



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **GARAGE KEEPERS' LIEN ACT**

## PLEASE NOTE

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## GARAGE KEEPERS' LIEN ACT

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## GARAGE KEEPERS' LIEN ACT

### CHAPTER G-1

#### 1. Definitions

In this Act

- (a) “**aircraft**” means any machine used or designed for the navigation of the air, and includes any part, accessory or equipment pertaining to an aircraft, including any aircraft engine, aircraft propeller or aircraft appliance or the component parts of any of those things;
- (a.01) “**financing statement**” means a financing statement as defined in the *Personal Property Security Act* R.S.P.E.I. 1988, Cap P-3.1;
- (a.1) “**garage**” means a building or part of a building within or in connection with which any service is rendered upon a motor vehicle or aircraft in the ordinary course of business;
- (b) “**garage keeper**” means a person, firm or corporation, who, or which renders service upon a motor vehicle or aircraft in a garage for or at a charge, price or consideration in the ordinary course of business and as the principal employment or one of the principal employments of that person, firm or corporation;
- (c) “**motor vehicle**” includes automobile, motor bicycle, tractor, travel trailer, and any other vehicle propelled or driven otherwise than by muscular power, and any internal combustion engine, but does not include a motor vehicle running only upon rails;
- (c.1) “**security interest**” means a security interest as defined in the *Personal Property Security Act*;
- (d) “**service**” means
  - (i) the making of repairs in good faith to a motor vehicle or aircraft by or under the supervision of a mechanic who is, or who is employed by, a garage keeper,
  - (ii) the painting, stabling, storing or caring for a motor vehicle or aircraft by a garage keeper. *R.S.P.E.I. 1974, Cap. G-1, s.1; 1994,c.48,s.11; 2005,c.7,s.1; 2009,c.72,s.1.*

#### 2. Lien of garage keeper

- (1) Every garage keeper has a lien upon every motor vehicle or aircraft left with him for the service rendered upon it by the garage keeper.

##### Amount of lien

- (2) The lien shall be for the amount of the garage keeper's charges, that is to say
  - (a) all lawful charges for the service rendered upon the motor vehicle or aircraft by the garage keeper;
  - (b) all lawful charges for materials supplied for the motor vehicle or aircraft by the garage keeper; and

- (c) all reasonable charges for any notice to be given under this Act, and for notice and advertisement of sale, and for sale of the motor vehicle or aircraft where default is made in satisfying the garage keeper's lien. *R.S.P.E.I. 1974, Cap. G-1, s.2; 2005, c.7, s.2.*

### 3. Right of detention

- (1) A garage keeper may detain in the custody or possession of the garage keeper
  - (a) any motor vehicle;
  - (b) any aircraft; or
  - (c) any part, accessory or equipment pertaining to any motor vehicle,that belongs to any person who is indebted to the garage keeper for any service.

#### Priority of claim

- (2) The right of detention of a garage keeper under subsection (1) in respect of any motor vehicle, part, accessory or equipment of a motor vehicle, or aircraft has priority over, and shall not be subject to, any lien, lien note, chattel mortgage, bill of sale, or other charge or encumbrance of whatever nature or kind upon or in respect of the motor vehicle, part, accessory or equipment existing at the time of the detention. *R.S.P.E.I. 1974, Cap. G-1, s.3; 2005, c.7, s.3; 2009, c.72, s.2.*

### 4. Sale by public auction

- (1) In addition to all the remedies provided by law for the enforcement of liens or for the recovery of a garage keeper's charges, a garage keeper may sell by public auction, in a manner provided in this section, any motor vehicle or aircraft upon which he has a lien for charges which have become due.

#### Notice of intention to sell

- (2) The garage keeper shall give written notice of his intention to sell the motor vehicle or aircraft by public auction
  - (a) to the person liable as debtor for the charges for which the lien exists;
  - (b) to a secured party having a security interest in the motor vehicle or aircraft under the *Personal Property Security Act R.S.P.E.I. 1988, Cap. P-3.1;*
  - (c) repealed by *1997, c.33, Schedule;*
  - (d) to any other person known by the garage keeper to have or claim an interest in the motor vehicle or aircraft.

#### Contents of notice

- (3) The notice referred to in subsection (2) shall contain
  - (a) a brief description of the motor vehicle or aircraft;
  - (b) a statement showing the location of the garage where the motor vehicle or aircraft is stored, the date the motor vehicle or aircraft was left with the garage keeper for services and the name of the person by whom it was left;
  - (c) an itemized statement of the garage keeper's charges showing the sum due at the time of the notice;
  - (d) a demand that the amount of the charges as stated in the notice and such further charges as may accrue shall be paid on or before a date mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time the

notice should reach its destination according to the due course of mail if it is sent by mail; and

- (e) a statement that, unless the charges are paid within the time mentioned, the motor vehicle or aircraft will be advertised for sale and sold by public auction at a time and place specified in the notice.

#### **Advertising sale**

- (4) Where the charges are not paid on or before the day mentioned in a notice, an advertisement of the sale of the motor vehicle or aircraft by public auction that
  - (a) describes the motor vehicle or aircraft to be sold;
  - (b) states the name of the person liable as debtor for the charges for which the lien exists; and
  - (c) states the time and place of the sale

shall be published at least once in a newspaper published in the province and circulated in the locality where the sale is to be held.

#### ***Idem***

- (5) The public auction by the sale of the motor vehicle or aircraft shall be held not less than ten days from the publication date of the advertisement. *R.S.P.E.I. 1974, Cap. G-1, s.4; 1997,c.33,Schedule; 2001,c.6,s.1; 2005,c.7,s.4.*

### **5. Substantial compliance with section**

Where a notice of intention to sell under section 4 has been given, but the section has not been strictly complied with, if the court or a judge before whom any question respecting the notice is tried or inquired into considers that the section has been substantially complied with, or that it would be inequitable that the lien or sale shall be void by reason of the non-compliance, no objection to the sufficiency of the notice shall in any such case be allowed to prevail so as to release or discharge the motor vehicle or aircraft from the lien or vitiate the sale. *R.S.P.E.I. 1974, Cap. G-1, s.5; 2005,c.7,s.5.*

### **6. Proceeds of sale**

From the proceeds of the sale, the garage keeper shall satisfy his lien, and shall pay over the surplus, if any, to the person entitled thereto; and the garage keeper shall, when paying over the surplus, deliver to the person to whom he pays it, a statement of the account showing how the amount has been computed. *R.S.P.E.I. 1974, Cap. G-1, s.6.*

### **7. Surplus may be paid into court**

If the surplus is not demanded by the person entitled thereto within ten days after the sale, or if there are different claimants or the rights thereto are uncertain, the garage keeper shall pay the surplus into the Supreme Court upon the order of a judge. *R.S.P.E.I. 1974, Cap. G-1, s.7.*

### **8. Order of court**

The order may be without notice upon such terms and conditions as to costs and otherwise as the judge may direct and may provide to what fund or name the amount shall be credited; the garage keeper, at the time of paying the amount into court, shall file in court a copy of the statement of account showing how the amount has been computed. *R.S.P.E.I. 1974, Cap. G-1, s.8.*

**9. Payment in satisfaction of before sale**

At any time before the motor vehicle is sold any person claiming an interest or right of possession in the goods may pay the garage keeper the amount necessary to satisfy his lien including the expenses incurred in serving notices and advertisements and preparing for the sale up to the time of payment; the garage keeper shall deliver the motor vehicle or aircraft to the person making the payment if he is the person entitled to the possession of the motor vehicle or aircraft on payment of the garage keeper's lien thereon. *R.S.P.E.I. 1974, Cap. G-1, s.9; 2005, c.7, s.6.*

**10. Service of notice**

Where by this Act any notice in writing is required to be given, the notice shall be given by delivering it to the person to whom it is to be given, or by mailing it in the post office, postage paid and registered, addressed to him at his latest known address. *R.S.P.E.I. 1974, Cap. G-1, s.10.*

**11. Acknowledgement of debt, garage keeper does not lose lien**

- (1) Subject to subsection (2), if a garage keeper, before surrendering possession of an aircraft, obtains from the person at whose request the garage keeper has serviced the aircraft an acknowledgment of debt by requiring that person to sign an invoice or other statement of account, the garage keeper does not, by surrendering possession of the aircraft, lose any lien that the garage keeper has on the aircraft under section 2.

**Lien ceases to exist unless registered under PPSA**

- (2) A lien that a garage keeper has on an aircraft ceases to exist on the 15th day after the day on which the garage keeper surrenders possession of the aircraft unless, in the meantime, the garage keeper registers a financing statement pertaining to the lien under the *Personal Property Security Act*. *2009, c.72, s.3.*

**12. Priority of lien in aircraft over other interests acquired after lien**

- (1) Except as otherwise provided in this Act or any other Act, a lien that a garage keeper has on an aircraft under this Act has priority over any other interest in the aircraft that is created after the garage keeper acquired the lien under this Act.

**Priority upon surrender of possession**

- (2) A lien that a garage keeper has on an aircraft becomes subject to the following interests on the surrender of possession of the aircraft:
- (a) the interest of a buyer of the aircraft acquired in good faith, for value and without knowledge of the lien of the garage keeper after the surrender and before a financing statement relating to the lien is registered under the *Personal Property Security Act*;
  - (b) a security interest pertaining to the aircraft that is acquired in good faith, for value and perfected under the *Personal Property Security Act* after the surrender and before a financing statement relating to the lien is registered under that Act;
  - (c) the lien of another garage keeper in the aircraft if
    - (i) the service to which the other lien relates was rendered without knowledge of the first lien, and
    - (ii) a financing statement relating to the other lien is registered under the *Personal Property Security Act* before that lien ceases to exist under



subsection 11(2) and before a financing statement relating to the first lien is registered;

- (d) the lien of another garage keeper in the aircraft who has retained possession of the aircraft, if the service to which the other lien relates was rendered without knowledge of the first lien and before a financing statement relating to the first lien is registered under the *Personal Property Security Act*.

**Priority of lien over security interests and writs**

- (3) Notwithstanding subsections 35(2) and (5) of the *Personal Property Security Act*, a lien that a garage keeper has on an aircraft, whether or not a financing statement has been registered under the *Personal Property Security Act* pertaining to the lien, has priority over
  - (a) a security interest that another person acquired in the aircraft before the garage keeper acquired the lien under this Act; and
  - (b) a writ of execution that is issued, or a charging order that is granted, against the aircraft before the garage keeper acquired the lien under this Act. *2009, c.72, s.3.*

**13. Application of Personal Property Security Act**

Except as otherwise provided in this Act, sections 5 to 8, 17, 18, Parts IV and V, sections 65 and 66, clause 67(c), and section 69, of the *Personal Property Security Act* apply, with any necessary modification, to a lien that a garage keeper acquires on an aircraft under this Act as though the lien were a security interest. *2009, c.72, s.3.*