

NORTH CAROLINA BILL TEXT

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David W. Hoyle

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TEXT:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

SENATE BILL 448

RATIFIED BILL

AN ACT amending the laws regulating **self-servicestorage** facilities.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 44A of the General Statutes reads as rewritten: "Article 4.

"**Self-ServiceStorage** Facilities.

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"§ 44A-41. **Self-servicestorage** facility owner entitled to lien.

The owner of a **self-servicestorage** facility has a lien upon all personal property stored at the facility for rent, expenses necessary for the preservation of the personal property, and expenses reasonably incurred in the sale or other disposition of the personal property pursuant to this Article. This lien shall not have priority over any security interest which is perfected at the time the occupant stores the property at the **self-servicestorage** facility. **For purposes of this Article, to identify an existing security interest in stored property, the owner shall conduct an online search for Uniform Commercial Code financing statements filed with the Office of the Secretary of State in the name of the occupant.**

"§ 44A-43. Enforcement of **self-servicestorage** 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-servicestorage**

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 registered or 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-servicestorage** facility, (ii) that the lien is being asserted for rental charges at the **self-servicestorage** 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 registered or 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 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, 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 by registered or certified mail, return receipt requested~~ 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.

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-servicestorage** 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 ~~receipt~~**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 ~~of receipt~~**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 ~~mailed~~**delivered by registered or certified mail** to the person having ~~legal title to a security interest in~~ the property if reasonably ascertainable, **and** to the occupant ~~if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (d) hereof; and~~ **at the occupant's 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.**

b. ~~Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held; and shall publish notice of sale once a week for two consecutive weeks in a newspaper of general cir-~~

~~evaluation in the same county, the date of the last publication being not less than five days prior to the sale.~~

(1a) Not less than five days prior to sale by public sale, the lienor shall publish notice of sale in a newspaper of general circulation in the county where the sale is to be held. If there is no newspaper of general circulation in the county where the sale is to be held, notice of sale shall be published in any publication that accepts classified advertisements and has a general circulation in the county where the sale is to be held.

(2) 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. At the **self-servicestorage** facility or at the nearest suitable place to where the property is held or stored; or

b. In the county where the obligation secured by the lien was contracted for.

(3) A lienor may purchase at public sale.

(d) Notice of Sale. The notice of sale shall include:

(1) The name and address of the lienor;

(2) A statement to the effect that various items of personal property are being sold pursuant to the assertion of a lien for rental at the **self-servicestorage** facility;

(3) The place, date, and time of the sale.

“§ 44A-44. Right of redemption; good faith purchaser's right; disposition of proceeds; lienor's liability.

(a) Before the sale authorized by G.S. 44A-43, or other disposition of the property, the occupant may pay the amount necessary to satisfy the lien plus the reasonable expenses incurred by the owner for the preservation of the property and thereby redeem the property. Upon receipt of such payment, the owner shall return the personal property to the occupant; and thereafter shall have no further claim against such personal property on account of the lien which was asserted. **The partial payment of rent or other charges shall not satisfy the lien or stop or delay the owner's right to sell the occupant's property unless the owner agrees to satisfaction or a stop or delay in a writing signed by the owner.**

“§ 44A-44.1. Possession vested in occupant.

Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in a storage space at a self-service storage facility shall remain vested in the occupant until the property is sold as provided in this Article or otherwise disposed of. The owner of a self-servicestorage facility is a commercial landlord who rents space. Unless the rental agreement specifically provides otherwise, while the personal property remains on the owner's premises, the owner is liable for damage caused by the intentional acts or negligence of the owner or the owner's employees.

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Walter H. Dalton

President of the Senate

Joe Hackney

Speaker of the House of Representatives

Beverly E. Perdue

Governor

Approved _____ .m. this _____ day of _____, 2009

2009 NC S.B. 448 (NS)

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