

Your Own Legal Team

Carlos Kaslow and Scott Zucker weigh in on top legal issues.

By John Dunlap – Editor, SSA Globe

There are not too many people who think of lawyers as fun...or even the least bit entertaining. But the world of self storage is lucky to have two lawyers who, besides knowing virtually everything there is to know about law and self storage, are also clever, witty and downright enjoyable. When Carlos Kaslow and Scott Zucker come together for presentations at SSA conference and trade shows, the crowds are large and enthusiastic. And the Kaslow/Zucker Show ends up being both informative and entertaining.

Such will be the case again in September in Las Vegas at Caesar's Palace when the SSA convenes its Fall Conference & Trade Show. Kaslow and Zucker both appreciate how they work as a team to address the pressing legal issues in the industry.

But first, here's a brief look at how they ended up as the Self Storage Legal Network in the SSA.

"It all began with a job interview at Deans & Homer, an insurance underwriting company, in 1978," says Kaslow. "They were launching a new product called the Self Storage Policy—a package policy specifically designed for owners of 'mini warehouses' that were popping up in Southern California and other parts of the Sunbelt. While the self storage industry did not make a big impression on me, the company made me an offer I could not refuse: a four-day work week. This was irresistible to a first year lawyer at a litigation firm working six days a week."

Kaslow later had the opportunity to become involved in the Self-Service Storage Association (the name was changed a few years later to the Self Storage Association) during its early days. In the 1980s, the laws of self storage

were literally being created. In 1994, Kaslow started the *Self Storage Legal Review (SSLR)* which was an immediate success with over a thousand subscribers in just two years. In 1999, the SSA acquired the *SSLR*, renamed it the *SSA Legal Review* and Kaslow became the Association's general counsel.

For Zucker, it was all about easing from real estate and construction law in 1987 into self storage, which he took to quickly.

"One of the early development projects that I got involved with as a young associate involved a self storage facility," says Zucker. "I helped with the real estate development and construction issues and then, once it opened, the owner started asking a lot of questions about the laws surrounding operations. So I started doing the research about the lien laws and the insurance and employment issues that were unique to the business and began to understand how special this industry was. I started writing articles and attending meetings and soon became involved in some state associations in the Southeast. I was very lucky to start my self storage practice with the guidance of people like Anne Ballard, Carol Shipley, Mike Burnam, Steve Nehmen, Hardy Good and Brenda Scarborough. But mostly I have to thank Carlos and, of course, one of the first partners of the Self Storage Legal Network, Joe Joiner who passed away three years ago."

You two seem to work so well together in your SSA conference and trade show presentations. Why is that and how do you each differ in your approach?

Zucker: Carlos and I seem to come from different angles when we look at owners' questions. He has a tremendous amount of experience from the insurance side of the self storage world and I have spent the last 20+ years representing owners in defending tenant claims. So when we're asked questions, I always think that I look at the question as to how I would approach the issue if I was in court and had to defend the claim. I think Carlos looks at the business side of the operation. The two perspectives together really provide a broad-brush approach to helping operators with their tenant issues. It's really fun to do programs with Carlos. We both have a sense of humor and work well bouncing our comments off one another.

Kaslow: I think that Scott's take on this is exactly on point. We seem to agree on the big issues. We may differ



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on applications or in more nuanced ways. I'm always amazed at how consistent our answers on Self Storage Legal Network questions are. We each provide independent answers, but they are surprisingly similar.

What is the single most important legal issue facing the self storage industry right now?

Kaslow: Adapting to a changing legal environment. The state lien laws are changing; this year six states have enacted lien law reform measures. While they are beneficial to storage operators, they will need to adapt. Scott and I have filmed four videos that explain the changes in Colorado, Illinois, Tennessee and Texas that will be out soon. The changes in the lien laws were the result of state legislatures realizing there have been major changes in technology since the mid-1980s, when the lien laws were first enacted. Self storage operators will be able to use new ways of sending notice, such as email and advertising on the Internet. Storage operators will need to keep up with a changing legal landscape and make better use of the technology. One change that storage operators need to consider is integrating email and mobile technology as methods of communicating with customers. These are interesting times.

Zucker: On this one I certainly agree with Carlos. The most important legal issue in our industry right now is



this unprecedented movement throughout the country to update the self storage lien laws. This is the first time in the last 15–20 years that states are systematically approaching their state legislatures and requesting that their lien laws be updated to match existing technologies (like email and electronic advertising). It is significantly important that all states update their laws and not get left behind in this current industry-wide movement. The new legislation helps both operators and their tenants. Carlos has always said that it is easier these days to locate a tenant via email as compared to a mailbox—especially when it comes to certified mail letters (that no one wants to collect at the post office). Now, in many of the states, operators can notify their tenants via email. It's exciting news and updates the nature of self storage operations. I have to add that we're seeing another significant legislative change as well and that's with the legislatures' accepting the limitation of value provisions that operators have in their leases. Now, if there is a value limit, there are statutes which say that it's fair and proper to do so.

For the average single-facility owner or even those owning just a few, legal issues may not seem to be a prime consideration in running their businesses. Tell us why they should be concerned and what those immediate concerns should be.

Zucker: Unfortunately, the law consumes the operation of all businesses in the United States and Canada. Companies have to be aware of rules about how they advertise their businesses, how they pay their employees, how they choose to hire and fire employees, how they design their offices and buildings to protect the disabled, how they secure their properties, how they contract for services, what they use for rental agreements and the list goes on and on. So, if our world is built around what companies need to do to be "legal," they need lawyers or legal advice to make sure they comply with all of these laws. A self storage business is just as likely to be sued for a slip and fall as they are for a wrongful lien sale. So they need to remain educated about all of these legal traps and compliance issues. It's not easy out there these days.

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Kaslow: Scott is exactly right about the law consuming business operations in this country. The largest jury verdicts against self storage operators have been in wrongful lien sale lawsuits. The self storage lien is granted by statute and must be implemented by every storage operator as part of their collection procedures. The self storage rental agreement is a legal document and every customer executes one. It can have a significant impact on storage operator liability for customer claims ranging from a slip-and-fall to loss of or damage to stored property. These are just two examples of how legal concerns cannot be ignored. Self storage is a real estate business and the law permeates every aspect of the business. This is one reason that Scott and I make the *Self Storage Legal Network* available, so SSA members will have access to reliable legal information directly applicable to their business.

Tell us about the benefits and values, as you see them, in the Self Storage Legal Network.

Kaslow: The Self Storage Legal Network is a unique business information service. For a very reasonable annual fee, SSA members can have access to legal information that is not easy to get from other sources. Both Scott and I each have more than 20 years experience in self storage law. Over the years we have dealt with thousands

of operational problems confronting self storage operators. This allows us to respond to SSLN member questions with timely and practical advice on the operational problems they confront. What we try to do is provide one or more strategies to the storage operator for dealing with lien problems, tenant liability issues and other situations that have a legal element. The SSLN is a resource for storage operators and managers that they can rely on when they need it. We try to respond to calls and emails within one business day and our guarantee is to respond in two business days. The SSA has been the SSLN's administrative partner for almost a decade and it is been a very good relationship for both organizations.

Zucker: The concept works perfectly with self storage operators. There are so many issues that come up while running a self storage business that the operator would otherwise be stymied in their operations unless they had someone to turn to for some information as to how to handle the situation. So Carlos and Joe created the Network to allow a direct resource for SSA members to contact them for the immediate information. I joined a few years later and we updated the system with the SSA to provide for members to ask their questions via email. I can tell you that the email works because these days I can answer those questions at night from home, or during the day even if I'm traveling or in court. The bottom line benefit of the SSLN is risk management. If an operator

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has the information they need, they can make better decisions and avoid more problems. Hopefully that will keep the facilities out of trouble. Unfortunately, it's easy these days to bring a lawsuit—so sometimes no matter what a facility does, they can get sued. What makes the SSLN really unique is the expertise of the lawyers involved. I think we've seen everything—but Carlos has the grey hair to really back up the claim!

What is the strangest, most unusual, or downright perplexing case that you have had to deal with in self storage?

Zucker: The funniest cases involve those where people end up getting into trouble—but they blame the facility. Like the tenants who plug their freezers into a light socket or run extension cords into the hallways and then when the power goes out or the plug gets pulled and the food gets spoiled, they try to complain that they were paying for the right to use the electricity and the facility needs to pay for the food. But the best ones are when operators find tenants using their units as a place for romantic interludes and then, when they get caught, complain that their privacy has been violated. I have to laugh when I get a phone call from a manager standing outside of a unit and they don't know whether to interrupt and knock on the door or wait. I tell them to knock! Hey, it's not a permitted use of the storage space!

Kaslow: The strangest case I have ever confronted involved an apparently mentally ill woman who locked herself in a self storage space for over 40 days and lived. It appears that she jammed the door so it would not open more than two feet. When the manager discovered an unlocked door he put a company lock on the unit and had planned to get it repaired. This did not happen. The woman was very quiet (it appeared that she liked the darkness and quiet) and was only discovered when the tenant who rented an adjoining unit heard noises coming from her space. He came to his unit everyday but this was the first time he had heard anything. She had water and food in the space. What was most surprising was that she survived and that she sued the storage operator. The case settled for \$100,000. The facility's insurer concluded that this suit was potentially too dangerous to take to trial and settled for the \$100,000 policy limit.

The best use of a self storage space I ever heard was by a man who came to his space five days a week. He would spend around two hours in his unit then leave. One day the facility manager stopped by the space and noticed the man was sitting in an overstuffed chair with a beer on a side table and was reading. He asked the guy what he was doing in the unit. The man said, "I have a wife and five daughters who I love dearly, but this is the only place where can get some time to myself without distractions." ♦