

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2983

By: Phillips of the House
and
Smith of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to landlord and tenant relationships;
enacting the Self-Service Storage Facility Lien
Act; defining terms; providing for scope of act;
providing immunity for certain actions; requiring
certain disclosure; authorizing certain enforcement
actions; providing for certain liability; providing
for lien upon certain personal property; stating
priority of lien; prescribing time as of which lien
attaches; prescribing procedures for satisfaction
of lien; requiring notice; prescribing form and
content of notice; providing for presumption
regarding delivery of notice; providing for
publication of notice; prescribing content of
notice; prescribing requirements for sale of
property; authorizing redemption of lien; providing
for rights acquired by good faith purchasers;
providing for rights of lienholders; providing for
disposition of sale proceeds; prescribing rights of
parties based upon noncompliance with act;
requiring certain purchasers to obtain certificate
of title; prohibiting use of self-service storage

facilities for certain purposes; stating relationship between certain lien rights; amending 41 O.S. 1991, Sections 127 and 132, as amended by Section 13, Chapter 339, O.S.L. 1996 (41 O.S. Supp. 1997, Section 132), which relate to the Oklahoma Residential Landlord and Tenant Act; imposing duties upon tenants with respect to certain activity; stating grounds for lease termination; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 191 of Title 42, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 9 of this act shall be known and may be cited as the "Self-Service Storage Facility Lien Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 192 of Title 42, unless there is created a duplication in numbering, reads as follows:

As used in this act, unless the context otherwise requires:

1. "Default" means the failure to perform in a timely manner any obligation or duty set forth in this act or the rental agreement;

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

3. "Occupant" means a person, or his sublessee, successor, or assign, entitled to the use of the storage space at a self-service

storage facility under a rental agreement, to the exclusion of others;

4. "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized by him to manage the facility or to receive rent from an occupant under a rental agreement;

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

6. "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy at a self-service storage facility and which contains a notice stating that all articles stored under the terms of such agreement will be sold or otherwise disposed of if no payment has been received for a continuous thirty-day period; and

7. "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such facility for the purpose of storing and removing personal property.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 193 of Title 42, unless there is created a duplication in numbering, reads as follows:

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 Article 7 of Title 12A of the Oklahoma Statutes, and the provisions of this act are not applicable.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 194 of Title 42 of the Oklahoma Statutes, unless there is created a duplication in numbering, reads as follows:

A. The duty of care an owner must exercise with respect to personal property located in a self-service storage facility is ordinary care only.

B. Each owner of a self-service storage facility shall provide a disclosure in the rental agreement, in conspicuous terms and in a conspicuous manner, that the occupant has a duty to safeguard the personal property located in a self-service storage facility from losses and that the owner has no legal obligation to provide insurance to protect the personal property from loss.

C. No owner of a self-service storage facility shall be liable for loss sustained by an occupant as a result of theft committed by a third party provided that ordinary care was exercised.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 195 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. An owner shall have the right to take such action as may be required to prevent an occupant who has committed an act of default pursuant to the rental agreement from gaining access to the self-service storage facility or any specific location at which personal property is stored by an occupant. The owner of a self-service storage facility shall not be liable for damages sustained by an occupant, if any, alleged to result from action taken by the owner to prevent access to the self-service storage facility after the occupant has committed an act of default pursuant to the rental agreement.

B. If an occupant damages any real or personal property of the owner in order to attempt to regain access to a self-service storage facility, or any component of a self-service storage facility, including but not limited to the destruction of a padlock or similar device, in addition to criminal liability, the occupant shall be liable for the damage caused and the owner of the self-service storage facility may add the damages or expenses incurred as a

result of the action taken by the occupant to the amount of unpaid storage charges for purposes of enforcing the lien authorized by Section 6 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. Where a rental agreement, as defined in Section 2 of this act, is entered into between the owner and the occupant, the owner of a self-service storage facility and his heirs, executors, administrators, successors, and assigns have a lien upon all personal property located at the self-service storage facility for rent, labor, 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 this act.

B. The lien attaches as of the date the personal property is brought to the self-service storage facility and continues so long as the owner retains possession and until the default is corrected, or a sale is conducted, or the property is otherwise disposed of to satisfy the lien.

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

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 197 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. An owner's lien as provided for a claim which has become due may be satisfied as provided by this section. With respect to any lien on personal property sold in satisfaction of obligations secured by the lien authorized by this section, the provisions of Section 9-310 of Title 12A of the Oklahoma Statutes shall be applicable and the possessory lien as authorized by this section

shall be prior to any previously perfected security interest in the personal property.

B. No enforcement action shall be taken by the owner until the occupant has been in default continuously for a period of thirty (30) days. As used in this subsection, "enforcement action" shall not include actions of the owner taken pursuant to Section 5 of this act.

C. After the occupant has been in default continuously for a period of thirty (30) days, the owner may begin enforcement action if the occupant has been notified in writing. Said notice shall be delivered in person or sent by certified mail return receipt requested to the last-known address of the occupant. Any lienholder with an interest in the property to be sold or otherwise disposed of, of whom the owner has actual knowledge, shall be included in the notice process as provided in this section.

D. The notice shall include:

1. An itemized statement of the owner's claim showing the sum due at the time of the notice and the date when the sum became due;

2. A brief and general description of the personal property subject to the lien. Such description shall be reasonably adequate to permit the person notified to identify such property, 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;

3. A notification of denial of access to the personal property, if such denial is permitted under the terms of the rental agreement, which notification shall provide the name, street address, and telephone number of the owner or his designated agent whom the occupant may contact to respond to such notification;

4. A demand for payment within a specified time not less than fifteen (15) days after delivery of the notice; and

5. A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

E. Any notice made pursuant to this section shall be presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid.

F. After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county where the self-service storage facility is located.

G. The advertisement prescribed by subsection F of this section shall include:

1. A brief and general description of the personal property reasonably adequate to permit its identification as provided in paragraph 2 of subsection D of this section, the address of the self-service storage facility and the number, if any, of the space where the personal property is located, and the name of the occupant and his last-known address;

2. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than fifteen (15) days after the first publication; or

3. If there is no newspaper of general circulation in the county where the self-service storage facility is located, the advertisement shall be posted at least ten (10) days before the date of the sale or other disposition in not less than six (6) conspicuous places in the neighborhood where the self-service storage facility is located.

H. Any sale or other disposition of the personal property shall conform to the terms of the notification as provided for in this section.

I. Any sale or other disposition of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored.

J. Before any sale or other disposition of personal property pursuant to this section, the occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property. Upon receipt of such payment, the owner shall return the personal property, and thereafter the owner shall have no liability to any person with respect to such personal property.

K. A purchaser in good faith of the personal property sold to satisfy a lien as provided in this act takes the property free of any rights of persons against whom the lien was valid and free of any rights of a secured creditor, despite noncompliance by the owner with the requirements of this section.

L. In the event of a sale under this section, the owner may satisfy his lien from the proceeds of the sale.

M. If the proceeds from sale of the property are less than the amount required to pay the obligation secured by the lien, the owner may pursue a deficiency against the tenant. If the proceeds from sale of the property are more than the amount required to pay the obligation secured by the owner's lien, the owner shall hold the excess proceeds for a period of ninety (90) days from the date of the sale. During this period, any persons, including the tenant, claiming an interest in the excess proceeds from the sale of the property shall present adequate proof of their claim to the owner. After the expiration of the ninety-day period, the owner shall make such distribution of the excess proceeds as is required based upon the claims presented. If after making distribution of the proceeds as prescribed by this subsection there are any remaining proceeds, the proceeds shall become the property of the owner without further

recourse by the occupant, any lienholder or other person in interest.

N. If the requirements of this act are not satisfied, if the sale of the personal property is not in conformity with the notice of sale, or if there is a willful violation of this act, nothing in this section affects the rights and liabilities of the owner, the occupant, or any other person.

O. Any purchaser of personal property for which a certificate of title has been issued by the Oklahoma Tax Commission shall obtain a certificate of title to be issued in the purchaser's name in the same manner as provided by law for the issuance of a certificate of title for a motor vehicle sold pursuant to the provisions of Sections 91 through 102 of Title 42 of the Oklahoma Statutes if the personal property is sold as authorized by this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 198 of Title 42, unless there is created a duplication in numbering, reads as follows:

No occupant shall use a self-service storage facility for residential purposes.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199 of Title 42, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law in equity, or by any statute of this state.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200 of Title 42, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Real Estate Commission shall cause the "Self-Service Storage Facility Lien Act" to be reproduced in a publication

together with other statutes of the State of Oklahoma as are ordinarily reproduced by the Commission for distribution to the public.

SECTION 11. AMENDATORY 41 O.S. 1991, Section 127, is amended to read as follows:

Section 127. The tenant shall at all times during the tenancy:

1. Keep that part of the premises which such tenant occupies and uses as safe, clean and sanitary as the condition of the premises permits;

2. Dispose from such tenant's dwelling unit all ashes, garbage, rubbish and other waste in a safe, clean and sanitary manner;

3. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean and sanitary as their condition permits;

4. Use in a safe and nondestructive manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises;

5. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person, animal or pet to do so;

6. Not engage in conduct or allow any person or animal or pet, on the premises with the express or implied permission or consent of the tenant, to engage in conduct that will disturb the quiet and peaceful enjoyment of the premises by other tenants; ~~and~~

7. Comply with all covenants, rules, regulations and the like which are in accordance with Section ~~26~~ 126 of this ~~act~~ title; and

8. Not engage in criminal activity that threatens the health, safety or right of peaceful enjoyment of the premises by other tenants or is a danger to the premises, and not engage in any drug-related criminal activity on or near the premises either personally or by any member of the tenant's household or any guest or other person under the tenant's control.

SECTION 12. AMENDATORY 41 O.S. 1991, Section 132, as amended by Section 13, Chapter 339, O.S.L. 1996 (41 O.S. Supp. 1997, Section 132), is amended to read as follows:

Section 132. A. Except as otherwise provided in the Oklahoma Residential Landlord and Tenant Act, if there is a noncompliance by the tenant with the rental agreement or with Section 127 of this title which noncompliance can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in the case of an emergency or within ten (10) days after written notice served as provided in subsection E of Section 111 of this title by the landlord specifying the breach and requiring that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and thereafter submit the itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date rent is due, or if the rental agreement has terminated, for immediate payment. If the landlord remedies the breach as provided in this subsection, the landlord may not terminate the rental agreement by reason of the tenant's failure to remedy the breach.

B. Except as otherwise provided in the Oklahoma Residential Landlord and Tenant Act, if there is a material noncompliance by the tenant with the rental agreement or with any provision of Section 127 of this title, the landlord may deliver to the tenant a written notice served as provided in subsection E of Section 111 of this title specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date not less than fifteen (15) days after receipt of the notice unless remedied within ten (10) days. If the breach is not remedied within ten (10) days from receipt of the notice, the rental agreement shall terminate as provided in the notice. If within the ten (10) days the tenant adequately remedies the breach complained

of, or if the landlord remedies the breach according to the provisions of subsection A of this section, the rental agreement shall not terminate by reason of the breach. Any subsequent breach of the lease or noncompliance under this section shall be grounds, upon written notice to the tenant, for immediate termination of the lease.

C. Notwithstanding other provisions of this section, if there is a noncompliance by the tenant with the rental agreement or with any of the provisions of Section 127 of this title, which noncompliance causes or threatens to cause imminent and irreparable harm to the premises or to any person and which noncompliance is not remedied by the tenant as promptly as conditions require after the tenant has notice of it, the landlord may terminate the rental agreement by immediately filing a forcible entry and detainer action.

D. Any criminal activity that threatens the health, safety or right of peaceful enjoyment of the premises by other tenants committed by a tenant or by any member of the tenant's household or any guest or other person under the tenant's control or is a danger to the premises and any drug-related criminal activity on or near the premises by the tenant or by any member of the tenant's household or any guest or other person under the tenant's control shall be grounds for immediate termination of the lease.

SECTION 13. This act shall become effective November 1, 1998.

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