

Guide to Understanding the 2016 Lien Law Updates

Use for Guidance Purposes Only, This is Not Legal Advice

Following are steps to guide you through the lien sale process under the updated Self Service Storage Statutes (R.S. 4757 and 4759) effective May 19, 2016:

1. Under the updated statute, you determine the tenants that are to be auctioned. Set a date for your auction (at least 4 weeks in advance). Determine your timing for when you send your notice, when you run your ad in the legal section of the paper, and when the auction itself will be conducted. Under the updated statute, your suggested timeline is as follows:
 - A. Day 1: Send notice of lien with a 10 day demand of payment (cure period).
 - B. Day 11 or later: Publish your notice in the legal section of the newspaper (It will run **AFTER** the 10 day cure period, not WITHIN, as before).
 - C. Day 22 or later: Have the Auction (The **auction cannot be sooner than 10 days AFTER publication in the newspaper.**)

Keep in mind that these should be based on **business days, not calendar days.**

Example: Lien notice mailed on July 1st.
Advertisement in legal section of newspaper published on July 15th.
Auction scheduled on July 29th.

2. To prepare: Go to the post office and ask for several **Certificate of Mailing** forms (USPS Form 3817) and complete one for each tenant that is scheduled to be auctioned. Your company name and address goes on the top part and the tenant name and address on the bottom.
3. If your company charges an auction fee, apply it, and generate your notice of lien with a demand for payment within ten days. Be sure the notice of lien indicates clearly the date, time and location where the auction will be held (ex. Your property is scheduled to be auctioned at 10:00 AM on July 29, 2016 at ABC Storage, 1234 Main St., Baton Rouge, LA 70816, Phone 225-321-1234), as well as the owner's/manager's name to make payment to.
4. **ONLY** the Lien Notice will go into the envelope for mailing – a copy of the contract and unit inventory is no longer required.
5. Attach a Certificate of Mailing Form (USPS Form 3817) to each envelope and deliver the completed Lien Notice to the U.S. Post Office for mailing. Present the USPS agent with the letters and certificate of mailings. They will round date stamp each certificate of mailing and hand it back to you. Each will cost \$1.30. Be sure to obtain a receipt for the Certificate of Mailing to go in the tenant file for Proof and Verification of the date that the Lien Notice was mailed. Your round stamped Certificate of Mailing form provides evidence of the date that your mail was presented to the Postal Service for mailing.

6. **On the same day as the mailings**, email the lien notice to the tenant, if you have their email address. Make sure that the email address you send to is one that you have a signature for by the tenant, either on the lease or tenant information sheet that they have signed. It is a good idea to make sure in your management software that the tenant's email address is printed on the lease by their physical address, as the updated statute says "The notice shall be delivered in person to the lessee or sent by verified mail to the last known address of the lessee, **and electronic mail if the email address is provided by the lessee in the rental agreement.**"
7. Wait ten days and collect payments.
8. Those that have not paid at the end of the 10 day cure period: cut their lock, from the doorway write a brief and general inventory of the unit and take pictures of the contents. **DO NOT ENTER THE UNIT!!** The cut lock process is now done after the 10 day cure period. This will give more tenants the opportunity to pay in full before their lock is cut. Hopefully managers will have fewer locks to cut.
9. Type up the advertisement to send to the newspaper. Be sure to include the following in the advertisement: Unit Number, Tenant Name and a Brief and General Description for each unit in the auction. The auction must be held at least ten (10) days after publication of the advertisement.
10. Conduct the auction on the specified date, time and location as indicated in the lien notice and the advertisement.
11. The remaining balance owed on the unit after auction can be turned over for collection.

Late Fees and Vehicle Towing:

1. **Late Fees:** You do not have to change your late fee structure if you don't want to. The "safe harbor" created with the statute update is a protected amount that allows a facility to charge either \$20.00 or 20% of rent, whichever is greater, late fees per month. This is the "safe harbor" provided for in the updated statute. If you charge more than the \$20.00 or 20%, whichever is greater, of monthly rent, you may be subject to litigation. On units over \$100.00 a month, you can charge up to 20% in a month and be protected legally. You are still able to charge less, or more, if you wish. If you choose to charge more, you will be outside the "safe harbor" as provided in the statute. How you charge that \$20.00 or 20%, whichever is greater, is at the discretion of the facility. It is our understanding that you may charge the entire late fee after specified grace period or in increments that add up to the \$20.00 or 20%, whichever is greater.
2. **Vehicle Towing:** If the unit/space rented for the purpose of storing a vehicle is more than 60 days past due the updated statute allows you to have the vehicle towed from your facility by a licensed towing company. You no longer have to go through the lien sale for a stored vehicle. You simply send a letter and/or email informing the tenant that their vehicle will be towed if the unit/space rent is not paid in full, per Louisiana R.S. §4759, paragraph 9. (We need to get clarification from Scott Zucker on whether a tenant may be turned over for collection if they owe you a balance and you have their vehicle towed. Unlike a storage unit that is auctioned and can be turned over for collection, this is uncertain.)

Sample Lien Sale Check List

(This is an example that will help you be sure you follow all the necessary steps)

CUSTOMER NAME: _____ UNIT #: _____

- 1. First late notice sent to address on record. Date: _____
- 2. Second late notice to address on record. Date: _____
- 3. Auction Date scheduled after talking with OM: _____
- 4. Lien Letter sent Date: _____
 - A. \$_____ auction fee charged to account
 - B. Notice of lien letter (2 copies – send one, keep one)
 - C. Postmarked certificate of mailing receipt. (Staple to corner of this form)
 - D. Notation made in notes about lien letter being sent.
 - F. Security tag number: _____
- 5. Unit inventory completed for ad in newspaper. _____
- 7. Newspaper ad published (Must be after 10 day cure period). _____
- 8. Certified proof of publication received. Date: _____
- 9. Lien letter returned as undeliverable. Date: _____

PHONE CONTACTS:

DATE CONTACT # RESULT

1. Decide which units are going to auction. Add your auction fee, and print 2 copies of lien sale letter. Send one copy of letter using certificate of mailing.
2. Send notice by email on same day. Subject – Notice of Lien from, and at the top of the body of the email type in: the time and date that your auction is scheduled for.
3. After the 10 day cure period, cut locks, complete unit inventory or do over the top of the unit for the newspaper ad.
4. Create the ad for newspaper, as we have always done.
5. Run ad in newspaper, conduct auction at least 10 days after publication. As a general rule it's always better to give more than 10 days.