

# Limit Value of a Tenant's Stored Property

*The SSA gets involved to protect the rights of storage operators.*

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A self storage rental agreement provision that limits the value of stored property has proven to be an effective defense to lawsuits for loss of or damage to stored property and wrongful sale claims. Even judges who refuse to enforce a release of liability may enforce the cap on the value of stored property in the same agreement.

A typical limitation of value provision would state:

LIMITATION ON VALUE OF STORED PROPERTY: Occupant agrees not to store property with a total value in excess of \$5,000 without the written permission of the Owner. If such written permission is not obtained, the value of Occupant's property shall be deemed not to exceed \$5,000. Nothing herein shall constitute any agreement or admission by Owner that Occupant's stored property has any value, nor shall anything alter the release of Owner's liability set forth below.

Unlike a release of liability, the limitation of value provision is a condition on the tenant's use of the storage space, not a limit on the owner's liability. When a tenant claims to have stored property over the amount of the limitation, he is admitting to breaching the rental agreement. The provision is typically either integrated into a *use of space* paragraph that delineates how the tenant may or may not use the rented space, or in a paragraph specifically on the value of property such as the one above.

The provision typically limits the value of the property that the tenant may store to a stated amount, but does give the tenant the option of increasing the limit to a higher value with the facility operator's written permission.

## Cases in Point

The protective effect of such a provision is exemplified by the 2009 Georgia Court of Appeals decision in *Lancaster v. SUSA Partnership, L.P.*, 685 S.E.2d 474.

Lancaster had been a tenant for several months when he returned to his space and discovered a new lock on the door and that a new tenant occupied his space. His property was nowhere to be found, and the facility operator had no explanation as to why his space was rented to a new tenant.

Lancaster brought suit and claimed a loss of more than \$70,000. The trial court concluded that while the facility might be liable for Lancaster's loss, his recovery was capped at the \$5,000 limit in the rental agreement. The ruling was upheld by the court of appeals. Lancaster's

rental agreement had a provision that was almost identical to the one above.

Unfortunately, in the same year an Illinois Court of Appeals—in *Dubey v. Public Storage, Inc.*, 918 N.E.2d 265—refused to enforce a similar limitation of value. As in *Lancaster*, the tenant's property mysteriously disappeared. The plaintiffs sued and alleged that they had stored property worth well over \$100,000. The trial court refused to enforce the limitation of value provision and this was upheld on appeal.

Also during this period, two Wisconsin appellate courts split on the enforcement of value limitations, upholding one and declining to enforce another. While courts had generally enforced value limitations, the opinions in *Dubey* and Wisconsin raised concerns that storage operators could no longer rely upon this defense.

## The SSA Intervenes

The Self Storage Association decided to take legislative action in light of the *Dubey* case. It set out to change the law, so that it explicitly stated that a rental agreement limitation on the value of stored property was enforceable and that the stated limit would be the most a tenant could recover. Wisconsin and Illinois were the first states targeted for change because of prior court rulings. In 2011, the following provision became law in Illinois:

“(770 ILCS 95: sec. 7.5. Limitation of value. If the rental agreement contains a limit on the value of property that may be stored in the occupant's space, this limit is deemed to be the maximum value of the stored property, provided that this limit provision must be printed in bold type or underlined in the rental agreement in order to be enforceable...”

This section of the Illinois lien law makes it clear that rental agreement value limitation provisions are valid and the limit is to be enforced. Few trial judges will refuse to give full effect to the limitation given such a legislative directive. The only conditions of enforcement are that the language limiting the value of stored property be clearly drafted and that it be printed in bold type as required by the law.

It is also recommended that the limitation on the value of stored property be reasonable. A limit of \$2,500 to \$10,000 per space is probably reasonable. A limit of \$100 may be found wanting. Sixteen states have enacted statutory provisions similar to Illinois. This number will grow as the SSA continues to move forward with its legislative efforts in other states. ❖