

3411--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 22, 2015

Introduced by M. of A. TITONE -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the lien law, in relation to notice of enforcement of a lien on the goods in a self-storage facility

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The section heading and subdivisions 1, 2, 6 and 7 of
2 section 182 of the lien law, as added by chapter 975 of the laws of
3 1983, are amended to read as follows:
4 [Self-service storage] SELF-STORAGE facilities; lien. 1. Definitions.
5 As used in this article:
6 (a) ["Self-service storage] "SELF-STORAGE facility" means any real
7 property or a portion thereof that is designed and used for the purpose
8 of occupying storage space by occupants who are to have access thereto
9 for the purpose of storing and removing personal property. The owner of
10 a [self-service storage] SELF-STORAGE facility shall not be deemed to be
11 a warehouseman as defined in the uniform commercial code. Except as
12 provided in paragraph (b) of this subdivision, if an owner issues any
13 warehouse receipt, bill of lading, or other document of title for the
14 personal property stored, the owner and the occupant are subject to the
15 provisions of the uniform commercial code and the provisions of this
16 section shall not be applicable.
17 (b) "Owner" means a person, partnership or corporation which operates
18 a [self-service storage] SELF-STORAGE facility, an agent, or any other
19 person authorized by the owner to manage the facility or to receive
20 storage fees from an occupant under an occupancy agreement. A warehouse-
21 man may be an owner to the extent that any part of the building is oper-
22 ated as a [self-service storage] SELF-STORAGE facility.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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(c) "Occupant" means a person, entitled to the use of the storage space at a [self-service storage] SELF-STORAGE facility under a written occupancy agreement or his successor or assignee, to the exclusion of others including the owner except as provided in this section or the occupancy agreement.

(d) "Occupancy agreement" means any written agreement, ELECTRONIC OR PRINTED, that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of a [self-service storage] SELF-STORAGE facility and any one or more individual storage spaces therein.

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

(F) "ELECTRONIC MAIL" SHALL MEAN AN ELECTRONIC MESSAGE OR AN EXECUTABLE PROGRAM OR COMPUTER FILE THAT CONTAINS AN IMAGE OF A MESSAGE THAT IS TRANSMITTED BETWEEN TWO OR MORE COMPUTERS OR ELECTRONIC TERMINALS. SUCH TERM SHALL INCLUDE ELECTRONIC MESSAGES THAT ARE TRANSMITTED WITHIN OR BETWEEN COMPUTER NETWORKS.

(G) "LAST KNOWN ADDRESS" SHALL MEAN THE STREET ADDRESS, POST OFFICE BOX ADDRESS OR ELECTRONIC MAIL ADDRESS PROVIDED BY THE OCCUPANT IN THE OCCUPANCY AGREEMENT, OR A SUBSEQUENT ADDRESS PROVIDED BY THE OCCUPANT PURSUANT TO THE OCCUPANCY AGREEMENT.

(H) "VERIFIED MAIL" SHALL MEAN ANY METHOD OF MAILING THAT IS OFFERED BY THE UNITED STATES POSTAL SERVICE OR A PRIVATE DELIVERY SERVICE THAT PROVIDES EVIDENCE OF MAILING INCLUDING, BUT NOT LIMITED TO, A FIRST CLASS MAILING WITH CERTIFICATE OF MAILING.

2. Required disclosures. (a) The owner shall be required to provide prior to allowing occupancy a written occupancy agreement which shall be dated and signed by the occupant and the owner or his duly authorized agent, and be written or printed in a size equal to at least ten-point bold type and which shall set forth the following information:

(i) name and address of owner and occupant;

(ii) street address of [self-service storage] SELF-STORAGE facility where goods will be stored;

(iii) the actual monthly occupancy charge for the particular goods to be stored expressed in dollars;

(iv) an itemization of other charges imposed or which may be imposed in connection with the occupancy, a description of each such charge, whether the charge is mandatory or optional, and the amount of each charge expressed in dollars;

(v) a statement of any limitation of damages [which shall only be applicable after the owner has enforced his lien pursuant to subdivision seven of this section] limiting the amount of the owner's liability in case of loss or damage of the goods setting forth a specific liability per room size or dollar amount beyond which the owner will not be liable; provided that if damages are so limited, a statement shall be included that such liability may on the written request of the occupant and if accepted in writing by the owner at the time of signing such occupancy agreement or within a reasonable time thereafter be increased on part or all of the goods stored, in which event increased rates may be charged based on such increased valuation. The rates charged for an increased valuation shall be set forth and a pre-addressed request form to enable the occupant to request an increased valuation shall be provided; and

(vi) any other material terms and conditions of the occupancy transaction.

1 (b) Every occupancy agreement as required by this section shall
2 include the business address and telephone number to be used by the
3 occupant in making inquiries concerning the occupancy transaction.

4 (c) Every occupancy agreement as required by this section shall
5 contain the following conspicuous notice:

6 "Notice: The monthly occupancy charge and other charges stated in this
7 agreement are the actual charges you must pay".

8 6. Lien. The owner of a [self-service storage] SELF-STORAGE facility
9 has a lien upon all personal property stored at a [self-service storage]
10 SELF-STORAGE facility for occupancy fees or other charges, present or
11 future, in relation to the personal property and for expenses necessary
12 for its preservation or expenses reasonably incurred in its sale or
13 other disposition pursuant to law and any other charges pursuant to the
14 occupancy agreement. The lien provided for in this section is superior
15 to any other lien or security interest. The lien attaches as of the date
16 the personal property is brought to the [self-service storage] SELF-STO-
17 RAGE facility.

18 7. Enforcement of lien. (A) An owner's lien may be enforced by public
19 or private sale of the goods [that], WHETHER OR NOT THEY have been
20 removed from the storage space at a [self-service storage] SELF-STORAGE
21 facility, in block, or in parcel, at any time or place and on any terms
22 which are commercially reasonable after notice to all persons known to
23 claim an interest in the goods. The notice shall include an itemized
24 statement of the amount due, the description of the property subject to
25 the lien, the nature of the proposed sale, a demand for payment within a
26 specified time not less than [ten] TWENTY days from [receipt of notifi-
27 cation] MAILING OF THE NOTICE and a conspicuous statement that unless
28 the claimant pays within that time the goods will be advertised for sale
29 and sold at public or private sale in a commercially reasonable manner.
30 The notice shall further include the time and place of any public or
31 private sale and it shall state that any person claiming an interest in
32 the goods is entitled to bring a proceeding hereunder within ten days of
33 the service of the notice if he disputes the validity of the lien, or
34 the amount claimed. The notice shall EITHER be personally delivered to
35 the occupant, or sent [by registered or certified mail, return receipt
36 requested,] to the [occupant to the] OCCUPANT'S last KNOWN address
37 [provided by the occupant, pursuant to the occupancy agreement] BY VERI-
38 FIED MAIL OR ELECTRONIC MAIL.

39 (B) ANY NOTICE MADE PURSUANT TO THIS SECTION AND SENT BY ELECTRONIC
40 MAIL TO THE OCCUPANT'S LAST KNOWN ADDRESS SHALL ONLY BE EFFECTIVE IF A
41 NONAUTOMATED RESPONSE OR A RECEIPT OF DELIVERY TO THE E-MAIL ADDRESS IS
42 RECEIVED. IF THE OWNER DEPOSITS THE NOTICE OF THE SALE WITH THE UNITED
43 STATES POSTAL SERVICE OR A PRIVATE DELIVERY SERVICE, THE NOTICE SHALL BE
44 SENT TO THE OCCUPANT BY VERIFIED MAIL TO THE OCCUPANT'S LAST KNOWN
45 ADDRESS OR TO THE LAST KNOWN ADDRESS OF THE DESIGNATED AGENT OF THE
46 OCCUPANT BEFORE PROCEEDING WITH A SALE OF THE GOODS.

47 S 2. This act shall take effect immediately.