



# QUESTIONS

## for 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:** *We have a delinquent tenant who was recently sentenced to 4 years in prison for tax fraud. Our manager called his home phone and his wife said he would not be paying the rent on the unit and we could go ahead and sell the contents. The wife is not on the lease. The tenant was an accountant. The space contains office furniture and what appear to be boxes of business records (we assume, his clients' files). Can we take direction from the wife even though she is not on the rental agreement now that her husband is in prison? Should we just follow our lien sale procedures? If we do conduct a lien sale, how should we handle the sale of the furniture and the business records? Are we obligated to have the business records shredded? Are we obligated to disclose at time of sale that these are records stored by a convicted tax fraud?*

**Answer:** This is not your typical delinquent space and you have a number of legal issues that need to be addressed. While the wife has indicated that she has no interest in paying the rent and does not want the contents, she does not have the legal authority to abandon the space to the facility and allow you to dispose of the contents. Only the tenant, the husband, can do this and it must be done in writing. Your eventual strategy may be to use the lien remedy but there may be other options before that point.

The fact that the tenant is in prison does not relieve him of his legal obligations—such as paying the rent on his storage space. Even though your tenant is in prison, you still may be able to work out a resolution directly with him. He can provide written instructions concerning the space. If you know in which prison he is residing, you can send him a letter that offers him the option of avoiding a lien sale by giving you title to the furniture and written permission to destroy the business records. You can even pursue this option while you are also sending out the required

lien notice so that you can sell the space pursuant to your statutory lien if he doesn't cooperate.

At the end of the day, you will probably have to use the lien remedy and sell the contents of this space. The sale must be handled carefully because you know the tenant is an accountant and you have reason to believe that the space contains files that contain personal information of the imprisoned tenant's clients. The best approach would be to break the contents of the space into two lots; the suspected business records would be in one lot and the furniture and other property that may be clearly sold would be in the other. The furniture can be sold at the scheduled lien sale. The boxes of business records would not be included in the sale. You have the legal right to remove the business records from the space prior to the sale to prevent confusion concerning the contents being sold. The fact that you are selling only part of the contents of this space should be disclosed at the sale. You do not have an obligation to disclose that the tenant is in prison. It is not relevant information at a distress sale like this.

Dealing with the business records is a little more complicated. First, you should determine if the police who investigated the tenant have any interest in the files. Next, you should try to determine if the tenant had any partners in the accountancy business. If he did, his partners may want these files. Finally, you should contact the state agency that regulates accountants to see if they want the files. They may take control of the documents given that they contain client information. If, after a reasonable effort, no one will take the records, they should be shredded. Several states, including Arizona, California, Colorado and Maine, give self storage operators statutory protection from third party claims when they are forced to destroy business records that have been abandoned. Even in states that do not provide specific statutory liability protection, legal liability for destroying the business records is not likely if you act reasonably. ❖