

Colorado Statutes

Title 38. PROPERTY - REAL AND PERSONAL

LIENS

Article 21.5. Self-Service Storage Facility Liens

Current through Chapter 334, with the exception of Chapters 197 and 264, Regular Session 2011

Standard 38-21.5-101. [Effective 8/10/2011] Definitions

As used in this article, unless the context otherwise requires:

(1) "Default" means the failure to perform in a timely manner any obligation or duty set forth in this article or the rental agreement.

(1.5) "Electronic mail" or "e-mail" means 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. The term includes electronic messages that are transmitted within or between computer networks.

(2) "Last-known address" means that postal address or e-mail address provided by the occupant in the latest rental agreement or in a subsequent written notice of a change of address.

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

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

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

(6) "Rental agreement" means any written agreement or lease that establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy at a self-service storage facility and that contains a notice stating that all articles stored under the terms of such agreement will be sold or otherwise disposed of if no payment has been received for a continuous thirty-day period. The agreement must contain a provision directing the occupant to disclose any lienholders with an interest in property that is or will be stored in the self-service storage facility.

(7) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such facility for the purpose of storing and removing personal property. No occupant shall use a self-service storage facility for residential purposes. A self-service storage facility is not a warehouse as used in sections 4-7-209 and 4-7-210, C.R.S. 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 article do not apply.

As used in this article, unless the context otherwise requires:

(8) "Vehicle" means any item of personal property required to be registered with the department of revenue pursuant to section 42-3-103, C.R.S.

(9) "Verified mail" means any method of mailing that is offered by the United States postal service and that provides evidence of mailing.

(10) "Watercraft" means any vessel, including a personal watercraft, as defined in section 33-13-102, C.R.S.

Standard 38-21.5-102. [Effective 8/10/2011] Lien Established

Where a rental agreement, as defined in section 38-21.5-101 (6), is entered into between the owner and the occupant, the owner of a self-service storage facility and his or her heirs, executors, administrators, successors, and assigns have a lien upon all personal property located at the self-service storage facility for rent, labor, 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 this article. The lien attaches as of the date the personal property is brought to the self-service storage facility and continues so long as the owner retains possession and until the default is corrected, or a sale is conducted, or the property is otherwise disposed of to satisfy the lien. Prior to taking enforcement action pursuant to section 38-21.5-103 (1) (b), the owner shall determine if a financing statement concerning the property to be sold or otherwise disposed of has been filed with the secretary of state in accordance with part 5 of article 9 of title 4, C.R.S.

Standard 38-21.5-103. [Effective 8/10/2011] Enforcement of Lien

(1) An owner's lien, as provided for a claim that has become due, may be satisfied as follows:

(a) No enforcement action shall be taken by the owner until the occupant has been in default continuously for a period of thirty days.

(b) After the occupant has been in default continuously for thirty days, the owner may begin enforcement action if the occupant has been notified in writing. The owner shall deliver the notice in person or by verified mail or electronic mail to the last-known address of the occupant, and shall provide the notice to any lienholder with an interest in the property to be sold or otherwise disposed of, of whom the owner has knowledge through the disclosure provision on the rental agreement, as evidenced by a financing statement filed with the secretary of state, or through the owner's receipt of other written notice of such interest from the lienholder.

(c) The notice shall include:

(I) An itemized statement of the owner's claim showing the sum due at the time of the notice and the date when the sum became due;

(II) A brief and general description of the personal property subject to the lien. Such description shall be reasonably adequate to permit the person notified to identify such property; except that any container including, but not limited to, a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(III) A notification of denial of access to the personal property, if such denial is permitted under the terms of the rental agreement, which notification shall provide the name, street address, and telephone number of the owner or his designated agent whom the occupant may contact to respond to such notification;

(IV) A demand for payment within a specified time not less than fifteen days after delivery of the notice;

(V) A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

(d) If the owner sends notice of a pending sale of property to the occupant's last-known e-mail address and does not receive a response, return receipt, or delivery confirmation from the same e-mail address, the owner must send notice of the sale to the occupant by verified mail to the occupant's last-known postal address before proceeding with the sale.

(e) (I) After the expiration of the time given in the notice, the owner shall advertise the sale of the personal property either by:

(A) Publishing an advertisement of the sale once a week for two consecutive weeks in a periodical that circulates weekly or more frequently in the county where the self-service storage facility is located; or

(B) Advertising the sale in any other commercially reasonable manner. The manner of advertisement is deemed commercially reasonable if at least three independent bidders attend the sale at the time and place advertised.

(II) As used in this paragraph (e), "independent bidder" means a bidder who is not related to and who has no controlling interest in, or common pecuniary interest with, the owner or any other bidder.

(f) [Deleted by 2011 amendment.]

(g) (I) Any sale or other disposition of the personal property must be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored.

(II) If the property upon which the lien is claimed is a vehicle or watercraft, and rent and other charges related to the property remain unpaid or unsatisfied for sixty days:

(A) The owner may have the property towed from the self-service storage facility by an independent towing carrier holding current and valid operating authority from the Colorado public utilities commission; and

(B) The owner is not liable for the property, or for any damages to the property, once the towing carrier takes possession of the property.

(III) The owner is not liable for identity theft or other harm resulting from the misuse of information contained in documents or electronic storage media:

(A) That are part of the occupant's property sold or otherwise disposed of; and

(B) Of which the owner did not have actual knowledge.

(h) Before any sale or other disposition of personal property pursuant to this section, the occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property. Upon receipt of such payment, the owner shall return the personal property, and thereafter the owner shall have no liability to any person with respect to such personal property.

(i) A purchaser in good faith of the personal property sold to satisfy a lien as provided in this article takes the property free of any rights of persons against whom the lien was valid and free of any rights of a secured creditor, despite noncompliance by the owner with the requirements of this section.

(j) In the event of a sale under this section, the owner may satisfy his lien from the proceeds of the sale, subject to the rights of any prior lienholder. The lien rights of such prior lienholder are automatically transferred to the proceeds of the sale. If the sale is made in good faith and is conducted in a reasonable manner, the owner shall not be subject to any surcharge for a deficiency in the amount of a prior secured lien but shall hold the balance, if any, for delivery to the occupant, lienholder, or other person in interest. If the occupant, lienholder, or other person in interest does not claim the balance of the proceeds within three years of the date of sale, it shall become the property of the owner without further recourse by the occupant, lienholder, or other person in interest.

(k) Nothing in this section affects the rights and liabilities of the owner or the occupant if:

(I) The requirements of this article are not satisfied;

(II) The sale of the personal property is not in conformity with the notice of sale; or

Standard 38-21.5-104. Notice Posted in Office

Each owner acting pursuant to this article shall keep posted in a prominent place in his office at all times a notice which shall read as follows:

"All articles stored by a rental agreement, and charges not having been paid for thirty days, will be sold or otherwise disposed of to pay charges."

I) There is a willful violation of this article.

Standard 38-21.5-105. Additional Liens

Nothing in this article shall be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute of this state.