

# Don't mess with self-storage public notice laws

**W**ithin the past five years, the turbulent economic conditions have caused a high number of people to suffer foreclosures and evictions, forcing many into smaller, temporary living arrangements. Many of these displaced people become tenants of storage facilities by renting units for their personal property and intensely confidential documents until permanent living arrangements are located. The stored property may include medical and tax records, family heirlooms and other valuables.



## PERSPECTIVES ON PUBLIC NOTICE

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When a storage operator leases a storage unit to a tenant, that person is required to sign a rental contract, which contains statutory consumer disclosures on lien enforcement. In this rental contract, if a tenant is delinquent in rent payments for a specific time, the storage operator will notify the tenant by certified mail that a lien has been placed on the tenant's property, and if the tenant does not satisfy the deficiency, the storage operator can enforce the lien by public auction. This same rental contract usually requires the storage operator to publish notice of the public auction in a local newspaper within a certain number of days before the scheduled auction.

I examined proposed bills and legislative history from legislative sessions in various states, and I found that there is a push by the growing self-storage industry to eliminate public notice laws for auction announcements in newspapers, the laws that are designed to help notify delinquent tenants that their personal belongings are subject to a scheduled auction.

This year, Colorado and Maine passed legislation eliminating storage operators' responsibility to publish auction announcements in newspapers—a position that only a couple other states mirror. The argument for this change centers on the storage operators wanting to reduce their statutory responsibility and get rid of the expense of publishing auction announcements in newspapers.

This argument, however, does not take into account the fact that auction announcements in newspapers by storage operators are necessary to alert the community of a scheduled auction. By storage operators notifying the com-

munity, there is a greater chance that a delinquent tenant will either directly learn of the scheduled auction or someone from the community will pass the information on to the tenant.

Auction announcements in newspapers also informs the public that an auction is scheduled, which helps increase the number of bidding participants. Having more bidders ensures a competitive auction, which will result in the highest bid for the property. All the states that have self-service storage laws require the storage operator who has conducted an auction to use the proceeds from the auction to satisfy the tenant's deficiency and reasonable sale expenses, and if proceeds remain, to retain the amount for the tenant within a specified time. The more bidders, the more competitive the bid, the more likely the deficiency will be satisfied and that there will be excess proceeds for the tenant.

Unlike Colorado and Maine, Illinois recognized the importance of publishing auction announcements in newspapers midway through the legislative process with SB 1394, a bill designed to amend its existing self-service storage laws. When introduced, SB 1394 expanded how auction announcements could be distributed, including "using the best method of advertising as determined by the facility owner including, but not limited to, advertising on a publicly accessible website that is identified in the rental agreement [or] a locally recognized publication." But when SB 1394 passed both state houses on May 31 and was approved by the governor on Aug. 26, the amended language was absent. It retained the current law—that auction announcements be published once a week for two consecutive weeks in a newspaper of general circulation—standard language that is found in most states.

After extensive lobbying by groups wanting to dilute California's original auction announcement laws for storage operators, the state amended its law in the 2009-2010 legislative sessions: AB 655, replaced the term "judicial district" with "county" in order to allow storage operator's to publish the auction announcement in any newspaper within that county. Shortly thereafter, California had buyers' remorse and in the 2011-2012 legislative session, SB 279 was passed. It reverted the auction announcement to the original requirement that auction announcements be published in the "judicial district" where the sale is to be held. In California, some counties are so small and densely populated that judicial districts are better to define an area because the notice will be published in a



newspaper that is adjudicated and circulated in communities that are affected by the event.

With today's economy displacing so many people from permanent residences, forcing some to shuffle between friends' and family's dwellings, direct mail notice is not practical to notify tenants of delinquent payments or that their belongings are subject to an auction. For the cost of placing an auction announcement in the newspaper, storage operators can provide every opportunity to contact a tenant. Good public policy requires that storage operators publish auction announcements in newspapers because the community can help locate the person whose property is subject to an auction, the public can take notice of the auction process, and the public can monitor the storage operators' business practices conducting auctions. If auction announcements in newspapers are abolished, then the tenant and the public lose.

If you would like more information on public notice, please visit [www.pnrc.net](http://www.pnrc.net) or call 703-237-9806. © David Placher 2011

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