



# 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 sold the contents of a delinquent space. The tenant's ex-wife came to our facility after the sale and told us that both she and her ex-husband had property in the storage space. Her phone number was listed on the rental agreement as an emergency contact. She claims that we never contacted her; however, our computer notes indicate that we did call her number and left a message indicating that the tenant had listed her as a contact and we needed to talk with him about his storage space. She says that the site manager knew that her property was in the space, and that she had informed the manager that she would pay the rent if it ever became delinquent. The manager does not recall this. The ex-wife is threatening to sue us if we do not pay her at least \$10,000. What should we do?*

**Answer:** The space was rented to the ex-husband, not to the ex-wife. The husband was your tenant; the ex-wife is not a tenant and you had no contractual relationship with her. As a general rule only the tenant may bring suit for the wrongful sale of property. In a recent California case the court dismissed the claims of a tenant's wife for wrongful sale because she was not a party to the rental agreement. The court rejected the wife's claim that because facility personnel had seen her at the facility and she had items in the space, she had a right to sue.

Your situation is similar and the ex-wife may be barred from bringing suit for the same reason. However, you indicated that the ex-wife was listed as an emergency contact. The ex-wife also claimed that the manager knew she was storing her property in the space and that she had told the manager that she would pay the rent if her husband did not. It is possible that a court could conclude that since she was listed on the rental agreement as a contact and the manager had actual knowledge that she was willing to

pay the rent if her ex-husband did not, that this gave her tenant-like rights. There have been cases where courts have extended the right to bring suit for wrongful lien sale to persons who were listed on the rental agreement as persons with access. The courts have concluded that the facility owner should have assumed that a person with access may put their own property in the space. It is less likely that a court would extend the right to sue to a person who is listed as an emergency contact. It is not reasonable to assume that a person listed as an emergency contact would be storing property in the space.

You also indicated that you called her at the phone number provided in the rental agreement. The computer notes establish that a message concerning the space (and indicating that her ex-husband needed to contact the facility) was left at her number. This is exactly the type of call a storage operator should make when trying to reestablish contact with a delinquent tenant and prevent a lien sale. It is not unusual for a facility to call every number and use all contact information available to reach a tenant before proceeding with a lien sale. Your effort to contact him through this emergency number should not be a basis for the ex-wife to now pursue claims against you.

Unfortunately, people and companies get sued often just because the right to sue is not restricted. However, based on your description of the events, it would appear that her claims would be difficult to prove unless corroborated by the manager. If you are certain that you followed your state lien procedures and that the manager did not know that she was storing property and would have paid the rent, any claim she brings could be easily defended. If she does sue, it is very important that you have insurance that covers wrongful sale claims. The necessary coverage is generally referred to as "Wrongful Sale" or "Sale and Disposal Legal Liability" insurance and is a liability insurance coverage that every storage operator should have. It is also important that you report the suit promptly to your insurer. ❖