House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 48

HOUSE BILL 2435

AN ACT

AMENDING SECTIONS 33-1701, 33-1703 AND 33-1704, ARIZONA REVISED STATUTES; RELATING TO SELF-SERVICE STORAGE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 33-1701, Arizona Revised Statutes, is amended to read:

33-1701. Definitions; exception

A. In this article, unless the context otherwise requires:

1. "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement.

2. "Department" means the Arizona game and fish department in the case of motorized watercraft and the department of transportation in the case of all other vehicles.

3. "Last known address" means that address provided by the occupant in the rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.

4. "Late fee" means a reasonable fee or charge that is assessed by the operator for the failure of the occupant to pay rent when due pursuant to section 33-1703, subsection D.

5. "Leased space" means the ~~individual~~ storage space OR SPACES at the self-service storage facility ~~which is~~ THAT ARE rented to an occupant pursuant to a rental agreement.

6. "Net proceeds" means the total proceeds received from the lien sale less the total amount of the lien.

7. "Occupant" means a person or ~~his~~ THE PERSON'S sublessee, successor or assign, entitled to the use of ~~a~~ THE leased space at a self-service storage facility under a rental agreement, to the exclusion of others.

8. "Operator" means the owner, operator, lessor or sublessor of a self-service storage facility, an agent or any other person authorized to manage the facility.

9. "Personal property" means movable property that is not affixed to land and includes but is not limited to goods, wares, merchandise, household items and furnishings and vehicles.

10. "Registered owner" means an owner of a vehicle as stated in the official records of the department.

11. "Rental agreement" means any written agreement provided to the occupant ~~which~~ THAT establishes or modifies the terms, conditions or rules concerning the use and occupancy of LEASED SPACE AT a self-service storage facility.

12. "Self-service storage facility" means any real property used for renting or leasing ~~individual~~ storage spaces in which the occupants themselves customarily store and remove their own personal property on a self-service basis.

13. "Vehicle" means a motor vehicle, a trailer or a semitrailer as defined in section 28-101 and a motorized watercraft as defined in section 5-301.

14. "VERIFIED MAIL" MEANS ANY METHOD OF MAILING THAT IS OFFERED BY THE UNITED STATES POSTAL SERVICE AND THAT PROVIDES EVIDENCE OF MAILING.

B. This article does not apply to a warehouseman unless the warehouseman issues a warehouse receipt, bill of lading or other document of title for the personal property stored.

Sec. 2. Section 33-1703, Arizona Revised Statutes, is amended to read:

33-1703. Lien; rental agreement; contents; late fees

A. The operator of a self-service storage facility has a possessory lien from the date the rent is unpaid and due on all personal property stored within ~~each~~ THE leased space for rent, late fees~~,~~ AND labor or other charges, and for expenses reasonably incurred in its sale, as provided in this article. The lien shall not impair any other lien or security interest at the time the storage was commenced, unless the lienor or secured party knows and consents to the storage of the personal property.

B. The rental agreement shall contain a statement, in at least ten point bold-faced type, advising the occupant:

1. Of the accrual of the lien as of the date the rent is unpaid and due.

2. That property stored in the leased space may be sold to satisfy the lien if the occupant is in default.

3. That any insurance protecting the personal property stored within the storage space against fire, theft or damage must be provided by the occupant.

4. That a late fee may be charged by the operator for each month that the occupant does not pay rent when due. The rental agreement shall state the date on which rent is due and the date on which the late fee accrues.

C. The rental agreement shall contain a provision requiring the occupant to disclose any lienholders or secured parties who have an interest in property that is or will be stored in the self-service storage facility.

D. The operator may impose a reasonable late fee on the occupant for each month the occupant does not pay rent when due. For purposes of this section, a reasonable late fee may be computed as the greater of ten dollars per month or twenty per cent of the amount of monthly rent. Any late fee imposed by the operator pursuant to this section is in addition to any other remedy provided by law or contract.

E. The operator shall provide adequate notice to the occupant before a late fee is imposed. Adequate notice is provided if the rental agreement complies with subsection B or if a notice is sent to the occupant by ~~certified~~ VERIFIED mail that notifies the occupant that a late fee may be charged in any month in which the occupant does not pay rent when due.

Sec. 3. Section 33-1704, Arizona Revised Statutes, is amended to read:

33-1704. Enforcement of lien

A. If the occupant is in default for a period of more than thirty days, the operator may foreclose the lien by selling the property stored in the leased space at a public sale, for cash. Proceeds shall then be applied as provided in subsection E of this section. If the contents of the

~~occupant's~~ LEASED space include a vehicle, ~~the provisions of~~ section 28-4839 ~~do~~ DOES not apply.

B. Before conducting a sale under subsection A of this section, the operator shall:

1. ~~Notify the occupant~~ SEND NOTICE of the default by ~~certified mail, return receipt requested,~~ VERIFIED MAIL TO THE OCCUPANT at the occupant's last known address.

2. Send a second notice of default by ~~regular~~ FIRST CLASS mail not less than seven days after the mailing date of the first notice to the occupant at the occupant's last known address ~~which~~ THAT includes:

(a) A statement that the contents of the occupant's leased space are subject to the operator's lien.

(b) A statement of the operator's claim, indicating the charges due on the date of the notice and any other charges that may accrue.

(c) A demand for payment of the charges due within a specified time, not less than fourteen days after the mailing date of the second notice or thirty additional days if the address of the occupant is outside of the continental United States.

(d) A statement that unless the claim is paid within the time stated the contents of the ~~occupant's~~ LEASED space will be sold at a specified time and place.

(e) The name, street address and telephone number of the operator, or ~~his~~ THE OPERATOR'S designated agent, whom the occupant may contact to respond to the notice.

3. If the contents of the ~~occupant's~~ LEASED space include a vehicle:

(a) At the time the notice is sent pursuant to paragraph 1 of this subsection, send a notice of default by ~~certified mail, return receipt requested,~~ VERIFIED MAIL to the registered owner at the registered owner's most recent address as shown in the records of the department.

(b) At the time the notice is sent pursuant to paragraph 2 of this subsection, send a notice of default by ~~regular~~ FIRST CLASS mail to the registered owner at the registered owner's most recent address as shown in the records of the department.

(c) The operator is not required to send a notice pursuant to this paragraph if ownership information for a vehicle is unavailable.

(d) In any notice that is sent, include a description of the vehicle and its vehicle identification number.

4. At least ten days ~~prior to~~ BEFORE the sale, ~~notify~~ SEND NOTICE by ~~certified mail, return receipt requested~~ VERIFIED MAIL TO any record lienholder or secured party who has an interest in the property to be sold, of whom the operator has actual or constructive knowledge either through the disclosure provision of the rental agreement or through any other written or recorded notice of the sale, that any prior record lienor or secured party may at any time ~~prior to~~ BEFORE the sale recover possession of the item of personal property to which the record lien or security interest attaches.

~~5. At the time the operator sends the second notice to the occupant, publish a notice indicating the date, time and place of the sale and a description of the property to be sold. This notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county where the self-service storage facility is located. If there is no newspaper of general circulation in the county where the self-service storage facility is located, the notice shall be posted at least ten days before the date of the sale in not less than six conspicuous places in the neighborhood where the self-service storage facility is located.~~

C. At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.

D. If the personal property includes a vehicle, any person listed as a registered owner or lienholder on the records of the department may pay the amount necessary to satisfy the lien, redeem the vehicle and recover possession of the vehicle. The operator is not liable to the occupant or any other person who claims an interest in the vehicle if the operator releases the vehicle to a person listed as a registered owner or lienholder pursuant to this subsection.

E. If a sale is held under this section, the operator shall distribute the proceeds in the following manner:

1. To pay all reasonable costs of sale.

2. To satisfy the valid claims of any lienholder or secured party not otherwise subordinated pursuant to section 33-1703, subsection A.

3. To satisfy the operator's lien.

4. To satisfy the valid claims of any record lienholder or secured party subordinated pursuant to section 33-1703, subsection A.

5. To the occupant on demand.

6. If the occupant does not claim the balance due to ~~him~~ THE OCCUPANT within ninety days of the sale, the operator shall pay the balance to the department of revenue. If the occupant, at any time within two years from the date of payment to the department of revenue, establishes ~~his~~ THE OCCUPANT'S right to the money to the satisfaction of the director of the department of administration, it shall be paid to ~~him~~ THE OCCUPANT. After two years, all unclaimed monies shall be deposited in the permanent state school fund.

F. IF FIVE OR MORE BIDDERS WHO ARE UNRELATED TO THE OPERATOR ARE IN ATTENDANCE AT A SALE HELD UNDER THIS SECTION, THE SALE AND ITS PROCEEDS ARE DEEMED TO BE COMMERCIALLY REASONABLE.

~~F.~~ G. A purchaser in good faith of any personal property sold under this article takes the property free and clear of any rights of any party.

~~G.~~ H. If the operator complies with this article, the operator's liability arising from the sale:

1. To the occupant is limited to the net proceeds received from the sale of the personal property.

2. To other lienholders or a secured party is limited to the net proceeds received from the sale of any personal property covered by that other lien.

~~H.~~ I. If an occupant is in default, the operator may deny the occupant access to the leased space.

~~I.~~ J. Unless the rental agreement specifically provides otherwise and until a lien sale under this article, the exclusive care, custody and control of all personal property stored in the leased ~~self-service storage~~ space remain vested in the occupant. If the occupant is in default for a period of more than thirty days and until the time of sale, the operator ~~may~~, in addition to denying the occupant access to the personal property, MAY transfer the personal property to a place of safekeeping.

APPROVED BY THE GOVERNOR JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 10, 2009.

Passed the House May 14, 20 09

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate July 1, 20 09

by the following vote: 25 Ayes,

1 Nays, 4 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

1st day of July, 20 09

at 8:25 o'clock A. M.

Secretary to the Governor

Approved this 10th day of

July 2009

at 9:47 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 10 day of July, 20 09

at 12:30 o'clock P. M.

Secretary of State

H.B. 2435