



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 held an auction at our facility about a month ago. The buyer recently returned and demanded his money back plus his costs for hauling the property and disposal. He claimed that the property was not what we advertised, that it was a pile of junk and the good items must have been removed before the sale. He paid over \$1,000 for the space but claims we owe him \$2,500 and if we do not pay him, he will sue us. We announced at the auction that all spaces are sold "as is and without any representations as to the type, nature or quality of the contents." This is the first time something like this has ever happened. What should we do now? We have already sent the tenant \$215 which was the difference between the sale amount and what we were owed.*

Answer: It is unusual for auction buyers to return after a sale and demand their money back. However, you likely have some good defenses to the buyer's claim. First, the buyer knew this was a distressed sale when he purchased the contents of the space. He also knew that it was an "as is" sale without any representations concerning the property. These two facts will make it difficult for him to successfully bring a legal action against you on a breach of contract theory. The fact that the property was not worth what he hoped or less than he paid for it is not the basis for a lawsuit. In order to prevail in such an action, the buyer would have to prove fraud or misrepresentation and be able to show that you engaged in conduct that either would have led a reasonable person to believe the space had more valuable contents than it did or that you had removed items from the space after he inspected it. These are not easy allegations to prove in a self storage auction sale.

Claims by disgruntled buyer may become more common now that television shows like *Storage Wars* have swelled the ranks of inexperienced self storage auction bidders. This makes having sound auction documents more important than ever. We recommend that instead of just announcing the rules that storage operators have forms

for the bidders to sign. Operators should consider using a bidder sign-in form that requires all in attendance to provide their name, address, phone number and, when applicable, their resale number (for sales tax exemption). The sign-in form would also include the bidder's acceptance of the facility's bid rules as a condition of bidding. The other important form is the bidder rules. This form contains provisions stating that the items purchased are sold without warranty (which would have helped in this case), the form of payment required and the requirements as to when the property must be removed from the storage space or a space rented to store them. These types of auction documents are crucial for the protection of a self storage operator and these forms are now available through the Self Storage Association in a publication entitled *The Self Storage Collection and Lien Sale Handbook*.

Unfortunately, nothing can stop people from making unreasonable demands or from even filing lawsuits. However, by using and completing good auction forms, you will have proof that the bidders knew the rules of sale in advance and will be less vulnerable to such lawsuits. You also have other defenses available to you if the disappointed bidder brings his lawsuit. He will have to prove his damages. This means that the high bidder will have to prove exactly how he spent the \$1,500 in excess of the sale price he is demanding. Also if he cannot return all the property purchased he cannot collect the full sale price. You should have your inventory, photos of the contents and your advertisement of sale. This will establish that what was offered was essentially what he purchased. The bidder may have bid too much but this is a risk that participants take at distressed property auction.

Let's hope this complaint goes away. Operators should keep in mind that any time they sell a tenant's property they risk making either the tenant or the bidder. So if you're able to avoid a sale that is the best course of action. Strategies for resolution with delinquent tenants can also be found in the new SSA *The Self Storage Collections & Lien Sale Handbook*. ❖