

# WEST VIRGINIA CODE: §38-14-5

## §38-14-5. Enforcement of lien.

(a)(1) If the occupant is in default for a period of more than 60 days, the operator may enforce the lien by selling the personal property stored in the leased space at a public sale or dispose of the personal property if the operator can demonstrate by photographs or other images and affidavit of a knowledgeable and credible person that the personal property lacks a value sufficient to cover the reasonable expense of a public auction plus the amount of the self-service storage lien.

(2) Proceeds from the sale shall be applied to satisfy the lien, and any surplus shall be disbursed as provided in subsection (e) of this section.

(b)(1) Before conducting a sale under subsection (a) of this section, the operator shall, subject to subdivision (2) of this subsection, notify the occupant of the default by hand delivery, verified mail, electronic mail, or text at the occupant's last known address.

(2)(A) The operator may not notify the occupant of the default by electronic mail unless:

(i) The rental agreement specifies, in bold type, that notice may be given by electronic mail or text; and

(ii) The occupant provides the occupant's initials next to the statement in the rental agreement specifying that notice of default may be given by electronic mail or text.

(B) If the operator notifies the occupant of the default by electronic mail or text at the occupant's last known address and does not receive a response, return receipt, or a confirmation of delivery, the operator shall send the notice of default to the occupant by hand delivery or by verified mail to the occupant's last known postal address.

(C) Additional requirements for members of the military apply under the Soldiers and Sailors Relief Act, 50 U.S.C. §§3901-4043.

(3) The notice shall include:

(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, the amount of any additional charges which will become due before the date of sale, and the date those additional charges will become due;

(C) A demand for payment of the charges due within a specified time, not less than 14 days after the date that the notice was mailed;

(D) A statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at a specified time and place; and

(E) The name, street address, and telephone number of the operator, or his or her designated agent, whom the occupant may contact to respond to the notice.

(4) (A) Subject to paragraph (B) of this subdivision, at least three days before conducting a sale under this section, the operator shall advertise the time, place, and terms of the sale:

(i) In a newspaper of general circulation in the jurisdiction where the sale is to be held;

(ii) By electronic mail; or

(iii) On an online website.

(B) The operator may not advertise the sale in the manner provided under subparagraph (ii) or (iii) of this paragraph unless the occupant provides the occupant's initials next to the statement in the rental agreement required under this article.

(c) The operator may dispose of the personal property if the operator has complied with subsection (b) of this section and the property has not been purchased.

(d) 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.

(e) A sale under this section shall be held at the self-service storage facility where the personal property is stored, on an online auction website, or at any other location reasonably determined by the operator.

(f)(1) If a sale is held under this section, the operator shall:

(A) Satisfy the lien from the proceeds of the sale; and

(B) Mail the balance, if any, by certified mail to the occupant at the occupant's last known address of the occupant.

(2) (A) If the balance is returned to the operator after the operator mailed the balance in the manner required under paragraph (B), subdivision (1) of this subsection, the operator shall hold the balance for one year after the date of sale for delivery on demand to the operator.

(B) After expiration of the one-year period, the balance is presumed abandoned.

(g) A purchaser in good faith of any personal property sold under this article takes the property free and clear of any rights of persons against whom the lien was valid.

(h) If the operator complies with the provisions of this article, the operator's liability to the occupant is limited to the net proceeds received from the sale of the personal property less

the amount of the operator's lien.

(i) If an occupant is in default, the operator may deny the occupant access to the leased space.

(j)(1)(A) Notices sent to the operator shall be sent to the self-service storage facility where the occupant's personal property is stored by hand delivery or verified mail.

(B) Notices to the occupant shall be sent to the occupant at the occupant's last known address.

(2) Notices shall be considered delivered when:

(A) Deposited with the United States Postal Service or a private delivery service, properly addressed as provided in subsection (b) of this section, with postage prepaid; or

(B) Sent by electronic mail to the occupant's last known address.

(k)(1) If the occupant is in default for more than 60 days and the personal property stored in the leased space is a motor vehicle, trailer, or watercraft, the operator may have the personal property towed or removed from the self-service storage facility in lieu of a sale authorized under subsection (a) of this section.

(2) The operator is immune from civil liability for any damage to the personal property towed or removed from the self-service storage facility under subdivision (1) of this subsection that occurs after the person that undertakes the towing or removal of the personal property takes possession of the personal property.

(l) If a rental agreement specifies a limit on the value of personal property that may be stored in the occupant's leased space, the limit is the maximum value of the stored personal property.

(m) Nothing in this article impairs or affects the rights of the parties to create additional rights, duties, and obligations in and by virtue of the rental agreement.