

SECTION 2 — COMMERCIAL LIENS ACT



Module 7 — Surplus & Deficiency Rules

What Happens After the Sale of a Vehicle Under the Commercial Liens Act

Opening Narration

Narrator:

Once a lien vehicle has been sold, you must follow strict rules about what happens to the money. The Commercial Liens Act (CLA) sets out a clear order for distributing sale proceeds and explains when you may collect additional amounts from the debtor — or when you must return surplus funds.

Let's walk through the rules in simple, practical terms.

Lesson 1 — Order of Distribution: Who Gets Paid First?

After a lien sale, the money received must be distributed in the following order:

1. Costs of enforcing the lien

These are reasonable, documented expenses, such as:

- PPSA search fees
- Advertising and auction costs
- Administrative fees related directly to the sale
- Reasonable legal fees (in some cases)

2. The lien amount owed

This includes:

- Towing charges
- Storage charges
- Repair charges
- Diagnostic fees
- Taxes (if applicable)

3. Secured lenders (if applicable)

If the lender has priority over the debtor but *not* over the lien claimant, their remaining interest is extinguished — but they do not receive sale proceeds **unless surplus remains after payment of the lien.**

4. The surplus goes to the debtor (owner)

Any remaining balance must be returned to the person who owned the vehicle prior to the sale.

This is mandatory.

Lesson 2 — What is a Surplus?

A **surplus** occurs when:

The sale price is greater than the total of all liens, charges, and enforcement costs.

Examples:

- Vehicle sells for \$4,000
- Total charges are \$3,200
- Surplus = \$800 → must be returned to the debtor

Or:

- Vehicle sells for \$10,000
- Total lien + costs = \$3,000
- Surplus = \$7,000 → must be returned to the debtor

Important:

If a secured lender exists, they do **not** automatically receive the surplus.

The surplus belongs to the debtor unless the secured lender has already seized or otherwise taken legal entitlement to it through enforcement proceedings.

Lesson 3 — What If You Cannot Locate the Debtor?

This is a common problem in the towing and repair industries.

If the debtor cannot be located:

✓ You must still *set aside* the surplus

It must be held in trust or otherwise accounted for.

✓ You must document attempts to contact the debtor

Such as:

- Notices sent
- Returned mail
- Emails
- Phone attempts
- Contact with updated addresses or insurers

✓ You cannot treat the surplus as your own revenue

The surplus still belongs to the debtor.

✓ The surplus may need to be paid into court after a certain period

This varies depending on circumstances and government direction.

Lesson 4 — What Is a Deficiency?

A **deficiency** occurs when:

The sale price is *less* than the total lien amount.

Example:

- Charges: \$3,000
- Sale proceeds: \$1,800
- Deficiency: \$1,200

The CLA allows **debtor liability for the deficiency**, but only in certain circumstances.

Lesson 5 — When You Can Collect a Deficiency

You may pursue a deficiency if:

✓ Charges were reasonable

Courts will not support inflated or unreasonable storage rates.

✓ Repairs were authorized

Unauthorized repairs cannot be used to claim a deficiency.

✓ You complied fully with notice and sale procedures

Any procedural defect wipes out the right to claim a deficiency.

✓ There is no statutory restriction prohibiting deficiency recovery

Some older lien laws denied deficiency claims — but the CLA allows them in appropriate cases.

Lesson 6 — When You *Cannot* Collect a Deficiency

You cannot pursue a deficiency when:

✗ You violated notice or sale requirements

A defective sale extinguishes deficiency rights.

X Charges were unreasonable

Storage charges must be justifiable.

X Repairs were unauthorized

Unauthorized work cannot form the basis of a deficiency claim.

X You voluntarily released the vehicle prior to payment

Your lien was extinguished — no enforcement rights remain.

X A secured lender had priority over your lien

If the lender's interest outranks yours, your right to collect a deficiency may be limited.

Lesson 7 — Practical Examples: Real-World Scenarios

Scenario A — Surplus Returned to Debtor

- Tow and storage bill: \$2,200
- Vehicle sold for: \$3,400
- Surplus: \$1,200

Outcome:

✓ Tower must return the \$1,200 to the owner.

Scenario B — No Surplus, No Deficiency Claim

- Repair bill: \$4,000
- Sale price: \$2,000
- Deficiency: \$2,000
- BUT notice was defective.

Outcome:

X Repairer cannot pursue the deficiency.

X Improper notice invalidates further claims.

Scenario C — Valid Deficiency Claim

- Customer authorized \$1,500 repair
- Proper notice sent
- Sale price: \$1,000
- Deficiency: \$500

Outcome:

✓ Repairer may pursue the debtor for the remaining \$500.

Scenario D — Secured Lender Involved

- Vehicle sells for \$7,000
- Tower's lien: \$2,000
- Enforcement costs: \$300
- Surplus: \$4,700

Outcome:

✓ Surplus belongs to debtor, *not* lender

Unless lender has taken legal steps to enforce their own rights separately.

Lesson 8 — Best Practices for Handling Surplus & Deficiency

✓ Keep detailed accounting records

Sale price, charges, fees, distributions.

✓ Hold surplus funds in a separate account if required

Avoid commingling.

✓ Document all attempts to contact the debtor.

✓ Keep copies of notices and sale documentation

These support your right to collect a deficiency.

✓ **Ensure all charges are reasonable and well documented.**

✓ **Seek legal advice before pursuing large deficiencies**

Especially when lenders or insurers are involved.

Lesson 9 — Summary

Narrator:

To recap:

- Surplus must always be returned to the debtor.
- Deficiencies may be collected — but only when the sale and notices were conducted correctly.
- Secured lenders do not automatically receive surplus funds.
- You must maintain detailed accounting and compliance documentation.
- Incorrect handling of surplus or deficiency exposes operators to legal risk.

Understanding surplus and deficiency prepares you for more advanced scenarios involving police, insurers, out-of-province vehicles, and complex disputes — which we'll cover later in the module.
