

## **NYSSA Guide to 2019 Amendments to New York Lien Law Sec. 182**

In June 2019, the New York State Legislature passed bills A6556 and S5211 which amended Section 182 of the Lien Law, the law that regulates self-storage liens. New York Self Storage Association has created this guide to help owners and operators understand the changes and apply them to their businesses. While the Association's attorneys have contributed to this document, it should be used only as a guide and is not meant to be relied on as specific legal advice. The Association recommends that owners engage their attorney, or one of the Association's attorneys (listed at the end of this document), if they have questions or want more specific advice.

Changes to Sec. 182 of the Lien Law are as follows:

1. Definitions – In this section and throughout, the term “self service storage facility” is replaced by the term “self-storage facility”.

Interpretation – This is a modernization of language only; there is no meaningful legal change.

Recommendation – There is nothing for owners to do with this change.

- 1.(d) Occupancy Agreement – In this paragraph, the phrase “electronic or printed” is added into the definition of an occupancy agreement.

Interpretation – This language codifies that electronic occupancy agreements are included in the definition of “any written agreement”, a position that was previously un-stated and therefore open to interpretation by courts.

Recommendation – Any owner who was reluctant to move to electronic/paperless occupancy agreements should re-evaluate that position. If an owner chooses to use an electronic OA, that owner should ensure all language in the OA is fully compatible with existing laws, including the Electronic Signatures and Records Act, NY State Tech L §§ 301-309 (2014).

- 1.(f) Electronic mail – This is a new definition added by the amendment.

Interpretation – The definition includes traditional email as well as other types of electronic communication that are available now or will be in the future.

Recommendation – The definition is added in support of other changes that occur in subsequent sections of the law. Recommendations are made below.

- 1.(g) Last known address – This is a new definition added by the amendment.

Interpretation – The new definition creates clarity around the address that owners must use when issuing lien enforcement notices. It is intended to protect both owners and occupants by establishing a clear standard and eliminating ambiguity.

Recommendation – An important aspect of this definition is the provision for occupants to provide a subsequent address pursuant to the occupancy agreement. This means that owners must include in their occupancy agreement specific direction for occupants to provide address changes. If your occupancy agreement does not already include language for a specific process for address changes, you should update your OA with such a process. Owners should ensure they accept all address changes submitted through the process stated in the OA.

- 1.(h) Verified mail – This is a new definition added by the amendment.

Interpretation – The new definition establishes a term that will be used in subsequent paragraphs of the law to cover various types of mail that are permissible for sending lien enforcement notifications.

Recommendation – Owners should research the pros and cons of various types of mailing that fit the definition, paying particular attention to the “evidence of mailing” stipulation and determine which might be best for their business.

**2.(a)(i) Required disclosures** – The added language requires the OA to list, in addition to physical address, the electronic mail address of owner and occupant if the occupant chooses to be contacted via electronic mail.

Interpretation – The OA is meant to provide all relevant contact information for both the owner and the occupant, and with the addition of electronic mail as a legal means of contact, the OA must include electronic mail contact information.

Recommendation – Owners should revise their OAs so they show occupants’ electronic mail address, and they should revise the portion of the OA that shows the owner’s address to include the owner’s electronic mail address. Owners must be aware that all electronic mail addresses that are listed in the OA must be monitored, even after an employee whose address is used leaves the company.

**2.(a)(v) statement of limitation of damages** – The change removes language that says the limitation of damages shall only be applicable after the owner has enforced the lien.

Interpretation – Striking this language removes ambiguity and ensures that a stated limitation on damages is applicable at all times whether or not there has been lien enforcement action.

Recommendation – Owners are advised to include in their OAs a limitation of damages that is applicable at all times and a value limitation on rooms by which occupants contract to keep no more than a stated dollar value of goods in their room. Note that this does not relieve the owner of the obligation to provide a form for occupants to request an increased valuation.

**2.(c)(ii) Notices** – This change adds a requirement for a second conspicuous notice, this one regarding the right to opt in to receiving communication about late or lien notices via electronic mail.

Interpretation – This change has two purposes. First, it makes it obvious and clear that the customer must actively choose to receive late and lien notices via electronic mail in order for the owner to use the electronic mail method of communication. Second, it establishes the need for the occupant to provide electronic mail address in at least two places in the OA so as to avoid possibility of error in capturing the occupant’s electronic mail address.

Recommendation – Owners must revise their OA to include this second conspicuous notice, and it must be conspicuous in the same way as the first required notice. In addition, owners must revise their OA to allow occupants to enter their electronic mail address in at least two different places. Owner should be sure to verify that the two or more addresses provided by the occupant are identical.

**7.(a) Enforcement of lien** – The first change to this paragraph removes the phrase “...that have been removed from the storage space...” and replaces it with “...that remain in the self-storage facility”.

Interpretation – It is common practice for many operators to conduct public sales of occupants’ goods while the goods are in the occupants’ storage units.

Recommendation – No action is necessary for many owners, but the new language might impact owners who remove occupants’ goods from the facility prior to conducting an auction.

**7.(a) Enforcement of lien** – The second change to this paragraph extends the time allowed for occupant to make payment from ten days to thirty days, but it also changes the start of that time period from “receipt of notification” to “mailing of the notice”.

Interpretation – Depending on the method of communication, date of receipt of notification can be hard to determine, but date of mailing is always well-defined based on the certificate of mailing. The time allowed for occupant to make payment is hereby extended to thirty (30) days.

Recommendation – Owners must ensure their lien enforcement process does not progress to the next step beyond issuing a notice of intended lien enforcement until at least thirty days after mailing of the notice. Additionally, owners must ensure they have a reliable system for confirming whether or not an occupant has made payment within the twenty days before allowing the process to progress to the next step.

**7.(a) Enforcement of lien** – The third change to this paragraph provides new options for delivering notice of lien enforcement to occupants, and it is the most substantive part of the lien law amendment.

Interpretation – There are now three permissible ways to deliver lien notices:

(1) First, they may be delivered personally, as the current version of the law allows.

(2) Second, they may be delivered by registered or certified mail. Note that the requirement for “return receipt requested” no longer exists.

(3) The third option for delivering notices is by sending verified mail and electronic mail. The term “verified mail” is intended to capture mail sent via private delivery services that offer evidence of delivery. The combination of verified mail and electronic mail is an intermediary step to what will, hopefully, become an ability to send notices by electronic mail only, as is currently allowed in many other states. The NY state legislature was uncomfortable jumping all of the way to permitting only electronic mail notification at this time, but the door is open for future discussion based on our ability to gather data on electronic mail’s ability to reach occupants more effectively than other types of delivery. Note that electronic mail notice is only permissible if the occupant has opted in to receiving lien notifications via electronic mail and they have provided their electronic mail address in at least two places in the OA.

Recommendation – Owners should determine which of the three options they wish to use as their main process for lien enforcement notification. If they choose the second option, they should decide whether they wish to discontinue use of the return receipt. If owners choose the third option, there are several things they must do. (1) They must decide what form of verified mail they will use. (2) They must establish a back-up communication method for occupants who do not opt in to receiving lien notices through electronic mail. (3) They must determine how they will send electronic notices and how they will receive confirmation of delivery of electronic notices (receipt of delivery is required by paragraph (b) of this section). There are a number of third party electronic mailing services that will provide certificate of delivery, certificate of

receipt, and certificate of opening, and the Association recommends that owners consider such a service. No matter which option owners choose, they must make sure the language in their OA is consistent with the option they have chosen and revise their OA as needed.

The amendments will take effect immediately upon the bills being signed into law by the governor. Owners should do their research and make necessary OA changes now so they are ready to go when the bills are signed.

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