



Frequently Asked Questions

(And answers from the
State Court Administrative Office
Friend of the Court Bureau)

FAQ 2016-01

March 23, 2016

Vehicle Liens

This FAQ answers common questions and clarifies policy related to Administrative Memorandum 2000-11, Administrative Liens for Past Due Support. This FAQ was also drafted in response to the memo issued by the Michigan Secretary of State (Friend of the Court (FOC) Title Lien, November 1, 2015). If court or friend of the court staff have any questions or would like additional information or clarification, please contact Paul Gehm at [gehmp@courts.mi.gov] or (517) 373-5975.

1. Q. When should I perfect a lien?

A: Liens are used to collect child support. Therefore, it is important to place liens on property with value. As outlined in the [Administrative Memorandum 2000-11](#), evaluate whether the property has sufficient value to justify the lien before deciding whether to place a lien.

When considering whether to place a lien, it is also important that placement of the lien does not restrict the person's ability to earn income. For example, a possessory lien should not be placed on a payer's tools of trade, which will likely limit the payer's ability to work. If the levy and sale of a motor vehicle would interfere with the payer's ability to work, it is better to place a lien on recreational use vehicles such as show vehicles, snowmobiles, boats, or other watercraft.

SCAO recommends that FOC offices perfect liens only on property they are prepared to levy within a short time. The value of property (particularly motor vehicles) diminishes over time. Further, the longer the office waits to levy, the more likely it is that other creditors will compete for any equity in the property. Imposing a lien on personal property merely in the hope that there may be a recovery someday if the payer attempts to sell the property will not likely result in any useful collection amount and may result in the FOC taking possession of property that has no value. An exception to this approach may be justified where the payer owns property with high equity but the payer needs the property for some purpose that would justify not levying the lien (e.g., the property is necessary to aid the payer's custody or parenting time or for generating income).

If a local FOC has formal authorization to access the Law Enforcement Information Network (LEIN) resource, it may be beneficial to run a query to determine whether a person has a vehicle registered in the person's name, and obtain identifying information for vehicles. To run the report, FOC staff should request a "Query Alpha Vehicle" or SOS

47:15.¹ Running these reports may also identify other pieces of property registered under the individual’s name. Another resource for asset identification is available in MiCSES.²

2. Q. What should I do before perfecting a lien?

A. The FOC office must ensure that: 1) the payer has notice of the lien; 2) the property has sufficient value to justify imposing the lien after the property is sold and the costs of the sale are paid; and 3) there are no other outstanding liens on the same property.

1) Michigan law requires that “a lien shall not be perfected or levied under this act unless the Title IV-D agency has provided a notice to the payer that liens exist by operation of law and that the payer's real and personal property can be encumbered or seized if an arrearage accrues in an amount that exceeds the periodic support payments payable under the payer's support order for the time specified in this act. Notice has been provided if it is in the payer's support order or if it was mailed to the payer at any time.” MCL 552.625a(4).

Statute requires that a payer receive notice of the lien arising by operation of law, of the intent to perfect, notice of perfection, and notice of intent to levy. Notice of the lien arising by operation of law has been provided for in the Uniform Child Support Order (USO) since 2006. Therefore, staff will want to ensure that the payer’s order was entered after 2006; if the most recent order was issued before 2006, staff will need to first send notice to the payer that a lien arises by operation of law.³

A payer should be given the opportunity to set up a payment arrangement to avoid the lien or any levy.

SCAO has produced several forms to meet the statutory requirements for the different stages of the lien process. These forms are:

- [FOC 90 \(Notice of Lien\)](#)
- [FOC 91 \(Notice of Perfection of Lien\)](#)
- [FOC 92 \(Notice to Release Lien\)](#)
- [FOC 93 \(Notice of Intent to Levy\)](#)
- [MC 19 \(Request and Order to Seize Property\)](#)

¹ A “Query Alpha Vehicle” or SOS 47:15 will show all vehicles registered to a person or just an address. Agencies using Talon can find the correct form in the “Vehicles” section of their form lists. SOS is limited to showing a maximum of 22 responses; when there are more than 22 responses, a code appears in the top line of the response that begins with an asterisk (*). The operator then submits the code in the labeled box on the form to retrieve the next page, and then runs the new code as long as one appears.

It seems this transaction only works for Michigan vehicle files. For other states, we recommend sending an administrative message to the state’s main Originating Agency Identification Numbers (ORI) office.

² Staff can view the MiCSES Asset List (ATLT) screen for information regarding a case member’s financial, account, real estate, and vehicle registration information. For vehicle-specific inquiries, staff can refer to the “Registered Vehicle Assets” (ASRV) screen.

³ FOC staff should review the most recent order to ensure that the proper lien notification is present.

2) A lien should be perfected on property with value. Therefore, one of the first steps in the process is to look at the value of the property. As Administrative Memorandum 2000-11 states, the payer’s real or personal property must be of sufficient value or equity to make perfection of the lien cost effective.

For vehicles, information from Kelley Blue Book and similar sites may be used as a reference for estimating the current fair market value. However, the amount is subject to many factors, including the condition of the vehicle, which may be unknown.

3) The office will also want to consider whether there are already outstanding liens on the property. For vehicles, staff can refer to the MiCSES ASRV screen, which includes vehicles registered to a case member, and any information on liens placed on the vehicle(s). While the ASRV screen is populated with data manually entered by MiCSES users (as opposed to official data from the SOS), any information will be helpful in determining whether to place a lien on a vehicle.

Finally, to see if there is already another FOC lien on the vehicle, staff can review the list found at the SOS website: http://www.michigan.gov/sos/0,4670,7-127-49534_50300_50310-370486--,00.html.

3. Q. What must be provided to the Secretary of State to perfect a lien on a vehicle?

- A. To perfect a lien, the SOS requires the FOC to send an FOC 90 via email to a dedicated inbox at: SOS-FOC@MICHIGAN.GOV. The following information must be included: year, make, and VIN/Serial Number. SCAO recommends that if an FOC is placing liens on multiple vehicles owned by the same payer, the FOC should send a separate FOC 90 for each unique vehicle.

As with all other confidential information sent via email, FOC staff is required to encrypt the email and immediately send the SOS the password in a separate email.

4. Q. What happens once I send the lien information to the SOS?

- A. The SOS will place a lien on the vehicle with the friend of the court as the lienholder. The SOS will then issue a new title to the titleholder (payer) with the lien recorded on the title and the court listed as a secured party for the vehicle, mobile home, snowmobile, or watercraft. Because this procedure also perfects the lien, the FOC office is required to send the payer a Notice of Perfection of Lien (FOC 91).

Once the SOS processes the lien, the SOS will post the information on its Friend of the Court lien list at: http://www.michigan.gov/sos/0,4670,7-127-49534_50300_50310-370486--,00.html.

5. Q. What happens if a payer satisfies the lien?

- A. When the conditions to release a lien are met (arrearages are paid off), the FOC office must release the lien. To do so, the FOC office should send an FOC 92 (Notice of Release of Lien) to the payer, and also to the SOS at the dedicated email inbox: SOS-FOC@MICHIGAN.GOV. The SOS requests that the office also include the case number and the words “New” or “Release” in the subject line of the email. As with sending the FOC 90, a separate FOC 92 form should be sent for each vehicle, and each FOC 92 must be encrypted with the password immediately sent separately.

6. Q. What happens if the lien does not induce the payer to make payments?

- A. The office should ensure that once perfected, a lien is acted upon within a reasonable amount of time and not be left on the system (MiCSES and FOC records) for years without action. If the lien does not induce the payer to make payments, the FOC may levy the property (force the sale) (MCL 552.625b[7]) or release the lien. This will require that the FOC receive authorization or assistance from the court, and often from law enforcement agencies. For personal property, such as a vehicle or boat, the FOC will need to apply to the circuit court for an order to execute the judgment. (MCL 552.625b[8]). The FOC will need to use SCAO form MC 19 (Request and Order to Seize Property).

Upon sale of the asset, the amount that is actually collected and retained by the FOC may not exceed the amount of the support arrearage (in addition to any fees for the execution of the lien), and the FOC must return any extra money to the support payer. If the FOC believes the proceeds will exceed the amount owed, the FOC may want to request the court to order the payer to post a bond using the surplus funds to secure future support.

7. Q. What information may the FOC share regarding liens and amount of payoff?

- A. Federal Title IV-D rules control disclosure of information. Although generally not allowed to discuss case details with a third party, the FOC is allowed to disclose information that serves a Title IV-D purpose (such as enforcement of a lien). This is especially true when releasing information to another agency or department, like the SOS. (MCR 3.218[C][1]). Additionally, if a vehicle dealership inquires about a lien, the office should disclose that information as serving the purposes of the Title IV-D program.

However, the FOC may also receive inquiries about payoff amounts from private buyers. If a private buyer calls, it is recommended that the FOC direct the buyer to communicate with the seller to obtain that information.

8. Q. What should the FOC do if a dealer accepts ownership of a vehicle that has an FOC lien but the payer gives the dealer a bad (old) lienless title?

- A. When a payer trades in a vehicle with an FOC lien on it, and the dealer sells a new vehicle to the payer, the SOS has indicated that it will administratively transfer the old lien to the new vehicle. If the SOS administratively transfers the lien to the new vehicle, the FOC should hold the dealer harmless if the payer's equity in the new vehicle is of equal or greater value than the former vehicle.⁴

If the payer's equity in the new vehicle is less than the payer's equity in the previously-owned vehicle, the FOC should use discretion to hold the dealer harmless based on the likelihood that the payer will build equity in the new vehicle, making the new lien more valuable than the old lien over time.

⁴ However, if the dealer provides cash back to the payer as part of this transaction, instead of applying credit from the trade-in directly to the new sale, the FOC should pursue recoupment of the payer's cash assets.

Additionally, if the dealer can prove that they followed procedure and checked the SOS FOC-lien list, and the payer's old VIN was not included on the list, the FOC should simply work with the SOS to have the lien transferred.

The FOC should weigh the potential recovery from the forced sale of the lost property, and attempt to settle with the dealer or levy on the lien if the dealer does not agree to a reasonable settlement. If the dealer agrees to a settlement, SCAO recommends that the FOC notice the proposed settlement for the court's approval in order to allow the payee an opportunity to be heard if the payee objects.