

# **ABANDONED MOTOR VEHICLE FILING PROCEDURES**

## **I. If Removing Vehicle at Request of Law Enforcement (OCCA 40-11-16)**

1. ***Within 24 Hours*** of Removal—I-EO checks to see if stolen
2. ***Within 3 days*** of Removal—Request Owner's Info from DMV
  - a. If out of state license—request owner's info from that state
    - i. State must return info within 5 days, if not, publish notice

## **II. If Removing at Request of Private Property Owner (OCCA 40-11-16)**

1. ***Within 3 days***, request owner info from DMV
  - a. If Out of State License Plate, request info from that state
    - i. State must return in within 5 days, if not, publish notice
2. ***Within 24 hours*** of DMV Request, run LEO check to see if stolen

## **III. Notice, Advertisement, Lien, Demand Letter (OCGA 40-11-19)**

### **A. For Towing/Storage Facilities (40-11-19(a))**

1. ***Within 15 days*** of removal, send notice (**Form 40-03**) by cert. mail or hand delivery
2. ***Within 60 days*** of removal, if the owner is unknown or DMV fails to respond in 5 days, publish notice in paper once a week for two weeks (**Form 40-04**)
  - i. If owner identified during the two weeks of advertisement, send notice (**Form 40-03**) by cert. main or hand delivery, within 10 days of learning the identity of the owner

### **B. For Repair Facilities (40-11-19(b))**

1. ***After 15 days w/o payment, but no more than 180 days***, send notice (**Form 40-5**) with disclaimer form to all owners (must request additional owner's info from DMV)
2. IF DMV request for additional owner's info not returned in ***60 days***, publish notice (**Form 40-6**) where repair facility located
  - i. If owner identified during the two weeks of advertisement, send notice (**Form 40-05**) by cert. main or hand delivery, ***within 10 days*** of learning the identity of the owner

### **C. For Salvage Dealers (40-11-19(c))**

1. ***After 15 days, but no more than 60 days*** after insurer's determination to deny owner's claim has been communicated to salvage dealer send notice (**Form 40-07**) with disclaimer form to all owners (must request additional owner's info from DMV)
2. IF DMV request for additional owner's info not returned in ***60 days*** from the last communication from the insurer, publish notice (**Form 40-08**) in newspaper
  - i. If owner identified during the two weeks of advertisement, send notice (**Form 40-07**) by cert. main or hand delivery, ***within 10 days*** of learning the identity of the owner

#### **IV. Petition to Foreclose; Answer; Motion for Judgment (OCGA 40-11-19.1)**

##### **A. Petition to Foreclose**

1. File ***No Sooner than 10 days and No later than 6 months*** after notice (40-11-19)
2. **Items to File with the Magistrate Court**
  - i. Petition (Form 40-01)
  - ii. \$11 Filing Fee
  - iii. Copy of Owner's Info as required by 40-11-15 & 40-11-16
  - iv. Proof of Compliance with notice statute (copies letters & proof of delivery)

##### **B. Send Notice of Petition**

1. Send copy of signed petition and Answer form (**Form 40-02**) to all owners
2. Send notice the same way notice was sent originally
  - i. If notice sent by certified mail was returned ***unclaimed or undeliverable***, petitioner must place ad in the newspaper where the petition was filed
  - ii. if notice was sent by certified mail was marked ***refused***, no advertisement needed

##### **D. Answer and Motion for Order**

1. Answer must be returned ***within 10 days of receipt*** (OCGA 40-11-19.1 (c))
2. No Answer. If Answer ***not returned within 10 days***, file Motion for Order (**Form 40-11**) and proof of notice (OCGA 40-11-19.1 (e))
3. Judge has ***15 days*** to rule on the motion and an additional ***5 days*** to issue an order for the sale of the vehicle as outlined in OCGA 40-1 1-19.2
4. The clerk shall issue a certified copy of the order for \$14 fee.
5. Denial of Motion. If the court finds that the petition and supporting documents fail to meet the legal requirements under this law, the petition may be refiled once ***within 6 months of the denial of judgment*** (OCGA 40-11-19.1 (d))
6. When Answer Filed. If Owner(s) file an answer, a trial should be held within 10 days of the date answer filed. A continuance may be granted for good cause shown by either party. (OCGA 40-11-19.1(e)(1))
  - i. The trial Court may hear evidence on whether removal was lawful, notice was proper, whether fees charged and lien amount are lawful, and other relevant facts
  - ii. if foreclosure granted, the court shall issue an order for the sale of the vehicle and the clerk shall issue a certified coy for \$14

# **Checklist for Processing Abandoned Motor Vehicles For Use by Salvage Dealer (09-01-19)**

**Any salvage dealer which has been in possession of a motor vehicle for at least (15) days without communication from an owner or insurance company and which desires to file a petition pursuant to Code Section 40-11-19.1** ("communication" includes any form of

communication which can be verifiably documented)

The salvage dealer shall request from (local law enforcement, the Department of Revenue, or Auto Data Direct), the identification and addresses of all owners/lienholders of the vehicle. If such vehicle has an out-of-state license plate, such request shall be made to the state where the vehicle is registered or to an entity with access to such state's vehicle registration information. [40-11-16(b)(1)]

Date information requested \_\_\_\_\_

(Attach copy of request and the return to Petition)

**When a motor vehicle has been left with a salvage dealer for at least (15) days, and no later than (60) days, after determination by an insurance company to deny the owner's claim has been communicated to the salvage dealer**

The salvage dealer shall send all owners/lienholders the notification letter form, (MAG 40-07),(2 pages), developed by the Council of Magistrate Court Judges for such purpose by certified mail. [40-11-19(c)(1)]

Date notice mailed \_\_\_\_\_

(Attach copy of letter and certified receipt to Petition)

**If the Identity of the Owner/Lienholder Cannot be Obtained – Within (60) days**

The salvage dealer shall place an advertisement in a newspaper of general circulation or the legal organ in the county where such vehicle is stored, once a week for two consecutive weeks using the form (MAG40-04) provided by the council of Magistrate Court Judges for such purpose. [40-11-19(c)(2)]

Date of Publications \_\_\_\_\_

(Attach copy to Petition)

**If the Identity of an Owner/Lienholder Becomes Known While an Advertisement is Run – Within (10) Days of Obtaining Information**

The salvage dealer shall send a notification letter to owners/lienholders pursuant to the same requirements set forth in 40-11-19(c)(1) as stated above. [40-11-19(c)(3)]

Date notice mailed \_\_\_\_\_

(Attach copy of letter and certified receipt to Petition)

### SALVAGE FACILITY – KNOWN OWNER

Date of Last Communication with Owner	
Request Driver Info from Department	No sooner than 15 days or later than 60 days after last communication with owner
Send First Notices	No sooner than 15 days or later than 60 days after last communication with owner
Petition Filing	No sooner than 10 days but not later than 6 months of compliance with notice requirements

#### Important Documents

- ☐ Request for owner/lienholder info
- ☐ Response from department
- ☐ First notices
- ☐ Petition notices and evidence of delivery/refusal
- ☐ Request for order/SCRA affidavit

### SALVAGE FACILITY – UNKNOWN OWNER

Date of Last Communication with Owner	
Request Driver Info from Department	No sooner than 15 days or later than 60 days after last communication with owner
Advertise Two Consecutive Weeks	Within 60 days of Department's failure to send owner information
Petition Filing	No sooner than 10 days but not later than 6 months of compliance with notice requirements

#### Important Documents

- ☐ Request for owner/lienholder info
- ☐ Response from department (if applicable)
- ☐ Advertisement
- ☐ Petition advertisement
- ☐ Request for order

“Day” means a business day unless otherwise stated and shall not include Saturdays, Sundays, and legal holidays recognized by the state.” OCGA § 40-11-13 (1).

The term "communication" includes any form of communication which can be verifiably documented. OCGA § 40-11-16 (b)(1).

If owner becomes known while first advertisement is running, first notices must be sent within 10 days of receiving that information.  
If owner becomes known while petition advertisement is running, petition notices must be sent.

# MAGISTRATE COURT OF PEACH COUNTY, GEORGIA

Date Filed \_\_\_\_\_

Case No: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff(s) Name, Address

vs

Vehicle Owner Name, Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Motor Vehicle Description and VIN

Lien Holders Notified

## PETITION FOR ABANDONED MOTOR VEHICLE LIEN FORECLOSURE

NOW COMES PETITIONER, a [ ] towing or storage facility [ ] repair facility [ ] salvage dealer, and files this petition to foreclose on the above-referenced abandoned motor vehicle.

\_\_\_\_\_ Date vehicle was [ ] towed [ ] left at repair facility [ ] left with salvage dealer (authority to tow attached)  
\_\_\_\_\_ Date information was requested from Department of Revenue or authorized entity (copy of owner information attached)  
\_\_\_\_\_ Date and method of first notice [ ] mailed [ ] hand delivery [ ] advertised [ ] disclaimer (proof of compliance attached for all owners)

The accrued fees allowed under OCGA § 40-11-19, as set forth below, have not been paid.

PETITIONER PRAYS that the lien be foreclosed and an order be issued to allow for public sale of the vehicle to satisfy a lien for the following amounts:

Removal (Towing) Fee: \$ \_\_\_\_\_  
Storage: (At \$ \_\_\_\_\_ per day for \_\_\_\_\_ days) \$ \_\_\_\_\_  
Future Storage Fee \$ \_\_\_\_\_

per day from date of filing this action through  
25 Days after judgment is rendered

Repair Fees (if applicable, with invoice attached): \$ \_\_\_\_\_  
Cost of Obtaining Owner Information: \$ \_\_\_\_\_  
Notification/Advertising Fees: \$ \_\_\_\_\_  
TOTAL: \$ \_\_\_\_\_

PETITIONER ALSO PRAYS for prejudgment interest at the rate of 4% per annum from which the OCGA § 40-11-19 notification was received, 15% attorney's fees (if applicable), and all costs of court.

Sworn to and Subscribed before me

This \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public or Clerk

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff/Attorney for Plaintiff

## SUMMONS

YOU MUST FILE AN ANSWER TO THIS CLAIM NO LATER THAN TEN (10) DAYS FROM RECEIPT OF THIS NOTICE USING THE STANDARDIZED ANSWER FORM PROVIDED. FAILURE TO FILE A TIMELY ANSWER WILL RESULT IN FORECLOSURE OF THE LIEN AND A COURT ORDER AUTHORIZING DISPOSITION OF THE VEHICLE PURSUANT TO OCGA 40-11-19.2.

MAG 40-01

MAGISTRATE COURT OF PEACH COUNTY  
700 SPRUCE STREET, WING A  
FORT VALLEY, GA 31030

# MAGISTRATE COURT OF PEACH COUNTY, GEORGIA

Date Filed \_\_\_\_\_

Case No: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Plaintiff(s) Name, Address**

vs

**Vehicle Owner Name, Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Motor Vehicle Description and VIN**

**Lien Holders Notified**

## ANSWER TO PETITION FOR ABANDONED MOTOR VEHICLE LIEN FORECLOSURE

NOW COMES RESPONDENT, Owner of the above-referenced vehicle, and files this answer to the petition to foreclose lien on the above-referenced abandoned motor vehicle.

Owner Name: \_\_\_\_\_

Owner Address: \_\_\_\_\_

Date owner obtained an interest in the motor vehicle: \_\_\_\_\_

Check all that apply, and explain in the space provided (attach additional sheets if necessary).

☐ The towing or storage firm was not authorized to remove the vehicle for the following reason(s):

☐ The lien claimed is not valid because:

☐ Additional facts that support why the lien should not be foreclosed upon:

☐ I dispute the following charges:

THEREFORE, Respondent prays for a hearing on all relevant issues within ten (10) days.

Sworn to and Subscribed before me

This \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Notary Public or Clerk

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Defendant/Attorney for Defendant

MAG 40-02

# MAGISTRATE COURT OF PEACH COUNTY, GEORGIA

Date Filed: \_\_\_\_\_

Case No: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff(s) Name, Address

vs

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Vehicle Owner Name, Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Motor Vehicle Description and VIN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Lien Holders Notified

## AFFIDAVIT OF MILITARY SERVICE

Personally appeared before me, the undersigned notary public or clerk, \_\_\_\_\_  
(name of Affiant), who after being duly sworn, deposes and states as follows:

I am the ☐ Plaintiff, ☐ Attorney of Record for the Plaintiff, or ☐ the duly authorized agent for the Plaintiff, and I am executing this affidavit as required by Uniform Magistrate Court Rule 43.1 and the Servicemembers Civil Relief Act, 50 U.S.C. § 3931. To the best of my knowledge and belief:

[ ☐ ] I have searched the website for the Department of Defense Manpower Data Center and have been able to ascertain that the vehicle Owner/Lien Holder in the above-styled action is in military service as defined by 50 U.S.C. § 3911. The status report from the Department of Defense is attached.

[ ☐ ] I have searched the website for the Department of Defense Manpower Data Center and have found no indication that the vehicle Owner/Lien holder in the above-styled action is in military service. Therefore, to the best of my knowledge and belief, the vehicle Owner is not in military service as defined by 50 U.S.C. § 3911. The status report from the Department of Defense is attached.

[ ☐ ] I have not been able to ascertain whether or not the vehicle Owner/Lien Holder in the above-styled action is in military service as defined by 50 U.S.C. § 3911 after making a good faith effort.

Sworn to and Subscribed before me

This \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
Notary Public or Clerk  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature of Affiant

# MAGISTRATE COURT OF PEACH COUNTY, GEORGIA

Date Filed \_\_\_\_\_

Case No: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Plaintiff(s) Name, Address**

**vs**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Vehicle Owner Name, Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Motor Vehicle Description and VIN**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Lien Holders Notified**

## MOTION FOR ORDER ON MOTOR VEHICLE LEIN FORECLOSURE

NOW COMES PETITIONER, ☐ a towing or storage facility ☐ repair facility ☐ salvage dealer and shows the following

1. A petition was filed to foreclose on the lien placed on the above-referenced vehicle on
2. Service was perfected on all owners by ☐ certified mail ☐ return receipt requested ☐ advertisement ☐ disclaimer (Attach proof of service)
3. No answer has been filed as required by OCGA § 40-11-19.1 (c).

WHEREFORE, PETITIONER PRAYS that (a) an order be entered declaring the lien to be valid, and (b) an order be issued within five (5) days to allow for public sale of the vehicle to satisfy the lien as prayed for in the complaint.

Sworn to and Subscribed before me

This \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Notary Public or Clerk

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature



IN THE MAGISTRATE COURT OF PEACH COUNTY, GEORGIA

Date Filed \_\_\_\_\_

Case No: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

Civil Action File No: \_\_\_\_\_

\_\_\_\_\_  
(Motor Vehicle)

\_\_\_\_\_  
(Vehicle Identification Number)

\_\_\_\_\_  
(Tag Number)

Last known registered owner(s) & lienholder(s): \_\_\_\_\_  
\_\_\_\_\_

**AFFIDAVIT OF DISPOSITION OF  
ABANDONED MOTOR VEHICLE**

Comes now \_\_\_\_\_, [ ] the Plaintiff [ ] agent for the Plaintiff herein, who after having been duly sworn or affirmed states that the following facts are true and correct to the best of his/her knowledge:

[ ] The vehicle was redeemed by owner/lienholder prior to public auction. No sums are due and payable.

Or

[ ] The vehicle was sold at public auction on \_\_\_\_\_, at \_\_\_\_\_, said address being within:

[ ] the city limits of \_\_\_\_\_;  
[ ] unincorporated \_\_\_\_\_ County.

The sale was conducted in compliance with the provisions of O.C.G.A. ' 40-11-6.

1. The vehicle was impounded at the request of a:

[ ] private individual  
[ ] city officer/official of \_\_\_\_\_ (Name of Municipality)  
[ ] county officer/official  
[ ] Georgia State Patrol.

2. The amount received for the vehicle at public sale \$ \_\_\_\_\_

3. The amount of the lien on the vehicle \$ \_\_\_\_\_

4. The amount due to Clerk of Court and submitted herewith \$ \_\_\_\_\_

5. A true and correct copy of the bill of sale of the vehicle is attached hereto as Exhibit A.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[ ] Plaintiff [ ] Agent for Plaintiff

\_\_\_\_\_  
Notary Public/Clerk of Court  
My Commission Expires:

MAG 40-04 AFFIDAVIT OF DISPOSITION OF AMVR