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HOUSE BILL NO. 21

Offered January 12, 2022

Prefiled December 23, 2021

A BILL to amend and reenact § 55.1-2902 of the Code of Virginia, relating to public auction of personal property to satisfy lien; advertisement requirement; website.

 Patron—Fowler

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 55.1-2902 of the Code of Virginia is amended and reenacted as follows:****§ 55.1-2902. Enforcement of lien.**

A. 1. If any occupant is in default under a rental agreement, the owner shall notify the occupant of such default by regular mail at his last known address, or, if expressly provided for in the rental agreement, such notice may be given by electronic means. If such default is not cured within 10 days after its occurrence, then the owner may proceed to enforce such lien by selling the contents of the occupant's unit at public auction, for cash, and apply the proceeds to satisfaction of the lien, with the surplus, if any, to be disbursed as provided in this section. Before conducting such a public auction, the owner shall notify the occupant as prescribed in subsection C and shall advertise the time, place, and terms of such auction in such manner as to give the public notice.

2. In the case of personal property having a fair market value in excess of \$1,000, and against which a creditor has filed a financing statement in the name of the occupant at the State Corporation Commission or in the county or city where the self-service storage facility is located or in the county or city in the Commonwealth shown as the last known address of the occupant, or if such personal property is a watercraft required by the laws of the Commonwealth to be registered and the Department of Wildlife Resources shows a lien on the certificate of title, the owner shall notify the lienholder of record, by certified mail, at the address on the financing statement or certificate of title, at least 10 days prior to the time and place of the proposed public auction.

If the owner of the personal property cannot be ascertained, the name of "John Doe" shall be substituted in the proceedings provided for in this section and no written notice shall be required. Whenever a watercraft is sold pursuant to this subsection, the Department of Wildlife Resources shall issue a certificate of title and registration to the purchaser of such watercraft upon his application containing the serial or motor number of the watercraft purchased, together with an affidavit by the lienholder, or by the person conducting the public auction, evidencing compliance with the provisions of this subsection.

B. Whenever the occupant is in default, the owner shall have the right to deny the occupant access to the leased space.

C. After the occupant has been in default for a period of 10 days, and before the owner can sell the occupant's personal property in accordance with this chapter, the owner shall send a further notice of default, by verified mail, postage prepaid, to the occupant at his last known address, or, if expressly provided for in the rental agreement, such notice may be given by electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery. Such notice of default shall include:

1. An itemized statement of the owner's claim, indicating the charges due on the date of the notice and the date when the charges became due;

2. A demand for payment of the charges due within a specified time not less than 20 days after the date of the notice;

3. A statement that the contents of the occupant's leased space are subject to the owner's lien;

4. A conspicuous statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at public auction at a specified time and place; and

5. The name, street address, and telephone number of the owner or his designated agent whom the occupant may contact to respond to the notice.

D. At any time prior to the public auction pursuant to this section, the occupant may pay the amount necessary to satisfy the lien and thereby redeem the personal property.

E. In the event of a public auction pursuant to this section, the owner may satisfy his lien from the proceeds of the public auction and shall hold the balance, if any, for delivery on demand to the occupant or other lienholder referred to in this chapter. However, the owner shall not be obligated to

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59 hold any balance for a lienholder of record notified pursuant to subdivision A 2, or any other lien
60 creditor, that fails to claim an interest in the balance within 30 days of the public auction. So long as
61 the owner complies with the provisions of this chapter, the owner's liability to the occupant under this
62 chapter shall be limited to the net proceeds received from the public auction of any personal property
63 and, as to other lienholders, shall be limited to the net proceeds received from the public auction of any
64 personal property covered by such superior lien.

65 F. Any public auction of the personal property shall be held (i) at the self-service storage facility, (ii)
66 at the nearest suitable place to where the personal property is held or stored, or (iii) online. An
67 advertisement shall be published *at least once prior to the public auction* (a) in a newspaper of general
68 circulation in the locality in which the public auction is to be held, or in the case of an online public
69 auction, in the county, city, or town in which the self-service storage facility is located, ~~at least once~~
70 ~~prior to the public auction~~ or (b) *on a publicly accessible website that conducts property sales*. The
71 advertisement shall state ~~(a)~~ (1) the fact that it is a public auction; ~~(b)~~ (2) the date, time, and location of
72 the public auction; and ~~(c)~~ (3) the form of payment that will be accepted.

73 G. A purchaser in good faith of any personal property sold or otherwise disposed of pursuant to this
74 chapter takes such property free and clear of any rights of persons against whom the lien was valid.

75 H. Any notice made pursuant to this section shall be presumed delivered when it is (i) deposited
76 with the United States Postal Service and properly addressed to the occupant's last known address with
77 postage prepaid or (ii) sent by electronic means, provided that the sender retains sufficient proof of the
78 electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was
79 sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery. In
80 the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of default.

81 I. In the case of any motor vehicle, so long as the motor vehicle remains stored within such leased
82 space, the owner shall have a lien on such vehicle in accordance with § 46.2-644.01.