

RESOLUTION 5-05-03

DIGEST

Unlawful Detainer: Self-Service Storage Facility Act

Amends Business and Professions Code section 21710 to allow the use of unlawful detainer procedures to terminate a contract for the storage of personal property and to expand post-judgment remedies.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

None known.

Reasons:

This resolution amends Business and Professions Code section 21710 to allow the use of unlawful detainer procedures to terminate a contract for the storage of personal property and to expand post-judgment remedies. This resolution should be disapproved because it seeks to impose procedures and remedies which are unnecessary and inconsistent with the existing procedural framework.

Business and Professions Code section 21710 is part of the Self-Storage Act (the "Act"). (Bus. & Prof. Code, § 21700 et seq.). The Legislature enacted these provisions to deal with the special problems of self-storage units, which are leases that have aspects of licenses, but are non-residential and are typically not visited by their occupants for long periods. (See generally, *In re Safeguard Self Storage Trust* (9th Cir. 1993) 2 F.3d 967.) The Act already provides special procedures to terminate self-storage rental agreements for non-payment of rent, including a 14-day notice period before exercising self-help lien rights and an expedited procedure for resolving disputes that includes service of summons by mail and a 10-day time limit for any response. Moreover, the Act specifically provides that these rights are in addition to any other rights which may be provided in the rental agreement. (See Bus. & Prof. Code, § 21713.) A storage facility owner may thus specifically provide for the termination of a tenancy because of a breach of facility rules, and may enforce this provision by an ordinary civil action in a limited jurisdiction court even if the tenant is paying the storage fees.

The problem with simply adopting unlawful detainer procedures by reference in the Act is that many provisions of unlawful detainer law are inconsistent with provisions of the Act. Aside from differences in procedures for service of process (see, e.g., Code Civ. Proc., § 1162), there is no lien on personal property in unlawful detainer procedures, and there are specific obligations placed on a landlord regarding a tenant's personal property. (See Code Civ. Proc., § 1174.)

The proposed modification of post-judgment procedures is also flawed. It may be that an owner should have the right to refuse full payment if tendered less than 24 hours before a sale, but if the owner accepts full payment, he or she should be held to have waived the right to hold a lien sale, the proceeds of which by law would have to be paid entirely to the occupant.

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 21710 to read as follows:

- 1 §21710
- 2 If a declaration in opposition to the lien sale is received prior to the date set forth in the
- 3 notice of lien sale, the owner may enforce the lien as follows:
- 4 (a) ~~An action to enforce the owner's lien shall be commenced by the filing of a verified~~
- 5 ~~complaint setting forth the facts upon which the claim of lien is based. The owner may immediately~~

6 commence an action in Unlawful Detainer (non-residential). The summons and complaint may be
7 served by certified mail, postage prepaid, addressed to the occupant at his or her last known address,
8 in which case service shall be deemed completed on the fifth day after the mailing, or in any other
9 manner authorized by Chapter 4 (commencing with Section 413.10) of Title 2 of Part 2 of the Code
10 of Civil Procedure.

11 (b) The occupant shall have 10 days in which to respond to the complaint after service of the
12 summons is completed, which time may be extended for good cause shown.

13 (c) If the occupant has not responded to the complaint by answer or demurrer within the
14 time allowed after service is completed, the clerk, or the judge if there is no clerk, upon application
15 of the owner, shall enter the default of the occupant, and, thereafter, the owner may apply to the
16 court for judgment in the amount of the lien, including costs.

17 (d) Any judgment entered on the action on the lien in favor of the owner may be forced by
18 sale of the property by the owner. The sale shall be conducted in a commercially reasonable manner,
19 and shall take place 10 days or more from the entry of judgment ~~unless within that time period, or at~~
20 ~~any time prior to the sale, the occupant pays to the owner the full amount of the judgment.~~ In any
21 action originally based upon a non-payment of rent situation, occupant may stop such sale by paying
22 the owner the full amount of the judgment up to 24 hours prior to the scheduled sale. In any action
23 originally based upon a Thirty-Day Notice of Termination of Tenancy, occupant may stop such sale
24 by paying the owner the full amount of the judgment and by immediately removing his or her
25 personal property from and completely vacating the unit. If occupant does not immediately upon
26 payment remove his or her personal property from the unit, such sale shall go forward as scheduled.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Santa Barbara County Bar Association

STATEMENT OF REASONS

Existing Law: Provides no method for an owner to cease to rent to an occupant who consistently causes problems at the facility.

This Resolution: Provides a logical and fair method to terminate month-to-month self-service storage facility rental agreements.

The Problem: Courts are not familiar with the Self-Service Storage Facility Act, Chapter 10 of the Business and Professions Code, sections 21700, et seq. The Act itself currently is unclear about the type of complaint to file and how to actually vacate out the unit if the occupant pays the amount due. Sometimes, money is not the issue. Sometimes, occupants violate their rental agreements by attempting to live in a self-service storage facility unit which usually is in a gated area which is locked at night, which has no toilet or other plumbing facilities in the units, and which if used as a residential area could create a fire hazard by the use of camp stoves, etc. At other times, an occupant may harass the personnel at the facility by parking his or her car in the middle of the gate thus not allowing it to either close completely or open completely and certainly does not allow other occupants to enter the facility to access their units. In those instances, the owner may very reasonably simply want his or her unit back to rent to someone else who is willing to obey the rules for a self-service storage facility.

Even if the common month-to-month rental agreements for such facilities provides that either owner or occupant may give the other 30 days written notice that the agreement is terminated, the Act currently denies the owner a method to regain possession. Current law creates a vicious cycle of notice, lien sale procedure, opposition to lien sale filed, complaint filed and judgment obtained, occupant pays, owner has occupant as a tenant still. Another problem which currently exists is that auctioneers who conduct

“commercially reasonable sales” for self-service storage facility owners will not agree to conduct sales if they are continually canceled on the day of sale due to payment at that time by the occupant. Therefore, it is imperative that the occupant must pay at least 24 hours prior to the scheduled sale so that the owner may cancel the auctioneer’s presence.

Amending Business and Professions Code section 21710 will further the public policy by avoiding confusion and will not have a detrimental effect upon the process.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

This proposal unnecessarily deletes the existing procedure to enforce a lien of an owner of a self-storage facility. The problem identified as the basis for the proposed change could be more easily resolved through contractual agreements between owners of such facilities and their tenants. Existing law may already provide the remedies sought by the proponent without eliminating the current method to enforce an owner’s lien. Additionally, there appears to be a grammatical error in the language as drafted.