

**OPINION
73-278**

July 20, 1973 (OPINION)

Mr. Charles Bosch
Registrar
Motor Vehicle Department
State Office Building
Ninth and Boulevard
Bismarck, ND 58501

Dear Mr. Bosch:

This is in reply to your letter requesting an opinion of this office relative to the provisions of section 40-05-15 of the North Dakota Century Code.

You inform us that many times your records will show a lienholder while the Certificate of Title is in the name of the individual who allegedly abandoned a vehicle. You state that therefore you question is when the owner of a vehicle acquired through the provisions of section 40-05-15 of the North Dakota Century Code applies for a Certificate of Title from your office, are you required to indicate the lienholder on record, if any, on the new title if the lien was never released.

Section 40-05-15 of the 1971 Supplement to the North Dakota Century Code provides for the sale of an abandoned motor vehicle in effect in foreclosure of charges against it, issuance of a bill of sale in particular instances and provides that:

"said bill of sale shall be evidence of valid ownership for the issuance of a certificate of title by the registrar of motor vehicles."

While provision is made in said section 40-05-15 for notice to the former owner by registered mail, and for advertisement of sale in a newspaper in the county where the sale is to be made, no specific provision is made for notifying encumbrancers or lienholders, and no provision is made therein for cancellation liens or encumbrances. While provision is made for payment of the balance of proceeds to the registered owner, no provision is made for any payment to lienholders or encumbrancers.

Section 39-05-09 of the North Dakota Century Code provides that in issuing a certificate of title the department shall set forth "a statement of the owner's title and of all liens or encumbrances upon the vehicle therein described". It is conceivable, that in some instances where a vehicle has been abandoned, former liens and encumbrances also are in practical effect unenforceable, however, as indicated, section 40-05-15 does not provide for their cancellation or abrogation, nor does any statute give your department authority to decide the validity of an encumbrance. On such basis it is our opinion that when the owner of a vehicle acquired through the provisions of section 40-05-15 of the North Dakota Century Code applies for a Certificate of Title from your office, you are required

to indicate any lienholders of record, if any, on the new title, if the lien was never released pursuant to said section 39-05-09 of the North Dakota Century Code.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely yours,

Allen I. Olson

Attorney General