



April 5, 2019

California Second District Court of Appeal

Ronald Reagan State Building

300 S. Spring Street

2nd Floor, North Tower

Los Angeles, CA 90013

**Re: Request for Publication – *Halliburton v. Stadium Properties, LLC*, No. B 284848**

To the Honorable Presiding Justice Bigelow, Justice Grimes, and Justice Stratton:

Pursuant to California Rules of Court Rule 8.1120, the National and California Self Storage Associations (SSA and CSSA) respectfully request that this court certify for publication its March 23, 2019, opinion in *Halliburton v. Stadium Properties, LLC*, No. B 284848. The opinion makes important contributions to self storage law and to landlord and occupant law. The opinion satisfies numerous criteria for publication. As explained below, the opinion advances interpretation and construction of several provisions of the California Self-Service Storage Facility Act (Business & Professions Code section 21700 et seq.) that “involve legal issue[s] of continuing public interest.” (Cal. Rules of Court, rule 8.1105(c)(4) and (6)). What is most important is that publication of this opinion will improve self storage owner compliance with lien enforcement procedures and reduce future litigation.

The SSA and CSSA are nonprofit organizations dedicated to representing the interests of the owners and operators of approximately 4,500 storage facilities in the state. The Associations provide their members with state representation in the legislative, judicial, and regulatory arenas, to

improve best practices within the industry. The SSA and CSSA, therefore, have a significant interest in the issues addressed in this court's opinion.

**I. The California Self-Service Storage Facility Act is the primary remedy that self storage owners use when occupants fail to pay rent. There are few published opinions providing guidance on the interpretation of that law.**

The California Self-Service Storage Facility Act (SSSFA) is the primary remedy that storage owners use when occupants stop paying rent. The statute provides the procedures that facility owner must follow from occupant delinquency to lien sale. While the statute is generally clear, this statute like most would benefit from judicial guidance. Few published appellate opinions interpret any of the enforcement provisions of the SSSFA. The only other appellate opinion providing procedural guidance is *Vitug v. Alameda Point Storage, Inc.* (2010)187 Cal. App. 4<sup>th</sup> 407. However, the opinion in *Halliburton* provides clearer guidance on several important issues.

**II. No other opinion provides guidance on the interpretation of Business & Professions Code section 21715.5 dealing with the imposition of late fees.**

Business & Professions Code section 21715.5 regulates the late fees that self storage owners may charge their occupants. The statute states when a late fee may be charged in B & P Code section 21713.5(a)(1): “(1) No late payment fee shall be assessed unless the rental fee remains unpaid for at least 10 days after the date specified in the rental agreement for payment of the rental fee.” The *Halliburton* opinion is the first to interpret the meaning of this section of the law. Publishing the *Halliburton* opinion can prevent future late fee litigation because it provides clarity on exactly when a late fee may be assessed.

**III. A monthly late fee is not the exclusive charge that a delinquent occupant may incur. The *Halliburton* opinion also clarified that storage owners may recover both monthly late fees and the costs incurred associated with occupant delinquency.**

The *Halliburton* opinion draws an important distinction between a late fee, which is a charge for the untimely payment of rent, and the self storage owner's right to recover the associated costs of enforcing the lien such as sending statutory lien notice, inventorying the contents of the space and advertising the sale. While the law seems clear on this point and the *Vitug* opinion provides some guidance on this issue, suits continue to be filed alleging that the charges described in *Halliburton* are "disguised" late fees. Publication of the *Halliburton* opinion will reduce litigation over this issue.

**IV. The lockout procedure was not illegal self-help.**

There is no published opinion that directly addresses the self storage owner's right to restrict a delinquent occupant's access to the facility. The *Halliburton* opinion answers a question that self storage owners have asked for over 30 years. Can delinquent occupant be required to check-in at the office before entering the facility and accessing the rented space? The *Halliburton* opinion answers this important question affirmatively. The *Halliburton* opinion also draws the important distinction between the rights of a landlord pursuing the unlawful detainer remedy and a self storage owner taking action to enforce its lien right under the SSSFA.

**V. Advertising the lien sale.**

*Halliburton* is the only California appellate opinion to review the publication timing requirements under the SSSFA. The final step in the enforcement of the self storage owner's lien is the advertisement of the lien sale. The advertisement of the lien sale must be published "once a week for two weeks consecutively." The *Halliburton* opinion provides storage owners with clarity on the meaning of the SSSFA's publication requirement. The interpretation of Business & Professions Code section 21707 provided in the

*Halliburton* opinion provides clarity on an important issue where facility owners could only guess at the timing of the publications of their advertisements.

## **VI. Conclusion**

The *Halliburton* opinion answers several important questions surrounding the imposition of late fees and proper enforcement of the lien provided by the Self-Service Storage Facility Act. Publication of the opinion will provide needed guidance on developing compliance procedures. The *Halliburton* lawsuit was a result of the lack of clarity on specific sections of the law, and publication of this opinion will bring clarity to both self storage owners and their occupants on exactly how the lien remedy is to be implemented.

Thank you for your consideration of this request.

Respectfully,



Ross Hutchings

CEO, California Self Storage Association



Joseph Doherty

SVP, Legal & Legislative Counsel, Self Storage Association