



April 24, 2023

The Honorable Jason Kropf
Chair
Judiciary Committee
Oregon House of Representatives
900 Court Street, NE.
Salem, Oregon 97301

RE: Senate Bill 862 (Sen. Prozanski)

Dear Chair Kropf, Vice-Chairs Andersen and Wallan, and Members of the House Judiciary Committee:

The Oregon Self Storage Association (“OR-SSA”) and the Self Storage Association¹ (“SSA”) respectfully requests your support for passage of Senate Bill 862. SB 862 removes a government mandate on many small businesses in Oregon and provides a commonsense alternative to outdated newspaper advertising requirements by permitting Oregon storage owners to advertise upcoming lien sales on a publicly accessible website.

Introduction to Self Storage

By way of background, in self storage the operator and tenant have a commercial landlord-tenant relationship.² A broad swath of individuals use self storage for a variety of reasons. Once a unit size is selected, a customer signs the rental agreement, the contract that governs the relationship between the operator and the tenant. All rental agreements are month-to-month tenancies that renew only upon the mutual desire of both parties. In other words, tenants can simply vacate if they are unable or unwilling to pay for the leased space. Most tenancies are successful for both parties; goods are stored, and rent is timely paid.

Forty-nine states,³ including Oregon, have a self storage lien law. Self storage lien laws provide a non-judicial foreclosure process for addressing situations in which self storage tenants fail to pay their rent,

¹ The SSA is headquartered in Alexandria, Virginia, and represents owners and operators of self storage in all 50 states. The SSA also manages the Oregon Self Storage Association, which represents the industry in the state and many of its 900 facilities.

² Self storage expressly may not be used for residential purposes. *See* § 87.685(7)(b)(B).

³ Alaska is the only remaining U.S. state that does not have a self storage-specific lien statute.

and the storage operator must sell the tenant's property to satisfy the operator's lien for past due debts. National data from the Self Storage Association indicate that storage operators sell approximately 1% to 3% of leased spaces annually. Anecdotally, many of the lien sales involve tenants who have abandoned the space after removing their valuable property and are not interested in what is remaining in the space. Stated differently, 97-99% of tenants will use the space per the rental agreement and never have their belongings subject to a lien sale. The lien process is an infrequently used procedure, but it is necessary for the successful operation of a storage facility. Operators' primary goal is to recover the space, which can then be rented by a paying customer.

Notice Requirements to Self Storage Tenants

In the rare situations when a lien sale occurs, the tenant learns of the impending sale through several direct means. The newspaper advertisement is not – nor was it ever intended to be – a means of reaching a non-paying tenant or that tenant's friends and family.

When the tenant rents storage space, the tenant is informed in the rental agreement about the storage operator's lien rights and that a lien sale may occur if the tenant fails to pay rent. Additionally, before any sale may occur, operators are legally obligated to provide notice of the delinquency and lien sale directly to the tenant.

The notice must include an itemized statement of the owner's claim that shows the sum due on the date of the notice; an identification of the specific individual storage space that the occupant rented at the facility; a statement that denies the occupant access to the occupant's personal property stored at the facility, if the terms of the rental agreement allow the owner to deny access; a demand for payment within a specified time that is not earlier than 30 days after the default; a conspicuous statement that declares that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale and will be sold at a specified time and place; and, the name, street address and telephone number of the owner or the owner's designated agent whom the occupant may contact to respond to the notice.⁴

In practice, all tenants will be contacted several times before a sale is conducted. The OR-SSA and SSA encourages all members to reach out via mail, e-mail, and over the phone to resolve the payment issue. If all attempts to resolve the payment issue fail, or more commonly, the tenant is simply unresponsive, then the operator will proceed with the sale to recoup the debt owed and recover the space for rental by a paying customer. Importantly, nearly all lien sales fail to generate proceeds to cover the tenant's debt, much less costs such as advertising and postage.⁵

Advertising the Sale in the Newspaper

Before an auction may be conducted, if has a value of the stored property is more than \$300, the owner must advertise the sale once a week for two consecutive weeks in a newspaper of general circulation in

⁴ ORS § 87.689 (3).

⁵ Storage operators are lucky to collect even \$.30 on the dollar owed from a lien sale.

the city or county in which the self-service storage facility is located.⁶ The self owner can avoid the newspaper advertising mandate for property valued less than \$300. In practice, however, even though more than 90% of sales are for less than \$300, operators are cautious about using this option as it requires to act a spot appraiser for the contents of the unit.

If the owner determines that the unit is worth more than \$300 or, more likely is uncertain as to the value of the unit, the owner must advertise the sale and the contents of the advertisement must include:

- The address of the self-service storage facility, the number, if any, of the space where the personal property is located and the name of the occupant; and,
- The time, place and manner of the sale.⁷

As mentioned above, the purpose of the advertisement is not to reach the tenant; that purpose has already been satisfied through direct notice. The purpose of the newspaper advertisement is to bring bidders to the sale. The newspaper advertising requirement is outdated. Since the Oregon self storage lien law was passed in 1997 newspaper readership is down significantly. Simply, advertising in a local newspaper is no longer the most effective method to drive traffic to self storage lien auctions.

Advertising is Costly

In addition to being ineffective, newspaper advertising is expensive. The median advertising price in Oregon is \$150.⁸ \$150 is an exceptionally high cost, especially when considered in relation to the average unit sale price in Oregon:

- Avg Sale Price - \$208
- Avg. Views - 150 (per unit)
- Avg. Bids - 15 (per unit)⁹

As such, the cost of advertising consumes nearly 75% of the amount recovered from the lien sale. This is compounded further by the fact that the lien sale is likely, at best, only to recover \$.30 on the dollar owed. Once the cost of advertising is factored in, the storage owner is recouping almost none of total outstanding debt and thus increasing the overall loss.

If advertising in the newspaper was an effective means to drive traffic to lien sales and increase the sale price, storage owners would continue to do so. However, it simply does not accomplish that goal. It merely increases the storage owner's loss on the unit.

⁶ If there is no newspaper of general circulation in the city or county, the advertisement must be posted in not fewer than six conspicuous places in the neighborhood in which the self-service storage facility is located.

⁷ ORS § 87.691 (2).

⁸ This number is reflective of advertising costs from 20 facilities in 10 different publications: the prices for advertising vary based on column inches and range for \$60 to \$640.

⁹ The average prices / views above are averages from sales of more than 2,000 units.

The 2023 Alternative to Newspapers

32 states permit advertisements via another method other than newspapers preceding the sale or have no advertising requirement at all.¹⁰ Washington does not require storage operators to advertise by any method preceding the sale.

Historically, self storage lien sales occurred on-site at the facility where the tenant default occurred. In the last several years, that has changed. Many self storage owners nationally have shifted to online auction platforms to conduct these sales. Oregon law expressly permits online auctions.¹¹ Online sales can expand the audience of potential bidders by allowing bidders to submit bids over several days without attending a one-day sale in person.

As online auctions have increased significantly in popularity, it is logical that the sales would also be advertised on the platform where the sale is conducted. Interested bidders seek out these upcoming auctions on these platforms, which may be accessed free of charge. Further, self storage auction websites provide access to thousands of individuals who are specifically interested in upcoming sales. For many operators in Oregon, this is a much more effective means to generate greater participation and a higher sale price. A higher sale price benefits the former tenant, as any proceeds realized from the sale are applied to pay down the debt. If the proceeds are greater than the debt, the excess must be held for the former tenant.¹² If there is any remaining excess that the occupant does not claim, it becomes unclaimed property is turned over to the state after two (2) years.¹³

Responding to Newspaper Industry's Arguments

Some in the newspaper industry suggest that the outdated and costly method of advertising should still be legally mandated to ensure that military personnel's belongings are not sold while they are deployed. This argument does not have merit. If a tenant is a member of the uniformed services, the *Servicemembers Civil Relief Act*¹⁴ ("SCRA") expressly prohibits the sale of an active-duty

servicemembers' belongings in all 50 states. In practice, every storage owner, especially in areas with a heavy military population, will have a provision in their rental agreement that asks the prospective tenant to disclose their military status. Even absent a disclosure, owners will still do a search through the Department of Defense's Defense Manpower Data Center prior to any sale to ensure there is no question regarding military status. Violation of the SCRA carries civil and criminal penalties for storage owners.

¹⁰ See attached map on page 6 that outlines the adoption status of this issue.

¹¹ ORS § 87.691 (4)

¹² ORS § 87.691 (8).

¹³ *Id.*

¹⁴ See 50 U.S. Code §3958. Enforcement of storage liens.

Further, some in the newspaper industry suggest that the advertisement may provide some form of constructive notice to the tenant. However, the suggestion that a tenant or a friend may happen upon an advertisement, which prompts the tenant to pay his or her debt to avoid the sale is questionable, at best. This requires that the reader purchase the one newspaper where the notice was published or scour PublicNoticeOregon.com,¹⁵ read all the ads, see the specific advertisement, and alert that tenant. That does not happen.

Given that, Oregon operators should be legally permitted to choose the method of advertising that is most effective for their business. Amending the law to provide operators with additional options to advertise the upcoming sale on a publicly accessible website that advertises or conducts property sales is sensible. Importantly, if SB 862 is passed, Oregon operators retain the ability to advertise in the newspaper should they continue to feel that is the most effective means of reaching their intended audience. SB 862 provides flexibility to ensure that the sale is advertised in the most appropriate way for the circumstance, as determined by an individual business owner.

Conclusion

The OR-SSA and the SSA respectfully request your support for passage of SB 862. Thank you for your consideration.

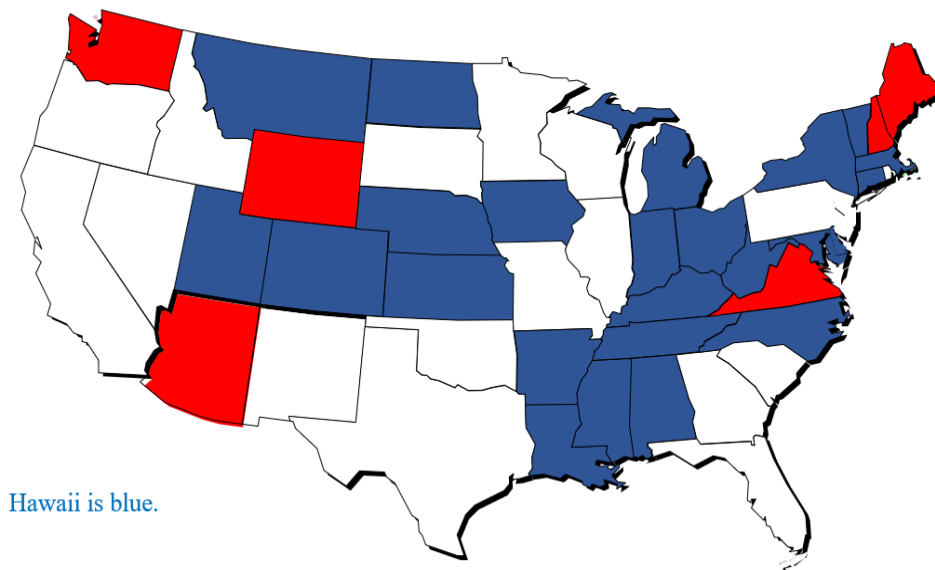
Respectfully submitted,

Erin Lightfoot

Erin Lightfoot
Executive Director
Oregon Self Storage Association

¹⁵ The SSA conducted a survey of more than 1,100 registered voters in California. 98% of those respondents indicated that they have never reviewed a notice on capublicnotice.com. The SSA and OR-SSA believes that the rate of review of publicnoticeoregon.com is similar.

Modernized Advertising Adoption - 2023



Hawaii is blue.

- Blue indicates state lien law provides for alternative advertising methods.
- Red indicates that no advertising is required.

