

**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. 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?

Most states have some way to re-title a motor vehicle, either in their Self-Storage statute or in other parts of their statutes, but you may have to look around for the answer.

Several states have some procedure set forth in their Self-Storage statute, setting out how to re-title and sell a motor vehicle stored at your facility when the rent is delinquent. Some also discuss prior lienholders. 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. If you are in 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 can safely sell the vehicle.

There are other states which have included requirements for sale of motor vehicles in their statutes and some statutes at least give some hint of law to get the title or sell the vehicle. 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 and New Hampshire give procedures for selling vehicles. Also, North Dakota,

Oklahoma and Wyoming's statute provides for the transfer of title on sale of the vehicle. 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 sue 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 should look at whether their lease speaks to the issue of default for vehicles and if you have provided yourself any extra rights. You may want to consider adding a provision to your lease that provides this right. 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. 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.

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 industry deal with the vehicle, 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, or mechanics who make repairs and then are not paid, etc., the manager should look for a statute like this. I strongly recommend at least on your first attempt that you consult an attorney for assistance. Often, if you find that type of 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. This statute may allow you to re-title and sell the vehicle.

Do not overlook the possibility of contacting the lender who has the security interest in the vehicle. Often, that lender will come and take the vehicle off your hands, although they may not be willing to pay storage charges. Even those that do not pay, it is still better to have the vehicle off your property and make space available for a rent-paying tenant, 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.

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 is superior, so that you can sell the vehicle and convey proper title.

Therefore, the first options for a manager is to, assuming that your state does not provide a disposal mechanism under your Self-Storage statute is to use the livery or towing, storage statute and its lien sale procedures or call the second lender.

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 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 a 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. 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 filing a second complaint against your tenant for money damages. Then you have a judgment for all of the money due to you. If your state allows execution against 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 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. Even if you do not get much or all of your proceeds, think about what you may have accomplished. The sheriff who has much better resources to accomplish re-titling 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.

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 provide for disposal 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 never removing vehicles, is to look for similar alternatives to see if it is possible to have the lender take the vehicle off the property, to

revise or enforce the lease provisions that allow you, if possible to tow vehicles off the property and allow the towing company to 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.

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