

Facility Operators: How Intrusive Can You Be?

By Gary Camp

Whether it's a liquid oozing out of a unit, abnormal behavior that makes you suspicious, or even a strong odor coming from a unit, you must be careful not to jump to conclusions. Facility operators certainly must protect their properties, but in order to enter a unit, the situation typically must be classified as an emergency or maintenance issue.

It's All in Writing

"The facility owner's rights are derived from their lease agreement," said Scott Zucker, partner with Weissmann Zucker Euster, P.C., in Atlanta. Zucker acts as legal information counsel for the Self Storage Association.

"Within the lease agreement there is a provision typical to self storage rental agreements, a right-to-enter clause, which would set out [the owner's] right to enter for the purpose of maintenance, for the purpose of emergency, and other reasons that they could identify in the agreement," Zucker said. "Their rights are derived from a contractual agreement between themselves—the landlord and the tenant—to enter the space."

Some forward-thinking rental agreements include language that protects facility operators in regard to police searches and illegal activity. Well-written rental agreements might state that the facility retains the right to provide police with information concerning all of its tenants, and that the facility operator has the right to enter the unit where it is believed illegal activity is occurring inside.

"Typically, in a situation where they think there is illegal activity going on, or something suspicious or dangerous, that's when they call the police," said Zucker. "The police will investigate, and if they believe there is probable cause they'll get a search warrant and they'll go in the unit. We don't ever want to recommend to managers to enter into the unit to investigate something suspicious—that is for the police to do.

"There is no privacy violation by calling the police and saying there is some weird activity going on, coming-and-going in the middle of the night, strange deliveries," said Zucker.

The police will investigate and determine if there is cause for concern, and if necessary, they will execute the proper

search warrants to be able to lawfully gain access to the unit in question. Proper documentation is necessary for anyone, other than the tenant that signed the rental agreement, to gain access.

"If they don't have the right paperwork, I don't care who they are, we can't give them any information or let them in," said Joe Stalloni, site manager with Sentinel Self Storage, located in Wilmington, Delaware. Sentinel Self Storage operates 11 properties in Delaware and Maryland.

"Now if they come in and they have all the proper paperwork, then we can do whatever they want to do. Personally, I would call our corporate manager, and discuss my concerns. I wouldn't personally call the police and say 'I think this guy is dealing drugs here.' I'd call the corporate office and let them handle it with the authorities."

Commonplace in rental agreement addendums are passages that clearly state what you can and cannot store. This also helps to avoid potential issues in the future.

The standard addendum on Sentinel Self Storage agreements includes verbiage that says: *You are agreeing not to store unusually valuable, sentimental, or irreplaceable items, such as heirlooms, jewelry, paintings, collectibles, or personal identification papers. In addition, items can not be stored for health, safety, or security reasons: Perishable foods, explosives or flammable items, items that can give off noxious odors, live animals, odors that can leak, spill or break out of their containers due to extreme temperatures, and any illegal or stolen property.*

A well-written rental agreement can provide the necessary blueprint for avoiding litigation in the future.



“We have the right to enter a unit at any time if we feel there is illegal activity,” said David Dixon, vice president of development for Universal Management Company, an organization that manages 43 facilities around the U.S. “We also post in the office a notice allowing us to inspect any vehicle as it enters the property. Normally, we notify customers prior to any entering, but our rental agreement allows entry at any time. Obviously, we do not like to do this, but we can.”

Maintenance and Emergencies

When a maintenance issue warrants immediate attention, it still makes sense to always bring along a witness, properly document and photograph the damage and building issue, and make sure that the reason for entering the unit is a valid one. The tenant should be contacted, if time permits, and asked to come let the facility manager in to the unit to repair the problem. But if the issue needs to be addressed immediately—such as a leaking roof or burst pipe—there isn’t always time to wait for the tenant to arrive.

“If a tenant doesn’t cooperate, and they have to proceed with the maintenance work, they will go in the unit and take a picture, have a witness with them, and proceed with the repairs that have to be done,” said Zucker.

What about the situations that can be deemed “emergencies?” And we’re not talking about the disgruntled girlfriend that wants access to her boyfriend’s unit (the answer should be “no”). What about someone that truly needs access to a unit for a legitimate emergency reason?

Unless someone, or something, is in immediate danger, proper verification and a signature should be obtained before allowing anyone to enter a unit.

A typical clause in a rental agreement will include verbiage that clearly grants access in an emergency: *“If there is an emergency where property, the environment or a human life is, in the opinion of the Owner, threatened, the Owner may enter the Space using all necessary force without the written consent of the Storer, but the Owner shall notify the Storer as soon as practicable. The Storer consents to such entry.”*

In most cases, it just requires written permission from the tenant to grant access to a third party. A notarized document is ideal, but a signed document or a fax can even work. Although a facility manager can easily say “yes,” and grant access to a unit, it’s best to always err on the side of caution, and avoid potential liability issues down the road. ❖

This article first appeared in the October 2008 issue of the SSA Globe.

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