



# 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 had an incident where an unsupervised child was almost injured at the facility. Our current policy is to permit children on the premises, but they must be supervised by their parents. We state this in our rules and regulations. We have had other incidents where parents have not supervised their children and we believe this is very dangerous. We think this is a serious safety issue and are not sure what our options are. Can you provide some suggestions?*

**Answer:** You are correct. Unsupervised children at self storage facilities can be a recipe for disaster. Including a statement that parents must supervise their children at all times is a good first step. In addition, you might also want to post signs warning tenants that there is risk of injury to unsupervised children at the facility. This places your customers on notice that a self storage premises poses a danger to unsupervised children.

Can you simply prohibit children from the facility? You may have the right to do this but it might not be your best course of action. Enforcement of a no-child rule can prove to be impractical. It is difficult to monitor every vehicle that enters the facility to make sure that children are not being brought onto the premises. It also has the potential of creating a customer relations problem for the facility. If you have a no-child rule, it must be enforced if it is to be effective.

Certain areas of the facility do pose a greater potential for injury to children. Accidents involving the access gates and roll-up doors, and injuries to children playing in driveways, have occurred. We suggest ensuring that your access gate has both warning notices and the necessary safety features installed to avoid closing on children. Additionally, all unrented storage spaces should be locked to prevent children playing with roll-up doors in empty units. Finally, the facility should have posted speed limits in the driveways. Vehicles often share facility driveways with tenants loading and unloading spaces. Keeping vehicle speeds down can help prevent accidents.

In addition to requiring supervision of children in the rules and regulations, it is equally important to include both a release of liability for bodily injury and an indemnity provision in the rental agreement. First, the release

of bodily injury provision may help as a defense to claims brought by parents for their children. The bodily injury waiver provision might read something like:

**RELEASE OF OWNER'S LIABILITY FOR BODILY INJURY:** Owner, Owner's agents and employees shall not be liable to Occupant or Occupant's agents for injury or death as a result of Occupant's use of the Storage Space or the self storage facility, even if such injury is caused by the active or passive acts or omissions or negligence of the Owner, Owner's agents or employees.

Second, the indemnity provision may allow a facility to respond to a parental claim alleging injury to a child by seeking indemnity from the parent for their role in causing the injury. The indemnity provision might read something like:

**INDEMNITY:** Occupant agrees to indemnify, hold harmless and defend Owner from all claims and lawsuits (including attorneys' fees and all costs) that are hereinafter brought by others arising out of Occupant's use of the Storage Space and common areas.

While facility rules and regulations concerning child supervision and rental agreement contractual defenses to lawsuits can all be helpful, the facility operator should have premises liability insurance with adequate limits. Premises liability insurance will cover bodily injury claims brought by tenants and other persons who are on the premises. A \$1,000,000 per occurrence limit for bodily injury claims is a good starting point. However, owners should look into the availability of even higher limits. An "umbrella policy" can provide added protection over the basic liability policy limit and increase total coverage by an additional \$1 to \$4 million.

Self storage operators should attack the potential for facility accidents with a three-pronged approach. *Prevention:* Make sure your tenants are aware of the potential dangers to unsupervised children. *Limit owner liability:* Include rental agreement provisions that protect the facility from tenant negligence claims. *Insurance:* A sound insurance plan can prevent an unfortunate accident to a child from becoming a financial disaster for the facility. ❖