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AB-1108 Self-service storage facilities. (2017-2018)

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Assembly Bill No. 1108

CHAPTER 227

An act to amend Section 21707 of, and to amend, repeal, and add Sections 21701, 21703, 21705, and 21712 of, the Business and Professions Code, relating to self-service storage facilities.

[Approved by Governor September 11, 2017. Filed with Secretary of State September 11, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1108, Daly. Self-service storage facilities.

(1) Existing law, the California Self-Service Storage Facility Act, specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Under existing law, if rent or other charges due from an occupant remain unpaid for 14 consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a preliminary lien notice by certified mail to the occupant's last known address, as defined to mean the address provided by the occupant, as specified.

This bill, until January 1, 2021, would authorize the notice to be sent by electronic mail and would revise the definition of last known address to include a mailing address and email address provided by the occupant, as specified, and make conforming changes.

(2) Existing law deems a lien to attach if the notice has been sent and the total sum due has not been paid within 14 days of the termination date specified in the preliminary lien notice and authorizes the owner to deny the occupant access to the space, enter the space, and remove property to a place of safekeeping. Existing law requires the owner to send to the occupant's last known address a notice of lien sale and a blank declaration in opposition to the lien sale.

This bill, until January 1, 2021, would deem the lien to attach if the notice has been sent and the total sum due has not been paid by the specified termination date.

(3) Existing law specifies procedures for an owner to enforce the lien by the sale of the stored property. These procedures require an advertisement of the sale to be published for 2 consecutive weeks in a newspaper of general circulation in the judicial district where the sale is to be held. They also require the sale to be conducted in a commercially reasonable manner.

The bill would define a commercially reasonable manner of sale to include, but not be limited to, an in-person auction or on a prescribed Internet Web site.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 21701 of the Business and Professions Code is amended to read:

21701. For the purposes of this chapter, the following terms shall have the following meanings:

(a) "Self-service storage facility" means real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property or for storing individual storage containers provided to occupants who have exclusive use of the container for the purpose of storing and removing personal property, whether or not the individual storage containers are transported pursuant to Section 21701.1. Self-service storage facility does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes. A self-service storage facility is not a warehouse, nor a public utility, as defined in Section 216 of the Public Utilities Code. If an owner issues a warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to the provisions of Division 7 (commencing with Section 7101) of the Commercial Code, and the provisions of this chapter do not apply.

(b) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his or her agent, or any other person authorized by him or her to manage the facility, or to receive rent from an occupant under a rental agreement, and no real estate license is required.

(c) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(d) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules, or any other provision concerning the use and occupancy of a self-service storage facility.

(e) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(f) "Last known address" means that mailing address or email address provided by the occupant in the latest rental agreement, or the mailing address or email address provided by the occupant in a subsequent written notice of a change of address.

(g) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 2. Section 21701 is added to the Business and Professions Code, to read:

21701. For the purposes of this chapter, the following terms shall have the following meanings:

(a) "Self-service storage facility" means real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property or for storing individual storage containers provided to occupants who have exclusive use of the container for the purpose of storing and removing personal property, whether or not the individual storage containers are transported pursuant to Section 21701.1. Self-service storage facility does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes. A self-service storage facility is not a warehouse, nor a public utility, as defined in Section 216 of the Public Utilities Code. If an owner issues a warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to the provisions of Division 7 (commencing with Section 7101) of the Commercial Code, and the provisions of this chapter do not apply.

(b) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his or her agent, or any other person authorized by him or her to manage the facility, or to receive rent from an occupant under a rental agreement, and no real estate license is required.

(c) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(d) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules, or any other provision concerning the use and occupancy of a self-service storage facility.

(e) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(f) "Last known address" means that address provided by the occupant in the latest rental agreement, or the address provided by the occupant in a subsequent written notice of a change of address.

(g) This section shall become operative on January 1, 2021.

SEC. 3. Section 21703 of the Business and Professions Code is amended to read:

21703. If any part of the rent or other charges due from an occupant remain unpaid for 14 consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a notice to the occupant's last known address and to the alternative address specified in subdivision (b) of Section 21712. The notice shall be sent by certified mail, postage prepaid, by regular first-class mail if the owner obtains a certificate of mailing indicating the date the notice was mailed, or by email pursuant to subdivision (c) of Section 21712. The notice shall contain all of the following:

- (a) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums became due.
- (b) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than 14 days after the mailing of the notice) unless all sums due are paid by the occupant prior to the specified date.
- (c) A notice that the occupant may be denied access to the storage space after the termination date if the sums are not paid and that an owner's lien, as provided for in Section 21702, may be imposed thereafter.
- (d) The name, street address, and telephone number of the owner or his or her designated agent whom the occupant may contact to respond to the notice.
- (e) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 4. Section 21703 is added to the Business and Professions Code, to read:

21703. If any part of the rent or other charges due from an occupant remain unpaid for 14 consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a notice to the occupant's last known address and to the alternative address specified in subdivision (b) of Section 21712. The notice shall be sent by certified mail, postage prepaid, or by regular first-class mail if the owner obtains a certificate of mailing indicating the date the notice was mailed. The notice shall contain all of the following:

- (a) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums became due.
- (b) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than 14 days after the mailing of the notice) unless all sums due are paid by the occupant prior to the specified date.
- (c) A notice that the occupant may be denied access to the storage space after the termination date if the sums are not paid and that an owner's lien, as provided for in Section 21702, may be imposed thereafter.
- (d) The name, street address, and telephone number of the owner or his or her designated agent whom the occupant may contact to respond to the notice.
- (e) This section shall become operative on January 1, 2021.

SEC. 5. Section 21705 of the Business and Professions Code is amended to read:

21705. (a) If the notice has been sent as required by Section 21703 and the total sum due has not been paid by the termination date specified in the preliminary lien notice, the lien imposed by this chapter attaches as of that date and the owner may do all of the following:

- (1) Deny an occupant access to the space.
- (2) Enter the space.
- (3) Remove any property found therein to a place of safekeeping.

(b) Upon taking the actions described in subdivision (a), the owner shall send to the occupant, by certified mail, or by first-class mail if the owner obtains a certificate of mailing, postage prepaid, addressed to the occupant's last known address, and to the alternative address specified in subdivision (b) of Section 21712, or by email pursuant to subdivision (c) of Section 21712, both of the following:

- (1) A notice of lien sale that states all of the following:

(A) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(B) That the stored property is subject to a lien, the current amount of the lien, and that the lien will continue to increase if rent is not paid.

(C) That the property will be sold to satisfy the lien after a specified date that is not less than 14 days from the date of mailing the notice, unless the occupant executes and returns by certified mail a declaration in opposition to lien sale in the form set forth in paragraph (2).

(D) A statement that the occupant may regain full use of the space by paying the full lien amount prior to the date specified in subparagraph (C).

(E) That any excess proceeds of the sale over the lien amount and costs of sale will be retained by the owner and may be reclaimed by the occupant or claimed by another person at any time for a period of one year from the sale and that thereafter the proceeds will escheat to the county in which the sale is to take place.

(2) A blank declaration in opposition to lien sale that shall be in substantially the following form:

"DECLARATION IN OPPOSITION
TO LIEN SALE

You must complete all sections of this declaration. If the owner cannot contact or serve you at the physical address and telephone number that you provide below, this declaration shall be void and the owner may sell your stored property.

I, _____ (occupant's name) _____ ,
have received the notice of lien
sale

of the property stored at _____
(location and space #) _____ .

I oppose the lien sale of the
property, because (provide a brief
explanation of the reason the
owner's lien may not be valid. For
example, "I have paid my rent and
other charges in full"):

My current address and telephone
number are:

(physical address)

(city)

(state)

(ZIP Code)

(telephone number)

I understand that the lienholder
may file an action against me in
any court of competent jurisdiction,
including small claims court, at the
address provided above, and if a
judgment is given in his or her
favor, I may be liable for the court
costs. I also understand that this
declaration is not valid if (a) the

address provided in this declaration is not my current address or (b) I change my address at any time prior to service of an action on the lien and I do not provide the owner the address within 10 days of the change.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was signed by me on _____ (date) _____ at _____ (place) _____.

(signature of occupant).
Return this declaration to:
(self-service storage facility address)"

(c) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 6. Section 21705 is added to the Business and Professions Code, to read:

21705. (a) If the notice has been sent as required by Section 21703 and the total sum due has not been paid within 14 days of the termination date specified in the preliminary lien notice, the lien imposed by this chapter attaches as of that date and the owner may do all of the following:

- (1) Deny an occupant access to the space.
- (2) Enter the space.
- (3) Remove any property found therein to a place of safekeeping.

(b) Upon taking the actions described in subdivision (a), the owner shall send to the occupant, by certified mail, or by first-class mail if the owner obtains a certificate of mailing, postage prepaid, addressed to the occupant's last known address, and to the alternative address specified in subdivision (b) of Section 21712, both of the following:

(1) A notice of lien sale that states all of the following:

- (A) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.
- (B) That the stored property is subject to a lien, the current amount of the lien, and that the lien will continue to increase if rent is not paid.
- (C) That the property will be sold to satisfy the lien after a specified date that is not less than 14 days from the date of mailing the notice, unless the occupant executes and returns by certified mail a declaration in opposition to lien sale in the form set forth in paragraph (2).
- (D) A statement that the occupant may regain full use of the space by paying the full lien amount prior to the date specified in subparagraph (C).
- (E) That any excess proceeds of the sale over the lien amount and costs of sale will be retained by the owner and may be reclaimed by the occupant or claimed by another person at any time for a period of one year from the sale and that thereafter the proceeds will escheat to the county in which the sale is to take place.

(2) A blank declaration in opposition to lien sale that shall be in substantially the following form:

"DECLARATION IN OPPOSITION
TO LIEN SALE

You must complete all sections of this declaration. If the owner cannot contact or serve you at the physical address and telephone number that you provide below, this declaration shall be void and the

owner may sell your stored property.

I, _____ (occupant's name) _____ ,
have received the notice of lien sale

of the property stored at _____
(location and space #) _____ .

I oppose the lien sale of the property, because (provide a brief explanation of the reason the owner's lien may not be valid. For example, "I have paid my rent and other charges in full"):

My current address and telephone number are:

(physical address)

(city)

(state)

(ZIP Code)

(telephone number)

I understand that the lienholder may file an action against me in any court of competent jurisdiction, including small claims court, at the address provided above, and if a judgment is given in his or her favor, I may be liable for the court costs. I also understand that this declaration is not valid if (a) the address provided in this declaration is not my current address or (b) I change my address at any time prior to service of an action on the lien and I do not provide the owner the address within 10 days of the change.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was signed by me on _____ (date)
_____ at _____ (place) _____ .

(signature of occupant).

Return this declaration to:
(self-service storage facility address)"

(c) This section shall become operative on January 1, 2021.

SEC. 7. Section 21707 of the Business and Professions Code is amended to read:

21707. (a) After the expiration of the time given in the notice of lien sale, pursuant to subdivision (b) of Section 21705, or following the failure of a claimant to pay rent or obtain a court order pursuant to Section 21709, an advertisement of the sale shall be published once a week for two weeks consecutively in a newspaper of general circulation published in the public notice district where the sale is to be held. The advertisement shall include a general description of the goods, the name of the person on whose account they are being stored, and the name and location of the storage facility. If there is no newspaper of general circulation published in the public notice district where the sale is to be held, the advertisement shall be posted at least 10 days

before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The sale shall be conducted in a commercially reasonable manner. After deducting the amount of the lien and costs of sale, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within one year of the date of sale. Thereafter, the owner shall pay any remaining excess proceeds to the treasury of the county in which the sale was held.

(b) For the purposes of this section, publication of notice in a public notice district is governed by Chapter 1.1 (commencing with Section 6080) of Division 7 of Title 1 of the Government Code. For the purposes of this section, a commercially reasonable manner of sale includes, but is not limited to, an in-person auction or a sale on a publicly accessible Internet Web site that customarily conducts online auctions or sales.

SEC. 8. Section 21712 of the Business and Professions Code is amended to read:

21712. (a) Each contract for the rental or lease of individual storage space in a self-service storage facility shall be in writing and shall contain, in addition to the provisions otherwise required or permitted by law to be included, a statement that the occupant's property will be subject to a claim of lien and may even be sold to satisfy the lien if the rent or other charges due remain unpaid for 14 consecutive days and that such actions are authorized by this chapter.

(b) The provisions of this chapter shall not apply, and the lien authorized by this chapter shall not attach, unless the rental agreement requests, and provides space for, the occupant to give the name and mailing or email address of another person to whom the preliminary lien notice and subsequent notices required to be given under this chapter may be sent. Notices sent pursuant to Section 21703 or Section 21705 shall be sent to the occupant's address and the alternative address, if both addresses are provided by the occupant. Failure of an occupant to provide an alternative address shall not affect an owner's remedies under this chapter or under any other provision of law.

(c) (1) The owner may send the notices required by Sections 21703 and 21705 to the occupant and to the alternative address specified in subdivision (b) by electronic mail only if both of the following conditions are met:

(A) The rental agreement states that lien notices may be sent to the occupant and to the alternate by electronic mail.

(B) The occupant provides a written signature on the rental agreement consenting to receive lien notices by electronic mail.

(2) An owner may demonstrate actual delivery and receipt by any of the following:

(A) The occupant acknowledges receipt of the electronic transmission of the document by executing an electronic signature, which is defined as an electronic sound, symbol, or process attached to, or logically associated with, an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(B) The document is posted on the owner's secure Internet Web site, and there is evidence demonstrating that the occupant logged onto the licensee's secure Internet Web site and downloaded, printed, viewed, or otherwise acknowledged receipt of the document.

(C) The document is transmitted to the occupant through an application on a personal electronic device that is secured by password, biometric identifier, or other technology, and there is evidence demonstrating that the occupant logged into the application and viewed or otherwise acknowledged receipt of the document.

(D) If the owner is unable to demonstrate actual delivery and receipt pursuant to this paragraph, the owner shall resend the notice by mail to the occupant's last known mailing address in the manner originally specified by the underlying provisions of Section 21703 or 21705.

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 9. Section 21712 is added to the Business and Professions Code, to read:

21712. (a) Each contract for the rental or lease of individual storage space in a self-service storage facility shall be in writing and shall contain, in addition to the provisions otherwise required or permitted by law to be included, a statement that the occupant's property will be subject to a claim of lien and may even be sold to satisfy the lien if the rent or other charges due remain unpaid for 14 consecutive days and that such actions are authorized by this chapter.

(b) The provisions of this chapter shall not apply, and the lien authorized by this chapter shall not attach, unless the rental agreement requests, and provides space for, the occupant to give the name and address of another person to whom the preliminary lien notice and subsequent notices required to be given under this chapter may be sent. Notices sent pursuant to Section 21703 or Section 21705 shall be sent to the occupant's address and the alternative address, if both addresses are

provided by the occupant. Failure of an occupant to provide an alternative address shall not affect an owner's remedies under this chapter or under any other provision of law.

(c) This section shall become operative on January 1, 2021.