



# 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 did lock cuts for an upcoming auction yesterday and came across some items that were possible collectibles and might be items of value. There were old comic books still in good condition, old vinyl records, and footballs in cases that appeared to be autographed. We are curious if these types of things should be handled in a different way in terms of advertising?*

**Answer:** When conducting a pre-lien sale inspection of a delinquent space, self storage operators will occasionally come across a space that has “better than typical” property. While it is possible that you have discovered a treasure trove of collectibles, you will need to do some investigation to determine what you really have. What’s important is that you determined that this may not be a typical self storage space and selling at your usual lien sale may not be the best option.

You will need to get more information about the possible collectibles that are in the space. Are the comic books and other items valuable collectibles or just someone’s personal collection with relatively little resale value? This can be determined by consulting local collectibles dealers. You could even do a quick determination online to get a sense of what you have. The advantage of going to a dealer rather than online is that with collectibles the condition of the item is an important part of its value.

If you determine that the space does contain valuable collectibles, your next step is to determine the best way to sell them. The self storage lien laws require that the owner conduct the sale in a “commercially reasonable” manner. This is simply a sale that is reasonable given all of the circumstances. For example, a typical distressed sale is not expected to fetch top dollar for the items offered.

Further, a typical self storage sale will be an auction of all the contents of the space (sale by “lot”) because it is the most reasonable way to dispose of the property given its value. However, if this is not a typical space, it would require that you attempt to expose the property to particular bidders with an interest in the property to be sold, and may require you to sell the items by piece rather than by lot.

One option that you may want to consider is to work with an online auction service such as StorageTreasures.com. In this case you could sell using three smaller lots: the comic books, the records and the sports items. Photos of the items can be posted online as part of the sale. You may be able to have a dealer provide you with an offer for each lot. The collections could then be offered with a minimum bid at the dealer price plus 10 percent. Another approach would be to offer the property through a collectibles auction. This could either be live or online. The advantage to such an auction is that you know that collectors will be in attendance and the price realized will reflect fair market price for the items. The delinquent tenant would have a very difficult time challenging such a sale.

Facility owners have a very limited duty to investigate what is in each space that is going to lien sale and are not required to open every box to determine if they may have valuable items inside. However, when the nature of the property is more obvious, as in your situation, a little effort is required. The law does not require that you do this for free. You can determine the reasonable value of the time that you spend preparing the property for sale and add this to the lien cost. In some states, such as Texas, if the tenant does not claim the excess proceeds they become the property of the facility owner. ❖