



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: *I cut the lock this morning on a delinquent unit. The unit has what looks like sports memorabilia from baseball, the Olympics and boxing. There are boxes of baseball cards and some appear to be autographed. The Olympics stuff dates back to before World War II. This is a small space and I think the property is worth more than the rent for the next 20 years. This tenant has rented from us for over 5 years and has a history of getting behind in the rent and then coming in to pay all the back rent. This is not the first time they have been out of touch for several months. What should we do?*

Answer: In self storage, all spaces are not the same and certainly not all lien sales are the same. This is important to remember and operators should carefully consider their actions when they come upon a unique space such as this one. Rather than just proceeding through the lien sale in the regular course of business you need to consider the contents, the amount owed and the history of the tenant. Since it appears that the items in the unit may have significant value, it becomes even more important to diligently and deliberately proceed through the collections and lien process since a mistake may have large financial consequences. Also, you have a long history with this customer and that should not be ignored.

So a number of questions need to be asked. For example, what efforts have been made by the operator to locate the tenant? Is there anything in the tenant's file which might assist the operator in reaching the tenant? Since the tenant has apparently been delinquent in the past but eventually paid the rent, what was the solution to the past payment problem? This is certainly one of those circumstances where it will benefit the operator to take some extra time to try to locate and communicate with the tenant. The "extra" time and effort may be important for two reasons. First, you may be able to establish contact with the tenant,

determine why rent is not being paid and avoid the sale of very valuable property. Second, if the property must be sold, you will have a record that you took all reasonable steps to locate the customer prior to sale. Tenant complaints that they weren't notified will have little merit.

If, after some effort, you cannot contact the customer, the next issue is to focus on the property in the unit. If the property is going to be sold, the facility operator is responsible for conducting a commercially reasonable sale and a fair price for the property. When it comes to memorabilia like these items, it is not too difficult to get an appraisal done on the property to establish the fair market value. Further, by getting appraisers involved, those individuals may also be potential bidders at the sale or will likely know others who may be potential bidders. Also, when it comes to items like these, sometimes it may not be the best approach to sell the unit as a whole; instead, the property in the unit can be sold as single items or in partial lots (for example, the baseball cards in one group, the Olympic items in another group). The items are still sold via the state's lien law and sold to the highest bidder at a public auction, the method of sale having only been modified to accommodate the unique nature of the items. For example, you may want to advertise the sale on a national self storage lien auction website in addition to the advertising required by law to expose the sale to a larger audience

Working a little harder to get the fair value under the circumstances is important for both the operator and the former tenant. In this case, if the unit is sold, it is likely that the facility will be able to recoup all of its unpaid rent and sale expenses. The tenant benefits since the higher sale price assists the tenant in paying off his financial obligations to the storage facility and may provide the tenant proceeds for his own account.

At the end of the day, the facility operator doesn't want to see a headline in the local paper which reads "Storage Facility Sells Memorabilia Treasure Trove for \$200!" ❖