

**HOW MANAGERS CAN PROTECT THEMSELVES
WHEN SELLING MOTOR VEHICLES AT LIEN SALE**

The storage of a car, boat, RV or other type of motor vehicle at a Self-Storage facility can be a lucrative part of your business, especially outdoor Self-Storage. However, when a tenant fails to pay rent on a space containing any type of vehicle, profits seem less than worthwhile compared to the problems. The problem with a vehicle is, unlike almost anything else stored at your facility, motor vehicles have titles and often, those titles have liens attached to them. Getting the title into your name to sell the abandoned vehicle is one problem, the liens attached are a separate, second problem. While in some states you are required to ask your tenant to declare liens on property stored at your facility and/or you are required to check for liens before the sale, you often do not find liens on property such as household goods and furnishings stored at your facility. That does not mean there are not liens on the property, it is simply that certain types of liens are not recorded and therefore you will not find them when you search. For example, purchase money security interest liens are virtually never recorded, thus, you are not charged with the responsibility of knowing about that specific lien when you sell a tenant's personal property at a lien sale. Therefore, often you can sell the property free and clear without liability to the lienholder. Conversely, with motor vehicles, there is virtually no way you can avoid not knowing about a lien. While the complexity of obtaining a title to allow you to sell the vehicle varies, the protection of a predecessor lienholder is generally consistent. So what is a manager to do?

Every state has some variance in their motor vehicle laws, either in their Self-Storage statute or in other parts of their statutes, and you may not be able to simply look at your Self-Storage statute for the answers to your questions about what to do with an abandoned/delinquent motor vehicle.

Several states have some procedure set forth in their Self-Storage statute, specifically setting out your rights how to re-title and sell a motor vehicle stored at your facility when the rent is delinquent and what happens to prior lienholders of motor vehicles. This could be a blessing or a curse. For example, California has a lengthy, complicated procedure for selling a motor vehicle

stored at your facility. The California Self-Storage statute goes so far as to draw a distinction in sale practices between cars and boats. If you are in a state such as California, while it is not as simple as it sounds, you need to follow all of the time lines, notice requirements, etc. of the California statute in order to be able to sell a motor vehicle. If you are able to follow this maze of statute properly, you are absolved of certain liability. In general, you will eventually be able to get a title to the vehicle and sell the vehicle and in order to pay off your lien and sale expenses.

There are other states which have included in the Self-Storage requirements for sale of motor vehicles and some statutes at least give some hint of law to get the title or sell without being as difficult as the California statutes. For example, the Michigan statute gives Michigan facility operators some help in what they need to do in order to sell a motor vehicle in default at their facility and handles the title issues. Other states, such as Arizona, New Hampshire give procedures for selling vehicles safely. Also, North Dakota, Oklahoma and Wyoming's statute provides for the transfer of title on sale of the vehicle. Virginia grants you priority in the first \$150.00 if you sell a vehicle. Idaho and Hawaii at least make mention of appropriate notice to lienholders in their statutes. Other states recognize the priority of secured liens over your storage lien. Unfortunately, in other states, with Self-Storage statutes, rarely, if ever, is a stored motor vehicle even mentioned in the statute. There are several things a manager must consider in order to protect themselves from the wrongful sale of the vehicle and having the lienholder show up with a lawsuit for some sort of wrongful conversion of their lien property.

The first consideration for a manager is whether or not their statute speaks to stored vehicles in default. If not, then the manager must look at whether their lease speaks to the issue of default for vehicles and if you have provided yourself any extra rights. Specifically, the right to tow a vehicle from the facility after the default has been declared, especially if the vehicle is in bad condition and not worth selling. Then, the manager must determine the approximate value of the vehicle. Many states do have junk vehicle-type statutes which allow anyone who has a vehicle stored on their property, with a certain maximum value, to have the vehicle easily re-titled as a junk vehicle and dispose of the vehicle easily because a title has been issued in the name of the facility.

Additionally, if your lease so provides, you may be able to just have the vehicle towed and allow the towing service to handle your state's procedures for towing, storing and disposing of abandoned vehicles if the vehicle has little or no value.

This, however, does not solve your problem for higher-value cars, boats, and motor homes. Presuming you do not have a Self-Storage statute that speaks to disposal of vehicles, and presuming your lease or statute does not allow you to tow the vehicle off and have somebody else in the towing profession deal with this issue, then the manager must understand what other laws might be available to the manager to allow them to remove or sell the vehicle.

While many of the state's Self-Storage statutes do not actually deal with lien sales of vehicles, many states have separate statutory sections that protect other industries such as towing companies who charge storage fees or mechanics who make repairs and then are not paid, etc., the manager must look for a statute like this. I strongly recommend at least on your first voyage through this area of the law that you consult an attorney for assistance. Often, if you find that statute, you will find that the statute provides for a specific lien and process for disposal of a vehicle in "storage" with a towing company or auto mechanic. Self-Storage facilities can often fall under these requirements because, in fact, you are "storing" the vehicle and your Self-Storage statute does not address this issue. If this is the case, you should be able to follow the disposal and/or re-titling procedures set forth in towing and storage statutes (sometimes called "livery statutes") in your state. These statutes are important to a manager because you simply can not take a vehicle, and safely convey clear title to a purchaser at a lien sale or public sale or auction. You have to be the titled owner or Power of Attorney for the owner to convey title.

Next, do not overlook the possibility of contacting the lender who has the security interest in the vehicle. Fifty percent of the time, that lender will come and take the vehicle off your hands, although they may not be willing to pay storage charges. Some may, and those that will not, it is still better to have the vehicle off your property and make space available for a rent-paying tenant, than it is to squabble over a few dollars in storage charges for the vehicle if you know you can get the

vehicle off your property and be absolved from liability by turning it over to the secured lender. You have avoided the issue of getting title in your name, extinguishing the lien and removal of the vehicle. Presuming the secured lender does not take the vehicle. Do not forget that if there is a lien and you do go to the trouble of getting the vehicle titled to the facility's name, when you sell the vehicle, the lender's pre-existing lien often has to be satisfied first (barring a statutory provision to the contrary). Remember, if you sell the vehicle without resolving the first lien, you would be doing all "the work" for the secured lender. However, some towing and livery statutes in various states have a "trumping" mechanism over secured lenders for the storage lien. If at all possible, follow that procedure, which unfortunately varies widely by state and can not be discussed in this short column, in order to obtain a title, which makes your storage lien superior, so that you can sell the vehicle, convey proper title, and hopefully recoup some of your selling expenses and lost storage charges before having to pay the previous secured lender. Further, if you are really sharp on your rights and know the livery or storage statute in your state well, and can articulate those rights to the secured lender and why the secured lender may end up taking a second position to your lien if they do not claim the vehicle and pay storage charges. You will be able to get more secured lenders to come and pay storage charges and remove the vehicle from your property. If you allow a big national bank or other lending institution to bully you, believe me, they will.

Therefore the first and best option for a manager is to, assuming that your state does not provide a disposal mechanism under your Self-Storage statute use the livery or towing, storage statute and its lien sale procedures. Please make certain that you, as a facility, you comply with the definition of a storage or parking lot as defined in the statutory section for the towing and livery companies.

There is an additional alternative that I can suggest that you may want to pursue. Often, managers spend a great amount of time and money finding liens, pursuing changed titles, notifying lenders and selling the vehicle, only to either (1) not recover enough money to pay all costs; or (2) finding themselves being sued by the owner or secured lender for making some procedural error. In most states, you can file an eviction or forcible entry and detainer action (eviction) for any storage

unit or space at your facility. Please make certain that the default clause in your lease provides that you may exercise “all other remedies available in equity or in law.” This would mean that, if permissible under the statute that you would have the right to commence an eviction action against the tenant. The logic in considering this particular option is as follows: (1) the time period for an eviction can generally be short; and (2) the court will grant you restitution of your premises and normally, for an additional fee, you can have a sheriff or bailiff of the Court to come out to “enforce your writ”. In most circumstances, that means having the court-appointed towing company take the vehicle into custody. In other situations, it means that the bailiff may simply watch you tow the vehicle to a off the premises (or to a corner of the premises as explained later). Again, laws and rules for writ enforcement vary almost by jurisdiction, let alone by state. Best of all, if you are allowed to have the sheriff tow the vehicle into their impound lot, then the re-titling and disposal becomes the sheriff’s problem and not your. Better yet, if you are allowed to tow the vehicle to another place, either in your facility or on the street, you may have an interesting option open to you. If your state permits execution (which means sheriff’s attachment and sale) of personal property such as a motor vehicle to satisfy your judgment, and your state’s exemption in a motor vehicle is not a large dollar amount, you may consider after your eviction action, filing a complaint against your tenant for money damages. It is unlikely that if your tenant did not attend the eviction, that they will file a responsive pleading to your complaint for money damages, and you will be allowed to take a default judgment against the tenant. Now you have a judgment for all of the money due to you. Again, if your state allows execution against items such as motor vehicles, you can then order the sheriff to execute against this motor vehicle (now stored in a corner of the facility to protect the asset) to satisfy your judgment. The sheriff would then take the vehicle into its possession. The sheriff would then have all the responsibilities of doing all of the title work to re-title the vehicle so that the vehicle could be sold at a sheriff’s sale. The sheriff would then sell the vehicle at the sheriff’s sale and proceeds from the sale would then be distributed to you on the execution of your judgment. Particularly, if there is not a lien on the vehicle, ahead of yours, you would get the proceeds from the sheriff’s sale directly. In the meantime, even if you do not get much or all of your proceeds, think about what you may have accomplished. For the cost of an eviction filing fee and maybe an execution fee, the sheriff who has much better resources to accomplish retitling of vehicles, has done

all of the title and lien check work with the Department of Motor Vehicles to get the vehicle re-titled in order to sell it. If any procedural errors are made by the sheriff, the liability for those procedural errors, and therefore the wrongful sale of the vehicle, lies primarily with the sheriff and not you. Therefore, for a smaller sum of money, you have saved yourself an enormous amount of work and done a good job of insulating yourself from certain liabilities that otherwise arise if you take the responsibility for processing all of the paperwork to get the vehicle re-titled yourself and avoided all the costs of sale. Again, you must check your state's statute to make certain that you can evict vehicles from your property and determine what the procedures are for executing on a judgment. If you have liberal execution procedures, this may be an idea worth pursuing at your facility.

The most important things managers need to understand in order to protect themselves is that they take on a great amount of risk if the Self-Storage statute does not help you dispose of a vehicle and there could be a lien on the vehicle. Selling the vehicle requires you to jump through enormous hoops to have the vehicle re-titled to the facility in order to sell it, and then you may be doing all of that work only to help pay off a first lien on the vehicle. Therefore, the most important things for a manager to attempt to do, short of avoiding ever removing vehicles, is to see if it is possible to have the lender take the vehicle off the property and to revise or enforce the lease provisions that allow you, if possible to tow vehicles off the property to a towing yard who can then exercise their towing and storage lien rights. If that is not possible, then try to following the towing and storage/livery lien laws in your state, acting as a storage or parking lot and having the vehicle re-titled under the storage and towing statutes and/or if possible, trying the eviction and execution route described above, which really puts a layer of insulation between the manager and the owner of the vehicle for liability purposes.

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