



QUESTIONS

from 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:

Our facility was hit by a tornado and one of our buildings was partially destroyed. Contents are now spread all over the property. The tenants with spaces in the damaged building want to enter the facility and remove their contents. We are not sure how safe the structure is; an engineer will be coming out to do an assessment and determine how best to repair it. Can we let the tenants onto the facility? We are worried about someone getting injured. Also, how do we respond to tenant claims against us for the loss of their property?

Answer:

Every facility should have insurance in place that covers damage to buildings for assorted weather risks like hurricanes, tornadoes, hail and other storms. In addition to coverage on buildings, storage operators should have coverage for loss of business income while the building is being repaired, plus liability coverage that will provide a defense and indemnity against tenant claims for loss of or damage to stored property and for bodily injury.

Whenever buildings are damaged at a self storage facility it is likely that tenant property will also be damaged. Affected tenants should be notified as soon as possible that the facility has been struck by a tornado. Notice should be made by phone, by written notice to each affected tenant's last known address and by email. The notice should explain what occurred at the facility and when the facility will be accessible so that the tenants may claim their goods. You can use your facility website to keep tenants updated on developments, such as when they can come on the premises. The written notice should alert tenants that they may want to notify their own insurance company that a loss has occurred.

Be certain that your facility is safe before permitting tenants on the premises. Initially, the facility may be closed by local emergency personnel, such as the police or fire department. You are wise to have your structural engineer perform an inspection before allowing tenants to enter. Once the facility is deemed safe, you will need a plan for giving customers access to the damaged parts of the facility. A facility that has extensive damage and is undergoing repairs can be dangerous. Tenants must be advised of the danger and that they enter the premises at their own risk. You should have each tenant acknowledge the risks in writing before entering. If a tenant is injured onsite, your premises liability insurance will provide emergency medical coverage—and a defense and indemnity if a lawsuit for bodily injury is filed.

If tenants submit claims for loss or damage to stored property, the facility should pass those claims along to its insurance company promptly. The company may assign an adjuster who will assist the facility owner in handling these claims. A facility operator will not usually be liable for tenant losses from catastrophic weather-related events. The facility can only be held liable if it is both found negligent in allowing the loss to occur and the lease defenses are not enforced.

This is where your insurance comes into play. Storage operators need insurance that will respond to tenant claims arising from loss of or damage to their property. Not all insurance companies provide the needed coverage. Make sure your insurance agent understands that you need insurance coverage for potential tenant claims for tenant property stored at the facility. Lawsuits are expensive even if you win, so the right kind of insurance is a must. ❖