

Briefly...

■ Scholarship Deadline

Applications for the SSA Foundation's Scholarship Program will be accepted from qualified individuals through May 15, 2010 for the 2010–11 academic year. All application materials must be submitted together electronically. Eligible applicants are employees (or employees' children/grandchildren) of Self Storage Association (national) direct member companies.

■ One Week Early

This year the SSA's Fall Conference and Trade Show at Caesars Palace in Las Vegas will be held Wednesday, September 1 through Friday (noon), September 3, 2010—the week before Labor Day weekend. These dates represent a change from the traditional SSA events schedule so that attending the conference will not conflict with the observance of the religious holiday of Rosh Hashanah. The SSA conference will revert back to its traditional dates following the Labor Day weekend in 2011.

■ Virtual SSA

Make sure to keep up with the SSA via our online presence. In addition to the SSA website (www.selfstorage.org), follow us on Twitter at [SelfStorageAssn](https://twitter.com/SelfStorageAssn) and become a fan of the Self Storage Association on Facebook. You can also check out past issues of the *SSA Globe* magazine at www.ssaglobe.org.



Handling of Sensitive, Abandoned Items Takes Shape in Legislatures

Financial struggles facing the country during the past two years have shed light on a growing problem for self storage operators; what to do with abandoned property that is too sensitive to hand over to the highest bidder. When business tenants store personal records in your facility, and then go out of business, is the self storage operator liable? If a tenant abandons weapons in storage, who is responsible? The SSA and state SSAs are working to ensure that the answer is not YOU.

This year, California and Maine have both enacted laws that cover the abandoned records dilemma, and both largely shield storage operators from recourse if care is taken in the handling of sensitive material. Then, on April 12, the Arizona Senate passed a much broader “protected property” bill. The measure provides clarity for not just private information, but for other items that cannot be auctioned during the lien process. The new law, which was expected to be signed by Arizona governor Jan Brewer in April, covers several classes of personal property that may be stored by occupants but may not be sold:

- Financial records, credit card numbers, credit files, account numbers and similar personal information of customers and clients gathered and maintained by a business.
- Legal files stored by a law firm, medical records stored by a medical practice, tax records stored by an accountancy firm.
- Pharmaceuticals. Only a licensed pharmacist may sell drugs.
- Alcoholic beverages. Only licensed dealers may sell alcoholic beverages, and even then the sales are subject to strict state regulations.
- Firearms. While in fact some guns may be sold, some weapons are prohibited from sale. A storage operator may not even know if a weapon is

See Abandoned Property, page 30

stashed within a unit, and upon finding it may not be able to determine if it may legally be sold. Moreover, at a public sale, the operator cannot be certain that the prospective buyer of a weapon is someone to whom he can legally sell a firearm.

Before the new law was established, selling protected property exposed the storage operator to significant potential liability, besides being extremely irresponsible. The existing self storage lien statute only authorized the sale of contents, not its destruction or other disposition. Thus, for the operator, doing the responsible thing exposed the business to liability.

This problem of disposition of protected property is in no measure the fault of the storage operator. The obvious sources of the problem are primarily companies in regulated industries, such as health care, financial services, accounting and law, which abandon business records containing customer and client personal information. Privacy problems arise only when such businesses do not fulfill their ethical and legal responsibilities. Likewise, the abandonment of pharmaceuticals by drug company representatives, and of firearms and alcoholic beverages by persons charged with their custody, are similar failures by those persons to fulfill their ethical and legal responsibilities.

The new Arizona law works to:

- Place the blame on persons or companies that abandon protected property in a self-service storage facility.
- Requires that any person or business that stores protected property in a self-service storage facility disclose that fact to the storage operator. Every self storage operator should be required to ask renters whether protected property will be stored.
- Prohibit the sale of protected property by a storage operator that has actual knowledge that a tenant has abandoned protected property, and require that in lieu of sale, such materials shall be destroyed or tendered to a suitable state or federal agency having purview over such things.
- Protect a storage operator from liability for destroying or disposing of protected property in the event of a default, as well as from liability to any tenant who abandons any materials that contain his or her own personal information.
- Protect the storage operator from liability for the sale or other disposition of protected property when the tenant has not disclosed that the rented space would be used to store such things, or if it cannot be readily determined that protected property may have been abandoned on the premises. It also provides that a buyer does not acquire title to such materials later discovered in a unit.

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The Arizona remedy was championed by the SSA and Arizona SSA, with funding provided by both organizations.

Abandoned Records Legislation

California and Maine have taken the lead in passing abandoned records legislation, and thanks to the active participation of concerned self storage operators, and their respective associations, both provisions generally protect self storage businesses. In January, after much input from the private sector (including the national SSA and the California SSA), the state implemented a law which ensures that the businesses that abandoned sensitive information are held responsible for any breach.

The new California law requires self storage operators to take care when they discover in storage units business files that may contain the personal information of a tenant's customers. The law specifically provides that a business that discovers that a tenant or customer has abandoned business records containing customer personal information may destroy such files without liability to any person.

The California legislature expressly declared that:

When records containing personal information are abandoned by a business, they often end up in the possession of a storage company or commercial landlord. It is the intent of the Legislature...to create a safe harbor for such a record custodian who properly disposes of the records.

A self storage operator who has knowledge that an abandoned space contains business files is under some obligation to take steps to determine if the files should be destroyed. So, if a space rented by a mortgage company is delinquent and the operator discovers the space contains boxes marked "customer application," the law imposes a duty to either return the files to the tenant who stored them or have the records destroyed.

But the operator has no duty to customers who store their own personal information in a storage space and would have little duty of inquiry when a space is rented by an individual and nothing indicates the space has a business use. A customer cannot simply abandon boxes that contain their own social security number or banking information and then claim the storage operator acted wrongfully by exercising their lien rights.

Maine Averts Burdensome Law

A new abandoned records law signed by Maine's governor in April will go into effect this summer and the final provision is very favorable for the industry. As proposed originally last year, the measure would have required self storage facilities to inventory each piece of information contained within an abandoned self storage unit regardless of whether or not a consumer or commercial tenant

occupied the unit. Compliance on such a proposal would have been extremely difficult and costly.

After the Maine SSA, led by Rhonda Hallett Pope, and the SSA worked with officials and legislators in the state, a more reasonable solution was approved limiting operator liability and only targeting business tenants. Facility operators can now simply destroy the information without recourse. The law reads in part:

When the operator has a reasonable belief that the leased space contains personal information relating to clients, customers or others with whom the occupant does business, the operator may not hold a lien sale of the personal information and may destroy the personal information without liability to any person.

Privacy legislation is rapidly changing the obligation that businesses have to protect customer information. The Self Storage Association is working to make sure that legislatures develop reasonable regulations that do not adversely affect self storage facility operator lien rights. ❖

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