



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

THREE MOST ASKED QUESTIONS DURING 2020-2021

New York Self Storage Association 2021 Summer Conference

Patrick J. Quigley, Esq.



Can we conduct an auction?

- From <https://www.governor.ny.gov/news/governor-cuomo-signs-extension-covid-19-emergency-eviction-and-foreclosure-prevention-act-2020>:
- Governor Andrew M. Cuomo today (May 1, 2021) signed an extension of the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 and the COVID-19 Emergency Protect Our Small Businesses Act. The legislation (S.6362-A/A.7175-A) extends protections prohibiting residential and commercial evictions, foreclosure proceedings, credit discrimination and negative credit reporting related to the COVID-19 pandemic until August 31, 2021. The legislation adds to New York State's efforts to protect tenants and homeowners from the economic hardship incurred as a result of the COVID-19 pandemic at a critical time in the pandemic's trajectory as the State begins to lift restrictions on public gatherings and businesses.

Can we conduct an auction?

Residential Evictions

- The legislation places a moratorium on residential evictions until August 31, 2021 for tenants who have endured COVID-related hardship. Tenants must submit a hardship declaration, or a document explaining the source of the hardship, to prevent evictions. Landlords can evict tenants that are creating safety or health hazards for other tenants, and those tenants who do not submit hardship declarations.

Can we conduct an auction?

Residential Foreclosure Proceedings

- The legislation also places a moratorium on residential foreclosure proceedings until August 31, 2021. Homeowners and small landlords who own 10 or fewer residential dwellings can file hardship declarations with their mortgage lender, other foreclosing party or a court that would prevent a foreclosure.



Can we conduct an auction?

Commercial Foreclosure Proceedings:

- The legislation places a moratorium on commercial foreclosure proceedings until August 31, 2021.

Can we conduct an auction?

Self Storage was **NOT** included in the legislation **BUT** it is being considered by the NYS Senate and Assembly. So, back to my original question --- can we conduct an auction?

Yes, but

- Does your customer suffer from a hardship, be it financial or economic?
- USE BEST PRACTICES. Maintain a record of the communications with your hardship customer and the actions taken by your facility.
- Double check your Occupancy Agreement.
- Self Storage lien auctions do not utilize the court system, unless there's a mistake. Let's avoid them!
- Check with your lawyer if the law now applies to self storage.



Can my customers sign an Occupancy Agreement by an electronic signature?

Yes, but you may need to revise your Occupancy Agreement to allow for it.

- **35. NOTICE TO CUSTOMER:** In testimony whereof, the Owner has caused this instrument to be executed in duplicate and Customer has hereunto affixed his/her signature on the date and year first above written. Customer acknowledges receipt of a fully executed copy of this Agreement. The parties hereto acknowledge that term “signature” shall include, but not limited to, any electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by the parties for the purpose of evidencing their intent to sign and enter into this Agreement.



Can I send default or late notices to my customers?

Yes, NYS allows it provided however your Occupancy Agreement complies with the legislation. Does yours?

- **Occupant's Email Address:_____ . OCCUPANT CONSENTS TO RECEIVING LATE AND/OR LIEN NOTICES BY ELECTRONIC MAIL AS SET FORTH IN SECTION 23 OF THIS OCCUPANCY AGREEMENT.**



Can I send default or late notices to my customers?

- **23. Notices** Except as otherwise expressly provided in this Agreement any written notice or demands required or permitted to be given under the terms of this Agreement shall be deemed delivered when deposited with the United States Postal Service or a private delivery service that provides evidence of mailing including, but not limited to, a first class mailing with certificate of mailing, and by electronic mail to the email address that Occupant has provided to Owner in this Occupancy Agreement. **ALL STATUTORY NOTICES SHALL BE SENT AS REQUIRED BY APPLICABLE LAW AND, BY OCCUPANT'S EXECUTION OF THIS OCCUPANCY AGREEMENT, OCCUPANT HEREBY CONSENTS TO RECEIVE LATE AND/OR LIEN NOTICES BY ELECTRONIC MAIL.**
- **Occupant's Email Address: _____ . OCCUPANT CONSENTS TO RECEIVING LATE AND/OR LIEN NOTICES BY ELECTRONIC MAIL AS SET FORTH IN SECTION 23 OF THIS OCCUPANCY AGREEMENT.**



QUESTIONS?

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