

## **New Mexico Lien Law**

### 48-11-1. Short Title.

This act [ 48-11-1 to 48-11-9 NMSA 1978] may be cited as the "Self-Service Storage Lien Act".

### 48-11-2. Definitions.

As used in the Self-Service Storage Lien Act [ 48-11-1 to 48-11-9 NMSA 1978]:

- "default" means the failure to perform in a timely manner any obligation or duty set forth in the Self-Service Storage Lien Act or in the rental agreement
- "occupant" means a person or his sublessee, successor or assign who is entitled to the use of storage space, to the exclusion of others, at a self-service storage facility under a rental agreement;
- "owner" means the owner or his heirs, successors or assigns, the operator, the lessor or the 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;
- "rental agreement" means any written agreement or lease between the owner and the occupant which establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of a self-service storage facility; and
- "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

### 48-11-3. Rental Agreement.

The rental agreement shall contain a notice stating that all articles stored under the terms of that agreement will be sold or otherwise disposed of under the terms and conditions of the Self-Service Storage Lien Act [ 48-11-1 to 48-11-9 NMSA 1978] if the tenant is in default. The agreement shall contain a disclosure provision stating the name and address of any lienholder with an interest in the property that is or will be stored in the self-service storage facility. The agreement shall also contain the address of the tenant.

### 48-11-4. Self-service storage facility; exclusion.

A self-service storage facility is not a warehouse as that term is used in Sections 55-7-209 and 55-7-210 NMSA 1978; nor shall a self-service storage facility be used for residential purposes.

### 48-11-5. Lien established.

When an owner has a lien, it is on all personal property located at the self-service storage facility for rent, labor or other charges 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 the provisions of the Self-Service Storage Lien Act [ 48-11-1 to 48-11-9 NMSA 1978]. The lien attaches as of the date the occupant goes into default and continues as long as the owner retains possession of the personal property and until the default is corrected, or a sale is

conducted, or the property is otherwise disposed of to satisfy the lien.

#### 48-11-6. Perfected security interests; payment; possession.

Any person who has a perfected security interest under Chapter 55, Article 9 NMSA 1978 may claim any personal property subject to the security interest and subject to a lien arising under the Self-Service Storage Lien Act [ 48-11-1 to 48-11-9 NMSA 1978] by paying the total amount due for the storage of the property as specified in the notice to the owner on behalf of the occupant as provided in Section 7 [ 48-11-7 NMSA 1978] of the Self-Service Storage Lien Act. Upon payment of the total amount due, the owner shall deliver possession of the particular property subject to the security interest to the person who paid the total amount due together with an affidavit setting forth his entitlement to the property. The owner shall not be liable for any action taken pursuant to the provisions of the Self-Service Storage Lien Act if the owner has fully complied with the provisions of [the] act.

#### 48-11-7. Enforcement of lien.

- An owner's lien, as provided under the Self-Service Storage Lien Act [ 48-11-1 to 48-11-9 NMSA 1978], for a claim that has become due may be satisfied as follows:
  - after the occupant has been in default continuously for a period of five days, the owner may deny the occupant access to his space for storage;
  - after the occupant has been in default continuously for a period of thirty days, the owner may enter the space and may remove the personal property within it to a safe place, providing that the owner has sent a notice of intent to enforce a lien pursuant to Subsection B of this section to the occupant at his last known address within five days of entering the space. The owner shall also give notice to all lienholders listed in the disclosure provision in the rental agreement; and
  - no action to sell any property as provided in the Self-Service Storage Lien Act shall be taken by an owner until the occupant has been in default continuously for a period of ninety days.
- The notice of intent to enforce a lien shall include:
  - 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;
  - a brief and general statement of the personal property subject to the lien. That description shall be reasonably adequate to permit the person notified to identify the property, except that any container including a trunk, valise or box that is locked, fastened, sealed or tied in a manner which deters immediate access to its contents may be so described without describing its contents;
  - a notification of denial of access to the personal property. That 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 that notification;
  - a demand for payment within a specified time, not less than fifteen days after the delivery of the notice; and
  - 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 to satisfy the owner's lien.
- All notices made pursuant to this section shall be by certified mail return receipt requested.
- After the expiration of the time given in the notice of intent to enforce a lien, the owner shall publish an advertisement of the sale or other disposition of the property once a week for two consecutive weeks in a newspaper of general circulation in the county where the self-service storage facility is located. The advertisement shall include:

- a brief and general description of the personal property reasonably adequate to permit its identification as provided in Paragraph (2) of Subsection B of this section, the address of the self-service storage facility where the personal property is located and the name and last known address of the occupant; and
- the time, place and manner of the sale or other disposition. The sale or disposition shall take place not sooner than fifteen days after the first publication.

If there is no newspaper of general circulation in the county where the self-service storage facility is located, the owner shall post the advertisement at least ten days prior to the sale or other disposition in at least six conspicuous places in the neighborhood where the self-service storage facility is located.

- Any sale or other disposition of the personal property shall conform to the terms of the notification as provided for in this section.
- Any sale or other disposition of the personal property shall be held at the self-service storage facility or at the nearest suitable place within the county to where the personal property is held or stored.
- Before any sale or other disposition of personal property pursuant to this section is made, the occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the property. Upon receipt of the payment, the owner shall return the personal property and thereafter the owner shall have no liability to any person with regard to that personal property.
- A good faith purchaser takes the property free of any rights of an unsecured lienholder and free of any rights of a secured lienholder who has received notice by owner as provided in this section.
- In the event of a sale under this section, the owner may satisfy his lien from the proceeds of the sale, subject to the rights of any prior lienholder who has not received notice. The lien rights of such prior lienholder are automatically transferred to the proceeds of the sale. If the sale was made in good faith and conducted in a reasonable manner, the owner shall not be subject to any surcharge for a deficiency in the amount of a prior secured lien, but shall hold the balance, if any, for delivery to the occupant, lienholder or other person in interest. If the occupant, lienholder or other person in interest does not claim the balance of the proceeds within two years of the date of sale, it shall become the property of the owner without further recourse by the occupant, lienholder or other person in interest.
- Nothing in this section affects the rights and liabilities of the owner, occupant or any other person if there is a willful violation of any of the provisions of the Self-Service Storage Lien Act.

#### 48-11-8. Notice; posting.

Any person who has a perfected security interest under Chapter 55, Article 9 NMSA 1978 may claim any personal property subject to the security interest and subject to a lien arising under the Self-Service Storage Lien Act [ 48-11-1 to 48-11-9 NMSA 1978] by paying the total amount due for the storage of the property as specified in the notice to the owner on behalf of the occupant as provided in Section 7 [ 48-11-7 NMSA 1978] of the Self-Service Storage Lien Act. Upon payment of the total amount due, the owner shall deliver possession of the particular property subject to the security interest to the person who paid the total amount due together with an affidavit setting forth his entitlement to the property. The owner shall not be liable for any action taken pursuant to the provisions of the Self-Service Storage Lien Act if the owner has fully complied with the provisions of [the] act.

#### 48-11-9. Criminal liability.

Any person who willfully fails to disclose any lienholder as required by the disclosure provision of the rental agreement defined in Section 3 [48-11-3 NMSA 1978] of the Self-Service Storage Lien Act is guilty of a petty misdemeanor.