

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 542 (Juan Carrillo)
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Fiscal: No
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SUBJECT

Self-service storage facilities: lien sales

DIGEST

This bill amends the publication notice requirements regarding lien sales of property within self-service storage facilities.

EXECUTIVE SUMMARY

The California Self-Service Storage Facility Act (the Act) specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Owners of such facilities have a lien upon all personal property located at a self-service storage facility for rent, labor, late payment fees, or other charges, present or future, incurred pursuant to the rental agreement and for expenses necessary for the preservation, sale, or disposition of personal property subject to the provisions of the Act. The Act lays out the process by which such liens may be established and executed upon.

This includes notice to the occupant through specified methods pursuant to the provisions of the Act that includes various information about the occupant's obligations and rights and other information about the lien process. After complying with these steps the owner has the right to sell the property at a lien sale. However, the owner must advertise the sale once a week for two consecutive weeks in a newspaper of general circulation that includes specified information about the occupant, the facility, and the sale.

This bill, sponsored by the Self Storage Association and the California Self Storage Association, updates this latter public notice requirement by providing an option for lien sales to be published only once in a newspaper and once on a website that conducts or advertises online auctions or sales. The bill is opposed by the California News Publishers Association and other media organizations.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Self-Service Storage Facility Act (the Act). (Bus. & Prof. Code § 21700 et seq.)
- 2) Provides that the owner of a self-service storage facility has a lien upon all personal property located at a self-service storage facility for rent, labor, late payment fees, or other charges, present or future, incurred pursuant to the rental agreement and for expenses necessary for the preservation, sale, or disposition of personal property subject to the provisions of the Act. The lien may be enforced consistent with the provisions of the Act. (Bus. & Prof. Code § 21702.)
- 3) Authorizes an owner, if any part of the rent or other charges due from an occupant remain unpaid for 14 consecutive days, to terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a notice to the occupant's last known address and to the specified alternative address. The notice shall be sent by certified mail, postage prepaid, by regular first-class mail if the owner obtains a certificate of mailing indicating the date the notice was mailed, or by email, as provided. The notice must contain specified information. (Bus. & Prof. Code § 21703.)
- 4) Provides that if an owner sends an occupant a preliminary lien notice, the owner may, upon the effective date of the lien, deny the occupant access to the space, enter the space, and remove property for safe-keeping. Upon taking such actions, the owner must send to the occupant, by certified mail, or by first-class mail if the owner obtains a certificate of mailing, postage prepaid, addressed to the occupant's last known address, and to the alternative address or by email, as specified, a notice of lien sale with specified information and a blank declaration in opposition to the lien sale. (Bus. & Prof. Code § 21705.)
- 5) Authorizes the owner to conduct the lien sale in the absence of a valid declaration in opposition. (Bus. & Prof. Code § 21706.) However, the lien sale must first be advertised in a newspaper of general circulation in the public notice district where the sale is to be held for two consecutive weeks. (Bus. & Prof. Code § 21707(a).)
- 6) Requires the above advertisement to include a general description of the goods, the name of the person on whose account they are being stored, and the name and location of the storage facility. (Bus. & Prof. Code § 21707(a).)

- 7) Requires the above advertisement to be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale, if there is no newspaper of general circulation published in the public notice district where the sale is to be held. (Bus. & Prof. Code § 21707(a).)
- 8) Permits lien sale of the property at an in-person auction or on a publicly accessible internet website that customarily conducts online auctions or sales. (Bus. & Prof. Code § 21707(b).)
- 9) Mandates that all notices required by law to be published in a newspaper, must be published in a newspaper of general circulation and that it must be published at least once a week before the event the notice concerns takes place. (Government Code Section 6061.)

This bill:

- 1) Authorizes an alternative publication notice requiring advertisement once in a newspaper of general circulation and once on any publicly accessible internet website that customarily conducts or advertises online auctions or sales. The online advertisement must remain online for seven days before the sale.
- 2) Eliminates the requirement that the advertisement include a general description of the goods.
- 3) Authorizes the advertisements to be published in either the public notice district where the sale is to be held or in the county where the self-service storage facility is located.

COMMENTS

1. California Self-Service Storage Facility Act

a. The regulated process for enforcing liens

The Act specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Owners of such facilities have a lien upon all personal property located at a self-service storage facility for rent, labor, late payment fees, or other charges, present or future, incurred pursuant to the rental agreement and for expenses necessary for the preservation, sale, or disposition of personal property subject to the provisions of the Act. The Act lays out the process by which such liens may be established and executed upon.

At the outset, each contract for the rental or lease of individual storage space in a self-service storage facility must be in writing and contain, in addition to the provisions

otherwise required or permitted, a statement that the occupant's property will be subject to a claim of lien and may even be sold to satisfy the lien if the rent or other charges due remain unpaid

If the customer becomes 14 days overdue in paying the fees for the unit, the self storage company may mail a preliminary lien notice to inform the occupant that if the overdue fees are not paid within another two weeks, the self storage company can place a lien on the contents of the unit, and the customer's right to use the unit will forfeit. The notice must be sent to the occupant's last known address or to a specified alternative address. The notice shall be sent by certified mail, postage prepaid, by regular first-class mail if the owner obtains a certificate of mailing indicating the date the notice was mailed. The owner may also send the notice by email, if certain conditions are met and actual delivery and receipt are demonstrated. The notice must contain detailed information, including:

- an itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums became due;
- a statement that the occupant's right to use the storage space will terminate on a specified date (not less than 14 days after the mailing of the notice) unless all sums due are paid by the occupant before the specified date;
- a notice that the occupant may be denied access to the storage space after the termination date if the sums are not paid and that an owner's lien may be imposed thereafter; and
- the name, street address, and telephone number of the owner or their designated agent whom the occupant may contact to respond to the notice.

If the customer still does not pay the bill, the lien attaches on the 28th day. At that point, the self-storage company can begin denying the customer access to the unit, may enter the unit, and can remove property for safekeeping, unless the customer pays the bill in full. The company must then mail another notice to the customer, a notice of lien sale, using the same methods as specified above, that states all of the following:

- that the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property;
- that the stored property is subject to a lien, the current amount of the lien, and that the lien will continue to increase if rent is not paid;
- that the property will be sold to satisfy the lien after a specified date that is not less than 14 days from the date of mailing the notice, unless the occupant executes and returns by certified mail a declaration in opposition to lien sale;
- a statement that the occupant may regain full use of the space by paying the full lien amount before the specified date; and
- that any excess proceeds of the sale over the lien amount and costs of sale will be retained by the owner and may be reclaimed by the occupant or claimed by another person at any time for a period of one year from the sale and that

thereafter the proceeds will escheat to the county in which the sale is to take place.

A blank declaration in opposition to the lien sale must accompany the notice. The customer can fill out the form to contest the process and return it. If the customer does so before the date of the auction, then the owner must file suit against the occupant to enforce the lien. Otherwise, the self-storage company may conduct a public auction sale of the content of the unit and can use the proceeds as payment against the outstanding balance.

The sale must be conducted in a commercially reasonable manner, which may take the form of an in-person auction or a sale on a publicly accessible website that customarily conducts online auctions or sales. After deducting the amount of the lien and costs of sale, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant may claim the excess proceeds at any time within one year of the date of sale. Thereafter, the owner shall pay any remaining excess proceeds to the treasury of the county in which the sale was held.

However, relevant here, the owner must first advertise the lien sale according to statute. The advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation published in the public notice district where the sale is to be held. The advertisement must include a general description of the goods, the name of the person on whose account they are being stored, and the name and location of the storage facility. If there is no newspaper of general circulation published in the public notice district where the sale is to be held, the advertisement shall be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

b. Modernizing the publication notice requirement

This bill updates this publication notice requirement in several material ways. First, the advertisement can either be accomplished through the existing method or by publishing the notice once in a newspaper of general circulation and once on any publicly accessible internet website that customarily conducts or advertises online auctions or sales. The online advertisement shall remain online for seven days before the sale.

Second, the bill allows for the advertisements, in either iteration, to be published in the public notice district where the sale is to be held, as under existing law, or in the county where the self-service storage facility is located. The stated goal of this change is to make compliance easier for owners who may not know the relevant public notice district.

Third, the bill eliminates the requirement that the advertisement include a general description of the goods. The advertisement will still need to list the name of the person

on whose account the goods are being stored and the name and location of the storage facility. However, the location of this provision may make it unclear that this requirement applies to the various advertising options. The author has agreed to amendments that clearly organize the provisions of the bill.

Given the thorough requirements regarding notification of the occupant, the main purpose of the publication notice is to ensure that the public has fair warning about the impending lien sale and an opportunity to bid on the property. This notice prevents facility owners from improperly disposing of the underlying property by, for instance, selling below market value in a transaction that is not at arm's length. This bill brings the notice to a place where potential buyers are more likely to be searching for such sales. In addition, such sales are still required to be published in newspapers and ensure that potential buyers can continue to rely on searches of such papers for notice of all such sales.

According to the author:

Assembly Bill 542 seeks to reduce an unnecessary burden on many small California storage owners while also expanding the access and visibility to lien sale advertisements. The bill provides storage owners with the option to advertise upcoming lien sales on a publicly accessible website, provided the sale is also advertised once in a newspaper of general circulation.

AB 542 updates The California Self Service Storage Facility Act by providing storage operators with flexibility and additional options to advertise lien sales, while still requiring at least one advertisement in the newspaper.

2. Stakeholder positions

The bill's sponsors, the Self Storage Association and the California Self Storage Association, write:

[T]he newspaper advertising requirement is outdated. Since the California Self-Service Storage Facility Act was passed in 1981 newspaper readership is down significantly and many newspapers have shuttered resulting in operators' inability to properly advertise within the specific public notice district. The purpose of the newspaper advertisement is to bring bidders to the sale. Simply, advertising in a local newspaper within a specific public notice district is no longer the most effective method to drive traffic to self storage lien sales. Thirty-two states permit advertisements via another mechanism other than newspapers preceding the sale or have no advertising requirement at all, including Washington. California is only

one of a dozen states that requires two newspaper advertisements before a sale.

Historically, self storage lien sales occurred on-site at the facility where the tenant default occurred. In the last several years, that has changed. Many self storage owners nationally, including in California, have shifted to online auction platforms to conduct these sales. California law permits online auctions. Online sales can expand the audience of potential bidders by allowing bidders to submit bids over several days without attending a one-day sale in person.

As online auctions have increased significantly in popularity, it is logical that the sales would also be advertised on the platform where the sale is conducted. Interested bidders seek out these upcoming auctions on these platforms, which may be accessed free of charge. Further, self storage auction websites are optimized to easily search and provide access to thousands of individuals who are specifically interested in upcoming sales.

The bill is opposed by a coalition of media organizations, including the California News Publishers Association, that asserts:

Newspaper public notices unlike the use of a website alone, constitute a forum that is independent of the government and self-storage facility owners and it is in the best of interest of newspapers to have the widest possible circulation. There are no standards for the maintenance, appearance, effectiveness or usage of web sites. A person who visits websites that customarily conducts or advertises online auctions or sales will not have any idea where to look or what to look for other than that information they are seeking. As a result, this new notice scheme is fundamentally flawed.

SUPPORT

California Self Storage Association (sponsor)

Self Storage Association (sponsor)

OPPOSITION

California Black Media

California News Publishers Association

Ethnic Media Services

RELATED LEGISLATION

Pending Legislation: SB 458 (Gonzalez, 2023) expands current requirements for local agencies to publish public contract information in physical newspapers, to require local agencies to post this information online as well. This bill is currently in the Senate Governance and Finance Committee.

Prior Legislation: AB 1108 (Daly, Ch. 227, Stats. 2017) updated two aspects of the Act to better fit the internet age. It allowed self-storage businesses to provide legal notices to customers by email, with the consent of the customer. It also clarified that self-storage companies may use online auction sites when conducting public sale of storage unit contents.

PRIOR VOTES:

Assembly Floor (Ayes 78, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
