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April 14, 2023

The Honorable Mike Prax
Alaska State House of Representatives
Capitol Building
Juneau, Alaska 99801

Dear Representative Prax,

Global Federal Credit Union (Global FCU) appreciates your efforts to align all stakeholders in the consideration of HB 97 in establishing the first self-storage lien statute in the State of Alaska. As Alaska's largest consumer lender, Global FCU is regularly involved in situations that would be impacted by this bill. We would like to work with you and the supporters of the legislation to address the legitimate concerns of lenders so that all parties can have transparency, fairness, and the right incentives in circumstances covered by HB 97. Our concerns are outlined below, accompanied by recommendations. Note that we refer to the property contained in the storage unit as "collateral" as a general term for items in which a lender would have a secured and recorded interest.

- **Sec. 34.35.605 – Priority of Lien.** The language in subsections (a) and (b) impose an obligation on an otherwise first-position lienholder like Global FCU to fully satisfy a storage lien to protect its own secured interest. As currently written, a self-storage facility lien is superior to that of a properly obtained and perfected lien by a financial institution or lender. This creates both a super and a secret lien, a result that far outweighs the legitimate interests at stake. Such a result is unnecessary and fails to consider the universally recognized need for both lien priority and proper notice to lienholders. The first position lender with a recorded interest has taken the substantially more significant risk with respect to the collateral and followed all the required steps to put the public on notice of its lien. In the case of a properly perfected lien, the lender should remain in first position to recover the collateral and apply the proceeds to its loan, with remaining funds disbursed to lienholders second (and third and fourth) in line.

  *Recommendation:* at a minimum, the bill should require that lienholders receive timely notice of an action by a self-storage facility prior to any sale and be given the opportunity to pay reasonable storage fees to secure its collateral. This is not a heavy lift – lien information is publicly available for the precise purpose of placing the public on notice to avoid conflict and uncertainty in these situations.

- **No Limitation on Lienholder Responsibility for Charges.** The bill lacks language setting a reasonable cap on the maximum storage charges allowed, which can de-incentivize a self-storage facility to act in a timely manner. As currently drafted, a self-storage facility can delay taking action (intentionally or unintentionally) for an extended period of time secure in the knowledge that when it decides to act it will be fully reimbursed out of the proceeds of the sale of the collateral. This harms both lienholders and the consumer. Unbeknownst to lienholders, the collateral becomes increasingly encumbered and the consumer, who is likely already in financial straits, incurs compounding additional debt.

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*Recommendation:* a maximum cap of 60 days for accrued self-storage facility charges, which would include rent, labor, and any other fees permissible under the storage unit agreement.

- **Sec. 34.35.620 – Denial of Access; removal of unit property.** As currently drafted, HB 97 provides a limitation of liability for the self-storage facility to remove the collateral to create an available rental unit. However, the limitation of liability fails: (1) to consider that it may inadvertently insulate the self-storage facility from liability as a warehouseman, bailee, and from associated negligence of standards of care. (See UCC § 7-204. Duty of Care; Contractual Limitation of Warehouse's Liability), (2) to articulate standards for documenting the condition of the collateral, both at the beginning and the end of the removal process, and (3) to require notice to other lienholders before removal to potentially minimize charges.

  *Recommendation:* the limitation of liability should be conditioned on an articulated standard of care, potentially referencing other applicable statutes, which would include condition documentation requirements and a notice provision.

- **Sec. 34.35.645 – Good Faith Purchaser.** HB 97 enumerates a variety of steps to protect the interests of self-storage facilities, but provides no remedy, consequence, or protection for other interested parties in the event the self-storage facility violates any provision of the statute. While the intent may be to protect a true "good faith purchaser" it unnecessarily strips any need or motivation for a self-storage facility to follow the required steps established to protect all stakeholders.

  *Recommendation:* HB 97 should include consequences (penalties) for violations of its provisions.

- **Sec. 34.35.650 – Vehicle Title.** This provision requires that the Department of Administration transfer title to a purchaser at a sale. However, it does not address the impact of such a sale or title transfer on other lienholders or require notice to such lienholders.

  *Recommendation:* clarify that prior to title transfer, reasonable notice to all lienholders is required and that the purchaser takes title subject to all prior liens.

- **Sec. 34.35.655 – Proceeds of Sale.** Sales conducted by self-storage facilities are typically handled via an auction bidding process, some of which are online and the results of which can reflect numerous other factors impacting price beyond the value of collateral contained in the storage unit. In the absence of language that assures meaningful notice to other lienholders and without penalties for non-compliance, this process puts lenders at significant risk for complete losses, which will ultimately restrict credit to all consumers.

  *Recommendation:* at a minimum, prior to any sale, self-storage facilities should be required to provide notice to the unit renter and all known lienholders including:
  - an itemized statement of rent, fees, and charges;
  - a preliminary lien notice; and
  - a blank declaration in opposition to lien sale.

  The foregoing are commonly required safeguards in other storage lien statutes in other states.

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- **Omission of Servicemembers Civil Relief Act (SCRA):** The SCRA, 50 U.S.C. app §§ 501 et seq., and more specifically the SCRA section that covers storage liens (§ 3958) makes it explicitly unlawful to sell the belongings of any servicemember absent a court order.

  *Recommendation:* HB 97 should specifically reference and incorporate the applicable section of the SCRA. While most, if not all, Alaska self-storage facilities are aware of this limitation and take steps to ensure compliance with the SCRA, specifically citing it in the bill will add clarity and recognition of this important federal limitation.

In conclusion, while we understand and agree with the need for an Alaska statue that addresses self-storage facility liens, that statue should provide a framework that ensures fairness, which includes proper notice to all other interested parties and accountability for self-storage facilities. We appreciate the opportunity to present these concerns and are available to discuss at your convenience.

Sincerely,

Tim Sullivan
Government Affairs Manager
Global Federal Credit Union