



Self-storage facilities: Know the law on delinquent rents and lien sales

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All sports have various rules that are obscure and rarely employed during a game. However, knowledge and interpretation of such rules can be crucial to the success of the team. During the 2007 season, Washington Redskins coach Joe Gibbs, a hall of fame coach called back-to-back timeouts in hopes of unnerving the Buffalo kicker before a field goal attempt in the final seconds of the game. A strategy referred to as "icing the kicker." However, Gibbs didn't realize that calling two time-outs in a row resulted in a 15 yard penalty which turned a difficult 51 yard field goal into a much easier 36 yard field goal. By the way, the field goal was good and the Redskins lost the football game.

Like most others, I often find laws that are equally as obscure in real estate type ventures. The self-storage industry has gained a significant amount of notoriety over the past few years as a solid investment vehicle and the New York Times has published many articles on the industry. Self-storage facilities provide individual lockable storage units (can be climate controlled) of all sizes for business and personal use. Property can be stored on a long or short term basis but usually not less than a month. The facility (lessor) and tenant (lessee) enter into a month-to-month occupancy/lease agreement and rent is usually due at the beginning of the month. Late fees, pre-pay discounts, move-in discounts are common in the industry but what happens if a tenant fails to pay for a substantial length of time? Most states have passed laws and such self-storage laws also typically outline the steps that can be taken to satisfy obligations for unpaid rent. It is crucial to fully understand these steps to assure that you are in compliance with the law.

The self-storage facility has a lien on the personal property (in the unit) for any amounts of rent and related charges and such lien actually attaches when the respective tenant is in default. In plain English, when the tenant is officially in default, the self-storage facility can try to recoup the delinquent rent by selling the personal property. The term default is either defined by the state or required to be in your occupancy/lease agreement. For example, you can indicate in your occupancy/lease agreement that you are in default if rent is delinquent for thirty days.

Each state's laws are different but generally they are trying to assure that the self-storage facility:

- * Provides ample notice to the tenant that they are in default and the intent to satisfy the lien by selling the tenant's personal property (in the unit) and recouping the delinquent rent and related charges. The content, format and delivery method of such notices are defined by the respective state's statute and must be followed exactly. For example, if the state requires letters to be sent certified with return receipt, then just don't send them certified only.
- * Gives the tenant sufficient time to react after such notice.
- * Verifies with the state if any other individual/entity has placed a lien on the personal property (such as a financing company) and also notifies them of their intentions.

* Advertises the pending sale of the personal property including time, place and manner of such sale.

* Allocates the proceeds from such sale in accordance with the state law. For example, assume that the proceeds of the sale exceed the delinquent rent and related charges. Many states require you to hold on to this residual amount for a specific period of time so that the ex-tenant has ample opportunity to make a claim.

Self-Storage laws regarding the sale of a delinquent tenant's personal property can be very confusing and setting up a process to follow the law can be difficult. To assure proper compliance and avoid unnecessary litigation, make sure to:

* Obtain a copy of your state's statute.

* Consult with the national Self-Storage Association and your state's Self-Storage Association.

* Contact the office of legislative research in your state to see if they have given any guidance on implementation of the statute.

* Obviously, consult with legal counsel.

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