



# 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 a customer who is chronically late in paying his rent. As a result, his property has been scheduled for sale on numerous occasions. However, each time prior to the sale he always pays what is owed to stop the sale. We have spoken to him a number of times to see if there is some way he could pay rent when due. We would like our tenants to pay rent on time. However, we do collect substantial late fees and other charges from this customer. The problem is his erratic payment behavior is not good for our site manager's morale. Our manager finds the constant collection problems frustrating and wants to terminate the tenant's tenancy. We have a number of unrented spaces and would like to keep this customer as long as he is paying rent even if he is a slow pay. Are we creating potential legal problems by not terminating this customer and letting this conduct continue?*

### Answer:

You have summed up the problems created by a chronically-late customer very well. The chronically-late tenant can pose legal problems for a facility operator if the operator continually permits late payments, agrees to waive late fees or delays or stops the lien process when some payments are made. The conduct of the operator may be seen as creating tenant expectations that late payments are permitted and that the property will not "really" be sold. If you have customers who have a history of paying rent late, having their units placed in foreclosure, and continually having their lien sales cancelled, it could prejudice your right to eventually sell these tenants' units. Operators in this situation are at risk if they ignore their prior behavior and suddenly take a tough line on requiring prompt payments and hold a lien sale on a suddenly rigid schedule without exceptions.

You noted that the customer's payment problems are having a negative effect on the manager's morale. Most

errors that lead to wrongful sale lawsuits are human errors. A manager who has become frustrated with a customer due to repeated payment problems is more likely to make an error regarding such an account compared to one that only has an occasional payment problem. You should have a discussion with your site manager about this account and other problem accounts and additionally should schedule periodic meetings with the manager to discuss problem accounts. It is very important that the manager understand that his or her frustrations cannot result in precipitous actions. Delinquent accounts with long, complicated payment histories should be reviewed by someone other than the site manager prior to a sale. A fresh pair of eyes viewing a lengthy tenant account history is more likely to see problems with lien compliance than someone who has been directly dealing with the tenant and the account for months.

Whenever a facility operator faces a tenant with payment problems, the best approach is to not ignore the situation but to address it directly with the tenant. More likely than not, that tenant's payment problem will only get worse. An operator who chooses to ignore the problem will likely be left with a greater uncollectable balance than if he had approached the tenant to address the problem. So what are the solutions? An operator has the option to require its tenants to provide security deposits or can require the use of auto-payment plans (so that the tenant's credit card or bank account can be debited each month). If the tenant agrees to these options, at least the onsite manager will know that the ongoing rent payment is more secure. If the tenant cannot or will not work with the facility to resolve the operator's payment concerns, it may simply be time to end the relationship. The termination of a month-to-month self storage lease is not complicated to do. The facility operator only needs to deliver advance written notice to the tenant that the lease is terminated as of a specified date and that you will not accept future rent. ❖