

When Money's Tight, People Fight

Mitigate legal risks with preparation.

By Laura Williams-Tracy

While you can't always anticipate an accident or break-in on a self storage property, how well you've prepared for its likelihood is a measure of the responsibility you'll take for the misfortune.

Risk is all around us—from thieves looking to break into your facility to employees who break the rules. With the economy continuing to limp along, people who believe they've been harmed financially are more likely to make claims against your business to recoup their loss. Almost all risks can be mitigated, either with better security systems, better insurance policies or more thorough human resources policies.

"You know the saying, 'When money's tight, people fight,' and that's what we've seen," says Scott Zucker, an Atlanta, Georgia attorney with Weissmann, Zucker, Euster, Morochnik, PC, specializing in the legal aspects of the self storage industry.

An uptick in tenant claims dealing with disputes of all types means self storage owners and operators should carefully review their security measures and operating policies to ensure they are minimizing their own liability when unfortunate events happen.

A thief breaks into your storage facility and gets away with tenants' belongings. Are you at fault?

The answer to that question goes to what was foreseeable by management, Zucker says.

"If you are operating in an environment where there have been lots of break-ins and criminal activity around you and do nothing to protect your tenants, then you could be held liable," Zucker says.

Taking Steps to Secure Property

In general, operators should take steps to secure their properties to the common standard of surrounding businesses. If all other self storage properties have gates, sophisticated entry systems and extensive lighting and your facility does not, you may be considered liable for not anticipating the threat of theft, Zucker says.

"Technology has really made it opportunistic for operators to find solutions to their problems without that much cost," Zucker says. "Keeping up with technology and security not only improves the marketability of your property, it also lessens the potential for liability."

Failure to maintain security measures can get owners into trouble too, Zucker says. Knowing that there's a hole in the fence or that the gate isn't working properly and putting off repairs can leave your business open to liability for problems that arise while security systems are compromised.

Tenants become your customers, in part, because of representations you make that the security systems are in place and will be operating during their tenancy, says Zucker. If the security systems are down and an event happens, the tenant can argue they didn't get the benefit of those systems.

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"I've seen so many of these situations, and the break-in always seems to happen when the gate is down," Zucker says. "The gate being down may have nothing to do with the break-in, but it looks bad."

The best advice, Zucker says, is to carefully monitor your operations and routinely check perimeter fencing, lighting and other systems to ensure they are in working order.

Self storage facilities are also vulnerable to security threats from within.



"The reality in self storage is bad guys are either going to get caught or they are not going to get in."

~ Scott Zucker

While most employees are a big part of most facilities' success, employees who commit crimes—whether breaking into units, opening units for lien sales and picking what they want, or getting into physical altercations with tenants—can create liability issues for owners, Zucker says.

The threat of liability for negligent hiring motivates most owners to conduct criminal background checks on new employees. If there's no criminal history but the employee does wrong, Zucker says owners might still hold some

liability but having done the background check makes them less liable for punitive damages levied by a jury looking to teach the self storage owner a lesson.

"There's a difference between direct damages associated with an employee's actions and punitive damages to act properly," Zucker says. "Punitive damages are generally not covered by insurance."

Dealing with Tenants

Of course, tenants who suffer a loss will almost always believe the self storage operator to be liable. Zucker recommends owners and operators approach the situation with caution and be ready to deal with it.

Under self storage non-bailment law, self storage owners and operators do not take care, custody or control over tenant goods, Zucker says.

"Self storage operators simply rent space suitable for storage," he says. "This is different from warehouses which take possession of goods, store them and return them."

If goods are damaged in a self storage unit, Zucker says operators are generally not liable because of non-bailment. Rental contracts should specify this relationship.

Zucker says operators should always encourage tenants to purchase customer storage insurance, or CSI, for the contents of their storage unit.

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Likewise, Zucker says, owners and operators should ensure they are covered by a customer goods legal liability (CGLL) policy which will cover claims arising from tenant claims.

“It’s a separate rider called CGLL which will defend you if a tenant sues you for theft or loss of property and you are found liable,” Zucker says. “If you go to your general insurance carrier it’s unlikely they will have a CGLL or know to suggest it to you. That’s why it’s important to work with an insurance company that’s involved with the self storage industry.”

Despite an increase in claims for damages, Zucker says claims for storage break-ins have actually decreased due to advancements in security measures.

“The REITS led the way in adding security with nicer, bigger and brighter facilities,” Zucker says. As other operators worked to keep up with the big outfits, self storage properties evolved into more secure settings.

“Self storage properties are so different from 30 years ago in terms of what people expect self storage facilities to look like. It has helped their marketability and reduced their liability. The reality in self storage is bad guys are either going to get caught or they are not going to get in.” ❖



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