



Office of the Attorney General of Guam

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LEGAL MEMORANDUM

Ref. No. DRT 15-0630

TO: Director, Department of Revenue & Taxation (DRT)
FROM: Attorney General *EPD*
SUBJECT: **Request for Legal Guidance regarding the use of liens on Abandoned Vehicles and the process of taking legal possession**

This Office is in receipt of your request seeking guidance as to the processing of a request by a private company in executing a mechanics lien on an abandoned vehicle, and the legal issues surrounding electronic security contracts.

QUESTIONS PRESENTED:

1. Can DRT issue a Certification of Ownership to an auto shop that has complied with the provisions of Title 18 §39105 and §39107 for the purpose of taking legal possession of the vehicle?
2. Does the Attorney General of Guam have standard procedural guidelines for executing mechanics liens with the intent to take legal possession of the vehicle if the vehicle is abandoned at a repair shop?
3. Are there local laws or regulations regarding electronic security contracts, and is additional legislation required to allow DRT to accept them?

DISCUSSION:

Issue #1: DRT can issue a Certification of Ownership to an auto shop that has complied with the provisions of law, provided that the shop can submit proof that it has followed the steps delineated in Title 18 G.C.A. §§39105 and 39107. In the materials provided by the auto shop, there was a request for title to two vehicles left abandoned at their shop. For both vehicles, the auto shop provided evidence regarding the amount owed, and provided evidence that the shop had posted notice of sale in three public places in the place where the property was to be sold. However, the auto shop was only able to obtain personal notice upon one of the owners, and not the other. Personal notice is a requirement under §39107, and failure to serve personal notice invalidates the shop's request for title to that particular vehicle. For the other vehicle, where all the requirements of §§39105 and 39107 were followed, including providing notarized evidence of the amount allowed, notarized

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evidence regarding the posting notice of sale, and successfully serving personal notice, DRT may issue a Certification of Ownership to the company.

Issue #2: The Office of the Attorney General of Guam does not have procedural guidelines for executing mechanics liens on abandoned vehicles, and refers to the discussion on Issue #1 for clarification as to what is legally required for DRT to issue a Certification of Ownership for mechanics liens on abandoned vehicles.

Issue #3: In 2000, the U.S. passed the Electronic Signatures in Global and International Commerce Act (ESGICA), making electronic contracts and signatures as legally valid as paper contracts, codified in 15 U.S. §7001-7031. Specifically, §7001(a)(1) and (2) provide:

- (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
- (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

There is no existing local law or regulation regarding electronic security contracts, and no additional legislation is required to allow DRT to accept them as the federal law provides the authority to do so.

Please feel free to contact me if you have any additional concerns.



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Assistant Attorney General