



# 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 have a delinquent unit that appears to have approximately \$5,000 worth of contents and the renter owes \$2,000. Is the owner permitted to bid on the contents? Our plan would be to bid the amount that is owed. If we are the successful bidder we would then apply the proceeds to the delinquent tenant's account and then sell the contents with the hope we can turn a profit by selling the items individually.*

**Answer:** In most states, but not all, the facility operator may bid on the property in a delinquent storage space. However, if you decide to bid on a space, you must act with care. Your conduct must be both transparent and fair to both your customer and the audience of bidders.

First, you will need to determine if your state prohibits the owner from bidding at self storage lien sales. For example, the Washington lien law specifically prohibits the facility operator, any family member of the owner, or any of the employees from bidding at the lien sale. The Pennsylvania lien law, however, specifically states that the owner may purchase at the sale. This is the rule in the majority of states. The operator must be sure that bidding is not prohibited.

Second, once you have determined that your state does not prohibit the owner from bidding, you need to do some preparation for the sale. The sale must be public and the bidding process must be transparent. You want the sale to be well attended; ideally, you want to have at least five or six independent bidders at your sale. More is better. It should be announced at the auction that the facility operator will be bidding on some of the storage spaces and those that the owner will be bidding on should be identified. You should also include a sentence in your written auction rules that the owner will bid on some spaces at the owner's discretion.

You have discretion in the method of bidding that you use. The simplest is to bid the amount owed by the tenant

and request bids over this amount. If no one bids, you have bought the property. In some states bidding the amount owed by the tenant is the only practical method of owner bidding. However, if other bidders bid more than the owner's initial bid, the owner may actively bid on the space. In states that permit owner bidding you have the right to bid incrementally and compete with any other independent bidders.

Once the sale is complete, make sure that your accounting of the sale proceeds are very clear and beyond reproach. This includes making sure all fees and charges are correct and that the net proceeds of the sale are properly applied to the tenant's outstanding lien balance. Typically, if the owner buys the contents, the tenant's debt would be extinguished and no deficiency may be collected.

But the owner may be successful at an amount less than is owed. If this occurs the owner has a post-sale decision to make. Do you refer to collections the balance of a space the owner has purchased? You should make this decision very carefully. While facility owner bidding may be consistent with state law, it does raise questions concerning the nature and fairness of the sale. Factors that can influence this decision include:

- The number of actively independent bidders who attended the sale
- The estimated fair market value of the contents purchased versus how much the owner paid, and
- The amount of the deficiency

If the outstanding balance of the tenant's debt is relatively small it may be wise to forgo post-sale collections. If there is any aspect of the sale that gives the owner reason to be concerned, it may be better not to refer the debt to collections. Such concerns would include a less-than-typical audience of bidders or a strong belief that the resale value of the contents will far exceed the amount the tenant owes. Certainly, if there are proceeds over the debt owed, the proceeds must be returned to the tenant. ♦