



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 self storage facilities in Arizona and Texas and have a question about excess proceeds from lien sales. When we sell a tenant's space for more than is owed, what are our responsibilities to the tenant? Also, in most instances, we never hear from the tenant or anyone else concerning the excess funds. How long must we hold the money, and what do we do with the money if it remains unclaimed?*

Answer: You raise an interesting issue that every storage operator will have to deal with when the sale nets more money than is owed. It does not happen often, but it does occur. The answer to this question can usually be found in the self storage lien law of your state. Let's take a look at the two states where you do business. Arizona is typical of many states. Section 33-1704(G)(6) of the Arizona lien law states the following:

If the occupant does not claim the balance due to the occupant within ninety days of the sale, the operator shall pay the balance to the department of revenue. If the occupant, at any time within two years from the date of payment to the department of revenue, establishes the occupant's right to the money to the satisfaction of the director of the department of administration, it shall be paid to the occupant. After two years, all unclaimed monies shall be deposited in the permanent state school fund. *[Emphasis added]*

The tenant, other lienholders and claimants all have the right to claim the funds for ninety days after the sale. If no one claims the funds they must be sent to the Department of Revenue. It should be noted that the Arizona lien law does not specifically require the owner to send notice that the sale netted more money than was owed. However, it is a good practice to send such notice if you have the tenant's current contact information.

The owner should carefully document the transfer of funds to the Department of Revenue. The tenant and other claimants have an additional two years to claim the money. A claimant's first stop will most likely be your facility and you must be prepared to document that you transferred the money as required by the law.

Texas and a number of other states, primarily in the South and Southwest, take a very different approach to excess sale funds. The self storage lien law, which is in the Texas Property Code, states:

Sec. 59.046. EXCESS PROCEEDS OF SALE. If the proceeds of a sale under this subchapter are greater than the amount of the lien and the reasonable expenses of the sale, the lessor shall deliver written notice of the excess to the tenant's last known address as stated in the rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the rental agreement. The lessor shall retain the excess and deliver it to the tenant if the tenant requests it before two years after the date of the sale. If the tenant does not request the excess before two years after the date of the sale, the lessor owns the excess.

The Texas lien law places two obligations upon the owner when the lien sale generates more money than is owed. First, you must send the tenant written notice of the proceeds to the last known address provided by the tenant. Do not delay in getting this notice out. It should be sent out within a few days of the sale. Second, the owner must hold the excess funds for two years from the date of sale. If the tenant returns and claims the money, the owner must promptly deliver the funds to the tenant.

Now for the good news. If the tenant does not claim the excess funds, they become the property of the owner. This should be a strong incentive for Texas operators to use sale methods that will maximize sale revenue.

Some states are less clear than Arizona and Texas on the owner's obligations concerning excess lien proceeds. If the state lien law is not clear on what to do with excess sale funds, the best practice is to treat the money as abandoned property and follow the state's abandoned property or unclaimed property laws. These are general statutes that deal with money and property that goes unclaimed by the person entitled to it. These laws require the money to be turned over to the state after a specified time, which is typically one to three years. ❖