



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 have a \$5,000 limitation of value in our rental agreement. We also have an addendum that allows the tenant to increase the amount. Under our current practice the manager can increase this to \$10,000. Beyond this amount the general manager must approve the increase and we require the tenant to show proof of insurance. If a tenant declares a stored property value over the limit set in the rental agreement are we potentially liable for up to this amount?"*

Answer: A value limitation placed in a self storage rental agreement is a contractual limit on the value of the property that a tenant may store. Such a limitation would read something like this:

Occupant agrees not to store property with a total value in excess of \$XX without the written permission of the owner. If such written permission is not obtained, the value of Occupant's property shall be deemed not to exceed \$XX. Nothing herein shall constitute an agreement or admission that Tenant's property has any value, nor alter the release of Owner's liability set forth in the Rental Agreement.

This type of provision is designed to give the facility owner control over the value of the contents its tenants may store in a single storage unit. Self storage facility operators do not inspect the property that their customers store. The tenant controls the type, nature and value of the property stored. This provision fixes the maximum value a tenant can store without the facility owner's permission. An owner may not want to rent to someone if he or she knows the tenant is storing \$500,000 worth of fine art.

If a tenant wants to store property with a value greater than the basic value allowed, usually between \$2,500 and \$10,000, this intention must be disclosed. If the tenant does not disclose his or her intention, the basic limit becomes an agreed maximum value regardless of the prop-

erty's actual value. There are many good tenants who need the flexibility of storing property with a value over \$2,500 or \$10,000. An owner may allow a tenant to increase the value to \$25,000 or even \$50,000, when there is a good business reason for doing so. Allowing a tenant to increase the value does not alter the release of owner's liability that the rental agreement should contain or the requirement that the tenants should insure their stored property. In most states and under most circumstances these rental agreement provisions will be enforced.

The value limitation is the last line of defense against a tenant inflating the value of his property after a loss. Recently, a number of states that have updated their state's lien laws have included statutory provisions that have upheld the use of such value limitations. The statutory provisions generally state that "If the rental agreement contains a limit on the value of property stored in the occupant's storage space, the limit shall be deemed to be the maximum value of the property stored in that space." The utilization of these statutory provisions have enhanced the enforceability of these provisions in response to tenants who may seek to claim amounts in excess of the value limits they agreed to in their leases. Remember, you are not required to increase the value limitation. You can set requirements for such increases such as the tenant providing proof of insurance. You can also refuse to rent to a tenant who intends to store property of a type or a value that makes you uncomfortable.

Keep in mind that a value limitation is not necessarily a limitation of damages. Its purpose is to provide the facility operator some protection in those situations where the non-liability provision would not apply, such as a wrongful sale of tenant property, or when a judge won't enforce the exculpatory provisions. However, depending on the actions of the owner or its managers in permitting the loss or damage to the tenant's property, the value limitation may not provide the ultimate measure of damages to which a tenant is entitled. ❖