

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 208

An Act to amend and reenact §§ 55-417 and 55-419 of the Code of Virginia, relating to the Virginia Self-Service Storage Act; notice of default.

[H 1921]

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-417 and 55-419 of the Code of Virginia are amended and reenacted as follows:

§ 55-417. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. "Self-service storage facility" means any real property designed and used for renting or leasing individual storage spaces, other than storage spaces which are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants thereof have access for storing or removing their personal property. No occupant shall use a self-service storage facility for residential purposes.

2. "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement.

The owner of a self-service storage facility is not a warehouseman as defined in § 8.7-102, unless the owner issues a warehouse receipt, bill of lading, or other document of title for the personal property stored, in which event, the owner and the occupant are subject to the provisions of Title 8.7 dealing with warehousemen.

3. "Occupant" means a person, his sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility under a rental agreement.

4. "Rental agreement" means any agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility.

5. "Leased space" means the individual storage space at the self-service facility which is leased or rented to an occupant pursuant to a rental agreement.

6. "Personal property" means movable property, not affixed to land and includes, but is not limited to, goods, wares, merchandise, and household items and furnishings.

7. "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement or this chapter.

8. "Last known address" means that address *or electronic mail address* provided by the occupant in the rental agreement or the address *or electronic mail address* provided by the occupant in a subsequent written notice of a change of address.

9. "Verified mail" means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

§ 55-419. Enforcement of lien.

A. 1. If any occupant is in default under a rental agreement, the owner shall notify the occupant of such default by regular mail at his last known address *or, if expressly provided for in the rental agreement, such notice may be given by electronic means*. If such default is not cured within ~~ten~~ 10 days after its occurrence, then the owner may proceed to enforce such lien by selling the contents of the occupant's unit at public auction, for cash, and apply the proceeds to satisfaction of the lien, with the surplus, if any, to be disbursed as hereinafter provided. Before conducting such a public auction, the owner shall notify the occupant as prescribed in subsection C of ~~this section~~ and shall advertise the time, place, and terms thereof in such manner as to give publicity thereto.

2. In the case of personal property having a fair market value in excess of \$1,000, and against which a creditor has filed a financing statement in the name of the occupant at the State Corporation Commission or in the city or county where the self-service storage facility is located or in the city or county in Virginia shown as the last known address of the occupant, or if such personal property is a watercraft required by the laws of Virginia to be registered and the Department of Game and Inland Fisheries shows a lien on the certificate of title, the owner shall notify the lienholder of record, by certified mail, at the address on the financing statement or certificate of title, at least 10 days prior ~~thereto~~ of to the time and place of the proposed public auction.

If the owner of the personal property cannot be ascertained, the name of "John Doe" shall be substituted in the proceedings hereunder and no written notice shall be required. Whenever a watercraft is sold hereunder, the Department of Game and Inland Fisheries shall issue a certificate of title and registration to the purchaser thereof upon his application containing the serial or motor number of the watercraft purchased, together with an affidavit by the lienholder, or by the person conducting the public

auction, evidencing compliance with the provisions hereof.

B. Whenever the occupant is in default, the owner shall have the right to deny the occupant access to the leased space.

C. After the occupant has been in default for a period of ~~ten~~ 10 days, and before the owner can sell the occupant's personal property in accordance with this chapter, the owner shall send a further notice of default, by ~~registered or certified~~ *verified* mail, postage prepaid, to the occupant at his last known address *or, if expressly provided for in the rental agreement, such notice may be given by electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.* Such notice of default shall include:

1. An itemized statement of the owner's claim, indicating the charges due on the date of the notice and the date when the charges became due;

2. A demand for payment of the charges due within a specified time not less than ~~twenty~~ 20 days after the date of the notice;

3. A statement that the contents of the occupant's leased space are subject to the owner's lien;

4. A conspicuous statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at public auction at a specified time and place; and

5. The name, street address, and telephone number of the owner or his designated agent whom the occupant may contact to respond to the notice.

D. At any time prior to the public auction pursuant to this section, the occupant may pay the amount necessary to satisfy the lien and thereby redeem the personal property.

E. In the event of a public auction pursuant to this section, the owner may satisfy his lien from the proceeds of the public auction, and shall hold the balance, if any, for delivery on demand to the occupant or other lienholder referred to in this chapter. However, the owner shall not be obligated to hold any balance for a lienholder of record notified pursuant to subdivision A 2, or any other lien creditor, that fails to claim an interest in the balance within ~~thirty~~ 30 days of the public auction. So long as the owner complies with the provisions of this chapter, the owner's liability to the occupant under this chapter shall be limited to the net proceeds received from the public auction of any personal property, and as to other lienholders, shall be limited to the net proceeds received from the public auction of any personal property covered by such superior lien.

F. Any public auction of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored. An advertisement shall be published in a newspaper of general circulation in the county, city or town in which the public auction is to be held at least once prior to the public auction. The advertisement must state (i) the fact that it is a public auction; (ii) the date, time and location of the public auction; and (iii) form of payment.

G. A purchaser in good faith of any personal property sold or otherwise disposed of pursuant to this chapter takes such property free and clear of any rights of persons against whom the lien was valid.

H. Any notice made pursuant to this section shall be presumed delivered when it is (i) deposited with the United States Postal Service and properly addressed to the occupant's last known address with postage prepaid *or (ii) sent by electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery. In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of default.*

I. In the case of any motor vehicle, so long as the motor vehicle remains stored within such leased space, the owner shall have a lien on such vehicle in accordance with § 46.2-644.01.