

Three Alternatives to Lien Sales

By D. Carlos Kaslow

When customers do not pay rent most self storage operators rely upon the state lien law as their primary collection tool. If the delinquency persists the tenant's property is sold to satisfy the owner's lien on rent and other charges. The lien remedy is especially effective when self storage operators lose contact with their customers. A lien sale is the only practical alternative when the delinquent tenant is no longer at the last known address, telephones are disconnected and emails are ignored.

Self storage operators also deal with delinquent customers who still communicate with them. A lien sale may be the best alternative when a delinquent customer simply does not have the resources to pay back rent and charges. However, the lien remedy is not the self storage operator's only option and there are two problems with lien sales. The first is that the property left in the storage space may have little or no value and the sale may generate little or no revenue. The second is that there is always a risk to the operator in selling a customer's property. Even when the storage operator does everything right, a tenant whose property has been sold can bring a suit for wrongful sale. While the owner may win a wrongful sale suit, defending them can be costly and time consuming. Here are three strategies for resolving payment problems without sale.

Sale in Lieu of Foreclosure

A sale in lieu of foreclosure is the purchase by the self storage operator of the delinquent customer's stored property for all or a portion of the outstanding balance owed. A written sales agreement must be executed by the customer that relinquishes title to the property to the self storage facility. Once the sale is completed the contents of the customer's space belong to the storage operator and may be disposed of in any way the operator chooses. For example, the contents could be included in the next lien sale; the operator could sell individual items on eBay; or the owner can give the property to a charity. The property belongs to the facility operator, who is free to deal with it however he or she chooses.

The advantage of this method is that the delinquent tenant has voluntarily relinquished his interest in the property and there is little risk of subsequent litigation. It also gives the facility owner greater freedom of action in how to dispose of the contents than is provided on the state lien laws which in most situations require the property to be sold at auction.

Come Get Your Property

Another option for the owner is to simply permit the delinquent customer to pick up his property. This is not something an owner would do early in the collection process. It is an offer that is made when all other collection efforts have failed and a sale seems likely. Facility owners should always keep in mind that the value of a self storage lien may be very little when the property is offered for sale. Permitting the customer to come pick up the property will not have a significant impact on revenue, but it does empty the space and eliminates the possibility of a subsequent wrongful sale lawsuit. The owner can permit the delinquent tenant to pick up his property without waiving his right to collect on the outstanding rent. This can be accomplished by sending the delinquent tenant a letter 15 days before the sale. The letter would offer the delinquent tenant the opportunity to pick up the property while the owner specifically retains the right to collect rent by any other remedy available by law. This could include a suit on the rent in small claims court or simply turning the rent claim over to a collection agency.

See *Lien Sales*, page 23

Annotated STATE LIEN LAWS


California • Colorado • Florida • Georgia • Illinois • Louisiana
Maryland • Michigan • New Jersey • North Carolina • New York
Pennsylvania • South Carolina • Utah • Virginia • Washington


Self Storage Lien Law booklets are now available for SSA members

The Lien Laws are broken down by section with a
Conclusion, Lien Sale Checklist and Notice of Lien Letter

Extensive comments are provided by the
Self Storage Legal Network attorneys:
D. Carlos Kaslow and Scott Zucker

Stay tuned for
additional states





Members: \$20
Affiliate Members: \$25
Not-Yet-Members: \$30
Bulk pricing available –
call 703-575-8000 for details

Even if the tenant does not respond to such an offer, it has a benefit to the storage operator. Imagine that a jury is reviewing a lien sale file during deliberations. Included in among documents is a copy of a letter to the delinquent tenant giving him the opportunity to pick up his property without paying the outstanding rent. Even if there is a defect in the lien sale procedure, a jury will be less likely to believe the property had great value (Why didn't he come get his stuff?) and unlikely to award punitive damages (The facility owner gave him the chance to get his property without paying anything.). The owner's position is better no matter what action the delinquent tenant takes.

Partial Payment and Leave

The last method is to simply offer the delinquent tenant the opportunity to make a partial payment on the rent and pick up his or her goods. This offer would typically be made when the rent is just a month or two past due. It allows the facility owner to avoid spending a lot of time on collections that may never be fruitful. One facility operator gives their delinquent customers a chance to pay 50% of what is owed, provided the tenant immediately vacates the space. If the offer is accepted revenue is realized, a

lot of work preparing the space for sale is avoided, the space is returned to rentable status, and there is no chance of a wrongful sale lawsuit. Keep in mind that the owner only accepts the partial payment if the delinquent tenant vacates the space. This option is designed to end a relationship with a customer who is having payment problems.

Lien Sales are Risky

All three options are designed to achieve a voluntary resolution of the delinquent customer's payment problem and avoid the necessity of a lien sale. There is a litigation risk with every lien sale and these techniques eliminate that risk. While few self storage lien sales result in litigation, when something goes wrong the cost to the facility operator can be very high. On April 14, 2009, an Illinois jury returned a \$750,000 verdict (\$5,000 for the property and \$745,000 in punitive damages) against a self storage operator for wrongful sale of property. The judge reduced the total verdict to \$462,429. Such verdicts are rare but they do occur and are reason enough to avoid conducting lien sales when an alternative resolution is possible. Unfortunately, many delinquent tenants will not take advantage of such offers and the storage operator will still have to conduct a lien sale. However, it is an effort worth making if the facility owner is able to resolve payment problems without sale. ❖



LOCKE Acquisition Group
Expert Transaction Advisors

We Get Deals Done – Regardless of the Economic Environment

- Over ten off-market properties under contract or LOI
- Separate transactions with various buyers and sellers
- \$180 million closed since July 2008

Call today to discuss your property or the current state of the industry

Call: (716) 633-3271
www.lockeacquisition.com