

When a Condominium Association Rents Storage Space to Owners, The Association is Bound By The Same Laws As Popular Commercial Facilities Such As Public Storage

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Many California condominium associations have common area storage lockers, rooms or areas that are made available to the owners. Sometimes, the storage area is assigned in a deed as exclusive use common area. More often than not, these areas are not assigned, and the board has the ability to assign and rent them to owners. And boards and the association's management often have no idea of the issues that storage areas can create until they are smack dab in the middle of a dispute with an owner.

There are many commercial self-service storage facilities that serve the general public; one of the more popular ones is called "Public Storage". Although homeowner associations that rent storage spaces to their owners generally do so on a much smaller scale, when an association does rent out these areas to owners, it is considered to be a "self-service storage facility" as defined under the California Self-Service Storage Facility Act (Business and Professions Code Sections 21700 *et seq.*, referred to in this article as the "Act") and therefore must comply with the same laws that apply to Public Storage. This designation becomes extremely important and should dictate the type of agreement that the association enters into with the owner for the use of the area, space or room that is being rented to the owner. And the Act is also important to consider when an owner becomes delinquent in their rent for the storage area, because the association must take care both to not run afoul of the self-service storage lease and to not take any collection actions that are prohibited for the owners of self-service storage facilities pursuant to the Act.

A self-service storage facility, as defined in the Act, is a business that was/is designed and used for the purpose of renting or leasing individual storage space to individuals or businesses who have access to the space for the purpose of storing and removing personal property. While a self-service storage facility does not include a garage or other storage area in any private residence, a self-service storage facility would include storage lockers and facilities inside a condominium association garage. This means that an association is not acting as a self-storage facility if storage areas are deeded or designated in an association's governing documents to be used by the owner of a particular unit. When an association begins renting storage spaces or areas located in the common area to its owners or residents for a fee outside of the regular assessments, it becomes an operator of a self-service storage facility and subject to the Act.

Similar to, but independent of an association's ability to foreclose on a unit when an owner fails to pay their assessments or association fees, if an owner falls behind on their storage unit rental payments, the association can "evict" or "foreclose" on the storage space and clear out the owner's property, but only after following very specific

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statutory steps. However, unlike the foreclosure of a unit, following which the association must return the personal property, the lien on a storage space actually attaches to the personal property kept inside of it, and gives the association the right to sell these items in order to cover the debt. The association, as the operator of the self-service storage facility, has a lien on all personal property located within the storage space for rent, labor, late payment fees, or other charges present or future, incurred pursuant to a rental agreement and for expenses necessary for the preservation, sale or disposition of personal property subject to the provisions of the Act.

Although there are some similarities as far as the notices that have to go to the association owner that is not paying rent on the storage area, the lien and lien sale process for storage units differs substantially from the delinquent assessment lien process for foreclosure of residential units. First, if any part of the rent or charges due from an owner remains unpaid fourteen days after it is due, the association may terminate the owner's right to use the storage space by sending a preliminary notice to the owner's last known address. The notice should include an itemized statement of the amounts due, a statement that the owner's right to use the space will terminate on a specific date (at least 14 days from the date of the letter) unless all sums are paid prior to that date, a notice that the occupant may be denied access to the storage space after that date, notice that a lien may be imposed, and the contact information for the association agent that the owner should contact to respond.

If such a notice has been sent, and the total sum due has not been paid as of the date set forth in the notice, a lien attaches on the property stored in the rented space as of that date. The association may then enter the space and deny the owner access to that space (by, for example, changing the lock). If the notice was sent via certified mail and the total sum due was not paid as of the termination date, the Association may immediately remove any property found in the space to a place of safekeeping. If the notice is sent by regular first class mail with a certificate of mailing, access can be denied to the owner, but the association may not remove the property until fourteen days after the termination date in the notice.

In either case, the association must send the owner who is not paying for their storage area a notice of lien sale and a blank declaration in opposition to the lien sale (the form declaration is provided in the text of the Act). The notice of lien sale must be served by certified mail postage prepaid and must notify the owner who is using the storage area that the right to use the storage area is terminated and that the owner no longer has access to the storage property with the storage property subject to a lien and the amount of the lien, the property that was kept in the storage space will be sold to satisfy the lien after a specified date (that is not less than fourteen days from the date the notice was mailed) unless the amount of the lien is paid or the occupant executes under penalty of perjury and returns by certified mail a declaration and opposition to the lien.

The association must advertise for the sale as required by the Act, and can then conduct a public sale of the contents of the storage unit. The association is entitled to keep the amount of the proceeds sufficient to cover the amount of the lien (all of the

overdue storage charges), plus the cost of conducting the sale. Any proceeds of the sale in excess of the lien amount and cost are to be retained by the association and made available for the former occupant to reclaim for a period of one year from the sale. After one year from the sale, if the owner has not claimed the proceeds, the association must surrender them to the county in which the sale was held.

The personal property pre-lien, lien and notice of sale requirements are very specific. An association may not repossess the personal property contained in the storage locker or space immediately upon non-payment, and the property cannot simply be discarded if the owner does not pay. Like when the association forecloses on a unit, the association must take care to follow all of the procedures when attempting to evict an owner from a storage space. Even though the association is a non-profit corporation (or unincorporated association) and its rental of certain storage areas comprises only a minor portion of the business that it conducts, the association renting the storage space is considered a commercial landlord and must follow all of the specific requirements for self-storage companies, just as if it were "Public Storage".

While this law is not overly complicated, it is likely a good idea for an association to consult with legal counsel regarding compliance with this Act. We have had clients who did not realize that there were any legal requirements relating to storage spaces, and they have been sued for their failure to comply with the Act.

If you have questions or want more information regarding issues relating to the rental of storage areas or spaces, please contact Joan Lewis-Heard via email: jlb@sgboalan.com or David Swedelson via email: dcs@sgboalan.com. They both can be reached by phone: 800.372.2207