

## **CHAPTER 35-33 SELF-SERVICE STORAGE FACILITY LIENS**

### **35-33-01. Definitions.**

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

1. "Default" means failure of the occupant to perform any obligation or duty at the time and in the manner set forth in the rental agreement or under this chapter.
2. "Last-known address" means the postal or electronic mail address provided by the occupant in the latest rental agreement or the postal or electronic mail address provided by the occupant in a subsequent written notice of a change of address.
3. "Occupant" means the person who rents storage space at a self-service storage facility under a rental agreement, or a sublessee, successor, or assignee.
4. "Owner" means any person who owns, leases, subleases, manages, or operates a self-service storage facility, or the owner's designee, who receives rent from an occupant under a rental agreement.
5. "Personal property" means movable property not affixed to land, including merchandise and household goods.
6. "Rental agreement" means a written agreement between the owner and the occupant which establishes or modifies the terms and conditions of the occupant's use of storage space at a self-service storage facility.
7. "Self-service storage facility" means any real property used for renting or leasing individual storage spaces in which occupants customarily store and remove their personal property. The term does not include a garage used principally for parking motor vehicles; any property of a financial institution which contains vaults, safe deposit boxes, or other receptacles for the purposes and benefits of the financial institution's customers; or a warehouse or a public warehouse where warehouse receipts, bills of lading, or other documents of title are issued for the personal property stored.
8. "Storage space" means an individual space at a self-service storage facility which is rented or leased by an occupant under a rental agreement.
9. "Verified mail" means any method of mailing offered by the United States postal service or a private delivery service which includes evidence of mailing.

### **35-33-02. Lien against property - Value limit - Late fee.**

1. The owner of a self-service storage facility has a lien on all personal property stored under a rental agreement in a storage space at the self-service storage facility for rent, labor, late fees, and other charges, and for expenses reasonably incurred in the sale or other disposition of the property under law. This lien is superior to other security interests except those perfected before the date the lien attaches. The lien attaches upon default by the occupant as stated in the notice of default delivered to the occupant as provided in this chapter.
2. If the rental agreement specifies a limit on the value of personal property the occupant may store in the storage space, the limit is deemed to be the maximum value of the personal property in the occupant's storage space.
3. The owner of a self-service storage facility may charge a late fee of twenty dollars or twenty percent of a delinquent monthly rent payment due under the rental agreement, whichever is greater, for each delinquent payment of rent, fees, or other charges due under the rental agreement.

### **35-33-03. Denial of access - Disposal of property.**

If the occupant is in default, the owner may deny the occupant access to the storage space and enforce the lien by selling the property stored in the storage space. Sale of the property may be by public or private proceeding and may also be as a unit or in parcels. After the proceeding, the owner may dispose of any property that was offered for sale but which remained unsold.

#### **35-33-04. Custody and control of property.**

Unless the rental agreement provides otherwise, until a sale under this chapter, the occupant is responsible for the care, custody, and control of all property stored in the storage space, unless the owner secures the property elsewhere during the sale proceedings.

#### **35-33-05. Notice of proceedings.**

Before conducting a sale, the owner shall:

1. Deliver in person or send by verified mail or electronic mail a notice of default to prior lienholders and to the occupant at the occupant's last-known address. A notice under this section sent by verified mail is deemed delivered if it is deposited with the United States postal service or a private delivery service and properly addressed with postage prepaid. A notice under this section sent by electronic mail is deemed delivered if it is sent to the occupant's last-known electronic mail address. The notice must include:
  - a. A statement that the contents of the occupant's storage space are subject to the owner's lien and that the occupant is denied access to the property until the owner's claim is satisfied;
  - b. The address of the self-service storage facility, the number of the space where the personal property is located, and the name of the occupant;
  - c. A statement of the charges due, the date of default, and a demand for payment of the charges due within a specified time, not less than ten days after the date of notice;
  - d. A statement in bold type providing that, unless the claim is paid within the time stated, the contents of the occupant's storage space will be sold; and
  - e. The name, address, and telephone number of the owner or a designated agent whom the occupant may contact to respond to the notice.
2. At least seven days before the sale, advertise the time, place, and terms of the sale in a commercially reasonable manner. An advertisement satisfies the requirements of this subsection if at least three independent bidders attend the sale in person or online at the time and place advertised.

#### **35-33-06. Sale of property - Application of proceeds.**

At any time before the sale, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's property. If a sale is held, the owner shall satisfy the lien from the proceeds of the sale and hold the balance, if any, for delivery on demand to the occupant or any other recorded lienholder for a period of six months from the date of sale. The owner may retain any balance unclaimed after the six-month period.

#### **35-33-07. Protection of purchaser in good faith.**

A purchaser in good faith of any property sold under this chapter takes the property clear of any rights of persons against whom the lien was valid.

#### **35-33-08. Liability of owner.**

If the owner complies with this chapter, the owner's liability to the occupant is limited to the application of the proceeds received from the sale of the property necessary to satisfy the lien. The owner's liability to other lienholders is limited to the proceeds received from the sale of any property covered by the other lien less the amount necessary to satisfy the owner's lien.

#### **35-33-09. Validity of certain rental agreements.**

Any rental agreement entered before August 1, 2021, remains valid and may be enforced or terminated in accordance with its terms or as permitted by any other law of this state.

#### **35-33-10. Sale proceedings - Titled vehicles - Towing.**

1. The sale proceedings in this chapter are sufficient to provide the instruments or documents of authority necessary to obtain a transfer of title to vehicles under section 39-05-19.

2. If the personal property subject to a lien under section 35-33-02 is a motor vehicle, watercraft, or trailer, and rent or other charges under the rental agreement remain unpaid for sixty days, the owner may have the motor vehicle, watercraft, or trailer towed from the self-service storage facility property by a commercial towing service as defined in section 23.1-15-01. An owner may not be held liable for damage incurred to an occupant's motor vehicle, watercraft, or trailer after the owner relinquishes possession of the personal property and the personal property is removed from the self-service storage facility property. Removal of personal property from a self-service storage facility does not release the owner's lien under section 35-33-02.

**35-33-11. Owner rights - Chapter construction.**

This chapter may not be construed as impairing or affecting the right of an owner and an occupant to create additional rights, duties, or obligations under a rental agreement. In addition to the rights and remedies under this chapter, an owner has the same rights and remedies available to creditors and landlords under the laws of this state.