



# QUESTIONS

## *from the Self Storage Legal Network*

*Each month SSLN partners Carlos Kaslow and Scott Zucker will select a question from a SSLN subscriber on an important self storage legal issue and provide their best advice on dealing with the problem.*

### **Question:**

*We have been in business for more than a decade. We've saved all our business and tenant files and believe it's time to dispose of some of them. Can you give us some time guidelines on disposing of old business records and old tenant records?*

### **Answer:**

The generally-recommended period for storing business and tenant records is at least six years. Part of this recommendation is based on IRS standards for audit purposes and part of the recommendation is based on the standard statute of limitations for certain causes of action that can be brought by tenants. However, you do need to retain every piece of paper that may be in your files for this long.

So, let's look at the business record keeping creation and maintenance process first. Keeping good records is very important to your business. Good records will help you monitor the progress of your business; help you better prepare your financial statements; identify the source of receipts for tax purposes; keep track of deductible expenses and properly support your tax returns. It is typically recommended that documents like vendor contracts, bank statements, cancelled checks, accounts payable and accounts receivable all are held at least six years. Other documents, like previous tax returns, should be kept indefinitely. Earlier returns help in preparing future tax returns and making computations if you file an amended return. The IRS audit limitation period is 3 years for standard review, and 6 years if you do not report income that you should report and it is more than 25 percent of the gross income shown on your return. There is no audit limit if you file a fraudulent return or if you do not file a return at all.

You must also keep records to verify certain information about your business assets. You need records to verify

the purchase price of the asset, to compute the annual depreciation and the gain or loss when you sell the asset. Documents for assets include the following: purchase contracts; sale contracts; records of the costs for any improvements or deductions taken for depreciation and all deeds and mortgages. Finally, you must maintain all records of employment for at least four years, including records of all employment taxes paid. Fortunately, many of these business and financial documents can be retained electronically on CDs and therefore can be stored indefinitely without taking up significant space.

As for tenant files, the six-year rule also holds true. However, there is generally more flexibility concerning the retention period. Most tenants rent space, stay several months and then vacate. Nothing out of the ordinary happens during their stay. These files are very different from tenants where lien sales have been conducted or a tenant has reported a break-in. We recommend that you retain tenant files where there was the report of an incident, such as theft, bodily injury, or a lien sale, for at least six years. You will need these records to defend against possible claims or lawsuits arising from such incidents.

Care also must be taken when you dispose of business or tenant records. There is always a potential for illegal use of any business or tenant records that include information about your tenants' bank accounts, social security numbers, checking accounts or other financial resources that could be used to gain access to those financial assets or to steal those identities. The best policy is to shred such documents and to permanently erase or destroy similar information maintained in electronic form. While these documents are being stored they should be kept safe. All stored business, financial and tenant records should be maintained in a controlled, locked location and access-limited. Electronic records containing sensitive tenant information should be password-protected and access-limited. ❖