



ABANONED RVS AND PROPERTY

SUMMARY OF ISSUE

The RV park statute is very unclear about how to dispose of abandoned property left on the site. Although there is a procedure for giving notice and then retaining possession of the property, that procedure does not work for titled property such as recreational vehicles, boats and automobiles. Also, the procedure does not apply to outstanding accounts where the guest leaves without paying the bill.

There has been litigation against RV park owners who have followed this procedure, asserting that they are not acting appropriately, and that there has been a “conversion” of the property.

If the tenancy is under Chapter 83, Part II, Landlord Tenant, the abandoned property must be dealt with under Chapter 715.

RV park owners need a clear path for dealing with abandoned property that does not subject them to litigation.

CURRENT STATUTES THAT APPLY TO ABANDONED PROPERTY

A. ABANDONED PROPERTY STATUTES

RV park owners and operators have two types of tenancies in their parks: (1) short term “transient” rentals of a duration less than 6 months; and, (2) Chapter 83 Landlord and Tenant tenancies that are for a duration of 6 months or more.

Abandoned property in RV parks is treated differently depending upon the type of tenancy. Chapter 83 tenancies that are for 6 months or longer are governed by the abandoned property statute governing landlord tenant properties, in section 715.10 – 711, as follows:

715.101 Application of ss. 715.10-715.111.—

(1) Sections 715.10-715.111 apply to all tenancies to which part I or part II of chapter 83 are applicable, and to tenancies after a writ of possession has been issued pursuant to s. 723.062.

The 715.10 – 715.111 abandoned property statute requires a notice to the owner of the property or to the person who left the property at the premises. That owner or other person has a right to redeem the property. However, if the property is not redeemed the landlord has the right to sell the property. Titled property is sold and the title is cleared by the Department of Highway Safety and Motor Vehicles for automobiles, RV’s, boats and other motorized vehicles.

The short term transient rental is governed by section 513.115, as follows:

513.115 Unclaimed property.—Any property having an identifiable owner which is left in a recreational vehicle park by a guest, other than property belonging to a guest who has vacated the premises without notice to the operator and with an outstanding account, which property

remains unclaimed after having been held by the park for 90 days after written notice was provided to the guest or the owner of the property, becomes the property of the park.

There has been case law in Florida that a tenant is entitled to notice and an opportunity to recover their property when it is left at an apartment, house or other Chapter 83 type rental. An abandoned property statute that does not provide for notice and a judicial proceeding was held to be unconstitutional as allowing the taking of property without due process. *Johnson v. Riverside Hotel*, 399 F. Supp 1138 (US Southern Dist. Ct. 1975).

The unclaimed property statute for recreational vehicle parks is less than clear about what to do when the party who abandons property in the RV park is a guest who has vacated the premises without notice and with an outstanding account.

B. LIEN STATUTES

The lien that is available to hotel owners is available to RV park owners for abandoned property. That statutory lien provides:

713.77 Liens of owners, operators, or keepers of mobile home or recreational vehicle parks; ejection of occupants.—A lien prior in dignity to all others except a lien for unpaid purchase price shall exist in favor of the owner, operator, or keeper of a mobile home park or recreational vehicle park for rent owing by, and for money or other property advanced to, any occupant thereof upon the goods, chattels, or other personal property of such occupant. Upon the nonpayment of such sums in accordance with the rules of such park, or for failure to observe any provision of this part or the rules and regulations prescribed by the Department of Health, the owner, operator, or keeper thereof may instantly eject such occupant therefrom. A lien created in favor of an owner or operator of a mobile home park or recreational vehicle park may be enforced in the same manner as is now or may hereafter be provided by law for the enforcement of liens in favor of keepers of hotels and boardinghouses. Nothing in this section, however, shall prevent an owner or operator of a mobile home park or recreational vehicle park from enforcing any claim for rent under and in the manner provided by landlord and tenant acts of this state.

The lien created for keepers of hotels and boardinghouses has been determined to be unconstitutional for failure to provide a

713.68 Liens for hotels, apartment houses, roominghouses, boardinghouses, etc.—In favor of any person conducting or operating any hotel, apartment house, roominghouse, boardinghouse or tenement house where rooms or apartments are let for hire or rental on a transient basis. Such lien shall exist on all the property including trunks, baggage, jewelry and wearing apparel, guns and sporting goods, furniture and furnishings and other personal property of any person which property is brought into or placed in any room or apartment of any hotel, apartment house, lodginghouse, roominghouse, boardinghouse or tenement house when such person shall occupy, on a transient basis, such room or apartment as tenant, lessee, boarder, roomer or guest for the privilege of which occupancy money or anything of value is to be paid to the person conducting or operating such hotel, apartment house, roominghouse, lodginghouse, boardinghouse or tenement house. Such lien shall continue and be in full force and effect for the amount payable for such occupancy until the same shall have been fully paid and discharged.

Guests in an RV park or tenants under Chapter 83 are “persons in privity with the owner of the park, and therefore the enforcement of liens falls under section 85.011, as follows:

85.011. Enforcement by persons in privity with the owner.--

All liens on real or personal property provided for by part I or part II of chapter 713 are enforceable by persons in privity with the owners, except when otherwise provided, as follows:

(1) Retention of possession.--By retention of possession of the property on which the lien has attached for a period of not exceeding 3 months by the person entitled to the lien, if the person was in possession at the time the lien attached.

(2) By action in chancery.--By an action in chancery, however this is the exclusive remedy for enforcement of liens on the separate statutory property of married women and against estates by the entirety.

(3) Ordinary action at law.--By an ordinary action at law and levy of the execution obtained therein on the property on which the lien is held.

(4) Special action at law.--By an action at law in which the complaint shall state the manner in which the lien arose, the amount for which the lien is held, the description of the property and demand that the property be sold to satisfy the lien. The judgment for plaintiff is a personal judgment against defendant as well as a lien on the property, which it shall describe, and shall direct execution against the property, as well as against the property generally of defendant.

The RV park statute seems to be in violation of this section because the lien to be enforced under section 713.77 must be filed as an action in court to dispose of the abandoned property. The case law beginning with *Johnson v. Riverside Hotel*, also provides that a hearing must be held on the disposition of the property.

The 715.10 – 715.111 statute does provide for simply notice and a Sheriff's sale. It does not require a court hearing. However, disposition of the property is based upon the Sheriff acting pursuant to his authority to dispose of the property, not the simple passage of time.