



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 self storage facilities in Michigan and Wisconsin. In 2009 the Michigan legislature changed our lien law and in 2010 the Wisconsin legislature also made changes. We have been trying to implement the changes which seem very positive but want to make sure we are doing it right. Do we have to make the changes immediately or can we adopt them over time. Also do we need to change our rental agreement? Do we have to give tenants notice that the lien law has changed? Could you give us some help on this?*

Answer: This has been an important issue for self storage operators recently and could be even more important over the next few years. In 2010, five states enacted legislation that made changes to the self storage lien law. In the upcoming 2011–12 legislative session as many as 12 states could make modifications to lien laws. The Self Storage Association has an ongoing project to update and improve the lien remedy and is working with state associations to enact legislation.

When the state lien law is changed, the first step for storage operators is to get a copy of the bill and review the current law very carefully. Make a list of the changes that you will need to make to update your facility's rental agreement and lien procedures. You will probably want to put most changes into effect as soon as possible but not all changes have the same priority. The Michigan and Wisconsin lien bills are a good example of this. Each state made changes in the language of the rental agreement. The Michigan bill changed the statutory lien notice that must appear in every rental agreement. Therefore, this change was required to be made before the law's effective date. The Wisconsin bill, although positively affecting an owner's lien rights, did not require a prior change to the rental agreement before implementing the new lien remedy.

Operators must carefully pay attention to the specific wording that may be required in lien notices and in adver-

tisements under their new laws. If the law changes the information that must be included in the statutory lien notices, you will need to get those done before the effective date of the law. For example, California revised its lien law in 2010 and the law required that the Notice of Lien Sale be modified. This form *must* be revised before the law's effective date or the owner would be sending out a non-complying notice.

Most importantly, Operators will want to consider the changes as to *how* notices are sent and advertisements are published. These are some of the most significant legislative changes that are being seen in the new self storage laws. For example, under the change in the Wisconsin statute, self storage operators were given an *additional* method of sending their second lien notice. Under the prior law, storage operators were required to send their second lien notice by certified mail. The law was changed to give storage operators the option of sending the second notice by either certified mail or by first-class mail with certificate of mailing. Sending notice by first-class mail with certificate of mailing costs less than half as much as sending the notice by certified mail. But even though it may make sense to send notice by the new method, owners can continue using the prior method of mailing until they are ready to put the change into effect.

Are you required to provide tenants notice about the legislative changes? If the revised law requires that you make changes to your rental agreement, you must send your tenants advance notice of the new or revised rental agreement provisions. However, you would not have to inform your tenants in advance about the legislative changes in the wording of the lien notice or the method of mailing the notice. There is one exception to this: If your rental agreement states that lien notices will be sent in a specified way, for example by certified mail, you could not start sending the notice by first-class mail with a certificate of mailing until notice was first given to your tenants about the new method of delivery. ❖