

BANKRUPTCY LAWS – PERFECTING LIENS

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U.S. Supreme Court Decision Impacts Vehicle Liens – Be Careful!

The U.S. Supreme Court has ruled that a finance company's lien on a motor vehicle can be voided by a bankruptcy trustee if the lien was not perfected within twenty (20) days after the date of the sale of the vehicle. In Fidelity Financial Services, Inc. v. Fink, the Supreme Court held that under the Bankruptcy Code's preference statute, if a customer purchases a vehicle and then files a bankruptcy proceeding within ninety (90) days, the lien on the vehicle can be set aside in favor of the bankruptcy trustee unless the lien was perfected within the twenty (20) days allowed by the Bankruptcy Code after the customer received possession of the vehicle. In Indiana a lien on a vehicle is perfected when a properly endorsed certificate of ownership or an application for original registration listing the name of the vehicle's lienholder has been deposited with the Bureau of Motor Vehicles (BMV).

Under this ruling, the potential problem for dealers is obvious. If the dealer waits more than twenty (20) days to mail in the necessary paperwork to perfect the finance company's lien, and the customer files a bankruptcy within ninety (90) days of taking possession of the vehicle, the bankruptcy trustee can set aside the finance company's lien. The dealer will ultimately be the party suffering the loss because the finance company will have a right of action against the dealer for the loss caused by the late processing of the lien.

The potential for the occurrence of this problem may be greatest with deals involving out-of-state vehicles or missing titles, or where the customer's creditworthiness is a problem and the dealer is encountering difficulty in getting financing. In such cases, dealers should consider protecting themselves from the 20-day federal deadline by delaying delivery of the vehicle to the customer until the missing paperwork is received or financing is confirmed. (Remember, it is the delivery of the vehicle to the customer that starts the running of the federal 20-day period.) If the vehicle has already been delivered to the customer, a dealer can always submit the necessary paperwork showing itself as lienholder before the federal deadline. The lien can later be transferred to a finance company if subsequent financing is found.

The result of this recent case underscores the need for dealers to act promptly in processing the necessary paperwork for the recording of the finance company's lien. Compliance with filing deadlines under Indiana law may not be sufficient to avoid this problem.

One solution is to be certain the vehicle's lienholder has been deposited with the BMV by physically delivering the title application to the BMV. This transaction cost is \$15.00 each.