STATE OF NEW YORK

5211

2019-2020 Regular Sessions

IN SENATE

April 16, 2019

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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:

Section 1. The section heading and subdivisions 1, 2, 6 and 7 of section 182 of the lien law, as added by chapter 975 of the laws of 1983, are amended to read as follows:

[~~Self-service storage~~] **Self-storage** facilities; lien. 1. Definitions. As used in this article:

(a) [~~"Self-service storage~~] **"Self-storage** facility" means any real property or a portion thereof that is designed and used for the purpose of occupying storage space by occupants who are to have access thereto for the purpose of storing and removing personal property. The owner of a [~~self-service storage~~] **self-storage** facility shall not be deemed to be a warehouseman as defined in the uniform commercial code. Except as provided in paragraph (b) of this subdivision, if an owner issues any 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 the uniform commercial code and the provisions of this section shall not be applicable.

(b) "Owner" means a person, partnership or corporation which operates a [~~self-service storage~~] **self-storage** facility, an agent, or any other person authorized by the owner to manage the facility or to receive storage fees from an occupant under an occupancy agreement. A warehouseman may be an owner to the extent that any part of the building is operated as a [~~self-service storage~~] **self-storage** facility.

(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

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

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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 **and electronic mail address of owner and occupant should the occupant choose to be contacted via electronic mail**;

(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.

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

(c) Every occupancy agreement as required by this section shall contain the following conspicuous [~~notice~~] notices: (i) "Notice: The monthly occupancy charge and other charges stated in this agreement are the actual charges you must pay"; (ii) "Notice: You may choose to be contacted for legal matters related to your account, including any late or lien notices, via electronic mail by providing your electronic mail address in at least two locations within the occupancy agreement".

6. Lien. The owner of a [~~self-service storage~~] self-storage facility has a lien upon all personal property stored at a [~~self-service storage~~] self-storage facility for occupancy fees or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to law and any other charges pursuant to the occupancy agreement. The lien provided for in this section is superior to any other lien or security interest. The lien attaches as of the date the personal property is brought to the [~~self-service storage~~] self-storage facility.

7. Enforcement of lien. (a) An owner's lien may be enforced by public or private sale of the goods [~~that~~], whether or not they have been removed from the storage space at a [~~self-service storage~~] self-storage facility, in block, or in parcel, at any time or place and on any terms which are commercially reasonable after notice to all persons known to claim an interest in the goods. The notice shall include an itemized statement of the amount due, the description of the property subject to the lien, the nature of the proposed sale, a demand for payment within a specified time not less than [~~ten~~] twenty days from [~~receipt of notification~~] mailing of the notice and a conspicuous statement that unless the claimant pays within that time the goods will be advertised for sale and sold at public or private sale in a commercially reasonable manner. The notice shall further include the time and place of any public or private sale and it shall state that any person claiming an interest in the goods is entitled to bring a proceeding hereunder within ten days of the service of the notice if he disputes the validity of the lien, or the amount claimed. The notice shall either be personally delivered to the occupant, or sent [~~by registered or certified mail, return receipt requested,~~] to the [~~occupant to the~~] occupant's last known address [~~provided by the occupant, pursuant to the occupancy agreement~~] by verified mail or electronic mail. The notice shall either be personally delivered to the occupant, or sent to the occupant's last known address by verified mail or electronic mail. Any notice made pursuant to this section and sent by verified mail shall be sent to the last known address provided by the occupant, pursuant to the occupancy agreement. Any notice made pursuant to this section and sent by electronic mail shall only be effective if: (i) the occupancy agreement states that the occupant has consented to receive legal notifications about their account by electronic mail; (ii) the occupant has provided the information necessary for the owner to communicate with the occupant by electronic mail; and (iii) prior to sending any legal notifications to the occupant by electronic mail, the owner has sent an electronic mail to the occupant requesting that the occupant confirm the electronic mail address provided by the occupant and the occupant has confirmed such electronic mail address.

(b) Any notice given pursuant to this section is presumed delivered when it is: (i) properly addressed to the last known address, and (ii) either sent by verified mail and evidence of mailing is received, or sent by electronic mail and either a non-automated response to the electronic mail is received or a receipt of delivery to the electronic mail is received.

§ 2. This act shall take effect immediately.