

You've Got Mail: Bringing New York's Self-Storage Industry into the 21st Century

By Patrick J. Quigley

The self-storage industry can be full of surprises. As any viewer of the show "Storage Wars" can tell, you don't always know what's behind those locked doors. But, not all surprises are tucked away in the storage units. In fact, the industry has recently seen a big surprise come from Albany.

After practicing for more than 20 years and representing countless owners, investors, and operators of self-storage facilities, I never thought Section 182 of the Lien Law would be amended by New York State. The State legislature, however, has finally done just that, and now that amendment awaits the Governor's signature for it to become law.

The New York State Assembly recently passed bill A 6556-A, with the Senate passing the same bill as S 5211-A, entitled "An act to amend the lien law, in relation to notice of enforcement of lien on goods in self-storage facility" (hereinafter referred to as the "Bill"). As noted in the New York Assembly Memorandum in Support of the Legislation, the legislature justified enactment of the Bill to allow self-storage facility operators to serve their late and lien notices by electronic mail and to "help modernize operations for the 21st Century." In other words, the State of New York is finally joining the 36 other states in the country to permit the service of late and lien law notices on occupants of self-storage units by email, with a few qualifications.

Until now, Section 182 of the Lien Law had provided that a self-storage facility operator could only serve late and lien law notices on a defaulted occupant either "personally" or "by register for certified mail to the occupant to the last address provided by the occupant, pursuant to the occupancy agreement." The Bill, however, expands the types of service that can be utilized and allows operators to send late and lien law notices "by verified mail and electronic mail to occupant's last known address." Please note that a notice sent by electronic mail must be coupled with a verified mailing, which is defined in the Bill as "any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing including, but not limited to, the first-class mailing with a certificate of mailing." In addition, the Bill defines "electronic mail" as "an electronic message or an executable program or computer file that contains an image of the message that is transmitted between two or more computers or electronic transmittals." In addition, the Bill states that electronic mail "shall include electronic messages that are transmitted within or between computer networks." So, it would appear that emails and possibly text messages would qualify as electronic mail for the purposes of the Bill.

Furthermore, the Bill defines the "Last known address" and how this term relates to an electronic mail address. First, the term "Last known address" is defined in the Bill as "the street address, post office address or electronic mail address provided by the occupant in the occupancy agreement, or subsequent address provided by the occupant pursuant to occupancy agreement." So, when an occupant enters into an occupancy agreement with an operator for a self-storage unit, the occupant will need to provide in writing the address the occupant wants to use for the purpose of receiving notices from the operator. Also, the occupancy agreement can provide that

the occupant can change the address, however, the burden of notifying the operator of any change may be able to be placed on the occupant.

In addition, the Bill further states that “any notice sent by electronic mail shall only be effective if: (i) the occupancy states that the occupant has consented to receive late or lien notices by electronic mail; and (ii) the occupant has provided the occupant’s electronic mail address in at least two locations within the occupancy agreement.” The Bill addresses other issues, such as how an electronic mailing is delivered to an occupant.

Given the potential magnitude of these changes, self-storage facility operators should review the Bill with counsel. It may be especially important to review occupancy agreements to ensure that any occupant clearly consents to the receipt of electronic mail and that the electronic address is inserted into the occupancy agreement in at least two places within the agreement.

Technology has revolutionized the way we communicate and conduct business. With a stroke of his pen, Governor Cuomo can help bring the self-storage industry in New York State into the 21st Century.

Patrick J. Quigley is a partner in the Real Estate practice at Harter Secrest & Emery LLP. He can be reached at pquigley@hselaw.com.