

§ 44A-43. Enforcement of self-service storage facility lien.

(a) If the rent and other charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 15 days following the maturity of the obligation to pay rent, the owner may enforce the lien by a public sale or other disposition of the property as provided in this section. The owner may bring an action to collect rent and other charges in any court of competent jurisdiction at any time following the maturity of the obligation to pay the rent.

The occupant or any other person having a security or other interest in the property stored in the self-service storage facility may bring an action to request the immediate possession of the property, at any time following the assertion of the lien by the owner. Before such possession is granted, the occupant or the person with a security or other interest in the property shall pay the amount of the lien asserted to the clerk of court in which the action is pending, or post a bond for double the amount. The clerk shall then issue an order to the owner to relinquish possession of the property to the occupant or other party.

(b) Notice and Hearing:

(1) If the property upon which the lien is claimed is a motor vehicle, the lienor, following the expiration of the 15-day period provided by subsection (a), shall give notice to the Division of Motor Vehicles that a lien is asserted and that a sale is proposed. The lienor shall remit to the Division a fee of two dollars (\$2.00); and shall also furnish the Division with the last known address of the occupant. The Division of Motor Vehicles shall issue notice by certified mail, return receipt requested to the person having legal title to the vehicle, if reasonably ascertainable, and to the occupant, if different, at his last known address. The notice shall:

- a. State: (i) that a lien is being asserted against the specific vehicle by the lienor or owner of the self-service storage facility, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the vehicle in satisfaction of the lien;
- b. Inform the person having legal title and the occupant of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place; and
- c. State that the legal title holder and the occupant have a period of 10 days from the date of receipt of the notice in which to notify the Division of Motor Vehicles by certified mail, return receipt requested, that a hearing is desired to contest the sale of the vehicle pursuant to the lien.

The person with legal title or the occupant must, within 10 days of receipt of the notice from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the vehicle pursuant to the lien, and that the Division should so notify lienor.

Failure of the person with legal title or the occupant to notify the Division that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor may proceed to enforce the lien by a public sale as provided by this section; and the Division shall transfer title to the property pursuant to such sale.

If the Division is notified within the 10-day period provided in this section that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

- (1a) If the property upon which the lien is claimed is a motor vehicle, watercraft, or trailer, and rent and other charges related to the property remain unpaid or unsatisfied for 60 days following the maturity of the obligation to pay rent, the lienor may have the property towed. If a motor vehicle is towed as authorized in this subdivision, the lienor shall not be liable for the motor vehicle or any damages to the motor vehicle once the tower takes possession of the property.
- (2) If the property upon which the lien is claimed is other than a motor vehicle, watercraft, or trailer, the lienor following the expiration of the 15-day period provided by subsection (a) shall issue notice to the person having a security or other interest in the property, if reasonably ascertainable, and to the occupant, if different, at his last known address. Notice given pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service, or when it is sent by verified electronic mail to the occupant's last known address, if the occupant has made an election in the rental agreement to receive notice by electronic mail.

The notice shall:

- a. State: (i) that a lien is being asserted against the specific property by the lienor, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the property in satisfaction of the lien;
- b. Provide a brief and general description of the personal property subject to the lien. The description shall be reasonably adequate to permit the person notified to identify it, 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;
- c. Inform the person with a security or other interest in the property and occupant, if different, of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place;
- d. State that the person with a security or other interest in the property or the occupant, if different, has a period of 10 days from the date of the mailing of the notice to notify the lienor by registered, or certified mail, return receipt requested, that a hearing is desired, and that if the legal title holder or occupant wishes to contest the sale of his property pursuant to the lien he should notify the lienor that a hearing is desired.

The person with a security or other interest in the property or the occupant must, within 10 days from the date of the mailing of the notice from the lienor, notify the lienor of his desire for a hearing, and state whether or not he wishes to contest the sale of the property pursuant to the lien.

Failure of the person with a security or other interest in the property, or the occupant to notify the lienor that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted. Upon such failure the lienor may proceed to enforce the lien by a public sale as provided by this section. Upon the

expiration of the 10-day notice, the occupant's tenancy shall be terminated, and the lienor may move the occupant's property to another place of safekeeping.

If the lienor is notified, within the 10-day period as provided by this section, that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section only pursuant to the order of a court of competent jurisdiction.

(c) Public Sale. –

(1) Not less than 20 days prior to sale by public sale the lienor:

a. Shall cause notice to be delivered by certified mail to the person having a security interest in the property if reasonably ascertainable, and to the occupant at the occupant's last known address by certified mail or by verified electronic mail if the occupant has made an election in the rental agreement to receive notice by electronic mail. Notice given by certified mail pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service. Notice given by verified electronic mail pursuant to this subdivision shall be presumed delivered when it is transmitted.

b. Repealed by Session Laws 2009-201, s. 1, effective October 1, 2009.

(1a) Not less than five days prior to sale by public sale, the lienor shall publish notice of sale either (i) in a newspaper of general circulation in the county where the sale is to be held or (ii) in any other commercially reasonable manner. The manner of advertisement shall be deemed commercially reasonable if at least three independent bidders attend the sale at the time and place advertised and the sale is otherwise consistent with the definition set out in G.S. 25-9-627.

(2) Repealed by Session Laws 2013-239, s. 2, effective October 1, 2013.

(2a) The sale shall be conducted in a commercially reasonable manner, as defined in G.S. 25-9-627, including offering property to an audience of bidders through an online, publicly accessible auction Web site. If the sale is a live auction conducted at the facility, the nearest suitable place where the property is held or stored, or in the county where the obligation secured by the lien was contracted for, the sale must be held on a day other than Sunday and between the hours of 9:00 A.M. and 4:00 P.M. A lienor may purchase at public sale.

(3) Repealed by Session Laws 2013-239, s. 2, effective October 1, 2013.

(d) Repealed by Session Laws 2013-239, s. 2, effective October 1, 2013. (1981 (Reg. Sess., 1982), c. 1275, s. 1; 2006-264, s. 38.5; 2009-201, s. 1; 2012-175, s. 12(c); 2013-239, s. 2.)