



Take Advantage of Progress, Legally

By Carlos Kaslow and Scott Zucker – Self Storage Legal Network

Technological developments are not often associated with the self storage industry. The industry's success has been based upon a very simple business model that has a decidedly low tech appearance. However, the industry does appear to be going through its own technological revolution. The revolution is still in its early stages but is already having an effect on how spaces are rented, how monthly rent is paid and how legal notices are sent. The changing technology is even having an impact upon the law governing self storage liens. The adoption of new technology by storage operators is a positive development for the industry. However, new technology presents legal challenges that storage operators should not ignore. Storage operators may differ on the pace that they adopt this new technology, but the changes will certainly have a direct impact on all storage operators.

Some years ago security systems were rare in the self storage industry. Gate access controls, better locking systems, door alarms and video cameras were first used

in facilities in the late 1980s and early 1990s and are now common features at self storage facilities. However, the installation of security systems is not without legal consequences. While the adoption of this technology has reduced the incidents of break-ins and has created better customer environments, storage operators need to take care in how they advertise these new features. Operators who make the investment in these security systems obviously want prospective customers to be aware of these features. However, it is important that all advertising be limited to statement of fact. Advertising that the facility has "A 24/7 monitored video surveillance system" may promise more than the facility can actually deliver. Such advertisements can become the basis for both breach of contract and tort claims if the spaces are burglarized. Facility security is a very positive development for the industry, but operators need to be careful not to create unreasonable customer expectations based on how the systems are operated.

Security and Credit

A growing percentage of customers are paying rent by credit card. Both state and federal laws regulate this payment process. For example, federal law prohibits the issuing of credit card receipts that have the complete credit card number on them. Failure to comply with this requirement can be the basis for civil liability. Most credit card servicers are in full compliance with the federal regulations on what information may appear on electronic credit card receipts. But the law places the legal responsibility on the self storage operator if the printed receipts given to customers do not comply with federal law. Therefore it is crucial that operators be familiar with these laws if they intend to permit payment through credit cards or other merchant service providers.

Law Favors Email

Electronic mail has revolutionized business communications over the last decade. It is a fast, reliable and low cost method of communication and it provides self storage operators another method of contact with its customers. Self storage tenants typically are transient and their contact info may not always be permanent. This is especially true of military and student customers. Storage operators are therefore collecting customer e-mail addresses as part of the rental process to enhance their customer communication. However, effectively using e-mail raises many legal issues for self storage operators. For example, how will the parties use the e-mail? Can it be used for notification of rent increases, address changes or other changes in the terms and conditions of the rental agreement? The law has determined in some circumstances that e-mail is a proper form of written communication and can be used instead of U.S. mail by self storage operators. However, applying such changes to tenant communication may require some advanced operator planning. For example, storage operators who permit address changes at the facility website or by e-mail may want to develop security procedures to ensure that the address change is actually coming from the tenant. This may include setting up secure customer accounts on the facility website or verifying e-mailed address changes with the tenant before making them permanent.

One change that the operator should make before using e-mail is to specifically state in the rental agreement that the facility owner can use e-mail to send notices to the customer. It is also important to keep in mind that while e-mail may be used for most customer communications, it still cannot be used for sending statutory lien notices unless the legislature of the operator's particular state has authorized this method of sending lien notices. So far only Arizona and Michigan have agreed to permit self storage operators to send lien notices by e-mail. The legislature of both states recently enacted bills changing the existing

lien law which permit this method of notice. It is likely that in the coming years more states will follow and will also authorize lien notification by e-mail. However, for now, most storage operators must continue to comply with the statutorily authorized methods of sending lien notices which typically include sending the notices via certified mail or first-class mail with a certificate of mailing. That is not to suggest that storage operators cannot utilize e-mail as an *additional method* of sending lien notices. Experience demonstrates that delinquent customers often refuse certified letters. By also sending the lien notice by e-mail, the delinquent customer may actually read the notice. The cost is minimal and if the customer receives the notice there is a chance that the payment problem can be resolved without sale. Effective collections require that delinquent customers be aware that their property may be sold and an e-mail notice may get to the customer when mailed notices are returned. While in a majority of states, e-mail notices are not authorized, they may prove to be an effective way of opening a discussion with your customer about unpaid rent.

Kiosk Considerations

Kiosks are another technological development that could have significant impact on the self storage industry. These machines provide an on-site option for renting spaces, taking payments and taking care of other routine customer services. With kiosks, a self storage facility can meet many of their customers' needs while site personnel are helping other customers, on breaks or even away from the facility. Storage operators need to give some thought on how they want to deploy this new technology. A kiosk can provide a wide array of services to customers including renting spaces, taking rent payments and allowing customers to talk to service personnel if assistance is needed. However, some storage operators use these devices less ambitiously, mostly as a supplement to the services already provided by their site personnel. The choice on how such technology is used is typically left to the storage operator.

But again, for legal problems are to be avoided, the implementation of the service must be done with the customer in mind. Therefore, when putting a kiosk into service it is very important that customers have a clear understanding of what they can expect when they use the kiosk. For example, if a delinquent customer making a payment at the facility kiosk will not have immediate access to the space during business hours, this should be clearly communicated. A customer operating under a different assumption can create friction between the facility and the customer. Again, the technology is changing rapidly and systems are now available where a customer paying a delinquent bill at the gate can get their gate access code reinstated and even individual space electronic overlocking removed. When putting new technology into service it is

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important to let your customers know how they can take advantage of it and its limitations. Kiosks can also affect facility staffing needs. Kiosks can take some of the pressure off site personnel to be available to customers at all times during the business day. The automated system can give site personnel the opportunity for taking the legally required rest and meal breaks while the facility's customers may still be served. Facility owners who take advantage of this technology can meet their legal obligations under state and federal employment laws while keeping personnel budgets under control. Prior to implementing a work plan that takes advantage of site kiosks, storage operators should consult attorneys who specialize in management side employment law.

Self storage operators who are planning on making more use of the latest technological developments in the industry need to carefully plan their implementation. New policies and procedures will need to be developed. Even simple changes may require new internal procedures. Developing sound procedures that take advantage of the new technological developments will be a challenge to operators who determine that new technology is a sound investment. However, creating these plans will help prevent possible legal troubles that may arise if this new technology is used improperly or not in accordance with current law. ❖

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