



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 auctions are always on a Friday morning at 10:00 a.m. We have a lot of people who come to bid on the storage units. Currently, we are allowing the delinquent customers to pay off their entire balance before 10:00 a.m. the day of the auction. The auction advertisements are quite expensive and those who come to bid are expecting that if they call or stop by the morning of the auction and ask how many units we have, that we will still have the same number of units to auction off at 10:00 a.m. Is there any way that we can stop this from happening? Meaning, are we legally allowed to refuse payment from the delinquent customers starting at 5:00 p.m. the day before the auction?*

Answer: This is a very important question concerning the conduct of lien sales and the time that a delinquent tenant has to pay the amount owed prior to the sale. The starting point with any question concerning owner and tenant rights during the lien enforcement process begins with a review of the state lien law. Does it specify a time-frame for the delinquent tenant to pay the amount owed? The overwhelming majority of states have a specific statutory provision dealing with this issue and most provide that the tenant can pay the amount owed up to the time of sale. The Maryland self storage lien law provides a typical provision in Code of Maryland section 18-504(C):

At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.

This provision clearly gives the tenant up to the time of sale to pay the amount owed. So, the Maryland law does not permit the facility operator to cut off the tenant's right to pay at 5:00 p.m. on the day preceding the sale. The facility owner must stand ready to accept payment up until the sale is complete (the "completion" of the sale should be defined within the facility's auction rules). Also, the operator needs to make it possible for a delinquent tenant to

make a payment of the lien amount on the day of the sale. While this may discourage some buyers, the owner must comply with the clear requirements of the lien law.

Notice that the law says, "any time before a sale." This could be interpreted to mean the start of the sale or the actual sale of a particular space. The more conservative approach would be to allow a delinquent tenant to pay until his or her space is actually sold. This is where your auction rules can be very important. Samples of auction rules can be reviewed in the SSA book, "The Self-Storage Collections and Lien Sale Handbook," available from the SSA.

A self storage operator is selling the contents of delinquent spaces for two reasons. The first is to recover as much money owed as possible. The second is to have the contents removed from the space so it can be put back into inventory. So, an operator could have an auction rule that states the sale is completed when the high bidder pays the amount of the bid *and* removes the contents from the space or rents a space to store the property. Such a rule gives the owner an additional opportunity to restore the property to the tenant even if the high bidder has paid the amount owed but has not removed the property from the facility.

As a practical matter, giving delinquent customers more time to pay the rent is a good operating strategy. The largest jury verdicts against self storage operators have all been in wrongful sale lawsuits, so it is almost always better for the owner to get a last minute payment from the tenant. This can be frustrating for potential buyers, but last minute payments are an inherent risk of distressed sales. Online self storage auctions may be an ultimate solution to this problem. Buyers do not have to drive miles to participate. If a sale is cancelled, then they are not burdened by a wasted trip to the facility. They only need to go to the facility to pay for spaces and pick up property that they have purchased online. ❖