



QUESTIONS

for 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 recently purchased an existing storage business. We have been reviewing tenant files and have discovered that about 30% of the rental agreements do not comply with the state lien law. We want to correct this problem. There are about 100 tenants involved and we realize this is going to take some work. What is the best way for us to update the customers who have the old non-complying rental agreements? Can we just send them a copy of the new rental agreement and state that it will go into effect in 30 days? Should we mail it by certified mail? Can we email it to customers who have provided email addresses? Do we have to get signed copies of the new rental agreement back from the tenants?*

Answer: Taking over a new facility is never an easy process and discovering that you have a number of rental agreements that do not comply with the state lien law is a significant problem. However, let's not overestimate the scope of the problem. Only tenants who are under the non-complying rental agreement and whose accounts become delinquent are affected. Even if you do not have a lien, you do have landlord remedies such as eviction available if one of these tenants fails to pay rent. Since the eviction process is a court procedure, it will be slower and more expensive than the lien remedy.

So how do you correct this problem?

Self storage facility operators are landlords who typically rent space on a month-to-month basis. Under general principles of real property law, a month-to-month tenancy can be unilaterally changed by giving the tenant 30 days advance written notice of the new terms. A shorter notice period may be used if provided for in the rental agreement. You do not need the tenant's consent to change the terms. The tenant either accepts the changes or can terminate the tenancy and vacate the premises. The written notice must actually be delivered to the tenant to be effective.

You can send the tenants with the out-of-compliance rental agreements a new rental agreement with a cover letter that states the new rental agreement will be effective on a specified date. That date must be at least 30 days from the date the notice is deposited in the mail plus a reasonable mailing time. Reasonable mailing time would be 5 or more days. You can send the change of terms notice by first-class mail, first-class mail with certificate of mailing or certified mail. The advantage of certified mail is that you can track the notice and establish the date it is actually received. In most states, delivery to the tenant's address is considered an effective delivery of the notice. You also asked about email. While we do not recommend that email be used (at least at this point) for sending the new rental agreements, it can be a very effective way to additionally contact your tenants in order to let them know that these changes are going into effect. Such additional notices are helpful if later a tenant disputes that they were not aware of the changes.

Keep in mind that the change of terms is not a negotiation and you do not need or even want to suggest in your notice that the tenant's consent is needed for the changes to be effective. However, we also suggest that you use all notices to your tenants as a marketing tool as well. Therefore the tone of the notice need not be harsh, and should be positive, i.e., "We are updating our facility and our forms." While most notices that are sent will be received and become effective on the date indicated in the notice, some will not. You can handle undelivered notices on an exception basis. One option would be to have pre-printed notices in the office with the new rental agreement. When a tenant who could not be given notice by mail comes to the facility, the manager can fill in the appropriate effective date in the notice form and hand the tenant the notice and the rental agreement. If the tenant will execute the new rental agreement, the changes will go into effect immediately. It is extremely important that you have clear records on those customers who have been given effective notice and those who were not. ❖