

NEW YORK

§ 182. Self-service storage facilities; lien.

1. Definitions. As used in this article:

(a) "Self-service storage facility" means any real property or a portion thereof that is designed and used for the purpose of occupying storage space by occupants who are to have access thereto for the purpose of storing and removing personal property. The owner of a self-service storage facility shall not be deemed to be a warehouseman as defined in the uniform commercial code. Except as provided in paragraph (b) of this subdivision, 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 section shall not be applicable.

(b) "Owner" means a person, partnership or corporation which operates a self-service storage facility, an agent, or any other person authorized by the owner to manage the facility or to receive storage fees from an occupant under an occupancy agreement. A warehouseman may be an owner to the extent that any part of the building is operated as a self-service storage facility.

(c) "Occupant" means a person, entitled to the use of the storage space at a self-service storage facility under a written occupancy agreement or his successor or assignee, to the exclusion of others including the owner except as provided in this section or the occupancy agreement.

(d) "Occupancy agreement" means any written agreement that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of a self-service storage facility and any one or more individual storage spaces therein.

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

2. Required disclosures. (a) The owner shall be required to provide prior to allowing occupancy a written occupancy agreement which shall be dated and signed by the occupant and the owner or his duly authorized agent, and be written or printed in a size equal to at least ten-point bold type and which shall set forth the following information:

(i) name and address of owner and occupant;

(ii) street address of self-service storage facility where goods will be stored;

(iii) the actual monthly occupancy charge for the particular goods to be stored expressed in dollars;

(iv) an itemization of other charges imposed or which may be imposed in connection with the occupancy, a description of each such charge, whether the charge is mandatory or optional, and the amount of each charge expressed in dollars;

(v) a statement of any limitation of damages which shall only be applicable after the owner has enforced his lien pursuant to subdivision seven of this section limiting the amount of the owner's liability in case of loss or damage of the goods setting forth a specific liability per room size or dollar amount beyond which the owner will not be liable; provided that if damages are so limited, a statement shall be included that such liability may on the written request of the occupant and if accepted in writing by the owner at the time of signing such occupancy agreement or within a reasonable time thereafter be increased on part or all of the goods stored, in which event increased rates may be charged based on such increased valuation. The rates charged for an increased valuation shall be set forth and a pre-addressed request form to enable the occupant to request an increased valuation shall be provided; and

(vi) any other material terms and conditions of the occupancy transaction.

(b) Every occupancy agreement as required by this section shall include the business address and telephone number to be used by the occupant in making inquiries concerning the occupancy transaction.

(c) Every occupancy agreement as required by this section shall contain the following conspicuous notice: "Notice: The monthly occupancy charge and other charges stated in this agreement are the actual charges you must pay".

3. Unlawful detention of goods. It shall constitute an unlawful detention of goods for an owner to refuse to surrender goods stored by him for an occupant upon payment by the occupant of the occupancy fees permitted by this section.

4. Private right of action. (a) Any occupant damaged by an unlawful detention of his goods or any other violation of this section may bring an action for recovery of damages and the return of his goods. Judgment may be entered in an amount not to exceed three times the actual damages plus reasonable attorneys fees.

(b) Nothing in this section shall be construed so as to nullify or impair any right or rights which a buyer may have against a seller at common law, by statute or otherwise.

5. Violation and penalties. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

6. Lien. The owner of a self-service storage facility has a lien upon all personal property stored at a self-service storage facility for occupancy fees 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 law and any other charges pursuant to the occupancy agreement. The lien provided for in this section is superior to any other lien or security interest. The lien attaches as of the date the personal property is brought to the self-service storage facility.

7. Enforcement of lien. An owner's lien may be enforced by public or private sale of the goods that have been removed from the storage space at a self-service storage facility, in block, or in parcel, at any time or place and on any terms which are commercially reasonable after notice to all persons known to claim an interest in the goods. The notice shall include an itemized statement of the amount due, the description of the property subject to the lien, the nature of the proposed sale, a demand for payment within a specified time not less than ten days from receipt of notification and a conspicuous statement that unless the claimant pays within that time the goods will be advertised for sale and sold at public or private sale in a commercially reasonable manner. The notice shall further include the time and place of any public or private sale and it shall state that any person claiming an interest in the goods is entitled to bring a proceeding hereunder within ten days of the service of the notice if he disputes the validity of the lien, or the amount claimed. The notice shall be personally delivered to the occupant, or sent by registered or certified mail, return receipt requested, to the occupant to the last address provided by the occupant, pursuant to the occupancy agreement.

8. Pricing. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the owner is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the owner either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently

necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

9. Special proceeding. The special proceeding may be brought in any court which would have jurisdiction to render a judgment for a sum equal to the amount of the lien. If the person shall show that the owner is not entitled to claim a lien in the goods, or that all or part of the amount claimed by the owner has not been properly charged to the account of such person, or, as the case may be, that all or part of such amount exceeds the fair and reasonable value of the services performed by the owner, the court shall direct the entry of judgment cancelling the lien or reducing the amount claimed thereunder accordingly. If the owner shall establish the validity of the lien, in whole or in part, the judgment shall fix the amount thereof, and shall provide that the sale may proceed upon the expiration of five days after service of a copy of the judgment together with notice of entry thereof upon the person, unless the goods are redeemed prior thereto. If the lien is cancelled, the judgment shall provide that, upon service of a copy of the judgment together with notice of entry thereof upon the owner, the person shall be entitled to possession of the property.