

SUMMARIZED REGULAR FORECLOSURE STEPS

(Days on steps for example only)

DAY 1

Seize Contents – Either overlock the unit or open the unit (a good time to look around and note generally what is in the unit for purposes of your newspaper ad) and lock with your lock. Before you open the unit, make sure you have a **signed Rental Agreement** with the proper Chapter 59 Language (TSSA rental agreements comply).

Mail Notice of Claim – Any time a tenant is delinquent (even one day), you may seize the property and mail the Notice of Claim. Mail the claim notice via verified mail or email (if the tenant provided an email address to you in a 2012 or later version of the TSSA Rental Agreement).

DAY 16

First Newspaper Ad – Wait at least 15 days after mailing the Notice of Claim before publishing the first newspaper ad. (See Step 6 in detailed Foreclosure Procedures.)

DAY 23

Second Newspaper Ad – In the next week (at least 7 days later) run the same newspaper ad again. (Example: 1st ad runs Tuesday and 2nd ad runs Tuesday of the following week.)

DAY 31

Auction Day – Hold the live or online public auction sale at least 15 days after the first newspaper ad is published. (For an online auction, the end of the auction period [the date of the auction's conclusion] must be at least 15 days after the first newspaper ad is published.)

See next page for details.

DETAILS FOR SUMMARIZED REGULAR FORECLOSURE STEPS

- **The rental agreement must be signed by the tenant.** The statutory lien language in the rental agreement must be underlined or in bold print as required by Section 59.041 of the self-service storage facility statute. The TSSA rental agreement complies.
- **Seizure must precede mailing of Notice of Claim,** according to Section 59.043(a)(3) of the statute. In TSSA legal counsel's opinion, seizure must be accomplished by either: (1) removing the tenant's lock, opening the unit and placing the Lessor's lock on the door; or (2) overlocking the unit, either of which is followed by sending a Notice of Claim.
- There is **no required waiting period between seizure and mailing Notice of Claim.**
- **Mail Notice of Claim via verified mail or email.** This is required by Section 59.042 of the statute. Verified mail is defined by statute as any method of mailing that provides evidence of mailing. The Notice of Claim may also be sent via email if (and only if) the lease contains language underlined or in conspicuous, bold print that notice may be given by email when the tenant elects to provide an email address. (In TSSA lease after Jan. 2012.)
- **Wait 15 days before publishing your first ad in the newspaper.** This 15-day wait is required by section 59.042(b) of the statute. This section requires you to publish notice if the tenant fails to pay *on or before* the 14th day *after* the Notice of Claim is sent. So, if you mail or email the Notice of Claim on "Day 1," the tenant has to pay *on or before* midnight on "Day 15." So, your first notice can be published no earlier than "Day 16." In other words, the first notice can be published no sooner than 16 days after the date the Notice of Claim is emailed (if your lease has the language allowing email) or sent via verified mail. It is immaterial whether the tenant actually receives the notice. (Provided you've sent the notice properly, you've given proper notice, even if the Tenant rejects the mail or doesn't open it.)
- **Newspaper publication is required by Section 59.044 of the statute.** The ads must be published in a newspaper "once in each of two consecutive weeks."
- **Mail the Notice of Public Sale to the tenant (optional).** Notifying the tenant of the sale, time and place of the sale is required by paragraph 24(6) of pre-1996 TSSA rental agreements. It is recommended (but not required) under the 1999 TSSA Rental Agreement and later versions. It is okay to mail it in advance of placing the ad or publishing the ad, so long as the letter correctly states the sale date and time (when the sale actually occurs). 2011 (Rev. 10/11) and later versions of the TSSA Rental Agreement also expressly state that this notice can be sent via email (if email was provided by tenant, but again, there is no requirement that any such notice be sent).
- **Wait 15 days after your first newspaper ad before holding your auction.** This 15-day wait after the first ad is published is required by Section 59.042(c) of the statute. This statute says that you cannot sell the property until the 15th day *after* the date the notice is first published. So, the earliest date you could hold the sale is Day 31 (Day 16 + 15 days = Day 31). For online auctions, you can open bidding at any time, but the bidding cannot close until Day 31.
- **A sale by "public auction"** to the highest bidder is required by Section 59.043(a)(4) and Section 59.045 of the statute. "Public auction" is not defined in the statute, but the statute requires the auction to be either (1) held in person "at the facility or a reasonably near public place," or (2) held online at an Internet website accessible to the public.
- **Allow tenant to redeem prior to sale.** Section 59.008 allows a tenant to redeem "prior to sale." Do not do anything to prevent the tenant from bidding at auction or paying the balance in full prior to the "gavel falling" at the auction.
- **Give buyer a Bill of Sale.** Giving a bill of sale is not required by statute or the TSSA Rental Agreement, but it is recommended.
- **Remember to collect sales taxes.** This is required under the State Comptroller's sales tax rule. The exceptions are a vehicle, trailer or boat foreclosure (see Summarized Special Foreclosure Steps), or a sale to a buyer possessing a resale certificate.

- **Send a Notice of Excess Proceeds** if applicable. There is no legal deadline for sending this notice, but it is required under Section 59.046. It is recommended that you send this notice promptly after the sale. After this notice has been sent, the tenant has two years to claim the excess proceeds.
- **Keep all tenant records for four years (five years for a vehicle foreclosure).** A tenant's right to file suit is cut off after four years per the statute of limitations, so keep all records that are relevant to that time period. However, TDMV advises that vehicle related records be kept for five years.

For more details, see "Step-by-Step Procedures for Regular Foreclosures."