

## Boat Management Companies and Unpaid Invoices

### General Position

If a service provider, such as a boatyard or a marina operator, is in possession of a vessel or other goods and they hold invoices which remain unpaid by the owner of the goods, then the general position is that the service provider may exercise a 'lien' over the goods. This means that they can keep the goods in their possession until the invoices have been paid, and can seek to settle the debt by selling the goods in question. In a marine context, this allows yards and marinas to retain possession of a vessel and prevent it leaving until outstanding invoices relating to storage, berthing or repairs are paid.



Neil Northmore, Head of Marine

The right to exercise a possessory lien for storage, berthing or repair charges should be reserved by an express term in a written agreement. The BMF standard Terms of Business provide a good example of this and include an express term which reserves the right to retain a vessel pending payment. However, a service provider can still exercise a lien even if there is no written agreement. In such circumstances the owner may be faced with having to resort to legal action to prove the service provider is not entitled to retain possession.

### Using a 'Managing Agent'

If an owner has an agreement with another party such as a managing agent to manage the vessel or to generally arrange for repairs, storage or mooring on the owner's behalf, it is presumed that the agent has the requisite 'authority' to act on the owner's behalf and instruct a third party in order to perform or supply the services.

The actual agreement between the owner and agent must be considered to confirm the precise terms of the agency relationship, but typically the owner will be bound by the contract entered into by its agent if the agent acts within the scope of its agreement with the owner.

Even if the agent does not have what is called 'actual authority', the third party may rely in good faith on representations made by a person who identifies himself as an agent for an owner where the third party 'reasonably believes' that the agent is authorised to act on the owner's behalf. Typically this occurs where an agent performs the services that are normally entrusted to someone occupying the agent's position or the owner creates an impression that the agent is authorised to act on its behalf.

Individual circumstances will vary but owners may have to settle or negotiate payment terms in respect of any unpaid invoices even if they have already paid the agent. Usually the agent will be liable to compensate the owner but that may be of little practical help if the agent is insolvent or otherwise unable to pay.

It may also be possible to exercise a statutory lien over the vessel for unpaid dock charges and dues. Statutory liens attach to the vessel itself rather than the owner. However, berthing charges do not fall within the legal definition of "dock charges and dues" and therefore the nature of the service provided and the precise terms of the contract must be considered in order to ascertain whether the sums due entitle the marina or yard to take action against the vessel. Detailed legal advice is often required and the process can be expensive.

## Resolving Disputes

The right to a possessory lien is lost if control of the vessel is lost or it is otherwise returned to the owner. If a yard wishes to retain possession of a vessel, possible ways to secure it include chaining it to the dock or lifting the vessel out of the water. A yard has a duty to maintain the vessel in the same condition as it was in when the yard or marina took possession until the vessel is released.

Check whether there is clear evidence to support the exercise of a lien, as a yard or marina will be in a weaker position without sufficient supporting evidence of their rights. If a lien is exercised over a particular vessel the yard or marina must inform the owner (or the owner's agent) of their intention to do so and it is advisable to highlight the basis on which it is entitled to exercise a lien, such as a written contract or Terms and Conditions of Business. Depending on the exact rights granted under an agreement, a yard may also be able to charge for berthing or storage ashore while it is detaining the vessel. However, if this right is not clearly reserved under the contract then additional charges may not be recoverable.

Owners should request exact details of any outstanding sums and then consider whether it is reasonable to pay the amount due in order to have their vessel released. Whether the owner is prepared to pay the debt depends on what the owner feels is reasonable in the circumstances and the extent to which the agent may ultimately be responsible for the unpaid amount.

Alternatively, if the sum is for a significant amount it may be possible to negotiate a deal for part-payment or payment by instalments in order to release the vessel. If the owner refuses to pay the outstanding sums a yard or marina can potentially obtain an order for sale of the vessel if the debt remains unpaid for more than 3 months.

**If you would like further information please contact**

**Neil Northmore at Michelmores Solicitors on 01392 688688 or**

**[neil.northmore@michelmores.com](mailto:neil.northmore@michelmores.com)**

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