



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 collect email addresses for most new tenants. Our current practice is to send a copy of any notice that we send by mail also by email. We recently had a situation where we sent a rent increase to a tenant by both first-class mail and by email. The letter was returned with the indication that the tenant was no longer at that address. We then got an email from that tenant responding to the email notice increasing the rent and requesting a change of his mailing address. We have been in contact with the tenant and have his new mailing address in our computer. However, we were not sure that the rent increase was effective given that the notice we mailed was returned. Can you provide us with guidance on this? Is the email notice of a rent increase valid?*

Answer: Your practice of sending notices via the United States Postal Service (USPS) and email is a good one. You are utilizing more than one of the avenues of communication provided by your tenants and this increases the likelihood that tenants will receive important communications that you send, such as notice of rent increases from the facility. Using both regular mail and email can be especially effective during this current period of transition where electronic communication is replacing mail service, which has been our traditional method of business communication.

Your specific issue highlights the importance of being able to contact self storage tenants electronically. The notice sent via mail was not received but the notice sent by email was received. The tenant responded only to the email notice. The tenant's actions in this instance solved two problems. First, you established that the tenant got actual notice that the rent would be increased starting on a specified date. Second, you received a response that provided the tenant's new address, so you were able to update his postal address. *The email notice was effective.* The notice of rent increase was sent to the electronic address provided by the tenant and his response clearly indicates that it

was received. There is no dispute concerning the receipt of the notice. A new rent increase notice does not have to be sent by mail. Per the terms of your rental agreement which allows such changes in rental rates, the tenant is now legally obligated to pay the higher rent on the next rental due date.

Self storage rental agreements should contain a "notice" paragraph that states that the parties agree to communicate by email. As the use of email has become more and more prevalent, more states are beginning to add email as a specific method of allowed communication within the terms of their self storage statutes. Every operator should carefully review their state law to see how their state has addressed the use of email. Some states require written approval by their tenant before email can be used, especially for the purpose of sending lien notices. If your statute calls for such permission, full attention should be given to updating your rental agreement to meet the requirements of the state statute before email is used.

Here are a few factors storage operators should consider when using email to send important notices: 1) Can you verify that the notice actually went to the tenant's email box? 2) Can you confirm the content of the notice? 3) And, can you archive and retrieve the notice for future use? If you can show that the notice was delivered to the email address provided by the tenant, you have established actual notice. A problem with ordinary email is that the contents can be easily modified and may not satisfy the rules of evidence if you need to prove the actual content of the notice in court. Also making sure that all email notices that are sent are saved and backed up so they can be retrieved when needed is very important. There are private companies that provide these services. RPost.com is one such company and was an exhibitor at the SSA trade show in Las Vegas. The cost of sending an email that can be tracked, verified as to content and archived is roughly the cost of a first-class letter. ❖