Stop trying to coax the borrower into cooperating. No constructive notice has worked. He has your money, he has his new car, and he now has amnesia about returning calls for his help.
- Determine whether the car's title has never been transferred into the borrower's name or whether a "clean" title has been incorrectly issued.
- If the vehicle has been issued a "clean" title in error, download and complete a fresh NC DMV Form MVR-6 **Lien Recording Application**.
- If the vehicle has not been transferred into the borrower's name AND if there is no unsatisfied notice of lien still on the "upstream" title in the seller's name, download and complete a fresh NC DMV Form MVR-1 Title Application.
- Complete the selected form with the borrower's name & address, the vehicle's description, and your name & address as lienholder, etc. As most Lenders know, the "Disclosure Section" of each form requires the borrower's signature, and when borrowers are not cooperating, that has been the real hold-up. That's where NCGS Sec. 20-58(a)(2) comes in. It allows the lender to dispense with the need for the borrower's signature altogether. Instead, the lender signs the paperwork and obtains the proper notary as usual.
- Create an "Affidavit of Explanation", telling the whole sordid story to the DMV. Attach a (redacted) copy of the loan agreement. Attach a (redacted) copy of the loan proceeds check (purchase money if any) or the ACH wire transfer information. Have it signed by a lender's representative and notarized. The purpose is to explain to the DMV how and why the problem arose, and that the borrower is not cooperating in recording the lender's lien. If you want a model "fill-in-the-blank" affidavit, contact the author.
- File the MVR-1 or MVR-6 with the Affidavit and any exhibits with the NC DMV. Be ready to pay the title issuance filing fee of \$15.00. If there are unpaid highway use taxes or unpaid sales taxes, advance those too. Charge them to the borrower's account. You do not need to surrender the incorrectly issued "clear" title.
- If you have access to the NC DMV Headquarters in Raleigh or DMV offices in Charlotte, you can file the papers in person and opt to pay an additional \$75.00 for an **Instant Certificate of Title** AND walk away with a new title in hand, bearing the

lender's lien.

*If you have questions or would like more information on this topic, please contact attorney Frank Drake at 919.250.2109 or by email at [fdrake@smithdebnamlaw.com](mailto:fdrake@smithdebnamlaw.com).*

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