

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 311

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

AN ACT

RELATING TO LIENS; AMENDING SECTIONS OF THE SELF-SERVICE  
STORAGE LIEN ACT TO PROVIDE FOR ELECTRONIC NOTIFICATIONS AND  
ADVERTISEMENT OF SALES; PROVIDING FOR THE SALE OF ABANDONED  
PERSONAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 48-11-2 NMSA 1978 (being Laws 1987,  
Chapter 314, Section 2) is amended to read:

"48-11-2. DEFINITIONS.--As used in the Self-Service  
Storage Lien Act:

A. "default" means the failure to perform in a  
timely manner any obligation or duty set forth in the Self-  
Service Storage Lien Act or in the rental agreement;

B. "electronic mail" means the transmission of  
information or a communication by the use of a computer or

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1 other electronic means sent to a person identified by a unique  
2 electronic address;

3 C. "last known address" means the postal address or  
4 electronic address provided to the owner by the occupant:

5 (1) for the purposes of the latest rental  
6 agreement; or

7 (2) in a written or electronic notice of a  
8 change of postal address or electronic address after the latest  
9 rental agreement;

10 ~~[B.]~~ D. "occupant" means a person or ~~[his]~~ the  
11 person's sublessee, successor or assign who is entitled to the  
12 use of storage space, to the exclusion of others, at a self-  
13 service storage facility under a rental agreement;

14 ~~[G.]~~ E. "owner" means the owner or ~~[his]~~ the  
15 owner's heirs, successors or assigns, the operator, the lessor  
16 or the sublessor of a self-service storage facility ~~[his]~~ or  
17 the lessor's or sublessor's agent or any other person  
18 authorized by ~~[him]~~ the lessor or sublessor to manage the  
19 facility or to receive rent from an occupant under a rental  
20 agreement;

21 ~~[D.]~~ F. "rental agreement" means any written  
22 agreement or lease between the owner and the occupant ~~[which]~~  
23 that establishes or modifies the terms, conditions, rules or  
24 any other provisions concerning the use and occupancy of a  
25 self-service storage facility; ~~[and~~

1           E.] G. "self-service storage facility" means any  
 2 real property designed and used for the purpose of renting or  
 3 leasing individual storage space to occupants who are to have  
 4 access to such facility for the purpose of storing and removing  
 5 personal property; and

6           H. "verified mail" means any method of mailing that  
 7 is offered by the United States postal service or private  
 8 delivery service that provides evidence of mailing."

9           SECTION 2. Section 48-11-7 NMSA 1978 (being Laws 1987,  
 10 Chapter 314, Section 7) is amended to read:

11           "48-11-7. ENFORCEMENT OF LIEN.--

12           A. An owner's lien, as provided under the Self-  
 13 Service Storage Lien Act, for a claim that has become due may  
 14 be satisfied as follows:

15                   (1) after the occupant has been in default  
 16 continuously for a period of five days, the owner may deny the  
 17 occupant access to [~~his~~] the occupant's space for storage;

18                   (2) after the occupant has been in default  
 19 continuously for a period of thirty days, the owner may enter  
 20 the space and may remove the personal property within it to a  
 21 safe place; [~~providing~~] provided that the owner has sent a  
 22 notice of intent to enforce a lien, pursuant to Subsection B of  
 23 this section, to the occupant at [~~his~~] the occupant's last  
 24 known address within five days of entering the space. The  
 25 owner shall also give notice to all lienholders listed in the

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1 disclosure provision in the rental agreement; and

2 (3) no action to sell any property as provided  
3 in the Self-Service Storage Lien Act shall be taken by an owner  
4 until the occupant has been in default continuously for a  
5 period of ninety days.

6 B. The notice of intent to enforce a lien shall  
7 include:

8 (1) an itemized statement of the owner's claim  
9 showing the sum due at the time of the notice and the date when  
10 the sum became due;

11 (2) a brief and general statement of the  
12 personal property subject to the lien. That description shall  
13 be reasonably adequate to permit the person notified to  
14 identify the property, except that any container, including a  
15 trunk, valise or box that is locked, fastened, sealed or tied  
16 in a manner which deters immediate access to its contents, may  
17 be so described without describing its contents;

18 (3) a notification of denial of access to the  
19 personal property. That notification shall provide the name,  
20 street address and telephone number of the owner or [~~his~~] the  
21 owner's designated agent whom the occupant may contact to  
22 respond to that notification;

23 (4) a demand for payment within a specified  
24 time, not less than fifteen days after the delivery of the  
25 notice; and

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1                   (5) a conspicuous statement that unless the  
2 claim is paid within the time stated in the notice, the  
3 personal property will be advertised for sale or other  
4 disposition and will be sold or otherwise disposed of to  
5 satisfy the owner's lien.

6                   C. All notices made pursuant to this section shall  
7 be by [~~certified mail return receipt requested~~] verified mail  
8 or electronic mail pursuant to the occupant's option at the  
9 time of entering into the current rental agreement.

10                  D. An owner shall provide written notice by  
11 verified mail to the person's last known address or by  
12 electronic mail to the person's last known electronic address.  
13 If an owner sends a notice by electronic mail and does not  
14 receive a response, return receipt or delivery confirmation  
15 from the electronic address to which the notice was sent within  
16 three business days after the day on which the notice was sent,  
17 the owner shall deliver a one-time notice by verified mail to  
18 the person's last known address.

19                  [~~D.~~] E. After the expiration of the time given in  
20 the notice of intent to enforce a lien, the owner shall publish  
21 an advertisement of the sale or other disposition of the  
22 property once a week for two consecutive weeks in a newspaper  
23 of general circulation in the county where the self-service  
24 storage facility is located. The advertisement shall include:

25                   (1) a brief and general description of the

1 personal property reasonably adequate to permit its  
2 identification as provided in Paragraph (2) of Subsection B of  
3 this section, the address of the self-service storage facility  
4 where the personal property is located and the name and last  
5 known address of the occupant; and

6 (2) the time, place and manner of the sale or  
7 other disposition. The sale or disposition shall take place  
8 not sooner than fifteen days after the first publication.

9 If there is no newspaper of general circulation in the  
10 county where the self-service storage facility is located, the  
11 owner shall post the advertisement at least ten days prior to  
12 the sale or other disposition in at least six conspicuous  
13 places in the neighborhood where the self-service storage  
14 facility is located.

15 [~~E.~~] F. Any sale or other disposition of the  
16 personal property shall conform to the terms of the  
17 notification as provided for in this section.

18 [~~F.~~] G. Any sale or other disposition of the  
19 personal property shall be held at the self-service storage  
20 facility or at the nearest suitable place within the county to  
21 where the personal property is held or stored or may be  
22 conducted on a publicly accessible online web site.

23 [~~G.~~] H. Before any sale or other disposition of  
24 personal property pursuant to this section is made, the  
25 occupant may pay the amount necessary to satisfy the lien and

1 the reasonable expenses incurred under this section and thereby  
2 redeem the property. Upon receipt of the payment, the owner  
3 shall return the personal property and thereafter the owner  
4 shall have no liability to any person with regard to that  
5 personal property.

6 ~~[H.]~~ I. A good faith purchaser takes the property  
7 free of any rights of an unsecured lienholder and free of any  
8 rights of a secured lienholder who has received notice by owner  
9 as provided in this section.

10 ~~[I.]~~ J. In the event of a sale under this section,  
11 the owner may satisfy ~~[his]~~ the owner's lien from the proceeds  
12 of the sale, subject to the rights of any prior lienholder who  
13 has not received notice. The lien rights of such prior  
14 lienholder are automatically transferred to the proceeds of the  
15 sale. If the sale was made in good faith and conducted in a  
16 reasonable manner, the owner shall not be subject to any  
17 surcharge for a deficiency in the amount of a prior secured  
18 lien, but shall hold the balance, if any, for delivery to the  
19 occupant, lienholder or other person in interest. If the  
20 occupant, lienholder or other person in interest does not claim  
21 the balance of the proceeds within two years of the date of  
22 sale, it shall become the property of the owner without further  
23 recourse by the occupant, lienholder or other person in  
24 interest.

25 ~~[J.]~~ K. Nothing in this section affects the rights

1 and liabilities of the owner, occupant or any other person if  
2 there is a willful violation of any of the provisions of the  
3 Self-Service Storage Lien Act. If the property subject to a  
4 lien described in this section is a vehicle, watercraft or  
5 trailer, the occupant is in default for a continuous sixty-day  
6 period and the owner chose not to sell the vehicle, the owner  
7 may have the vehicle towed from the self-storage facility by an  
8 independent towing carrier that is licensed by the public  
9 regulation commission pursuant to the Motor Carrier Act.  
10 Within one day after the day on which a vehicle is towed, the  
11 owner shall send verified notice to the occupant's last known  
12 address or electronic address that states:

13 (1) the date the vehicle was towed; and

14 (2) the address and telephone number of the  
15 person that towed the vehicle."

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