

The Issues With Remote Execution of Rental Agreements

Jeffrey Greenberger
Greenberger & Brewer, LLP
513.698.9350
Info@SelfStorageLegal.com
www.SelfStorageLegal.com



A Caveat

- The information I provide today is general in nature and represents the opinion of the presenter.
- **Do not** make changes to your rental agreement, forms and other procedures without consulting your own legal counsel.
- **This Presentation** does not constitute the establishment of an attorney client relationship.
- **REVIEW** the existing clauses in your rental agreement to make certain you aren't creating conflicts.

Proof Of Identity

Obtaining and maintaining a copy of a government issued photo identification for your occupants is vital.

Some reasons:

“Know your occupant;”

Compliance with post 9/11 Federal mandates;

Lock cuts;

Credit card disputes.

Getting the Military Question Right

SCRA answers that are wrong lead to a lot of liability:

This is governed by a federal law: the Servicemembers Civil Relief Act (SCRA). Several states include their own requirements in their self-storage statutes.

You're required to ask affirmatively if the person renting from you is active-duty military.

This includes all military service branches, National Guard, Reserves; and some uniformed responders from the National Institutes of Health and National Oceanic and Atmospheric Administration.

You are also required to inquire if the renter is a dependent of someone who's active duty. Arguably, dependents are entitled to the same protections under the Act.

The Military Question

When left to their own devices, occupants answer this question as if you are asking about a military service discount.

The problems:

Optics if you are wrong;

Civil and criminal penalties if you violate.

Making Certain the Mandatory Lien Question is Completed Properly

415.410 provides in part:

Prior to placing any personal property into his or her leased space, each occupant shall deliver a written statement to the operator or indicate in the rental agreement of such leased space containing the name and address of each person having a valid lien against such personal property and the name and address of any third party owner of personal property stored or to be stored in the leased space along with a description of such personal property.

You Control the Actual “Occupant”

In order to avoid a lot of these lien issues, facility owners/managers want to control who can be an occupant.

Many want to prevent limited liability entities (Corporations, LLCs) from acting as the occupant.

Online, I can fill in whatever name I want.

You Miss The Ability to Confirm the Last Known Address

"Last known address", that postal address or electronic mail address provided by the occupant in the latest rental agreement or the postal or electronic mail address provided by the occupant in a subsequent written notice of a change of address, one of which may be designated in writing by the occupant as the preferred method of contact which shall be used by the operator.

You can be given a bad address when completed online.

What is your remedy if you find a bad address after the occupant takes possession?

You miss the chance to emphasize the way(s) you accept change of address.

There is No Way To Control a Bad Hombre

If you know someone is a town troublemaker – do you want to rent to him/her?

If you have previously evicted someone or sold them, do you want them renting from you again?

If someone is in default, do you want him/her renting additional storage spaces?

You Miss The Opportunity to Emphasize Insurance

While there is a mandatory insurance statement in Missouri placing the Occupant into a contents insurance or protection plan you offer is important.

In person you get to explain the benefits, see the proposed insurance coverage to “opt out,” and you never get to explain why homeowners/renters insurance really does not provide any coverage for self-storage.

The Good Lock Discussion

Nothing protects the storage space better than a good lock.

What is your position on what kind of lock the occupant should/must use?

Is there a way to get a good lock in the hands of the occupant?

Prohibited Property

In person rentals gives you the chance to emphasize what can and cannot be stored as well as to ask questions about what is being stored.

This is not just about hazardous materials:

Prohibit antiques, collectables, items that are irreplaceable, sentimental and emotional;

Items that attract vermin;

Rehearsals, exhibits, displays, audiences, commercial use;

Living in/at or animals in/at the Facility;

Items that exceed the value limit.

Vehicle Storage

You need a lot more information when storing a vehicle/vessel:

Minimum of 4 extra questions:

What is it that is being stored?

Who actually owns the vehicle?

Who insures the vehicle(s), and make sure it is staying in place during storage?

Who is/are the lienholders?

Remember a trailer with 2 jet skis is 3 stored vehicles.

Outdoor Vehicle Storage Presents More Issues

Generally, operators want to see a vehicle before it is stored outdoors:

- To make sure it meets and appearance/condition requirements;

- To make sure it can arrive under its own power (excluding trailers;)

- To check current registration;

- To make sure personal property taxes are current;

- To make sure it is not a leaker.

Addendums

Many rental agreements need one or more addendums:

Indoor vehicle storage;

Amenity use such as electricity, water, dump station, dumpster;

There may be concessions or other discounts;

Extended gate access;

Over the value limit exceptions.

Addendums are not easily produced and managed when they are only needed for some occupants with online rentals.

Bankruptcy

Bankruptcy law is counterintuitive. The law different than what you'd expect, it's unfair to all creditors.

For many facility owners and operators, emotion gets in the way of important business decisions.

Since a violation of a bankruptcy order can result in a contempt-of-court holding, which can result in penalties including jail time, call your attorney anytime there is a tenant bankruptcy.

The Bankruptcy Automatic Stay

The first things you need to know about Automatic Stay:

The stay is automatically in force as soon as the bankruptcy is filed.

Take no action to collect, even if bankruptcy is alleged.

You need special approval to take any action (more on this later.)

This includes the commencement or continuation of a judicial or other proceeding against the debtor [11 USC 362 (a)(1)].

The Automatic Stay

The Automatic Stay includes:

Bills / late notices

Imposition of fees

Lien notices/Automatic text messages/Auto Dialed Calls

Lien sales

Evictions

Bankruptcy Questions

1. Is the Tenant delinquent post-petition (from the date of filing forward)?
2. Is the Tenant delinquent or current at the time of filing?
3. What chapter of bankruptcy did the Tenant file?

How do you know when a Tenant has filed bankruptcy?

- Notice from a court;
- Statement from Tenant or letter from an attorney;
- Word-of-mouth;
- Rumor/innuendo.

Chapters Of Bankruptcy

There are three common types of bankruptcy:

- Chapter 7
- Chapter 13
- Chapter 11

Chapter 7

Chapter 7

This is an attempt to discharge all unsecured debt and some or all secured debt (collateral pledged).

This is the one that was supposed to stop with bankruptcy reform.

At the end, there's little or no money to distribute to unsecured creditors.

Sample Notice Chapter 7



Chapter 13

Chapter 13

- Often called a “wage earner” plan
- Repays some or all debt over a period of time, known as the “bankruptcy plan” (three to five years)
- Can be filed “regularly”
- Don’t miss the opportunity to file a proof of claim (no money otherwise).
- Don’t presume there’s no money for you in a Chapter 13.

Sample Notice Chapter 13



Chapter 11

Chapter 11

- Business reorganization similar to Chapter 13
- Expensive
- Requires an attorney, as it's complicated
- Best for large businesses (Pier 1, GNC, JC Penny, Neiman Marcus, Stein Mart, Chuck E. Cheese, and anything with the word buffet in it.)

Bankruptcy Pitfalls

What you need to know about the tenant's debt:

How much is owed to you and the dates incurred.

What payments you have received (especially in the past 90 days).

There are exceptions to your tenant discharging the debt:

The most common is fraud, e.g., bad checks, identity misrepresentation.

Counter Intuitive

One final warning: Bankruptcy is counter-intuitive and can involve many pitfalls:

Trying to collect pre-petition debt;

Incorrectly submitting the proof of claim;

Violation of the Automatic Stay;

Preferential payments.

Your Remedy

- After the time for acceptance or rejection of the lease by the debtor passes, you can ask the Court for relief from the Automatic Stay Order.
- Generally, you need to prove:
 - The debtor is behind in rent post-petition;
 - Your business, as creditor, is not adequately secured;
 - The storage space is not necessary for an effective reorganization.

Late **2** Lien™

Powered by the requirements and timelines outlined in each state's statute, the Late2Lien engine provides an all-encompassing, fully-automated, easy-to-use system for accurately completing each step along the way.

Late2Lien benefits your Self-Storage operations by:

Saving Time

Reduces staff time and effort by 75%

Optimizing Revenue

Increases focus on tenant acquisition and property management

Accelerating Payments

Improves cash flow and reduces number of defaulting tenants

Decreasing Wrongful Sale Liability

Ensures industry best practice procedures for each facility



The turnkey solution for automating the Late through Lien Sale Process



Regardless if you own or manage one facility or many, Late2Lien is designed to improve your operations by reducing the time and effort spent executing the lien sale process. Late2Lien is:

Smart

Provides a centralized process which reduces staff effort and operating costs.
Includes Military Status search and USPS® Change of Address correction.
Recognizes payments and partial payments.

Powerful

Calculates sale dates and manages ad calendars to ensure accurate timing.
Built upon a state-of-the-art, cloud-based system which securely retains all documents and activity history.
Utilizes a comprehensive, 50-State Template Library* containing each required notice and supporting documents .

Easy

Quick and seamless implementation - No downtime or interruptions.
Team members are fully trained within 15 minutes.
Pay-per-use system - No setup fees, monthly minimums, or subscription fees.

**The 50-State Template Library and forms used throughout the Late2Lien process are written by industry expert, Jeffrey Greenberger, Esq. In the event of a change in state law, Late2Lien automatically updates the forms and protocols to conform to the latest requirements.*

Call us Today at 513.204.9633
Or visit
www.Late2Lien.com



QUESTION & ANSWER TIME

Thank You For Attending The MSSOA Annual Meeting

Jeffrey Greenberger

Greenberger & Brewer, LLP

P: 513.698.9350

www.SelfStorage.Legal.com

E: Info@SelfStorageLegal.com

[@SelfStorageLaw](https://twitter.com/SelfStorageLaw)

www.Late2Lien.com

