



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: *With our climate controlled facilities, it seems as if our energy costs keep rising which directly impacts our bottom line revenue for the property. What are the economics of adding solar panels to our facility? Do you know if they are practical for self storage facilities? Do they add liability risks?*

Answer: There are substantial benefits to creating and utilizing solar power, including the fact that sunlight is free, solar production requires no ongoing fuel purchases to maintain the energy and solar energy does not pollute, unlike other energy sources. There are other motivators to considering the use of solar power for property owners, including the recognition that there are likely to be future electricity price hikes, the consumer appreciation of “green businesses” and now, more than ever, the growth of federal and state tax incentives.

Commercial solar development like that with a self storage facility typically involves an operator who purchases his solar power system outright, arranges for the installation and commissioning of the system and obtains the direct benefits of the energy created. By purchasing less power from the local utility, the operator saves on its energy costs and recovers the cost of investment over the long term. This is especially true with facilities that have a significant number of climate controlled spaces because internal energy needs will be greater. The operator may also create revenue from the excess energy that is produced. States have different rules concerning the sale of excess power or whether the excess energy can be converted into a renewable energy credit (REC) that is needed by utilities and other commercial property owners who need the credit to offset its carbon creation. In some states, commercial property owners like self storage operators have the possibility of offering their property (raw land and rooftops) to third parties for the development of solar energy systems. These third party arrangements allow property owners to purchase the solar power that is generated, but they can transfer the ownership, maintenance and operation of the system to a separate entity through purchase power agreements (PPAs).

To encourage private investment in renewable energy, federal and state laws have been passed to promote the installation and use of solar power systems. The legislative goal has been to create programs for the “distributed generation” of power. A “distributed generation” facility is a facility owned and operated by a customer of an electric service provider that produces its own electrical energy to offset the needs of that particular power customer. Within the last few years there has been equal movement within the majority of the individual states to support the development of renewable energy in both residential and commercial applications. The state laws have addressed not just tax incentives, but other issues concerning the interconnection between the generator and public utilities, the requirements for net-metering to support energy sharing and even laws regarding solar easements. These are all legislative issues that are vital elements to an overall strategy of supporting the creation and use of renewable power.

Federal and state tax considerations and the requirements imposed on power companies to purchase excess power are often key elements to the financial feasibility of the installation of a solar system. These issues should be discussed with your tax advisor and legal advisor prior to signing an installation contract. Do not rely on the representations made by the companies trying to sell you a solar roof system since these systems are not inexpensive.

There are some construction issues which must be addressed when considering solar panels being installed on building rooftops. Since most self storage rooftops have standing seam roof systems, solar installers have available to them clips that provide for the attachment of the panels to the rooftops without creating penetrations in the rooftop that could potentially cause leaks (of course detrimental to tenant’s property stored within the building). Load issues must also be addressed to verify that the addition of the panels to the roof will not affect the integrity of the roof system. Assuming the financial and construction issues are properly addressed, there is no reason why self storage properties should not consider the application of this energy source for its operations. ❖