

§1385. Enforcement of lien

A facility owner may enforce a lien created by this chapter only if the property owner has been notified of the lien as required by section 1384. [PL 1993, c. 263, §1 (NEW).]

1. Sale; use of proceeds. If a property owner is in default for a period of more than 90 days, a facility owner may enforce a lien by selling the stored property at a commercially reasonable public sale for cash. As used in this section, "commercially reasonable" has the same meaning as in the Uniform Commercial Code. The proceeds of the sale must be applied in the following order:

- A. To the reasonable expenses of the sale incurred by the facility owner including, to the extent not prohibited by law, reasonable attorney's fees and legal expenses; [PL 1993, c. 263, §1 (NEW).]
- B. To the satisfaction of the lien created by this chapter; [PL 1993, c. 263, §1 (NEW).]
- C. To the satisfaction of all other liens on the property held by all lienholders of record to be paid in the order of priority; and [PL 1993, c. 263, §1 (NEW).]
- D. To the extent that the proceeds of sale exceed the sum of the foregoing, the surplus must be paid by the facility owner to the property owner. [PL 1993, c. 263, §1 (NEW).]

If proceeds of the sale are not sufficient to satisfy the property owner's outstanding obligations to the facility owner or any lienholder of record, the property owner remains liable to the facility owner or lienholder for the deficiency.

[PL 1993, c. 263, §1 (NEW).]

2. Advertisement; notice of default. Before conducting a sale under this section, the facility owner shall:

- A. Send a notice of default to the property owner. The facility owner shall provide a copy of the notice to each lienholder of record. The notice must include:

- (1) A statement that the property is subject to a lien held by the facility owner;
- (2) A statement of the facility owner's claim indicating the charges due on the date of the notice, the amount of any additional charges that will become due before the date of sale and the date those additional charges will become due;
- (3) A demand for payment of the charges due within a specified time not less than 30 days after the date the notice is delivered to the property owner and all lienholders of record;
- (4) A statement that unless the claim is paid within the time stated the property will be sold, specifying the time and place of the sale; and
- (5) The name, street address and telephone number of the facility owner, or the facility owner's designated agent, whom the property owner may contact to respond to the notice; and [PL 1993, c. 263, §1 (NEW).]

- B. After the expiration of the 30-day period set forth in paragraph A, publish an advertisement of the sale once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the sale is to be held. The advertisement must include a general description of the property, the name of the property owner and the time and place of the sale. The date of the sale must be more than 15 days after the date the first advertisement of the sale is published. [PL 1993, c. 263, §1 (NEW).]

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3. Location of sale. A sale under this chapter must be held at the facility or at the nearest suitable location.

[PL 1993, c. 263, §1 (NEW).]

4. Purchasers. A purchaser of property sold at a commercially reasonable sale pursuant to this chapter takes the property free and clear of any rights of persons against whom the lien was valid and all other lienholders of record.

[PL 1993, c. 263, §1 (NEW).]

5. Facility owner liability. If the facility owner complies with the provisions of this chapter, the facility owner's liability is as follows.

A. To a lienholder of record, the facility owner's liability is limited to payment from the net proceeds received from the sale of the property. [PL 1993, c. 263, §1 (NEW).]

B. To the property owner, the facility owner's liability is limited to the net proceeds received from the sale of the property after payment in full of all lienholders of record. [PL 1993, c. 263, §1 (NEW).]

[PL 1993, c. 263, §1 (NEW).]

6. Denying access to storage facility. A facility owner may deny a property owner who has been notified under subsection 2 access to the storage facility, except that the property owner is entitled to access to the facility during normal business hours for the purpose of satisfying the lien or viewing and verifying the condition of the property.

[PL 1993, c. 263, §1 (NEW).]

7. Notices. Except as otherwise provided, all notices required by this chapter must be sent by registered or certified mail, return receipt requested. Notices sent to a facility owner must be sent to the owner's business address or to the address of the owner's designated representative. Notices to a property owner must be sent to the property owner at the property owner's last known address. Notices to a lienholder of record must be sent to the address of the lienholder as provided in the public filings that serve to perfect the lienholder's interest in the property. Notices are considered delivered on the date the recipient of the notice signs the return receipt or, if the notice is undeliverable, the date the post office last attempts to deliver the notice.

[PL 1993, c. 263, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 263, §1 (NEW).

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