

Conducting Self-Storage Lien Sales

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► **Self-storage lien laws provide facility owners with unique and potent remedies in situations where a renter has become delinquent on their payment.**

Nearly every state has a self-storage statute that grants the owner of a self-storage facility a lien on the property stored by the facility's occupants. These laws provide owners with the right to sell the property of occupants who become delinquent in the payment of charges due under their rental agreements.¹ This article will discuss some of the issues that owners should consider in connection with self-storage lien sales. General principles will be illustrated by examining the applicable laws in New York and New Jersey. Owners of self-storage facilities in other states should consider the same or similar issues as those presented in the New York and New Jersey examples – however, they must ultimately be guided by the specific laws of the applicable jurisdictions.

Lien Attachment and Priority

Self-storage facility owners must understand when their liens attach, as well as the priority of those liens. The applicable statutes will often indicate when the owner's lien attaches. For example, the statutes in New York² and New Jersey³ provide that the lien attaches as of the date the personal property is brought to the self-storage facility. It is worth noting that, in some instances, the lien protections afforded to self-storage facility owners are more robust than the rights granted under other statutory schemes, such as the laws governing the lien rights of a warehouseman. A New York court observed such a distinction in *E-Z Self Storage, Inc. v. Aetna Casualty*

*& Surety Co.*⁴ There, a self-storage facility owner entered the storage unit of a defaulting occupant and found an automobile that was later discovered to have been stolen from a dealership insured by Aetna.⁵ Aetna had paid the dealership for its loss pursuant to the insurance policy and thereby acquired title to the vehicle.⁶ The self-storage facility owner voluntarily turned the car over to authorities, Aetna claimed ownership, and by mutual agreement the vehicle was sold at auction.⁷ The self-storage facility owner then claimed that Aetna was obligated to pay the outstanding storage charges, claiming a lien on the vehicle pursuant to New York Lien Law § 182, and on the proceeds of the sale by agreement.⁸ The court agreed with the self-storage facility owner, specifically drawing a distinction between UCC Section 7-209, under which stolen property cannot be subject to a warehouseman's lien, and New York Lien Law § 182, which does not distinguish stolen property from other property in the creation of a lien.⁹

As illustrated above, given the strong protections afforded to facility owners by self-storage laws, owners should be careful not to operate in a manner that accidentally puts them outside of the applicable statute's purview. For example, the laws in both New York¹⁰ and New Jersey¹¹ provide that if an owner issues a warehouse receipt, bill of lading, or other document of title for the stored personal property, the owner and occupant shall be subject to the UCC rather than the self-storage lien laws.

The priority of a lien that attaches under a self-storage statute can vary depending on any applicable qualifications and carve-outs. New York's statute contains an unqualified statement that the lien rights provided to self-storage facility owners are superior to any other lien or security interest.¹² In contrast, the New Jersey statute provides that the self-storage

facility owner's lien is superior to any other lien or security interest, except for certain specified prior liens.¹³ Before attempting to enforce its lien, a self-storage facility owner should understand whether any parties might have superior liens.

Notice Requirements

A self-storage facility owner must be cognizant of the notice requirements that need to be satisfied before its lien can be enforced, with reference to the applicable statute for guidance as to matters such as manner of delivery, parties to be notified, as well as content.

An owner should be careful to adhere to the technical requirements for delivery of notices to the occupant. For example, both New York¹⁴ and New Jersey¹⁵ permit notification by email, in addition to personal delivery or verified mail. However, in both states, an email notification shall only be deemed delivered if the owner receives a receipt establishing delivery (or, in New York, a nonautomated response).¹⁶



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In New Jersey, notification to the occupant must be followed by newspaper publication of the sale.¹⁸

Owners must also be careful that their notices contain all required information. For example, in New York and New Jersey, notices must contain, among other things, an itemized statement of the owner's claim, a description of the property subject to the lien, a demand for payment within a specified time, a conspicuous statement that the property will be advertised for sale if the owner is not paid, and an indication of the time and place of the sale.¹⁹

Alternatives to Lien Sales

The lien sale is a powerful tool, but there are downsides, such as the time and cost of enforcement and the potential for litigation if an occupant asserts that a lien sale was not properly conducted. Therefore, owners should also consider their alternatives. For instance, an owner might consider settling with a delinquent occupant (for partial payment in satisfaction of the claim, or perhaps for no immediate payment but a recognition that the debt remains outstanding), if the occupant promptly removes its property, thereby allowing the owner to quickly rent the unit to someone else. Other alternatives may also exist. In New Jersey, if the lien is claimed on a motor vehicle or watercraft, the statute provides a procedure whereby the self-storage facility owner can have the property towed and thereafter be relieved from liability respecting the motor vehicle or watercraft.²⁰

Conclusion

Self-storage lien laws provide self-storage facility owners with potent remedies that are unique to these types of rental properties. However, in order to help avoid liability or other complications stemming from

The applicable statutes may also dictate that notices must be delivered to parties other than the occupant. New York has a requirement that notice be given to all persons known to claim an interest in the goods.¹⁷



an occupant's assertion that a lien sale was wrongful, it is important that owners of these facilities understand the technical legal requirements applicable to lien sales, in order to ensure that the sales are conducted properly. Owners should also

weigh alternatives to such sales, which may result in more efficient resolutions to default situations. ■

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