



Bringing a Self Storage Lien Law to Alaska

Self Storage Association

Road Map

- How the self storage business works
- Lien law overview
- How the lien sale process works
- Proposed Alaska self storage lien law

Alaska Operators

- There are approximately 150 facilities in the state.
- Almost 100% storage operators are small businesses based in Alaska.

How Does Self Storage Work?

- The self storage operator and tenant have a commercial landlord-tenant relationship.
- A broad swath of consumers use self storage for a variety of reasons.
- Consumers contact storage operators over the phone, via the internet, or in person to rent a unit.
- Once a unit size is selected, a consumer signs the rental agreement, the contract that governs the relationship between the operator and the tenant.
- All rental agreements are month-to-month tenancies that renew upon the mutual desire of both parties. Consumers are free to terminate and vacate.
- Vast majority of tenancies are successful for both parties. Goods are stored and rent is timely paid.

Lien Law Overview

- Forty-nine states and the District of Columbia have a self storage lien law.
- Alaska is the last state without a self storage lien law.
- Self storage lien laws provide a non-judicial foreclosure process for addressing situations in which self storage tenants fail to pay their rent, and the storage operator must sell the tenant's property to satisfy the operator's lien for past due rents.
- Statutory lien laws are important to provide a basic legal framework and guardrails to protect both owners and occupants.
- This bill would ensure that several steps are taken before a sale, starting with the execution of a written rental agreement that informs the occupant of the lien and the fact the property may be sold or disposed of upon default.
- Also, the occupant would have to be notified several times before sale / disposal.

How Does The Lien Sale Process Work?

- National data from the Self Storage Association indicate that storage operators sell approximately 1% to 3% of leased spaces annually.
- Stated differently, 97-99% of tenants will use the space per the rental agreement and never have their belongings subject to a lien sale.
- The lien process is an infrequently used procedure, but it is necessary for the successful operation of a storage facility.
- Operators' primary goal is to recover the space, which can then be rented by a paying customer.

Servicemembers Civil Relief Act

- The SCRA is a federal statute that makes it illegal for a storage owner to sell an active-duty servicemembers' belongings in all 50 states, including Alaska.
- The SCRA has a provision that specifically applies to self storage that can be found at 50 U.S.C. Section 3958 "Enforcement of storage liens." That provision makes it explicitly unlawful to sell any servicemembers' belongings absent a court order.
- In practice, every storage owner, especially in areas with a heavy military population, will have a provision in their rental agreement that asks the prospective tenant to disclose their military statute.
- Even absent a disclosure, owners will still do a search through the Department of Defense's Defense Manpower Data Center prior to any sale to ensure there is no question regarding military status.
- Failure to comply with the SCRA carries both criminal and civil penalties and liability.

Proposed Legislation Highlights:

- Rental agreement requirements;
- Default notice requirements;
- Advertising requirements;
- Sale – manner and method; and,
- Excess proceeds.

Rental Agreement Requirements

- The bill would require that the rental agreement (the lease) be a written document agreed upon and executed by both parties.
- The lien attaches on the date on which property is placed in the unit.
- Storage owners would be legally obligated to ensure that the rental agreement contained a statement in bold type notifying the unit renter of the existence of the storage lien.
- Occupant must be informed about the lien upon execution of the rental agreement for the owner's lien to be enforceable.
- Page 2, lines 13-16.

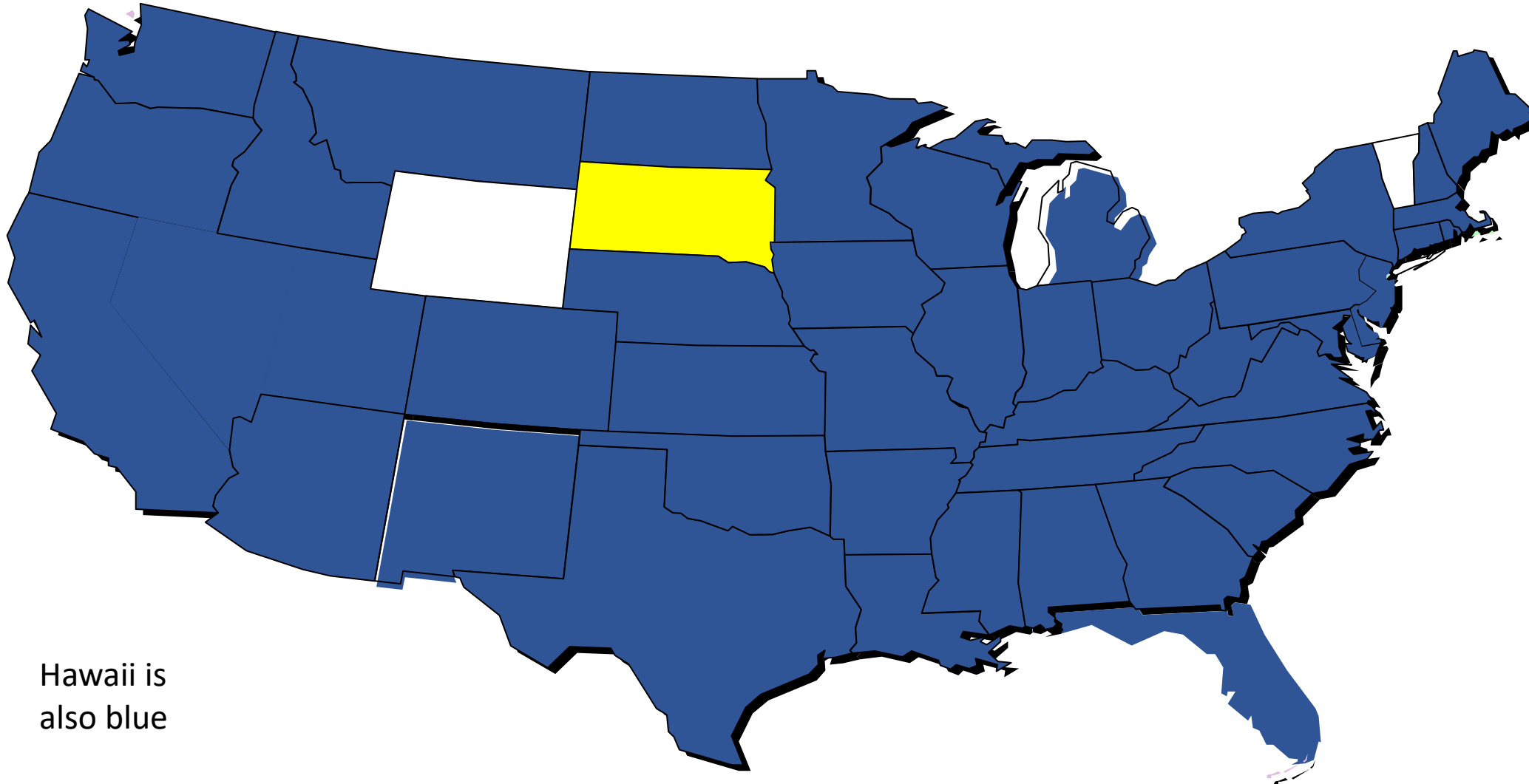
Default Notices

- After being informed of the owner's lien rights in the rental agreement, if the tenant defaults, the owner must send a notice to the occupant regarding the default and provide an opportunity to cure.
- Required notice must be to the occupant's postal address and electronic mail address provided in the rental agreement or in the written notice of a change of address.
- Hard copy mail must be send using a service that provides evidence of mailing.
- Required contents of notice: Page 2-3, lines 28-31, 1-28
- Required method of sending notice: Page 7, lines 10-20

Email

- Approximately 50% of self storage tenants are in transition.
- Unlike physical addresses, email addresses typically remain the same when an individual moves.
- The proposed legislation gives tenants the choice to receive lien notices by email.
- If provided, the owner must send the notice by both traditional mail and email.
- Most states allow tenants to choose to receive lien notices by email.
- Storage owners nationally have found that tenants are more responsive due to the immediacy, as well as the accessibility of email.

Lien notices may be sent by email



Blue: state permits notice via email

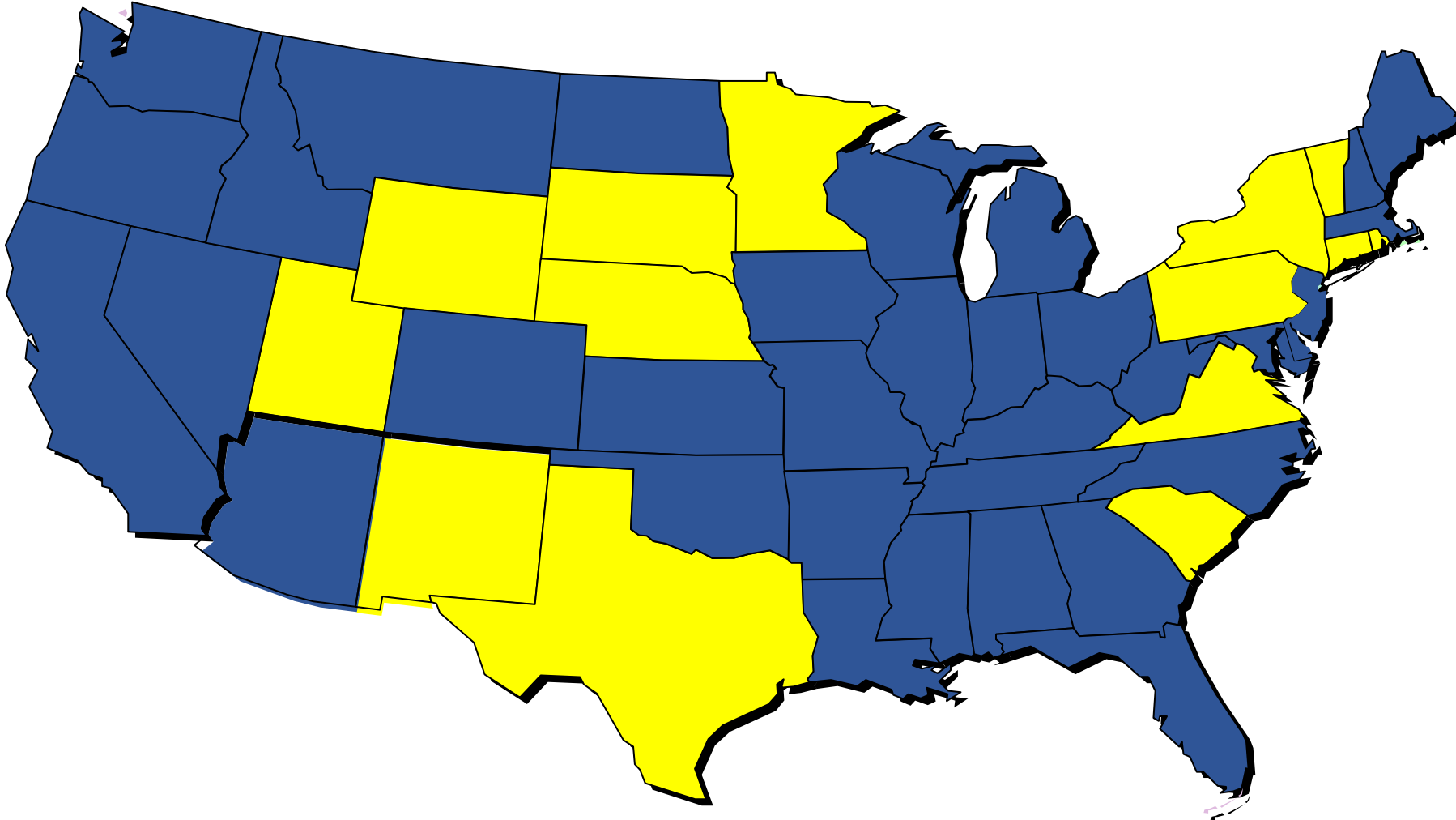
Yellow: bill passed both House and Senate this session and is awaiting action from Gov.

Hawaii is
also blue

Late Fees

- The proposed legislation includes a late fee standard of up to \$20 or 20% of the monthly rent, whichever is greater.
- The proposed legislation protects consumers by providing an amount that is fair and reasonable while still compensating the storage owner for lost revenue.
- 34 states recognize a late fee safe harbor in statute
- Page 2, lines 5-6

Provides for statutory late fee safe harbor



States in blue provide a statutory late fee safe harbor.

States in **yellow** allow for late fees but do not have a statutory safe harbor.

*Alaska is yellow

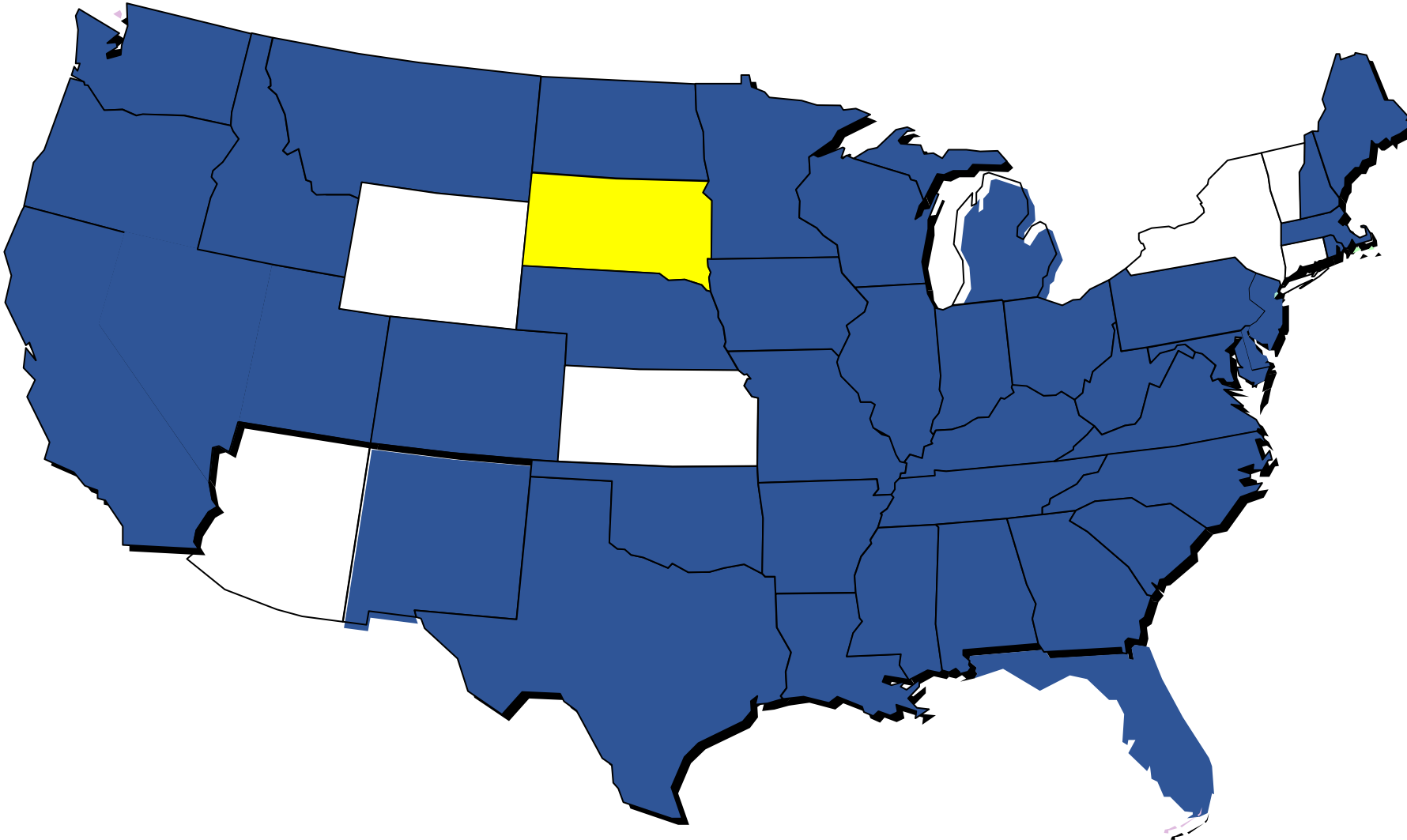
Remedies

- The occupant has been informed of the lien in the rental agreement, attempted to be contacted about the default several times, but the occupant is completely unresponsive, now what?
- The bill affords the owner with several remedies.
 - (1) Towing;
 - (2) Sale; or,
 - (3) Disposal of very low value property.

Towing

- Many storage operators do not want to go through the process for selling a titled property.
- The process can be cumbersome, and many operators are not frequently called upon to do so.
- The proposed legislation would provide operators with the option to have certain property towed after default.
- The towing company would have to comply with the process for selling a titled vehicle.
- 43 states allow operators to tow vehicles under similar circumstances.

Provides for towing



Blue – state permits
towing

Yellow: bill passed both House and Senate this session and is awaiting action from Gov.

White: no towing
authority presently
exists in statute

Towing – Proposed Language

“If the unit property includes a vehicle or watercraft, the facility owner may tow or otherwise remove the vehicle or watercraft from the storage facility, or have the vehicle or watercraft towed or otherwise removed from the storage facility.”

Page 2, lines 22-25

Lien Sale / Auction

- If a default occurs, for the limited number of sales that occur, most of the personal property will be sold.
- Lien sales nationally are not money-makers for storage owners – most are lucky to get thirty cents on the dollar.
- Many do not even realize that much
- The owner's primary goal is to return the unit back to inventory to be rented to a paying customer.

Advertising the Sale

- With that said, operators have a strong incentive to advertise in the most effective means possible in their community to maximize the sale price.
- Any proceeds received are applied to the debt owed.
- This also benefits the customer as any excess proceeds greater than the debt owed must be held for the former occupant. Again, in nearly all cases, the owner loses money when selling a customer's property.
- The owner must send notice to the occupant of the excess proceeds for the occupant to collect.

Advertising the Sale

- Before a sale, an owner must advertise the sale once in a newspaper of general circulation or one time a week for two weeks in commercially reasonable manner that is likely to attract three (3) independent bidders who are not related the owner or each other.
- Page 4, lines 13-17
- Required elements of the advertisement: Page 4, lines 22-31, page 5, line 1.

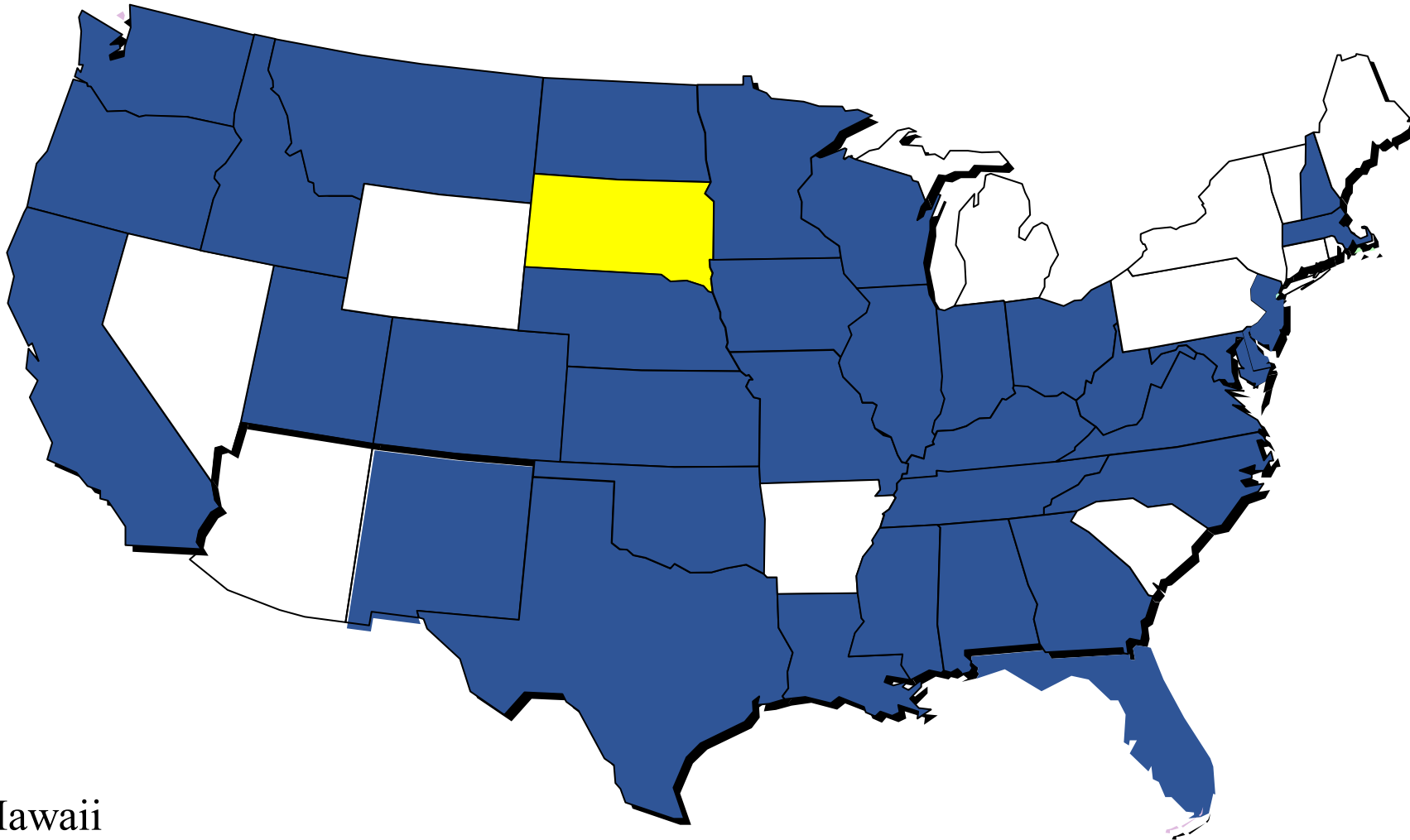
How is the Sale Conducted?

- An owner must hold the sale at the storage facility or, if the storage facility is not a suitable place for the sale, at a suitable location that is the nearest suitable location to where the unit property is being held or stored; or on a publicly accessible Internet website.
- The facility owner must hold the sale not less than 5 days after the advertisement.
- Page 5, lines 4-11
- Importantly, all occupants may redeem their property prior to any final sale.
- Page 5, lines 18-22

Online Auctions / On-Site Sales

- A trend is for self storage lien sales to occur online. Numerous websites conduct these sales for the self storage industry.
- Online sales expand the audience of potential bidders by allowing bidders to submit bids over the course of several days without attending a one-day sale in person.
- More bidders increases the likelihood of higher bids, with any sale proceeds going toward reducing the tenant's debt.
- However, the sale may also occur at the storage facility or nearest suitable location, too. Owners can choose the method that is best for their individual business.
- 36 states expressly allow online sales.
- 49 states expressly permit onsite sales.

Expressly allows online auctions



Also Hawaii

Disposal of Low Value Units

- The bill affords owners with the ability to dispose of all, or part, of very low value units.
- Most owners will elect to sell the unit, unless it is clearly filled with refuse or other worthless items, to attempt to recoup some of the debt owed.
- If the unit renter does not cure the default and pay the amount due by the deadline stated in the lien notice, and if the facility owner determines that it is not commercially viable to dispose of all or part of the unit property by public sale, the facility owner may privately sell, give away, donate, or throw away the unit property that is not commercially viable to dispose of by public sale.

Sale occurred, now what?

- After the sale, the bill outlines the order of priority payment from the proceeds obtained from the sale.
- Page 6, lines 11-21
- If excess proceeds remain, the facility owner must mail a notice to the unit renter that there are excess disposal proceeds and hold the proceeds for one year

Page 6, lines 25-29

- The bill requires storage owners to keep records for one year and provide access to those records to a former occupant.

Page 8, lines 1-4

Conclusion

- Self storage lien laws provide a non-judicial foreclosure process to address situations in which self storage tenants fail to pay their rent, and the storage owner must sell the tenant's property to satisfy the owner's lien for past due rents and other fees.
- The lien process is an infrequently used procedure, but it is necessary for the successful operation of a storage facility.
- A statutory lien law provides an essential framework and guardrails to protect storage owners and consumers.
- Alaska is the last remaining state without such a law.
- Now is the time to bring a self storage lien to Alaska.

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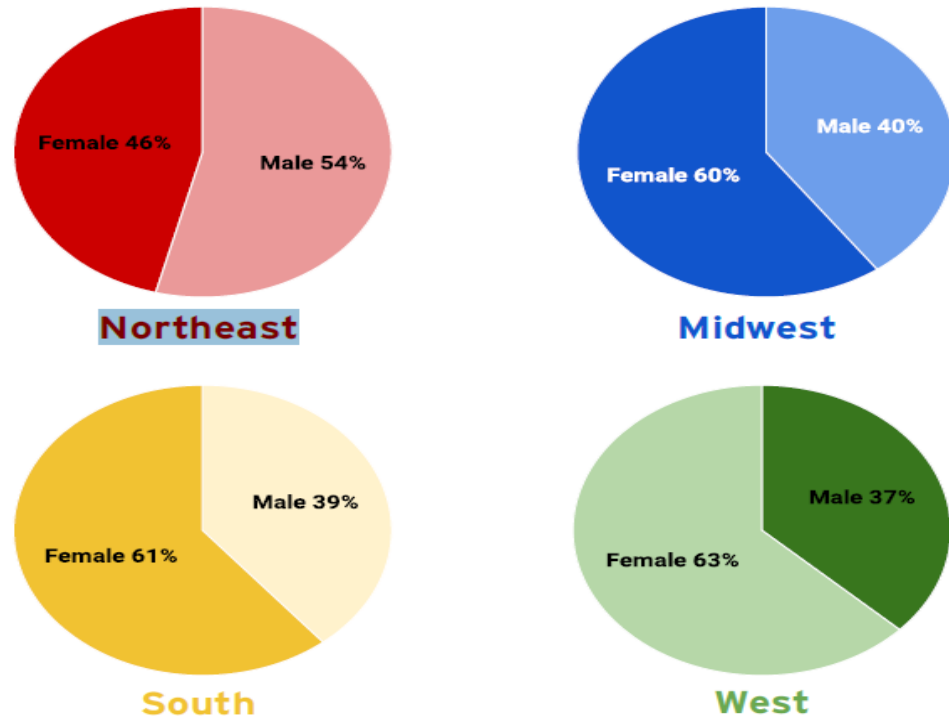
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Who are self storage customers?

(All data from SSA's 2020 Demand Study conducted by NAXION)

FIGURE 4-6:
Gender



- Nearly 1 in 6 Northeast and West renters have a college or post-graduate degree
- Just under 2/3 of renters in the Midwest, South, and West are female

■ Northeast
 ■ Midwest
 ■ South
 ■ West

FIGURE 4-7:
Education Level

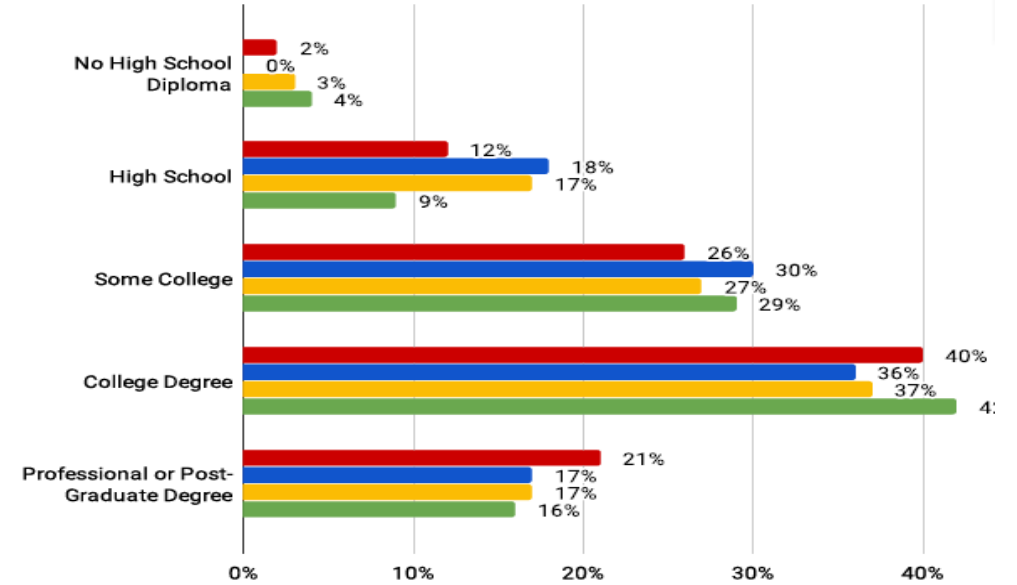


FIGURE 4-8:
Race

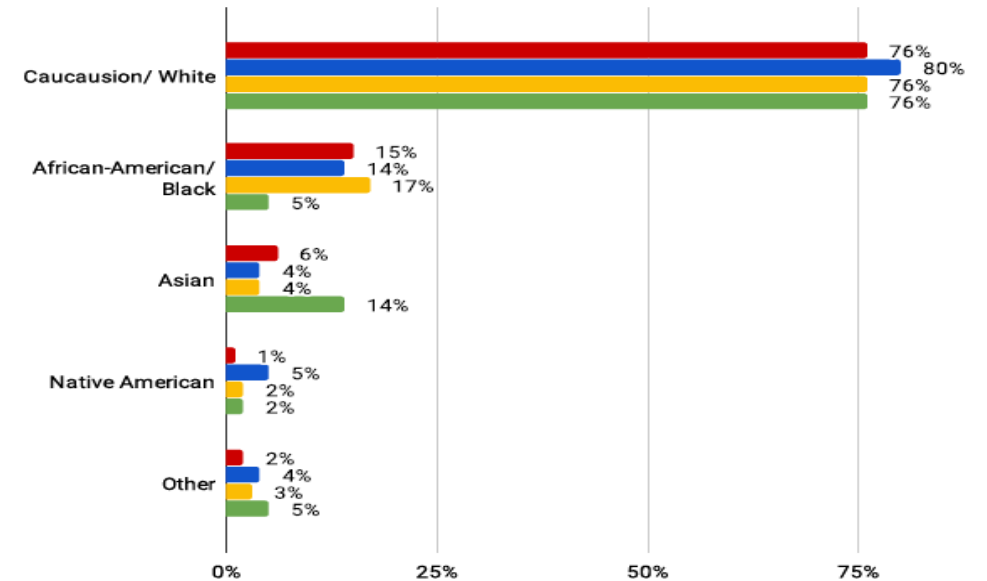
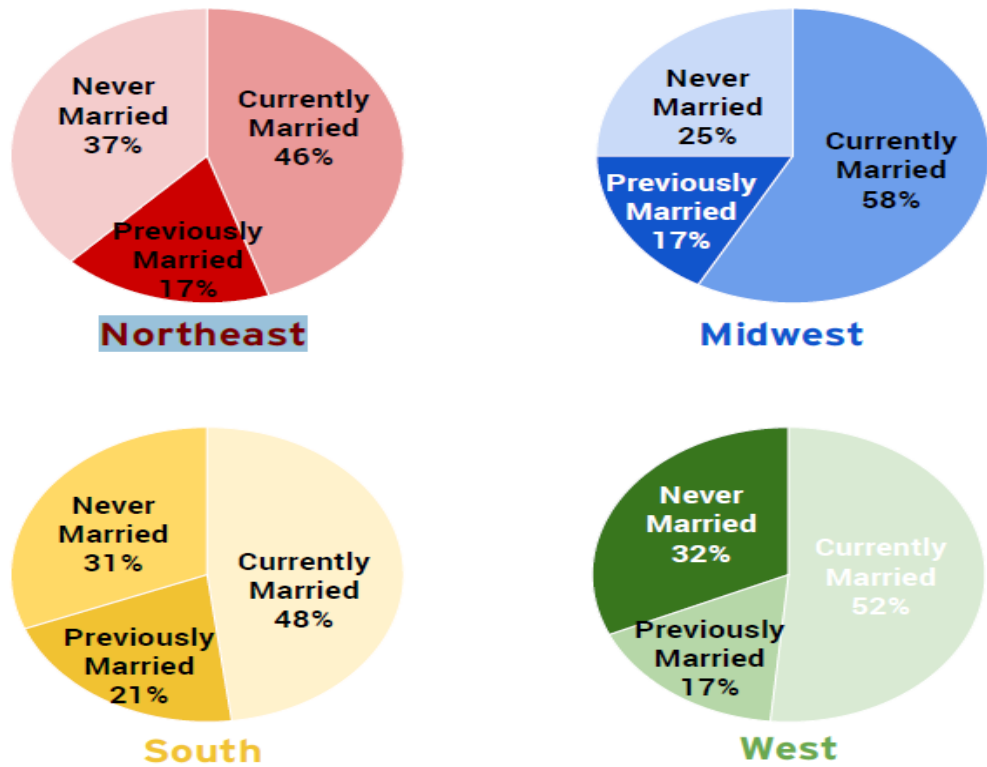
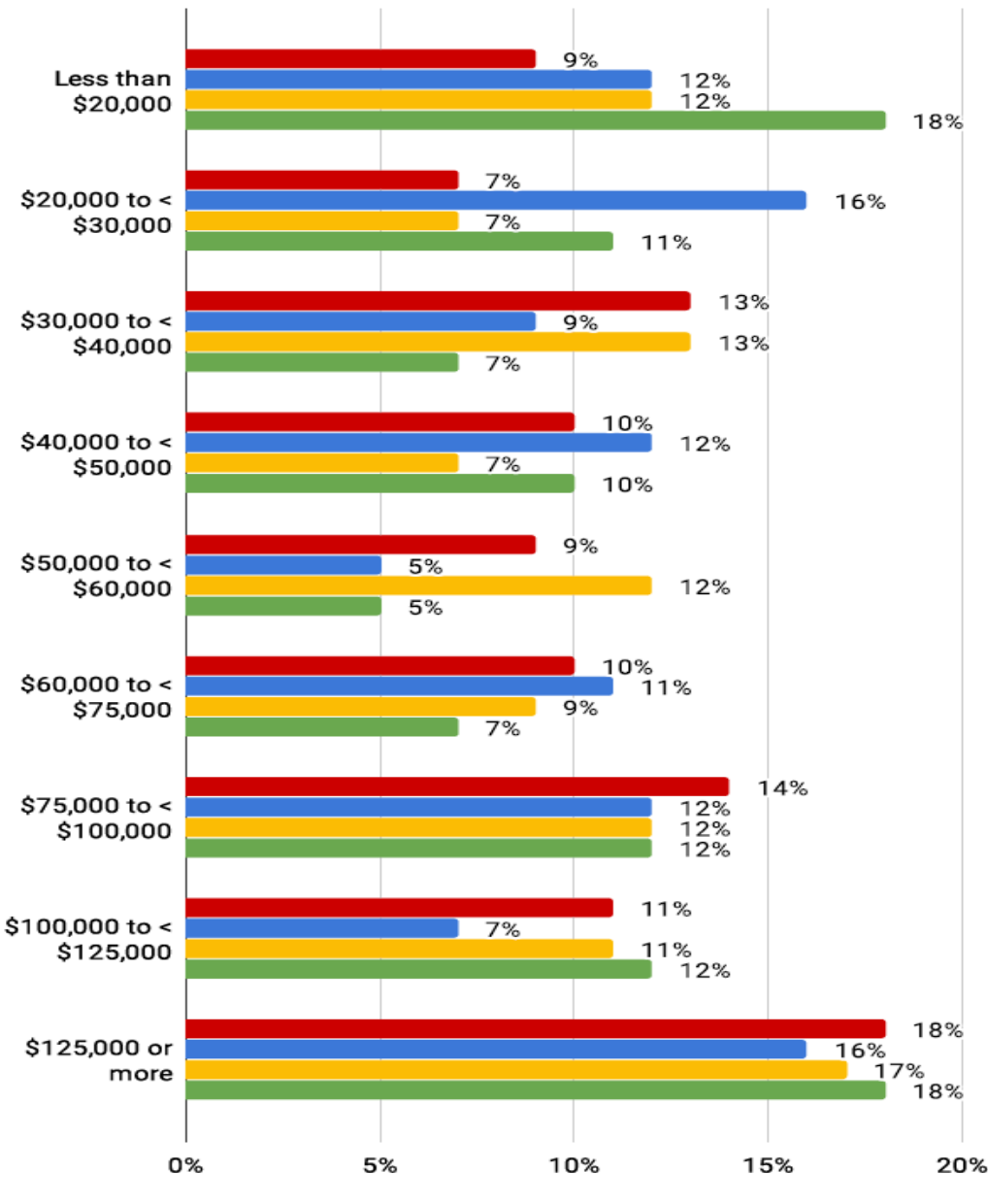


FIGURE 4-12:
Marital Status



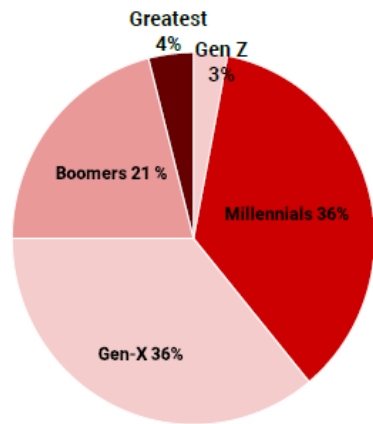
- Slightly more renters in the Northeast have never been married, compared to the other regions, though this number has decreased by 9% since 2017
- The number of households earning less than \$20,000 has increased by 6% among Northeast renters since 2017

FIGURE 4-13:
Household Income

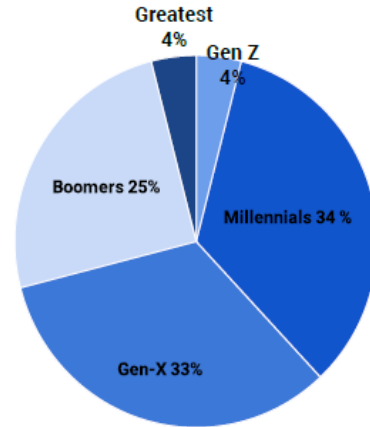


■ Northeast ■ Midwest ■ South ■ West

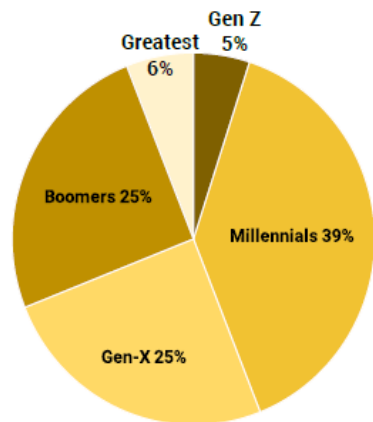
FIGURE 4-16:
Generation



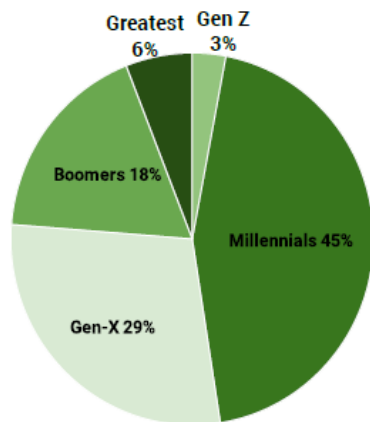
Northeast



Midwest

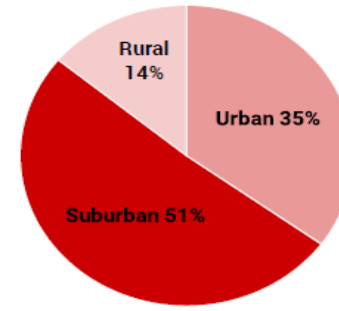


South

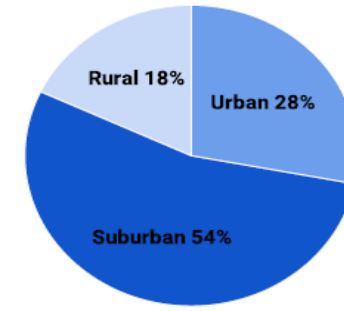


West

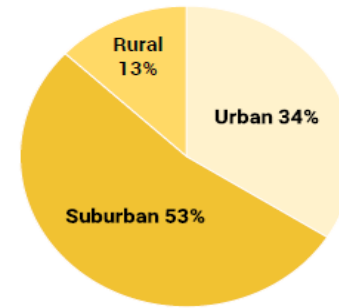
FIGURE 4-18:
Urbanization



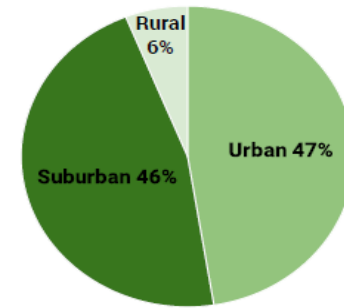
Northeast



Midwest



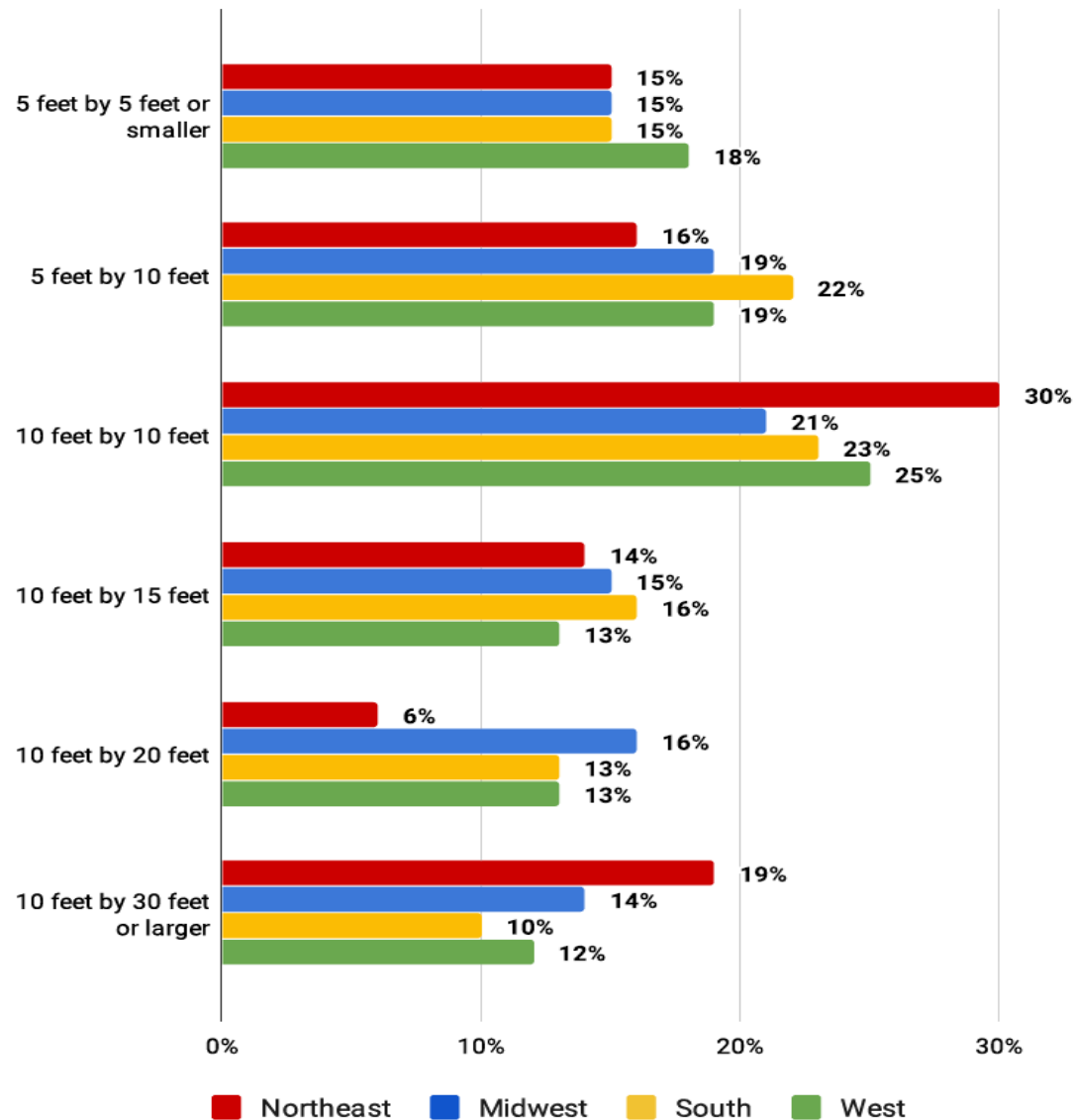
South



West

- West has the most urban renters, which is an increase of 9% since 2017
- Renters across regions tend to be fairly even across unit size, with the exception of Northeast renters - nearly 1 in 3 have a primary unit size of 10 feet by 10 feet, and nearly 1 in 5 have a 10x30 or larger sized unit

FIGURE 4-19:
Size of Primary Unit



WEST: Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming, *Alaska*, California, Hawaii, Oregon, and Washington