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SENATE BILL 141

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

George K. Munoz

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 COLLECTION OF LATE FEES.

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, as amended) is amended to read:

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

A. "commercially reasonable manner" means a public sale, in which three or more bidders participate, of personal property in a self-storage space;

~~A.~~ B. "default" means the failure to perform in a timely manner any obligation or duty set forth in the Self-

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1 Service Storage Lien Act or in the rental agreement;

2 ~~[B-]~~ C. "electronic mail" means the transmission of
3 information or a communication by the use of a computer or
4 other electronic means sent to a person identified by a unique
5 electronic address;

6 ~~[G-]~~ D. "last known address" means the postal
7 address or electronic address provided to the owner by the
8 occupant:

9 (1) for the purposes of the latest rental
10 agreement; or

11 (2) in a written or electronic notice of a
12 change of postal address or electronic address after the latest
13 rental agreement;

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

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

24 ~~[F-]~~ G. "rental agreement" means any written
25 agreement or lease between the owner and the occupant that

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1 establishes or modifies the terms, conditions, rules or any
2 other provisions concerning the use and occupancy of a self-
3 service storage facility;

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

9 ~~[H.]~~ I. "verified mail" means any method of mailing
10 that is offered by the United States postal service or private
11 delivery service that provides evidence of mailing."

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

14 "48-11-7. ENFORCEMENT OF LIEN.--

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

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

21 (2) after the occupant has been in default
22 continuously for a period of thirty days, the owner may enter
23 the space and may remove the personal property within it to a
24 safe place; provided that the owner has sent a notice of intent
25 to enforce a lien, pursuant to Subsection B of this section, to

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1 the occupant at the occupant's last known address within five
2 days of entering the space. The owner shall also give notice
3 to all lienholders listed in the disclosure provision in the
4 rental agreement; and

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

9 B. The notice of intent to enforce a lien shall
10 include:

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

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

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

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

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

9 C. All notices made pursuant to this section shall
10 be by verified mail or electronic mail pursuant to the
11 occupant's option at the time of entering into the current
12 rental agreement.

13 D. An owner shall provide written notice by
14 verified mail to the occupant's last known address or by
15 electronic mail to the occupant's last known electronic
16 address. If an owner sends a notice by electronic mail and
17 does not receive a response, return receipt or delivery
18 confirmation from the electronic address to which the notice
19 was sent within three business days after the day on which the
20 notice was sent, the owner shall deliver a one-time notice by
21 verified mail to the occupant's last known address.

22 E. After the expiration of the time given in the
23 notice of intent to enforce a lien, the owner shall publish an
24 advertisement of the sale or other disposition of the property
25 once a week for two consecutive weeks in a newspaper of general

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1 circulation in the county where the self-service storage
2 facility is located. The advertisement shall include:

3 (1) a brief and general description of the
4 personal property reasonably adequate to permit its
5 identification as provided in Paragraph (2) of Subsection B of
6 this section, the address of the self-service storage facility
7 where the personal property is located and the name and last
8 known address of the occupant; and

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

12 ~~[If there is no newspaper of general circulation in the~~
13 ~~county where the self-service storage facility is located, the~~
14 ~~owner shall post the advertisement at least ten days prior to~~
15 ~~the sale or other disposition in at least six conspicuous~~
16 ~~places in the neighborhood where the self-service storage~~
17 ~~facility is located.]~~

18 Alternatively, the owner may advertise and conduct the
19 sale in any commercially reasonable manner.

20 F. Any sale or other disposition of the personal
21 property shall conform to the terms of the notification as
22 provided for in this section.

23 G. Any sale or other disposition of the personal
24 property shall be held at the self-service storage facility or
25 at the nearest suitable place within the county to where the

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1 personal property is held or stored or may be conducted on a
2 publicly accessible online [~~web site~~] website.

3 H. Before any sale or other disposition of personal
4 property pursuant to this section is made, the occupant may pay
5 the amount necessary to satisfy the lien and the reasonable
6 expenses incurred under this section and thereby redeem the
7 property. Upon receipt of the payment, the owner shall return
8 the personal property and thereafter the owner shall have no
9 liability to any person with regard to that personal property.

10 I. A good faith purchaser takes the property free
11 of any rights of an unsecured lienholder and free of any rights
12 of a secured lienholder who has received notice by owner as
13 provided in this section.

14 J. In the event of a sale under this section, the
15 owner may satisfy the owner's lien from the proceeds of the
16 sale, subject to the rights of any prior lienholder who has not
17 received notice. The lien rights of such prior lienholder are
18 automatically transferred to the proceeds of the sale. If the
19 sale was made in good faith and conducted in a reasonable
20 manner, the owner shall not be subject to any surcharge for a
21 deficiency in the amount of a prior secured lien, but shall
22 hold the balance, if any, for delivery to the occupant,
23 lienholder or other person in interest. If the occupant,
24 lienholder or other person in interest does not claim the
25 balance of the proceeds within two years of the date of sale,

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1 it shall become the property of the owner without further
2 recourse by the occupant, lienholder or other person in
3 interest.

4 K. Nothing in this section affects the rights and
5 liabilities of the owner, occupant or any other person if there
6 is a willful violation of any of the provisions of the Self-
7 Service Storage Lien Act. If the property subject to a lien
8 described in this section is a vehicle, watercraft or trailer,
9 the occupant is in default for a continuous sixty-day period
10 and the owner chose not to sell the vehicle, the owner may have
11 the vehicle towed from the self-storage facility by an
12 independent towing carrier that is licensed by the public
13 regulation commission pursuant to the Motor Carrier Act.
14 Within one day after the day on which a vehicle is towed, the
15 owner shall send verified notice to the occupant's last known
16 address or electronic address that states:

17 (1) the date the vehicle was towed; and
18 (2) the address and telephone number of the
19 person that towed the vehicle.

20 L. A late fee of no more than twenty dollars
21 (\$20.00) or twenty percent of the monthly rent, whichever is
22 greater, may be charged and collected by the owner for each
23 month that the occupant's rental payment is in default."