



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: *Our state statute allows us to dispose of the stored property in lieu of conducting a lien sale if the value of the property is under \$300. But what is meant by “value”? We have interpreted the “value” to be what the unit sells for. Is that correct or does value mean something else? We are simply not sure when we can use our right to dispose of property that has a value of \$300 or less when the law seems a little vague on exactly what value of the property in the space means.*

Answer: You raise a difficult problem facing operators with facilities in states whose lien laws provide that the owner may dispose of property that is valued under a specified amount rather than going through the more complicated and slower lien sale process. This right can be especially useful when an owner opens a space and finds an old mattress and a broken table in the delinquent storage space. The property can simply be disposed of as provided by the law without having to conduct a sale. However, there is always the risk when dealing with contents other than obvious trash that the operator will value the property too low.

Unless an operator is extremely confident that the stored items have little or no value, then the operator should use the statutory sale process. The lien law is written to make the enforcement of the lien against a delinquent tenant relatively easy for self storage operators, giving them an opportunity to sell the stored goods to recoup the lost rental income and providing the opportunity for tenants to recoup any excess proceeds as a result of the sale.

In the jurisdictions that permit non-sale disposition of low-value property, the storage operator should not be trying to determine the precise value of the stored property. The owner should try to determine if there is any possibility that the contents in the space have any significant sale value. Only in situations where it is clear that the property has little value would the non-lien sale alternative be considered. It allows the owner, where the tenant has effectively moved and only left trash, the opportunity to clear the space without having to go through the time and expense of a sale.

It should also be noted that some states do provide guidance on how the value of the property is to be determined.

The Oregon lien law contains the following provision:

87.691(1) (1) After the time specified in the notice given under ORS 87.689 (Notice of foreclosure and sale) expires, if the owner determines, based on the owner’s previous experience, that the personal property subject to the lien created by ORS 87.687 (Self-service storage facility owner’s possessory lien) has a value of \$300 or less, the owner may dispose of the property at the owner’s sole discretion.

This subjective standard allows the owner to utilize their previous experience in setting the value of the goods. This provision appears to place the burden of proof on the tenant that the owner’s determination was clearly wrong. As long as the owner is careful not to abuse the privilege, the owner’s discretion as to their valuation should be affirmed.

West Virginia also provides reasonably clear guidance in determining the value of stored property:

(B) Destroy the personal property if he or she can demonstrate by photographs or other images and affidavit of a knowledgeable and credible person that the personal property lacks a value sufficient to cover the reasonable expense of a public auction plus the amount of the self-service storage lien.

West Virginia requires the opinion of an independent third party who is knowledgeable about the value of used property to determine the value. This could be an auctioneer or dealer in used property. Also, the valuation is not a fixed amount but a determination whether the sale proceeds will cover the expense of a sale.

Oregon and West Virginia are exceptions in the degree of guidance each provides to owners on determining the value of stored property. In most states there is not a clear standard for determining the value of contents of delinquent spaces. The safe and smart course of action for the storage operator is to conduct a lien sale. When an owner does determine that a space has little value and should be disposed of rather than included in a lien sale, the owner should carefully photograph or video the contents so there can be no dispute concerning the information upon which the owner’s determination of value was based. ❖