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HOUSE BILL 390

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO SELF-STORAGE LIENS; REMOVING THE PUBLICATION
REQUIREMENT FOR NOTICE OF SALE OF THE PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 48-11-7 NMSA 1978 (being Laws 1987,
Chapter 314, Section 7) is amended to read:

"48-11-7. ENFORCEMENT OF LIEN.--

A. An owner's lien, as provided under the Self-
Service Storage Lien Act, for a claim that has become due may
be satisfied as follows:

(1) after the occupant has been in default
continuously for a period of five days, the owner may deny the
occupant access to ~~[his]~~ the occupant's space for storage;

(2) after the occupant has been in default
continuously for a period of thirty days, the owner may enter

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1 the space and may remove the personal property within it to a
2 safe place; [~~providing~~] provided that the owner has sent a
3 notice of intent to enforce a lien, pursuant to Subsection B of
4 this section, to the occupant at [~~his~~] the occupant's last
5 known address within five days of entering the space. The
6 owner shall also give notice to all lienholders listed in the
7 disclosure provision in the rental agreement; and

8 (3) no action to sell any property as provided
9 in the Self-Service Storage Lien Act shall be taken by an owner
10 until the occupant has been in default continuously for a
11 period of ninety days.

12 B. The notice of intent to enforce a lien shall
13 include:

14 (1) an itemized statement of the owner's claim
15 showing the sum due at the time of the notice and the date when
16 the sum became due;

17 (2) a brief and general statement of the
18 personal property subject to the lien. That description shall
19 be reasonably adequate to permit the person notified to
20 identify the property, except that any container, including a
21 trunk, valise or box that is locked, fastened, sealed or tied
22 in a manner [~~which~~] that deters immediate access to its
23 contents, may be so described without describing its contents;

24 (3) a notification of denial of access to the
25 personal property. That notification shall provide the name,

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1 street address and telephone number of the owner or [~~his~~] the
2 owner's designated agent whom the occupant may contact to
3 respond to that notification;

4 (4) a demand for payment within a specified
5 time, not less than fifteen days after the delivery of the
6 notice; and

7 (5) a conspicuous statement that unless the
8 claim is paid within the time stated in the notice, the
9 personal property will be advertised for sale or other
10 disposition and will be sold or otherwise disposed of to
11 satisfy the owner's lien.

12 C. All notices made pursuant to this section shall
13 be by certified mail return receipt requested.

14 ~~[D. After the expiration of the time given in the~~
15 ~~notice of intent to enforce a lien, the owner shall publish an~~
16 ~~advertisement of the sale or other disposition of the property~~
17 ~~once a week for two consecutive weeks in a newspaper of general~~
18 ~~circulation in the county where the self-service storage~~
19 ~~facility is located. The advertisement shall include:~~

20 ~~(1) a brief and general description of the~~
21 ~~personal property reasonably adequate to permit its~~
22 ~~identification as provided in Paragraph (2) of Subsection B of~~
23 ~~this section, the address of the self-service storage facility~~
24 ~~where the personal property is located and the name and last~~
25 ~~known address of the occupant; and~~

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1 ~~(2) the time, place and manner of the sale or~~
2 ~~other disposition. The sale or disposition shall take place~~
3 ~~not sooner than fifteen days after the first publication.~~

4 ~~If there is no newspaper of general circulation in the~~
5 ~~county where the self-service storage facility is located, the~~
6 ~~owner shall post the advertisement at least ten days prior to~~
7 ~~the sale or other disposition in at least six conspicuous~~
8 ~~places in the neighborhood where the self-service storage~~
9 ~~facility is located.~~

10 ~~E.]~~ D. Any sale or other disposition of the
11 personal property shall conform to the terms of the
12 notification as provided for in this section.

13 ~~[F.]~~ E. Any sale or other disposition of the
14 personal property shall be held at the self-service storage
15 facility or at the nearest suitable place within the county to
16 where the personal property is held or stored.

17 ~~[G.]~~ F. Before any sale or other disposition of
18 personal property pursuant to this section is made, the
19 occupant may pay the amount necessary to satisfy the lien and
20 the reasonable expenses incurred under this section and thereby
21 redeem the property. Upon receipt of the payment, the owner
22 shall return the personal property and thereafter the owner
23 shall have no liability to any person with regard to that
24 personal property.

25 ~~[H.]~~ G. A good faith purchaser takes the property

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1 free of any rights of an unsecured lienholder and free of any
2 rights of a secured lienholder who has received notice by owner
3 as provided in this section.

4 ~~[F.]~~ H. In the event of a sale under this section,
5 the owner may satisfy ~~[his]~~ the owner's lien from the proceeds
6 of the sale, subject to the rights of any prior lienholder who
7 has not received notice. The lien rights of such prior
8 lienholder are automatically transferred to the proceeds of the
9 sale. If the sale was made in good faith and conducted in a
10 reasonable manner, the owner shall not be subject to any
11 surcharge for a deficiency in the amount of a prior secured
12 lien, but shall hold the balance, if any, for delivery to the
13 occupant, lienholder or other person in interest. If the
14 occupant, lienholder or other person in interest does not claim
15 the balance of the proceeds within two years of the date of
16 sale, it shall become the property of the owner without further
17 recourse by the occupant, lienholder or other person in
18 interest.

19 ~~[J.]~~ I. Nothing in this section affects the rights
20 and liabilities of the owner, occupant or any other person if
21 there is a willful violation of any of the provisions of the
22 Self-Service Storage Lien Act."