

West Virginia Statutes

Chapter 38. LIENS

Article 14. SELF-SERVICE STORAGE LIEN ACT

§ 38-14-1. Short title

This article may be known as the "Self-Service Storage Lien Act".

§ 38-14-2. Definitions

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

(1) "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement or this article;

(2) "Late fee" means a fee or charge assessed for a default;

(3) "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;

(4) "Occupant" means a person entitled to the use of a leased space at a self-service storage facility under a rental agreement, or the person's sublessee, successor or assign;

(5) "Owner" means the owner, operator, lessor or sublessor of a self-service storage facility or the person's 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 section one hundred two, article seven, chapter forty-six of this code 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 article seven, chapter forty-six of this code dealing with warehousemen;

(6) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, wares, merchandise, motor vehicles and household items and furnishings;

(7) "Primary address" means that address provided by the occupant in the rental agreement or the address provided by the occupant in a subsequent notice of a change of address;

(8) "Rental agreement" means any agreement or lease that establishes or modifies the terms, conditions or rules concerning the lawful and reasonable use and occupancy of a self-service storage facility;

(9) "Secondary address" means any address provided on the rental agreement and is in addition to the primary address;

(10) "Self-service storage facility" means any real property 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 have access for storing or removing their personal property; and

(11) "Self-service storage lien" means a lien imposed on the personal property of an occupant by the owner of a self-service storage facility.

§ 38-14-3. Self-service storage lien

(a) The owner has a self-service storage lien on all personal property stored within each leased space for agreed rent, labor or other charges and for expenses reasonably incurred in its sale or destruction pursuant to this article. The self-service storage lien attaches as of the date the personal property is stored within each leased space and remains a lien until the occupant has satisfied the terms of the rental agreement.

(b) In the case of any motor vehicle or watercraft which is subject to a lien previously recorded on the certificate of title, the owner has a self-service storage lien on the vehicle or watercraft so long as the motor vehicle or watercraft remains stored within the leased space.

(c) The rental agreement must contain:

(1) A statement, in bold type, advising the occupant of the existence of the self-service storage lien and that the personal property stored within the leased space may be sold to satisfy the self-service storage lien or destroyed if the value of the property would not reasonably discharge the costs of the sale and self-service storage lien;

(2) A space for a secondary address immediately following the space provided for the primary address; and

(3) A statement that the occupant may not store hazardous waste or contraband in the leased space.

§ 38-14-4. Late fees

The owner may charge a late fee not to exceed ten dollars or ten percent of the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of fifteen days or more

§ 38-14-5. Enforcement of self-service storage lien

(a) (1) If an occupant is in default under a rental agreement and the owner wishes to enforce the lien, the owner shall notify the occupant of the default in a form as prescribed by subsection (c) of this section. If the default is not cured within sixty days after the service of the notice, the owner may:

(A) Proceed to enforce the self-service storage lien by selling the contents of the occupant's unit at public auction, for cash, and apply the proceeds to satisfaction of the self-service storage lien, with the surplus, if any, to be disbursed as provided in this article; or

(B) Destroy the personal property if he or she can demonstrate by photographs or other images and affidavit of a knowledgeable and credible person that the personal property lacks a value sufficient to cover the reasonable expense of a public auction plus the amount of the self-service storage lien;

(2) In the case of personal property having a fair market value in excess of one thousand dollars and against which a secured party has filed a financing statement in the name of the occupant with the secretary of state or in the office of the clerk of the county commission in the county where the self-service storage facility is located or in the county in West Virginia shown as the last known address of the occupant or if the personal property is a motor vehicle or watercraft required by the laws of this state to be registered and the division of motor vehicles 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, of the time and place of the proposed public auction, at least thirty days prior to the auction. At any time prior to the public sale or destruction, a secured party may pay the reasonable fees and costs due to the person possessing the self-service storage lien and take possession of the personal property which is subject to the lien;

(3) If a lienholder of record of the personal property cannot be ascertained, the name of "Jane Doe" shall be substituted in the proceedings brought under this article and no written notice is required except as prescribed by subsection (c) of this section. Whenever a motor vehicle or watercraft is sold under the provisions of this article, the division of motor vehicles shall issue a certificate of title and registration to the purchaser upon the purchaser's application containing the serial or motor number of the vehicle or watercraft purchased, together with an affidavit by the person conducting the public auction, evidencing compliance with the provisions of this article.

(b) The owner may, without judicial process, deny the occupant access to the personal property stored at the self-service storage facility if the occupant has been in default for fifteen days: *Provided*, That the owner clearly states in the rental agreement that he or she may deny the occupant access to the personal property stored in the rental space after a default lasting fifteen or more days and the owner maintains a conspicuous sign on the premises of the self-service storage facility stating the name, street address and telephone number of the owner or the owner's designated agent who the occupant may contact to redeem his or her personal property and upon redemption, the occupant or lienholder be permitted access to his or her personal property at a time not later than the close of business on the next following business day.

(c) Anytime after the occupant has been in default and before the owner can sell or destroy the occupant's personal property in accordance with the terms of this article, the owner shall send a notice of default, by regular mail, and registered or certified mail, postage prepaid, to the occupant at the occupant's last-known primary address and secondary address, if any. The notice of default shall include:

(1) An itemized statement of the owner's claim, indicating the charges due on the date of the notice, the date when the charges became due and those charges that will accrue through the date of sale or destruction of the occupant's personal property;

(2) A demand for payment of the charges due to the owner with an address where payment can be made;

(3) A statement that the contents of the occupant's leased space are subject to the owner's self-service storage lien;

(4) A conspicuous statement that unless the claim is paid prior to the enforcement of the self-storage lien:

(A) The personal property contained in the occupant's space will be sold at public auction at a specified time and place which may not be less than sixty days from the date of the service; or

(B) The personal property contained in the occupant's space will be disposed of at a commercially reasonable cost to the occupant at a specified time and place which may not be less than sixty days from the date of the service; and

(d) At any time prior to the public auction or destruction of the personal property pursuant to this section the occupant may pay the full amount necessary to satisfy the self-service storage lien. A lienholder of record may pay an amount not to exceed one hundred seventy-five dollars for incurred rental fees, late fees and safekeeping of the property in addition to an amount not to exceed seventy-five dollars for notice and redeem only the personal property subject to the lien.

(e)(1) Any owner who conducts a public auction pursuant to this section may satisfy the self-service storage lien from the proceeds of the public auction and hold the balance, if any, for delivery on demand to the occupant. If an owner complies with the provisions of this article, his or her liability to the occupant is limited to the net proceeds less the amount of the self-service storage lien and costs received at the public auction;

(2) If an owner conducts a public auction pursuant to this section, the owner's liability to a lienholder is limited to the proceeds received at the public auction, less the amount of the self-service storage lien and costs. If an owner complies with the provisions of this article, the owner is not liable to a lienholder who fails to claim an interest in the net proceeds within thirty days after the public auction.

(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 or municipality in which the public auction is to be held not less than twenty days prior to the public auction. The advertisement must state the:

(1) Fact that it is a public auction;

(2) Date, time and location of the public auction;

(3) Date, time and location which the property may be inspected; and

(4) Form of payment acceptable.

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

(h) Any notice made pursuant to this section is presumed delivered when it is deposited with the United States postal service and properly addressed with postage prepaid.

§ 38-14-6. Other legal remedies may be used

The provisions of this article do not preempt or limit the owner's use of any additional remedy otherwise allowed by law.

§ 38-14-7. Duties; care, custody and control of property

(a) The owner shall use reasonable care in maintaining the self-service storage facility for the purposes of storage of personal property and may not offer to sell insurance to the occupant to cover the owner's risk or lack of care.

(b) Prior to the sale or destruction of personal property pursuant to this section, the owner shall prepare a detailed inventory of all personal property to be sold or destroyed and shall maintain the inventory listing for a period of two years from the date of the sale or destruction of the property. The occupant shall have access to the inventory listing for the period during which it is maintained by the owner.

(c) Unless the rental agreement specifically provides otherwise, the exclusive care, custody and control of all personal property stored in the leased space remains vested in the occupant.

(d) An occupant may not use a self-service storage facility for residential purposes.

(e) An occupant may not store hazardous waste or contraband in the leased space. An owner who discovers hazardous waste or contraband in a leased space shall promptly notify the appropriate law-enforcement agency and is authorized to deliver the hazardous waste or contraband to the appropriate law-enforcement agency.

§ 38-14-8. Savings clause

All rental agreements entered into prior to the first day of July, two thousand one, which have not been extended or renewed after that date remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state.

§ 38-14-9. Effective date and application of article

The provisions of this article apply to all rental agreements entered into or extended or renewed after the first day of July, two thousand one.