



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 conducted our own auctions for many years. An auctioneer recently came to our facility and told us that a licensed auctioneer must perform self storage lien auctions. He even suggested that we could be fined and our business shut down if we continued to perform our own auctions. Are self storage operators required to retain a licensed auctioneer to handle their auctions? He indicated that he would handle our auctions for 25 percent of the gross. We would prefer to continue doing our own auctions but are concerned about breaking the law.*

Answer: Whenever anyone tells you that you are engaged in an action that is against the law, you should ask him or her to provide you with the reference to the law so that you may review it. This is especially true when the messenger has a financial interest in the law or regulation that you are supposedly violating. While several states license auctioneers, it requires a careful reading of the law to determine if the law applies to a self storage auction conducted by the facility owner.

Twenty-two states do not license auctioneers. For example, California, Michigan and Missouri are among the states that do not license auctioneers. However, even if your state issues licenses for auctioneers, it does not mean that you must use a licensed auctioneer to conduct your lien sales. Auctioneer licensing laws exist to regulate persons in the auction business and not to give auctioneers a monopoly on conducting such sales. This is one reason every auctioneer licensing law has exceptions to the basic requirement that a licensed auctioneer must conduct an auction sale. Consider the Georgia auctioneer licensing law that appears to bar any person other than a licensed auctioneer from conducting an auction; however, the law contains several exemptions. One of those exemptions applies directly to Georgia self storage operators. The exemption states:

This chapter shall not apply to any person conducting a public sale of personal property pursuant to the provisions of Code Section 10-4-213.

Georgia Code section 10-4-213 is the state's self storage lien law enforcement section. So Georgia operators are not required to hold an auctioneer license to conduct their lien sales because the auctioneer licensing law has a specific exemption. Georgia is unusual in the specificity of the exemption, but many states have exemptions that are applicable to self storage lien sales conducted by facility owners. The Ohio auctioneer licensing law also seems to require all auction sales to be conducted by an auctioneer. However, the Ohio requirement is not absolute. The Ohio law exempts the following sales from the auction-licensing requirement:

- (1) Sales at auction that either are required by law to be at auction, other than sales pursuant to a judicial order or decree, or are conducted by or under the direction of a public authority;

The Ohio lien law requires that the property be sold through a public auction and therefore the above exemption would apply. The Ohio exemption is similar to that of many other states. In the past 30-plus years since the self storage lien laws have been in effect, only Pennsylvania has taken action against a self storage operator, contending that the storage operator violated the state's auctions laws when conducting his own lien sales. This enforcement appears to be an anomaly, because the auction authority has not taken any other actions against any other storage operators in the state that continue to conduct their own lien sales and do not hold an auctioneer's license.

While the auctioneer who said that a lien sale must be conducted by a licensed auctioneer could be right, you should be very skeptical. Storage operators who are concerned about the legality of conducting their own lien sales should consult their legal advisor on what the law of their state or local jurisdiction may actually require and how it applies to their self storage business. Although you may want to retain an auctioneer to run your self storage lien auctions, you probably should not take legal advice from an auctioneer concerning whether or not you are permitted to conduct your own lien sales. ♦