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SENATE BILL 311

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Lisa A. Torraco

AN ACT

RELATING TO LIENS; AMENDING SECTIONS OF THE SELF-SERVICE STORAGE LIEN ACT TO PROVIDE FOR ELECTRONIC NOTIFICATIONS AND ADVERTISEMENT OF SALES; PROVIDING FOR THE SALE OF ABANDONED PERSONAL PROPERTY; PROVIDING FOR ASSESSMENT OF LATE FEES FOR SELF-STORAGE RENTALS.

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

SECTION 1. Section 48-11-2 NMSA 1978 (being Laws 1987, Chapter 314, Section 2) is amended to read:

"48-11-2. DEFINITIONS.--As used in the Self-Service Storage Lien Act:

A. "default" means the failure to perform in a timely manner any obligation or duty set forth in the Self-Service Storage Lien Act or in the rental agreement;

B. "electronic mail" means the transmission of

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1 information or a communication by the use of a computer or
2 other electronic means sent to a person identified by a unique
3 electronic address;

4 C. "last known address" means the postal address or
5 electronic address provided to the owner by the occupant:

6 (1) for the purposes of the latest rental
7 agreement; or

8 (2) in a written notice of a change of postal
9 address or electronic address after the latest rental
10 agreement;

11 ~~[B-]~~ D. "occupant" means a person or ~~[his]~~ the
12 person's sublessee, successor or assign who is entitled to the
13 use of storage space, to the exclusion of others, at a self-
14 service storage facility under a rental agreement;

15 ~~[G-]~~ E. "owner" means the owner or ~~[his]~~ the
16 owner's heirs, successors or assigns, the operator, the lessor
17 or the sublessor of a self-service storage facility ~~[his]~~ or
18 the lessor's or sublessor's agent or any other person
19 authorized by ~~[him]~~ the lessor or sublessor to manage the
20 facility or to receive rent from an occupant under a rental
21 agreement;

22 ~~[D-]~~ F. "rental agreement" means any written
23 agreement or lease between the owner and the occupant ~~[which]~~
24 that establishes or modifies the terms, conditions, rules or
25 any other provisions concerning the use and occupancy of a

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1 self-service storage facility; ~~and~~

2 ~~E.]~~ G. "self-service storage facility" means any
3 real property designed and used for the purpose of renting or
4 leasing individual storage space to occupants who are to have
5 access to such facility for the purpose of storing and removing
6 personal property; and

7 H. "verified mail" means any method of mailing that
8 is offered by the United States postal service or private
9 delivery service that provides evidence of mailing."

10 SECTION 2. Section 48-11-7 NMSA 1978 (being Laws 1987,
11 Chapter 314, Section 7) is amended to read:

12 "48-11-7. ENFORCEMENT OF LIEN.--

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

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

19 (2) after the occupant has been in default
20 continuously for a period of thirty days, the owner may enter
21 the space and may remove the personal property within it to a
22 safe place; ~~[providing]~~ provided that the owner has sent a
23 notice of intent to enforce a lien, pursuant to Subsection B of
24 this section, to the occupant at ~~[his]~~ the occupant's last
25 known address within five days of entering the space. The

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1 owner shall also give notice to all lienholders listed in the
2 disclosure provision in the rental agreement; and

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

7 B. The notice of intent to enforce a lien shall
8 include:

9 (1) an itemized statement of the owner's claim
10 showing the sum due at the time of the notice and the date when
11 the sum became due;

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

19 (3) a notification of denial of access to the
20 personal property. That notification shall provide the name,
21 street address and telephone number of the owner or [~~his~~] the
22 owner's designated agent whom the occupant may contact to
23 respond to that notification;

24 (4) a demand for payment within a specified
25 time, not less than fifteen days after the delivery of the

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1 notice; and

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

7 C. All notices made pursuant to this section shall
8 be by [~~certified mail return receipt requested~~] verified mail
9 or electronic mail.

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

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

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

25 [~~If there is no newspaper of general circulation in the~~

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1 ~~county where the self-service storage facility is located, the~~
2 ~~owner shall post the advertisement at least ten days prior to~~
3 ~~the sale or other disposition in at least six conspicuous~~
4 ~~places in the neighborhood where the self-service storage~~
5 ~~facility is located].~~

6 E. The owner may advertise the sale in any other
7 commercially reasonable manner, other than what is required in
8 Subsection D of this section, if at least three independent
9 bidders attend the sale.

10 [~~E.~~] F. 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.~~] G. 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 or may be
17 conducted on a publicly accessible online web site.

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

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1 ~~[H.]~~ I. A good faith purchaser takes the property
2 free of any rights of an unsecured lienholder and free of any
3 rights of a secured lienholder who has received notice by owner
4 as provided in this section.

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

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

24 L. If the occupant is in default for more than
25 sixty days and the personal property stored in the space is a

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1 motor vehicle, watercraft or trailer, the owner may have the
2 personal property towed or removed from the self-service
3 storage facility in lieu of a sale authorized pursuant to the
4 Self-Service Storage Lien Act.

5 M. If the rental agreement specifies a limit on the
6 value of the personal property that may be stored in the
7 occupant's leased space, the limit shall be deemed to be the
8 maximum value of the stored personal property.

9 N. A late fee of no more than twenty dollars
10 (\$20.00) or twenty percent of the monthly rent, whichever is
11 greater, may be charged and collected by the owner for each
12 month that the occupant's rental payment is in default."