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

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

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

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

1 D. "occupant" means a person or the person's
2 sublessee, successor or assign who is entitled to the use of
3 storage space, to the exclusion of others, at a self-service
4 storage facility under a rental agreement;

5 E. "owner" means the owner or the owner's heirs,
6 successors or assigns, the operator, the lessor or the
7 sublessor of a self-service storage facility or the lessor's
8 or sublessor's agent or any other person authorized by the
9 lessor or sublessor to manage the facility or to receive rent
10 from an occupant under a rental agreement;

11 F. "rental agreement" means any written agreement
12 or lease between the owner and the occupant that establishes
13 or modifies the terms, conditions, rules or any other
14 provisions concerning the use and occupancy of a self-service
15 storage facility;

16 G. "self-service storage facility" means any real
17 property designed and used for the purpose of renting or
18 leasing individual storage space to occupants who are to have
19 access to such facility for the purpose of storing and
20 removing personal property; and

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

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

1 "48-11-7. ENFORCEMENT OF LIEN.--

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

5 (1) after the occupant has been in default
6 continuously for a period of five days, the owner may deny
7 the occupant access to the occupant's space for storage;

8 (2) after the occupant has been in default
9 continuously for a period of thirty days, the owner may enter
10 the space and may remove the personal property within it to a
11 safe place; provided that the owner has sent a notice of
12 intent to enforce a lien, pursuant to Subsection B of this
13 section, to the occupant at the occupant's last known address
14 within five days of entering the space. The owner shall also
15 give notice to all lienholders listed in the disclosure
16 provision in the rental agreement; and

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

21 B. The notice of intent to enforce a lien shall
22 include:

23 (1) an itemized statement of the owner's
24 claim showing the sum due at the time of the notice and the
25 date when the sum became due;

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

8 (3) a notification of denial of access to
9 the personal property. That notification shall provide the
10 name, street address and telephone number of the owner or the
11 owner's designated agent whom the occupant may contact to
12 respond to that notification;

13 (4) a demand for payment within a specified
14 time, not less than fifteen days after the delivery of the
15 notice; and

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

21 C. All notices made pursuant to this section
22 shall be by verified mail or electronic mail pursuant to the
23 occupant's option at the time of entering into the current
24 rental agreement.

25 D. An owner shall provide written notice by

1 verified mail to the occupant's last known address or by
2 electronic mail to the occupant's last known electronic
3 address. If an owner sends a notice by electronic mail and
4 does not receive a response, return receipt or delivery
5 confirmation from the electronic address to which the notice
6 was sent within three business days after the day on which
7 the notice was sent, the owner shall deliver a one-time
8 notice by verified mail to the occupant's last known address.

9 E. After the expiration of the time given in the
10 notice of intent to enforce a lien, the owner shall publish
11 an advertisement of the sale or other disposition of the
12 property once a week for two consecutive weeks in a newspaper
13 of general circulation in the county where the self-service
14 storage facility is located. The advertisement shall
15 include:

16 (1) a brief and general description of the
17 personal property reasonably adequate to permit its
18 identification as provided in Paragraph (2) of Subsection B
19 of this section, the address of the self-service storage
20 facility where the personal property is located and the name
21 and last known address of the occupant; and

22 (2) the time, place and manner of the sale
23 or other disposition. The sale or disposition shall take
24 place not sooner than fifteen days after the first
25 publication.

1 If there is no newspaper of general circulation in the
2 county where the self-service storage facility is located,
3 the owner shall post the advertisement at least ten days
4 prior to the sale or other disposition in at least six
5 conspicuous places in the neighborhood where the self-service
6 storage facility is located.

7 F. Any sale or other disposition of the personal
8 property shall conform to the terms of the notification as
9 provided for in this section.

10 G. Any sale or other disposition of the personal
11 property shall be held at the self-service storage facility
12 or at the nearest suitable place within the county to where
13 the personal property is held or stored or may be conducted
14 on a publicly accessible online web site.

15 H. Before any sale or other disposition of
16 personal property pursuant to this section is made, the
17 occupant may pay the amount necessary to satisfy the lien and
18 the reasonable expenses incurred under this section and
19 thereby redeem the property. Upon receipt of the payment,
20 the owner shall return the personal property and thereafter
21 the owner shall have no liability to any person with regard
22 to that personal property.

23 I. A good faith purchaser takes the property free
24 of any rights of an unsecured lienholder and free of any
25 rights of a secured lienholder who has received notice by

1 owner as provided in this section.

2 J. In the event of a sale under this section, the
3 owner may satisfy the owner's lien from the proceeds of the
4 sale, subject to the rights of any prior lienholder who has
5 not received notice. The lien rights of such prior
6 lienholder are automatically transferred to the proceeds of
7 the sale. If the sale was made in good faith and conducted
8 in a reasonable manner, the owner shall not be subject to any
9 surcharge for a deficiency in the amount of a prior secured
10 lien, but shall hold the balance, if any, for delivery to the
11 occupant, lienholder or other person in interest. If the
12 occupant, lienholder or other person in interest does not
13 claim the balance of the proceeds within two years of the
14 date of sale, it shall become the property of the owner
15 without further recourse by the occupant, lienholder or other
16 person in interest.

17 K. Nothing in this section affects the rights and
18 liabilities of the owner, occupant or any other person if
19 there is a willful violation of any of the provisions of the
20 Self-Service Storage Lien Act. If the property subject to a
21 lien described in this section is a vehicle, watercraft or
22 trailer, the occupant is in default for a continuous
23 sixty-day period and the owner chose not to sell the vehicle,
24 the owner may have the vehicle towed from the self-storage
25 facility by an independent towing carrier that is licensed by

1 the public regulation commission pursuant to the Motor
2 Carrier Act. Within one day after the day on which a vehicle
3 is towed, the owner shall send verified notice to the
4 occupant's last known address or electronic address that
5 states:

- 6 (1) the date the vehicle was towed; and
- 7 (2) the address and telephone number of the
8 person that towed the vehicle." _____

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