



## Utah Lien Law – Updated May 5, 2021

### Title 38, Liens

#### Chapter 8, Self-Storage Facilities

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##### **38-8-1 Definitions.**

As used in this chapter:

(1) “Certified mail” means:

(a) a method of mailing that is offered by the United States Postal Service and provides evidence of mailing; or

(b) a method of mailing that is accompanied by a certificate of mailing executed by the individual who caused the notice to be mailed.

(2) “Default” means the failure to perform in a timely manner any obligation or duty described in this chapter or the rental agreement.

(3) “Email” means an electronic message or an executable program or computer file that contains an image of a message that is transmitted between two or more computers or electronic terminals, including electronic messages that are transmitted within or between computer networks.

(4) “Last known address” means the postal address provided by an occupant in a rental agreement or, if the occupant provides a subsequent written notice of a change of address, the postal address provided in the written notice of a change of address.

(5) “Last known email address” means the email address provided by an occupant in a rental agreement or, if the occupant provides a subsequent written notice of a change of address, the email address provided in the written notice of a change of address.

(6) “Occupant” means a person, or the person’s sublessee, successor, or assignee, entitled to the use of a storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(7) “Owner” means:

(a) the owner, operator, lessor, or sublessor of a self-service storage facility;

(b) an agent of a person described in Subsection (7)(a); or

(c) any other person authorized by a person described in Subsection (7)(a) to manage the facility or to receive rent from an occupant under a rental agreement.

(8) “Personal property” means movable property not affixed to land and includes goods, merchandise, and household items.

(9) “Rental agreement” means any written agreement or lease that establishes or modifies the terms, conditions, rules, or any other provisions relating to the use and occupancy of a unit or space at a self-service storage facility.

(10)

(a) “Self-service storage facility” means real property designed and used for the purpose of renting or leasing individual storage space to occupants who have access to the facility for the purpose of storing personal property.

(b) “Self-service storage facility” does not include:

(i) a warehouse described in Section 70A-7a-102;

(ii) real property used for residential purposes; or

(iii) a facility that issues a warehouse receipt, bill of lading, or other document of title for the personal property stored at the facility.

(11) “Vehicle” means personal property required to be registered with the Motor Vehicle Division pursuant to Title 41, Chapter 1a, Part 2, Registration, Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act.

### **38-8-2 Lien against stored property -- Attachment and duration -- Search for financing statement prerequisite to enforcement of lien.**

(1) When an owner and an occupant enter into a rental agreement, the owner and the owner’s 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 under this chapter.

(2) The lien described in Subsection (1) attaches on the date the personal property is brought to the self-service storage facility and continues so long as the owner retains possession and until any default is corrected or a sale pursuant to a default is conducted to satisfy the lien.

(3) A rental agreement shall state that:

(a) an owner is entitled to sell all personal property stored at the self-service storage facility pursuant to the rental agreement if the occupant is in default for a continuous 30-day period; and

(b) the occupant shall disclose to the owner any lienholders that have an interest in the property that will be stored at the self-service storage facility.

(4) If a rental agreement states a maximum, aggregate value of the personal property that may be stored at the occupant’s storage space, the occupant may not assert that the value of the personal

property actually stored at the occupant's storage space exceeds the maximum amount stated in the rental agreement.

(5)

(a) Before an owner takes enforcement action under Section 38-8-3, the owner shall determine if a financing statement filed in accordance with Title 70A, Chapter 9a, Part 5, Filing, has been filed with the Division of Corporations and Commercial Code concerning the property to be sold.

(b) A security interest evidenced by a financing statement filed in accordance with Title 70A, Chapter 9a, Part 5, Filing, has priority over the lien provided by this section.

### **38-8-3 Enforcement of lien -- Notice requirements -- Sale procedure and effect.**

(1) An owner may enforce a lien described in Section 38-8-2 against an occupant if:

(a) the occupant is in default for a continuous 30-day period; and

(b) the owner provides written notice of the owner's intent to enforce the lien, in accordance with the requirements of this section, to:

(i) the occupant;

(ii) each lienholder disclosed by the occupant under Subsection 38-8-2(3)(b);

(iii) each person that has filed a valid financing statement with the Division of Corporations and Commercial Code; and

(iv) each person identified as a lienholder in the records of the Motor Vehicle Division.

(2) An owner shall provide the written notice described in Subsection (1)(b):

(a) in person;

(b) by certified mail, to the person's last known address; or

(c) subject to Subsection (3), by email, to the person's last known email address.

(3) If an owner sends a notice described in Subsection (2) by email and does not receive a response, return receipt, or delivery confirmation from the email address to which the notice was sent within three business days after the day on which the notice was sent, the owner shall deliver the notice in person or by certified mail to the person's last known address.

(4) A written notice described in Subsection (1)(b) shall include:

(a) 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;

(b) a brief description of the personal property subject to the lien that permits the person to identify the property, unless the property is locked, fastened, sealed, tied, or otherwise stored in a manner that prevents immediate identification of the property;

(c) if permitted by the terms of the rental agreement, a notice that the occupant may not access the occupant's personal property until the occupant complies with the requirements described in Subsection (9);

(d) the name, street address, and telephone number of the owner or the individual the occupant may contact to respond to the notification;

(e) a demand for payment within a specified time not less than 15 days after the day on which the notice is delivered; and

(f) a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale and will be sold at a specified time and place.

(5) A notice under this section shall be presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid.

(6) (a) (i) After the expiration of the time given in the notice, the owner shall publish an advertisement of the sale of the personal property subject to the lien once in a newspaper of general circulation in the county where the self-service storage facility is located.

(ii) An advertisement described in Subsection (6)(a)(i) shall include:

(A) the address of the self-service storage facility and the number, if any, of the space where the personal property is located;

(B) the name of the occupant; and

(C) the time, place, and manner of the sale, which shall take place not sooner than 15 days after the day on which the sale is advertised under Subsection (6)(a)(i).

(b) Subsection (6)(a) does not apply if:

(i) the owner:

(A) provided the notice described in Subsection (1)(b) by email; and

(B) received a response or return receipt from the email address to which the notice was sent; or

(ii) the owner:

(A) provided the notice described in Subsection (1)(b) by certified mail; and

(B) has evidence of providing the notice by certified mail.

(7) A sale of the personal property shall conform to the terms of the notice provided for in this section.

(8) A sale of the personal property shall be held at the self-service storage facility, at the nearest suitable place to where the personal property is held or stored, or online.

(9) Before a sale of personal property under 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 this payment, the owner shall return the personal property, and thereafter the owner shall have no liability to any person with respect to that personal property.

(10) A purchaser in good faith of the personal property sold to satisfy a lien as provided for in this chapter 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.

(11) In the event of a sale under this section, the owner may satisfy the lien for the proceeds of the sale, subject to the rights of any prior lienholder; the lien rights of the prior lienholder are automatically transferred to the proceeds of the sale; if the sale is made in good faith and is 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 one year of the date of sale, it shall become the property of the Utah state treasurer as unclaimed property with no further claim against the owner.

(12) If the requirements of this chapter 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 chapter, nothing in this section affects the rights and liabilities of the owner, occupant, or any other person.

### **38-8-3.5 Right to tow certain vehicles subject to lien.**

(1) If the property subject to a lien described in Section 38-3-2 is a vehicle, the occupant is in default for a continuous 60-day period, and the owner chose not to sell the vehicle under Section 38-8-3, the owner may have the vehicle towed from the self-service storage facility by an independent towing carrier that is certified by the Department of Transportation as described in Section 72-9-602.

(2) Within one day after the day on which a vehicle is towed under Subsection (1), the owner shall send written notice by certified mail, postage prepaid, to the occupant's last known address that states:

(a) the date the vehicle was towed; and

(b) the address and telephone number of the person that towed the vehicle.

(3) An owner that has a vehicle towed under Subsection (1) is not liable for any damage that occurs to the vehicle after the independent towing carrier takes possession of the vehicle.

### **38-8-4 Posting of notice.**

Each owner acting under this chapter shall keep posted in a prominent place in the owner's office at all times a notice that reads as follows:

“All articles stored under a rental agreement, for which charges have not been paid for 30 days, will be sold to pay charges. If this business does not sell a vehicle stored under a rental agreement, it will be towed from the self-storage facility after 60 days of nonpayment.”

**38-8-5 Other liens unaffected.**

Nothing in this section 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 or in equity, or by any statute of this state.