

Removal and Storage of Abandoned Vessels and Lien Foreclosure Procedures

O.C.G.A. §§ 52-7-71 & 52-7-74

These materials were prepared by the Judges of the Cherokee County Magistrate Court. Please be aware that the deadlines and requirements set forth in the Abandoned Vessel Code are different from those found in the Abandoned Vehicle Code. These deadlines and procedures must be followed or the lien claimant risks losing its claim for storage fees.

At the time of this printing, the Georgia Department of Natural Resources and the Georgia Bureau of Investigation were developing procedures for responding to abandoned vessel inquiries. The sample forms provided herein may be helpful in making such requests. It is incumbent upon the lien claimant to obtain sufficient responses from these agencies prior to filing a petition to foreclose its lien.

Please be aware that the person removing or storing an abandoned vessel who does not provide the notice and information required below, shall not be entitled to any storage fees. Any such person who knowingly provides false or misleading information as required below, shall be guilty of a misdemeanor.

**James E. Drane, III, Chief Judge
Gregory T. Douds, Chief Associate Judge
Cherokee County Magistrate Court
90 North Street, Suite 150
Canton, Georgia 30114-2786
(678) 493-6431**

DISCLAIMER

The information presented in this packet is provided as a primer and for information purposes. Each case is unique and these sample forms might not be sufficient for your particular situation. The information presented herein is not legal advice and should not be relied upon as a substitute for the advice and assistance of a competent lawyer.

PART I – NOTIFICATION PROCEDURES

If vessel was removed from **public** property or **public** water at request of law enforcement, and

If owner is not known, you must seek:

- A) identity and
- B) address of last known registered owner

from law enforcement officer or his agency within 72 hrs of removal.

See AV Form 1

If vessel was removed from **private** property or **private** water at request of property owner, and

If owner is not known, you must notify in writing local law enforcement within 72 hours of removal of:

- A) location of vessel
- B) certificate number
- C) hull identification number
- D) model
- E) year, and
- F) make of vessel.

And you must seek from local law enforcement the identity and address of last known registered owner and if the vessel has been reported stolen.

See AV Form 1

If the owner is known and the vessel is not:

- A) stolen,
- B) being repaired by a repair facility, or
- C) being stored by an insurance company providing coverage

that person removing or storing shall within seven (7) days of removal notify owner, if known, by certified or registered mail or statutory overnight delivery, giving owner:

- A) location of vessel,

- B) fees connected with removal and storage, and
- C) that vessel deemed abandoned unless redeemed within thirty (30) days of removal.

See AV Form 2

If owner fails to redeem, or
If vessel being repaired by a repair facility, or
If vessel being stored by insurance company providing coverage, becomes abandoned,

the person removing or storing shall within seven (7) days after abandonment:

- A) give notice, in writing,
- B) by sworn statement,
- C) to the Georgia Department of Natural Resources, and
- D) to the Georgia Bureau of Investigation,
- E) stating vessel number,
- F) hull identification number,
- G) the fact that vessel is abandoned,
- H) model,
- I) year,
- J) make, if known,
- K) the date vessel became abandoned,
- L) the date of removal, and
- M) present location of vessel.

Such letter shall request from the Department of Natural Resources and the Georgia Bureau of Investigation:

- A) name and address of all owners,
- B) lessors,
- C) lessees,
- D) security interest holders, and
- E) lienholders of said vessel.

If person removing or storing has knowledge that vessel is registered in another state, such person shall check the records of that other state in an attempt to identify the owner.

See AV Forms 3 and 4

If person removing or storing becomes aware of the identity of the owner of said vessel, the person removing or storing the vessel shall, within five (5) calendar days, by certified or registered mail or statutory overnight delivery, notify:

- A) the owner,
- B) lessors,
- C) lessees,
- D) security interest holders, and
- E) lienholders,

of the location of the vessel, that the vessel is deemed abandoned, and that the vessel will be disposed of if not redeemed.

See AV Form 5

If after all of the above has been completed and the owner of the vessel can not be ascertained, the person removing or storing the vessel shall place an advertisement in the newspaper in the county where said vessel was removed that serves as the county's legal organ or, if no such paper exists, shall post such advertisement at the county courthouse where such public notices are posted. The advertisement shall run or the notice remain posted for two (2) consecutive weeks. The advertisement shall contain:

- A) a complete description of the vessel,
- B) certificate number,
- C) hull identification number,
- D) the location where removed,
- E) the present location of the vessel,
- F) that the vessel is deemed abandoned, and
- G) that the vessel will be disposed of if not redeemed.

See AV Form 6

The person removing or storing the vessel shall notify the Georgia Department of Natural Resources and the Georgia Bureau of Investigation within seven (7) days if:

- A) the vessel is recovered by its owner,
- B) is claimed by the owner,
- C) is determined to be stolen, and
- D) or for any other reason is no longer abandoned.

See AV Forms 7 and 8

PART 2 – LIEN FORECLOSURE PROCEDURES
O.C.G.A. 52-7-74

Any action to foreclose a lien on an abandoned vessel must be instituted within one year from the time the lien is recorded or asserted by retention.

Demand upon the owner of the vessel for reasonable fees for removal and storage plus the costs of any advertisement, shall be made by certified or registered mail or statutory overnight delivery. Such written demand shall include an itemized statement of all charges. No such demand shall be required if the identity of the owner cannot be ascertained and the requirements of O.C.G.A. § 52-7-71 have been complied with.

See AV Form 9

If, after the elapse of ten (10) days, from the date of delivery:

- A) the owner fails to respond to said demand, or
- B) refuses to pay, or
- C) if the owner cannot be ascertained,

the person removing or storing may foreclose such lien.

The person asserting such lien may move to foreclose by making an affidavit to the Magistrate Court showing all facts necessary to constitute such lien and the amount claimed. Such affidavit shall state:

- A) that the notice requirements of O.C.G.A. § 52-7-71 have been met,
- B) that a demand for payment has been made and refused, or
- C) that the identity of the owner cannot be ascertained.

See AV Form 10

The filing fee for such affidavit shall be \$5.00 per vessel.

With the filing of the affidavit, the lien claimant shall give the clerk the address, if known, of:

- A) the owner,
- B) lessor,
- C) lessee,
- D) security interest holder, and
- E) lienholders of the vessel.

The clerk shall give notice to each of the above addresses provided of the right to a hearing to determine if reasonable cause exists to believe that a valid debt exists; such

hearing must be petitioned for within ten (10) days after receipt of such notice; and if no petition is forthcoming within time allowed, the lien will conclusively be deemed valid.

Any notice required above shall be by certified, registered, or overnight mail, and if the owner, lessor, lessee, security holder, and lienholder are not known, by posting notice at the courthouse.

If a petition for a hearing is filed within ten (10) days of notice given by the owner, lessor, lessee, security holder, and lienholder, the court shall set such hearing within ten (10) days of the filing of petition.

If the court determines that reasonable cause exists of the valid debt, the person asserting the lien shall:

- A) retain possession of the vessel, or
- B) the court shall obtain possession of the vessel by court order.

The owner-debtor may obtain possession of the vessel by giving bond and security in the amount due, plus costs of the action.

Within five (5) days of the probable cause hearing, any party defendant must petition the court for a full hearing on the question of the valid debt. If no such petition is filed, the debt will be conclusively valid and the foreclosure granted. If the petition is filed, the court shall set the hearing within fifteen (15) days of the filing of the petition. Upon the filing of the petition, neither the lienholder, nor the Court may sell or dispose of the vessel.

If, after hearing on the petition above, the Court finds the debt valid, the Court shall grant the foreclosure upon and sale of vessel subject to the lien if such debt is not otherwise immediately paid.

If the court finds that the actions of the person asserting the lien in retaining possession of the vessel were not taken in good faith, the court may award damages to the owner, or any interested party, due to the deprivation of the use of the vessel.

If no petition is filed, or if, after full hearing on the petition, the Court finds a valid debt exists, the Court shall authorize, by order, the sale of the vessel. The holder of a security interest in or lien on the vessel, other than the holder created by O.C.G.A. § 52-7-73, shall have the right, in order of priority of such interest, to pay the debt and costs. If this occurs, that person shall have the right to possession of the vessel, and that person's interest in the vessel shall be increased by the amount paid. A court order shall be issued to this effect, and no sale of the vessel shall occur.

ABANDONED VESSEL REQUEST FOR INFORMATION

To Local Law Enforcement Agency

Date of This Notice: ____/____/____

Name of Agency: _____

Agency's Address: _____

The undersigned is in possession of the below-described vessel which was removed from public or private property at the request of the property owner or law enforcement. Pursuant to O.C.G.A. §§ 52-7-71(a) and (b), we request that you provide to us the identity and address of the last known registered owner of the vessel, and whether the vessel is a stolen vessel.

Vessel Identification:

Vessel Certificate of Number: _____

Hull Identification Number: _____

Year: _____ Make: _____

Model: _____

Location of Vessel: _____

Telephone: (____) ____-_____

Date Vessel Removed: ____/____/____

From:

Signature

**THIS NOTICE MUST BE SENT TO LAW ENFORCEMENT WITHIN
72 HOURS OF THE VESSEL'S REMOVAL.**

ABANDONED VESSEL NOTICE

ATTENTION: To the Owner of the Below-Listed Vessel

Date of This Notice: ____/____/____

Owner's Name: _____

Owner's Address: _____

The below-listed vessel will be deemed abandoned if you do not redeem it on or before the "Date Deemed Abandoned" shown below. You may redeem the vessel by paying the redemption fees shown. If the vessel is deemed abandoned, we will proceed with legal foreclosure proceedings to enforce our lien on the vessel.

Vessel Identification:

Vessel Certificate of Number: _____

Hull Identification Number: _____

Year: _____ Make: _____

Model: _____

Location of Vessel: _____

Telephone: (____) _____ - _____

Date Vessel Removed: ____/____/____

Date Deemed Abandoned: ____/____/____

Redemption Fees:

Towing and/or removal fees: \$ _____

Storage Fees (Daily Rate): _____

Other Fees (described below): _____

Description of Other Fees: _____

**THIS NOTICE MUST BE SENT VIA CERTIFIED OR REGISTERED MAIL
OR STATUTORY OVERNIGHT DELIVERY.**

**To: Georgia Department of Natural Resources
Lieutenant Sam O'Neal
GA DNR / WRD
2065 Highway 278 S.E.
Social Circle, Georgia 30025**

Date: _____

To: Lieutenant O'Neal
Re: **Abandoned Vessel Notice and Information Request**

I am required by O.C.G.A. § 52-7-71 to notify you that I am in possession of an abandoned vessel. I am required to provide you with the following information, if known:

- A) vessel number: _____
- B) hull identification number: _____
- C) The vessel is in fact abandoned
- D) model: _____
- E) year: _____
- F) make of vessel: _____
- G) the date the vessel became abandoned: _____
- H) the date vessel was removed: _____
- I) the present location of the vessel: _____ .

I am also required to inquire of you the names and addresses of all owners, lessors, lessees, security interest holders, and lienholders of said vessel. Please provide the requested information to me at the address shown below, or if you do not have that information please provide a written statement to that effect.

I swear under the pain and penalty of perjury that the information provided in this form is true and correct to the best of my knowledge, information, and belief.

Signed:

(x) _____

Address

City State Zip

Notary Public
My Commission Expires:

**To: Georgia Bureau of Investigation
Investigative Reports
3121 Panthersville Road
Decatur, Georgia 30034**

Date: _____

Re: Abandoned Vessel Notice and Information Request

I am required by O.C.G.A. § 52-7-71 to notify you that I am in possession of an abandoned vessel. I am required to provide you with the following information, if known:

- A) vessel number: _____
- B) hull identification number: _____
- C) The vessel is in fact abandoned
- D) model: _____
- E) year: _____
- F) make of vessel: _____
- G) the date the vessel became abandoned: _____
- H) the date vessel was removed: _____
- I) the present location of the vessel: _____ .

I am also required to inquire of you the names and addresses of all owners, lessors, lessees, security interest holders, and lienholders of said vessel. Please provide the requested information to me at the address shown below, or if you do not have that information please provide a written statement to that effect.

I swear under the pain and penalty of perjury that the information provided in this form is true and correct to the best of my knowledge, information, and belief.

Signed:

(x) _____

Notary Public
My Commission Expires:

Address

City State Zip

**THIS NOTICE MUST BE SENT VIA CERTIFIED OR REGISTERED MAIL
OR STATUTORY OVERNIGHT DELIVERY.**

ABANDONED VESSEL NOTICE

Date of This Notice: ____ / ____ / ____

TO (Name and Address):

On ____/____/____ (date notified by DNR or GBI) you were identified by the Georgia Department of Natural Resources and/or the Georgia Bureau of Investigation as an owner, lessor, lessee, security interest holder, or lien-holder of the below-listed vessel. Pursuant to O.C.G.A. §§ 52-7-71(f) and 52-7-74(3)(A), the vessel shall be disposed of if you fail to redeem it within ten (10) days of this notice. You may redeem the vessel by paying the redemption fees itemized below.

Vessel Identification:

Vessel Certificate of Number: _____

Hull Identification Number: _____

Year: _____ Make: _____

Model: _____

Location of Vessel: _____

Telephone: (____) _____ - _____

Redemption Fees:

Towing and/or removal fees: \$ _____

Storage Fees (Daily Rate): _____

Other Fees (described below): _____

Description of Other Fees: _____

**THIS NOTICE MUST BE SENT VIA CERTIFIED OR REGISTERED MAIL
OR STATUTORY OVERNIGHT DELIVERY.**

NOTICE: TO ALL OWNER(S), LESSOR(S), LESSEE(S), SECURITY INTEREST HOLDER(S), AND LIENHOLDER(S) OF THE BELOW DESCRIBED VESSEL

Date first run in county organ or posting at county courthouse: _____ .

To the above styled individuals:

You are hereby given notice that the below named individual or company is in possession of your vessel.

The vessel is described as:

_____ .

The certificate number is: _____ .

The hull identification number is: _____ .

The vessel was removed from: _____ .

The present location of the vessel is: _____ .

Submitted by:

_____ as Owner/Operator of Removal or Storage Company

Address

City State Zip

THE ABOVE VESSEL HAS BEEN DEEMED ABANDONED AND IF NOT REDEEMED BY ITS OWNERS OR THOSE HAVING A LEGAL INTEREST, IT WILL BE DISPOSED OF.

THIS ADVERTISEMENT SHALL RUN IN THE COUNTY'S LEGAL ORGAN FOR TWO (2) CONSECUTIVE WEEKS, AND IF NO PAPER EXISTS, SHALL BE POSTED AT THE COUNTY COURTHOUSE FOR TWO (2) CONSECUTIVE WEEKS. O.C.G.A. § 52-7-71

**To: Georgia Department of Natural Resources
Lieutenant Sam O'Neal
GA DNR / WRD
2065 Highway 278 S.E.
Social Circle, Georgia 30025**

Date: _____

Re: Notice of Abandoned Vessel Recovery or Redemption

I am required by O.C.G.A. § 52-7-71(i) to notify you that the below-described vessel is no longer an abandoned vessel. On ___/___/_____, the vessel was (check one):

- Recovered; or,
- Claimed by its owner; or,
- determined to be stolen; or,
- some other reason (described below)

Other reason: _____

Description of Vessel:

- A) vessel number: _____
- B) hull identification number: _____
- C) The vessel is in fact abandoned
- D) model: _____
- E) year: _____
- F) make of vessel: _____
- G) the date the vessel became abandoned: _____
- H) the date vessel was removed: _____
- I) the present location of the vessel: _____

Signed:

(x) _____

Address

City State Zip

**To: Georgia Bureau of Investigation
Investigative Reports
3121 Panthersville Road
Decatur, Georgia 30034**

Date: _____

Re: Notice of Abandoned Vessel Recovery or Redemption

I am required by O.C.G.A. § 52-7-71(i) to notify you that the below-described vessel is no longer an abandoned vessel. On ____/____/_____, the vessel was (check one):

- Recovered; or,
- Claimed by its owner; or,
- determined to be stolen; or,
- some other reason (described below)

Other reason: _____

Description of Vessel:

- A) vessel number: _____
- B) hull identification number: _____
- C) The vessel is in fact abandoned
- D) model: _____
- E) year: _____
- F) make of vessel: _____
- G) the date the vessel became abandoned: _____
- H) the date vessel was removed: _____
- I) the present location of the vessel: _____ .

Signed:

(x) _____

Address

City State Zip

DEMAND FOR PAYMENT

To:

From:

Vessel Owner's Name

Removal or Storage Company

Address

Address

City State Zip

City State Zip

Telephone Number

Dear Vessel Owner:

This company was requested to remove and or store your boat which appeared to be abandoned. This letter is an attempt to collect reasonable fees and costs associated with the removal and storage of your vessel. **This vessel will be deemed abandoned unless redeemed within thirty (30) days of removal, the removal date being** _____.

Vessel Identification:

Vessel Certificate Number: _____

Hull Identification Number: _____

Year: _____ Make: _____

Model: _____

Redemption Fees:

Towing and/or removal fees: \$ _____

Storage Fees (Daily Rate): _____

Other Fees (described below): _____

Description of Other Fees: _____

**THIS NOTICE MUST BE SENT VIA CERTIFIED OR REGISTERED MAIL
OR STATUTORY OVERNIGHT DELIVERY.**

State of Georgia
County of Cherokee

ABANDONED VESSEL AFFIDAVIT

I, _____, do hereby solemnly swear or affirm under the penalties of perjury as follows:

The vessel described as:

Certificate Number: _____
Hull Identification Number: _____
Make & Model: _____
Year: _____

was removed to and or has been stored at: _____; the vessel is an abandoned vessel as defined in O.C.G.A. § 52-7-70; and the vessel has not been claimed or redeemed by the owner, lessor, lessee, or any holder of a security interest or lien.

I hereby further solemnly swear or affirm that, in following the procedure to foreclose on an abandoned vessel lien on said vessel, I have complied with the requirements of O.C.G.A. §§52-7-71 and 52-7-74 as evidenced by the following:

1. Within 72 hours of the removal or storage of said vessel at the request of law enforcement from public property or from public waters, I requested of law enforcement the identity and address of the last known registered owner; or
2. Within 72 hours of the removal or storage of said vessel at the request of property owner from private property or from private water, I notified in writing local law enforcement of the location, the certificate number, the hull identification number, the model, the year, and the make of the vessel, and requested from local law enforcement the identity and address of last known registered owner and if stolen; and
3. If the owner is known, I notified the owner within seven (7) days of removal by certified, registered, or overnight delivery giving owner the location of the vessel, fees connected with removal and storage, and that vessel was deemed abandoned unless redeemed within thirty (30) days of removal; and
4. That the owner failed to redeemed the vessel, and that I did give notice, within seven (7) days after the vessel was abandoned, to the

Georgia Department of Natural Resources, and the Georgia Bureau of Investigation stating the certificate number, hull identification number, model, year, make, if known, of the vessel and the date of abandonment, the date of removal, and the present location of the vessel; and

5. I did request of the Georgia Department of Natural Resources and the Georgia Bureau of Investigation the name and address of all owners, lessors, lessees, security interest holders, and lienholders of said vessel; and

6. If the vessel is registered in another state, I checked the records of that other state in an attempt to identify the owner; and

7. If I became aware of the identity of the owner of said vessel, I did within five (5) calendar days, and by certified, registered, or overnight mail notify any owner, lessor, lessee, security interest holder, and lienholder of the location of the vessel, that the vessel was deemed abandoned, and that the vessel will be disposed of if not redeemed; and

8. If the owner could not be ascertained, I did cause an advertisement to be placed in the county's legal organ for two (2) consecutive weeks containing a complete description of the vessel, the certificate and hull identification number of the vessel, the location where removed, the present location of the vessel, that the vessel was deemed to be abandoned, and that the vessel was going to be disposed of if not redeemed; or

9. If the owner could not be ascertained, I did cause notice to be posted for two (2) consecutive weeks at the county courthouse where such public notices are posted; and

10. I did notify the Georgia Department of Natural Resources and the Georgia Bureau of Investigation within seven (7) days if the vessel was recovered by its owner, was claimed by the owner, was determined to be stolen, and for any other reason the vessel is no longer abandoned; and

11. I have made demand of the owner, if known, for the reasonable fees for removal and storage, plus any cost of advertisement, and that demand was made by certified, registered, or overnight mail. All fees and charges were itemized; and

12. Said demand has been made without satisfaction, as evidenced by the document(s) attached hereto and incorporated herein, without a timely filing of a petition for a judicial hearing.

The foregoing information presented in this affidavit is true and correct to the best of my knowledge, information, and belief.

Therefore, I respectfully ask this Court to issue an order authorizing the foreclosure of my lien and the sale of this vessel.

For Removing/Storage Company:

(x) _____
Signature

Printed Name

Address

City State Zip

Sworn to and subscribed before me, a notary public in and for the State of _____, County of _____, by the above-named individual who is personally known to me or has proven his or her identity to me.

Notary Public

My Commission Expires:

The Court may, in its discretion, enter judgment foreclosing the above asserted lien based on this affidavit and without a hearing if all the required documents are attached to support each paragraph of the foregoing affidavit. An unsupported or partially supported affidavit might be set for a hearing before the Court to determine whether all the requirements for lien foreclosure have been met.