

SECTION 2 — COMMERCIAL LIENS ACT



Module 3 — Maintaining & Enforcing Possessory Liens

How Towers & Repairers Protect Their Lien Rights Under the CLA

Opening Narration

Narrator:

A commercial lien gives you the legal right to hold a customer's vehicle until the charges are paid — but only **as long as you maintain possession**.

Possession is the foundation of your lien rights under the Commercial Liens Act (CLA).

If possession is lost, voluntarily or accidentally, the lien is usually lost with it.

In this lesson, we will cover:

- What it means to maintain possession
- How lien rights are preserved
- When possession is considered lost
- Temporary release rules
- Police orders and insurer involvement
- Documentation and best practices
- Situations that weaken or extinguish your lien

This lesson is essential for avoiding costly legal mistakes.

Note for repairers. If you give up possession of the vehicle you may still register a lien through the Personal Property Registry to retrieve it. For example, a customer says he will be back in a week to pay for the repairs but doesn't show. We will provide more details on this later in the course.

Lesson 1 — What Does “Possession” Mean Under the CLA?

Narrator:

Under the Commercial Liens Act, a lien claimant (owner or repairer) maintains their lien **only while they retain continuous physical possession** of the goods — in our case, a vehicle.

Possession requires:

- Physical control
- The ability to prevent the vehicle from being removed
- Appropriate custody and security measures

Your lien evaporates the moment you surrender or lose possession.

Lesson 2 — Maintaining Possession in Practice

To maintain a valid lien, you must:

✓ Keep the vehicle on your premises

Or another secured area **under your exclusive control**.

✓ Prevent unauthorized access or removal

This includes:

- Locked gates
- Controlled access to your lot
- Documentation of every visit and access event

✓ Document all interactions

Record:

- Who accessed the vehicle
- What was removed
- When the visit occurred
- Why the visit was allowed

✓ **Ensure clear internal procedures**

Staff must know:

- When NOT to release a vehicle
- How to verify identity
- How to confirm payment

In Module 1 (impounds), RSBC dictated these policies.

Under the CLA, **you** set your own procedures — but you must follow them consistently.

Lesson 3 — When Is Possession Lost? (Lien Extinguishment)

This is a critical section. Towers and repairers may lose their lien unintentionally.

Possession is lost when:

✗ The vehicle is released voluntarily (even briefly)

If a customer takes the vehicle off your lot — even for “just 10 minutes” — the lien may be extinguished.

✗ Access is granted without supervision

Case law shows that unsupervised access can undermine possession because you are no longer exercising control.

✗ A staff member allows the vehicle to be driven out by mistake

More for repairs, but this is more common than it sounds.

✗ A bailiff, repo agent, or third party removes the vehicle without resistance or objection

If the business does not object or take reasonable steps to prevent removal, courts have found that the business “surrendered” possession.

✗ You move the vehicle to a location you do not control

Example:

Storing a customer vehicle at an unsecured overflow lot managed by a third party.

✗ Police lawfully seize the vehicle

When police take custody under a warrant, your lien is suspended or may be extinguished — depending on circumstances.

We will cover this in detail in Lesson 8.

✗ A court or CRT issues an order requiring release

You must obey all lawful orders.

Lesson 4 — Temporary Release: The Dangerous Myth

Some operators believe they can release a vehicle temporarily (e.g., for inspection, insurance photographs, VIN verification) and then “reassert” the lien afterward.

This is incorrect.

✓ Once possession is lost, your lien is gone.

There is no legal mechanism to “restart” it without performing new services.

Examples of risky temporary release situations:

- Allowing the customer to “just drive it home overnight”
- Allowing insurance staff to take the vehicle to a salvage yard
- Letting a customer borrow the vehicle to retrieve documents
- Allowing a mechanical inspector to tow the vehicle off-site

Even if the customer promises to return, the lien is extinguished the moment you release your physical control.

Lesson 5 — Exceptions: When Possession Is *Not* Considered Lost

There are a few situations where your lien is maintained even though another person interacts with the vehicle.

✓ **Supervised access to personal property**

If the customer retrieves loose belongings under your supervision, possession remains intact.

✓ **Moving the vehicle on your property**

Shifting it to a different bay or storage section does not affect possession.

✓ **Allowing an insurer to inspect the vehicle**

As long as:

- The vehicle remains under your control
- The insurer does not remove it
- You document the inspection

✓ **Road testing (repairer-specific scenario)**

A brief, documented road test by staff does not extinguish possession.

✓ **Police attendance without removal**

Police may inspect a vehicle due to an investigation; possession is not lost unless the vehicle is seized.

Lesson 6 — Police Orders and Your Lien Rights

Police may require a vehicle to be released, even when money is owed.

Three key facts:

1. Police may override your lien in certain lawful situations.

Examples:

- Vehicle is evidence in a criminal investigation
- Vehicle is subject to a court order
- Vehicle must be seized for public safety reasons

2. You must comply with lawful orders.

Refusing may expose your company to legal or criminal liability.

3. Your lien is not automatically preserved.

If police remove the vehicle, your lien may be:

- Suspended
- Transferred
- Extinguished

This depends on the authority under which the police acted.

Lesson 8 explores these scenarios in detail.

Lesson 7 — Insurer Involvement (ICBC, Private Insurance, Salvage)

Insurance companies often interact with lien vehicles.

Your lien is maintained if:

- The insurer inspects the vehicle on your lot
- The insurer negotiates payment for repairs or towing
- The insurer requests an estimate
- The insurer acknowledges responsibility for charges

Your lien is lost if:

- The insurer removes the vehicle without your objection
- You release the vehicle voluntarily under pressure
- You accept partial payment as settlement and allow removal

This lesson will connect strongly to Modules 4 and 5 (Notice and Priority).

Lesson 8 — Documentation Required to Maintain a Lien

Strong documentation protects you in disputes and prevents errors.

Essential records include:

- Tow sheets / work orders
- Photos of the vehicle
- Storage logs or lot movement records
- Customer conversations (emails, texts)
- Police tow authorizations
- Insurance communications
- Access logs for personal property
- Notes on any attempted removal or threats

Good documentation makes it easy to enforce your lien and defend your actions.

Lesson 9 — Best Practices for Maintaining Possession

✓ Always verify ID before releasing a vehicle

No exceptions.

✓ Never release a vehicle until full payment is made

Unless required by court or police.

✓ Never allow "temporary" releases

They destroy the lien.

✓ Keep gates locked and control access

Unauthorized removal can lead to loss of the lien.

✓ Train all staff consistently

A lien is only as strong as the staff who enforce it.

✓ **Maintain clear internal policies**

Including:

- Access procedures
 - Payment rules
 - Release protocols
 - Who is authorized to speak with customers
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Lesson 10 — Summary

Narrator:

To recap:

- A commercial lien is only enforceable while you **maintain possession**.
- If possession is lost — voluntarily or by mistake — the lien is extinguished.
- Supervised access does not harm the lien; unsupervised access might.
- Police or insurers may change lien status depending on the circumstances.
- Strong documentation and consistent procedures protect your rights.

Understanding possession is essential before learning how to notify owners, assert priority, or sell vehicles. Everything flows from this principle.