

# VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

## CHAPTER 560

*An Act to amend and reenact §§ 43-34 and 46.2-644.03 of the Code of Virginia, relating to mechanics' liens; notice of sale.*

[S 1336]

Approved March 18, 2019

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 43-34 and 46.2-644.03 of the Code of Virginia are amended and reenacted as follows:**

**§ 43-34. Enforcement of liens acquired under §§ 43-31 through 43-33 and of liens of bailees.**

*For the purposes of this section, "public place" means a premises owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.*

Any person having a lien under §§ 43-31 through 43-33 and any bailee, except where otherwise provided, having a lien as such at common law on personal property in his possession that he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within 10 days after it is due and the value of the property affected by the lien does not exceed \$10,000, may sell such property or so much thereof as may be necessary, by public auction, for cash. The proceeds shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if any, shall be paid within 30 days of the sale to any lienholder, and then to the owner of the property. A seller who fails to remit the surplus as provided shall be liable to the person entitled to the surplus in an amount equal to \$50 for each day beyond 30 days that the failure continues.

Before making the sale, the seller shall advertise the time, place, and terms thereof in *any of the following places: (i) a public place in the county or city where the property is located; (ii) a website operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) a newspaper of general circulation in the county or city where the property is located, either in print or on its website.* In the case of property other than a motor vehicle required to be registered in Virginia having a value in excess of \$600, 10 days' prior notice shall be given to any secured party who has filed a financing statement against the property, and written notice shall be given to the owner as hereinafter provided.

If the value of the property is more than \$10,000 but does not exceed \$25,000, the party having the lien, after giving notice as herein provided, may apply by petition to any general district court of the county or city wherein the property is, or, if the value of the property exceeds \$25,000, to the circuit court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court is satisfied that the debt and lien are established and the property should be sold to pay the debt, the court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ of fieri facias.

If the owner of the property is a resident of the Commonwealth, any notice required by this section may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the courts, by personal delivery or by certified or registered mail delivered to the present owner of the property to be sold at his last known address at least 10 days prior to the date of sale. If the owner of the property is a nonresident or if his address is unknown, any notice required by this section may be served by posting a copy thereof in three of any of the following places in any combination: (i) one or more public places in the county or city where the property is located; (ii) one or more websites operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) one or more newspapers of general circulation in the county or city where the property is located, either in print or on their websites. ~~For purposes of this section, "public place" means a premises owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.~~

**§ 46.2-644.03. Enforcement of liens acquired under §§ 46.2-644.01 and 46.2-644.02 and of liens of bailees.**

*For the purposes of this section, "public place" means a premises owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.*

Any person having a lien under §§ 46.2-644.01 and 46.2-644.02 and any bailee, except where otherwise provided, having a lien as such at common law on personal property in his possession that he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within 10 days after it is due and the value of the property affected by the lien does not exceed \$12,500, may sell such property or so much thereof as may be necessary, by public auction, for cash. The proceeds shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if

any, shall be paid within 30 days of the sale to any lienholder, and then to the owner of the property. A seller who fails to remit the surplus as provided shall be liable to the person entitled to the surplus in an amount equal to \$50 for each day beyond 30 days that the failure continues.

Before making the sale, the seller shall advertise the time, place, and terms thereof in *any of the following places*: (i) a public place in the county or city where the property is located; (ii) a website operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) a newspaper of general circulation in the county or city where the property is located, either in print or on its website. In the case of property other than a motor vehicle required to be registered in Virginia having a value in excess of \$600, 10 days' prior notice shall be given to any secured party who has filed a financing statement against the property, and written notice shall be given to the owner as hereinafter provided. If the property is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the person having the lien shall ascertain from the Commissioner of the Department of Motor Vehicles whether the certificate of title of the motor vehicle shows a lien thereon. At that time, the Commissioner shall also determine the value of the property and shall communicate it to the bailee. If the certificate of title shows a lien, the bailee proposing the sale of the motor vehicle shall notify the lienholder of record, by certified mail, at the address on the certificate of title of the time and place of the proposed sale 10 days prior thereto. If the name of the owner cannot be ascertained, the name of "John Doe" shall be substituted in any proceedings hereunder and no written notice as to him shall be required to be mailed. Whenever a vehicle is shown by the Department of Motor Vehicles records to be owned by a person who has indicated that he is on active military duty or service, the Department shall include such information in response to requests for vehicle information pursuant to the requirements of this chapter.

If the value of the property is more than \$12,500 but does not exceed \$25,000, the party having the lien, after giving notice as herein provided, may apply by petition to any general district court of the county or city wherein the property is, or, if the value of the property exceeds \$25,000, to the circuit court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court is satisfied that the debt and lien are established and the property should be sold to pay the debt, the court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ of fieri facias.

In determining the value of the property as required by this section, the Commissioner shall use a recognized pricing guide and, in using such guide, shall use the trade-in value specified in such guide.

If the owner of the property is a resident of the Commonwealth, any notice required by this section may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the courts, by personal delivery or by certified or registered mail delivered to the present owner of the property to be sold at his last known address at least 10 days prior to the date of sale. If the owner of the property is a nonresident or if his address is unknown, any notice required by this section may be served by posting a copy thereof in three of any of the following places in any combination: (i) one or more public places in the county or city where the property is located; (ii) one or more websites operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) one or more newspapers of general circulation in the county or city where the property is located, either in print or on their websites. ~~For purposes of this section, "public place" means a premises owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.~~

If the property is a motor vehicle (i) for which neither the owner nor any other lienholder or secured party can be determined by the Department of Motor Vehicles through a diligent search of its records, (ii) manufactured for a model year at least six years prior to the current model year, and (iii) having a value of no more than \$3,000 as determined by the provisions of § 8.01-419.1, a person having a lien on such vehicle may, after showing proof that the vehicle has been in his continuous custody for at least 30 days, apply for and receive from the Department of Motor Vehicles title or a nonrepairable certificate to such vehicle, free of all liens and claims of ownership of others, and proceed to sell or otherwise dispose of the vehicle.

Whenever a motor vehicle is sold hereunder, the Department of Motor Vehicles shall issue a certificate of title and registration or a nonrepairable certificate to the purchaser thereof upon his application containing the serial or motor number of the vehicle purchased together with an affidavit of the lienholder that he has complied with the provisions hereof, or by the sheriff conducting a sale that he has complied with said order.

Any garage keeper to whom a motor vehicle has been delivered pursuant to § 46.2-1209, 46.2-1213, or 46.2-1215 may after 30 days from the date of delivery proceed under this section, provided that action has not been taken pursuant to such sections for the sale of such motor vehicle.

Notwithstanding any provisions to the contrary, any person having a lien under § 46.2-644.01 or 46.2-644.02 shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.) when disposing of a vehicle owned by a member of the military duty or service.

# **Mechanics' and Storage Liens/Abandoned Vehicles Stakeholder Meeting June 5, 2019**

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## **Study Charge**

- DMV, in conjunction with stakeholder groups, examine issues surrounding abandoned vehicles and vehicles subject to mechanics' and storage liens
- The Department must report the study groups findings to the Senate and House Transportation Committees by December 2019

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## Study Scope

- Review the concerns raised regarding difficulties complying with notice, posting and Servicemember Civil Relief Act requirements
- Review the confusion between the different processes legislated for abandoned vehicles and vehicles subject to mechanics' and storage liens and when they may be used
- Review options to facilitate compliance with other states' requirements

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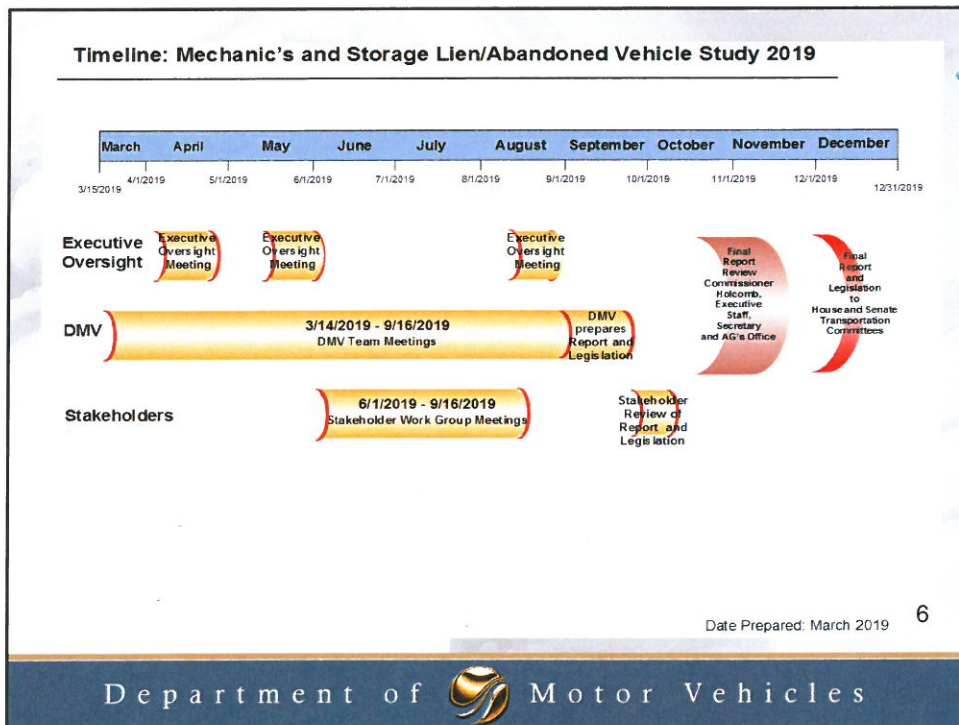
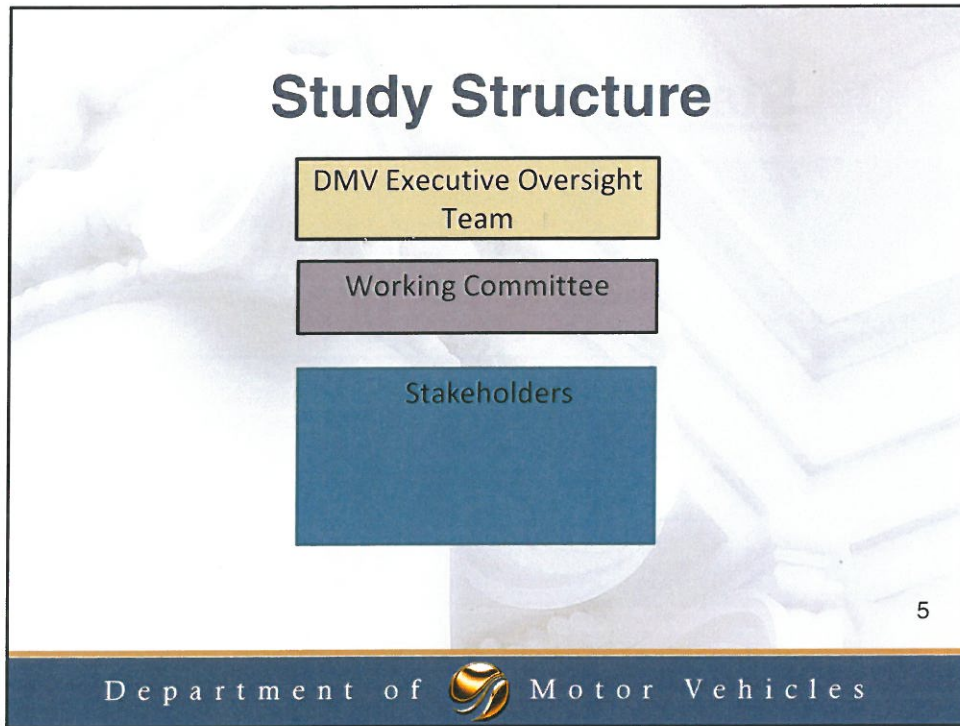
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## Study Scope

- Identify changes that would provide adequate statutory authority or direction for some practices
- Review Virginia's current requirements and processes to determine how to increase compliance and streamline them
- Identify processes or legislation needed to ensure compliance with notification requirements in both Virginia law and other jurisdictions' laws, when applicable

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## Stakeholder Meetings

Wednesday, June 5 <sup>th</sup> (Kick-Off) 9:00 a.m. – noon	Tuesday, July 9 <sup>th</sup> 1:00 p.m. – 4:00 p.m.	Wednesday, August 14 <sup>th</sup> 9:00 a.m. – noon
<ul style="list-style-type: none"> <li>• Review study charge</li> <li>• Provide overview of DMV's current and related processes</li> <li>• Present preliminary other state research</li> <li>• Review topics to be addressed during this study</li> <li>• Additional topics – Roundtable</li> <li>• Next Meeting</li> </ul>	<ul style="list-style-type: none"> <li>• Present additional other state research</li> <li>• Provide an overview of each study topic</li> <li>• Discuss areas of concern</li> <li>• Identify and review proposed recommendations</li> </ul>	<ul style="list-style-type: none"> <li>• Review final recommendations</li> <li>• Obtain stakeholder consensus</li> <li>• Outline next steps</li> </ul>

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## **Mechanics' and Storage Liens (MSL) Abandoned Vehicles Process (AVP)**

### ❖ MSL Purpose:

Businesses that tow, recover, repair, or store a vehicle to recover charges owed when the vehicle owner fails to pay within a reasonable time frame.

### ❖ AVP Purpose:

For the applicants to dispose of an abandoned motor vehicle, trailer, or manufactured home left on a highway, public property, or private property.

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## MSL/AVP Current Process

### MSL Eligibility

❖ Who

Any person having a lien under §§ 46.2-644.01 (storage lien) and/or 46.2-644.02 (mechanic's lien)

❖ When

If the debt for which the lien exists is not paid within 10 days after it is due (§ 46.2-644.03)

*Note: By statute, when work is performed on a vehicle or a vehicle incurs storage fees, a lien is automatically attached, pending payment of charges owed.*

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## MSL/AVP Current Process

### AVP Eligibility

❖ Who

Any city or locality in Virginia or an individual or business (§ 46.2-1202)

❖ When

1. Vehicle is left unattended on public property, for more than 48 hours in violation of a state law or local ordinance (§46.2-1200); or

2. Vehicle has remained for more than 48 hours on private property without the consent of the property owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property (§46.2-1200); or

3. Vehicle is left unattended on the shoulder of a primary highway (§46.2-1200).

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## MSL/AVP Current Process

### ❖ Step 1 (optional): Applicant secures priority

- **MSL:** Storage lien applicants may secure priority over existing liens for storage charges above \$300. Priority ensures that they will be paid before any other lienholder after sale of the vehicle
- **AVP:** This step does not apply to AVP

### ❖ Step 2: Applicant initiates record request

- **MSL:** There are 3 methods for obtaining a MSL transcript:
  1. In person at a DMV customer service center;
  2. By mailing documents to DMV's HQ work center; or
  3. Through DMV's Online Extranet Application.
- **AVP:** Applicant applies online to request the vehicle information

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## MSL/AVP Current Process

### ❖ Step 3: Customer submits documentation and pays for MSL transcript or vehicle record information (AVP Process)

- **MSL** – applicant pays \$9.00 in CSC and for requests sent to HQ, \$8.00 Online
- **AVP** – applicant pays \$25.00 online

### ❖ Step 4: DMV initiates system query

- DMV checks for a vehicle record, any stolen indicators, and validity of the entered VIN

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## MSL/AVP Current Process

### ❖ Step 5: DMV reviews vehicle record

- **MSL:** Vehicle trade-in value, age of vehicle, type of vehicle (*moped, scooter, manufactured home or all-terrain vehicle are submitted to the titling work center for processing*)
- **AVP:** This step does not apply to AVP

### ❖ Step 6: DMV sends initial notification

- **MSL:** If Virginia record is found, notice to the owner and lienholder on record sent by first class mail as a courtesy
- **AVP:** Official notice to Virginia owner and lienholder sent by certified mail

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## MSL/AVP Current Process

### ❖ Step 7a: Applicant sends notification to the vehicle and/or lienholder

- **MSL:** Notice must be sent by certified mail at least 10 days prior to the date of the vehicle sale
- **AVP:** Applicant required to send notice by certified mail only when vehicle is titled out-of-state. Applicant must contact other state for owner information. DMV does not send this notice

### ❖ Step 7b: Applicant allows response time for vehicle owner or lienholder

- **MSL:** Until sale date
- **AVP:** 15 days to claim vehicle

### ❖ Step 7c: Applicant posts notice of sale

**MSL:**

Virginia record is found:

- Post advertisement in public place
- Have notice served (in person, certified, or registered mail)

No record found/owner out-of-state:

- Post advertisement in a public place
- Post 3 notices of the sale

**AVP:**

- Post intent to auction for 21 days on DMVnow.com

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## MSL/AVP Current Process

### ❖ Step 8: Applicant complies with auction requirements /sale of vehicle

- **MSL:** Applicant is authorized to host the auction at least 10 days after the required notice is given
- **AVP:** Applicant is authorized to title or auction the vehicle after ~21 day intent to auction posting period has passed

### ❖ Step 9: Applicant completes requirements after sale of the motor vehicle

- **MSL:** Purchaser's information is captured on VSA 41 and the affidavit of compliance is completed
- **AVP:** Purchaser's information is captured on VSA 40

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## MSL/AVP Current Process

### ❖ Step 10: DMV reviews titling documents

Customer service center employees review all required paperwork.  
(Effective June 15, 2019 all title paperwork will be processed centrally at DMV HQ)

- **MSL:** VSA-41 for titling the vehicle
- **AVP:** VSA 40 as ownership document

### ❖ Step 11: DMV titles motor vehicle and collects sales and use tax (SUT)

- **MSL:** Purchaser obtains title, pays the greater of either the SUT on the sales price or minimum SUT
- **AVP:** Purchaser or applicant obtains title, pays the greater of either the SUT on the NADA trade-in value, or minimum SUT

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## Mechanic's and Storage Lien (MSL) and Abandoned Vehicle (AVP) Volumes

**Fiscal Year 2018**  
*(July 1, 2017 – June 30, 2018)*

❖ **MSL:**

- **Transcripts:** 58,993
- **Vehicles Titled:** 9,145

❖ **AVP:**

- **Record Requests:** 13,939
- **Vehicles Titled:** 10,851

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## Mechanic's and Storage Lien (MSL) Abandoned Vehicle (AVP) Volumes

• **DMV Investigations Conducted**

❖ **MSL:**

- FY17: 45
- FY18: 97
- FYTD 19: 144

❖ **AVP:**

- FY17: 116
- FY18: 164
- FYTD 19: 140

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## State Research

### ❖ Recent survey by American Association of Motor Vehicle Administrators (AAMVA) on MSL

- 32 jurisdictions responded to survey
- Key information/themes from survey:
  - Majority have 45-60 days to secure the priority
  - National vehicle search is conducted (NMVTIS)
  - Independent appraisals are not accepted
  - Pennsylvania requires court judgement for mechanics' liens
  - Maryland requires licensed auctioneer in some counties

### ❖ DMV will conduct more targeted MSL survey and present results at July stakeholder meeting

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## MSL/AVP Concerns

- Lack of clarity on who can initiate the AV process and in what scenario
- Inconsistencies in time frames related to abandoned, immobile, and unattended vehicles within Article 1 and Article 2 of Chapter 12 of Title 46.2
- No specific time frame to request a vehicle transcript
- Inconsistent fees for an MSL and AV transcripts

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## MSL/AVP Concerns

- Lack of clarity and missing key information on the DMV form (VSA 41)
- Concern over utilizing trade-in value rather than retail value for vehicle valuation
- MSL record search performed when a vehicle transcript is being requested for MSL process does not include NMVTIS

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## MSL/AVP Concerns

- Statute does not specify who qualifies to provide an independent appraisal or when appraisals are accepted
- Complaints that vehicle owners/lienholders do not receive notifications, even though notifications are sent via certified mail
- Inconsistencies in MSL and AVP timeframes required for the owner/lienholder to respond to the intent to sell notice

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## MSL/AVP Concerns

- Difficulty/inability to obtain vehicle information from other states/jurisdictions
- No statutory provisions for a title process for AVP

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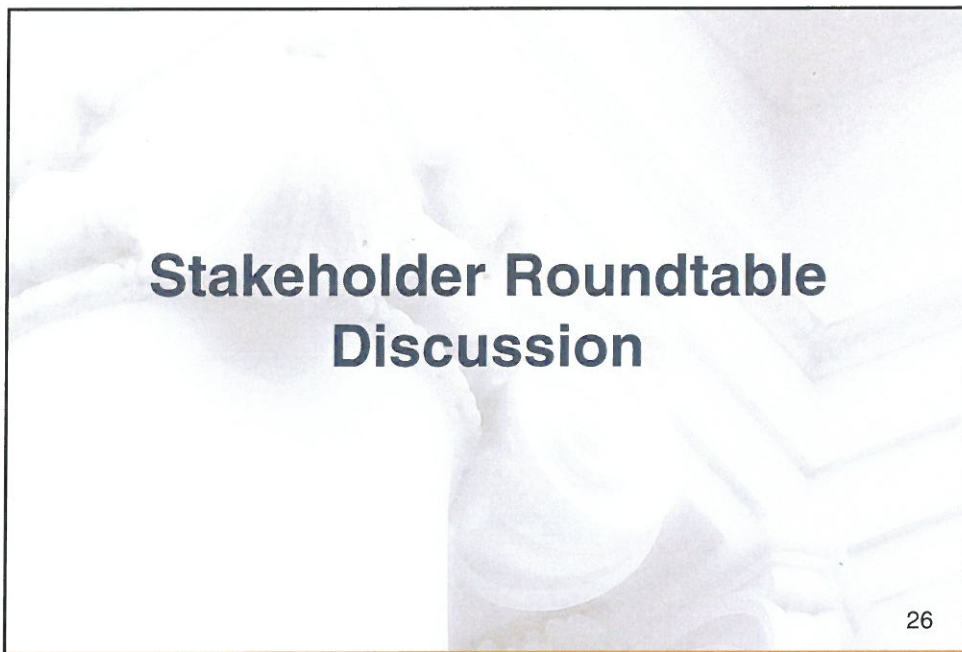
## Additional Topics for Discussion

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- Incorporating a process for handling discrepancies between applicant, vehicle owner, and lienholder
- Ensuring proper disbursement of MSL proceeds
- Complying with Servicemember Civil Relief Act


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**Stakeholder Roundtable  
Discussion**

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