

Do I Need To Ask A (Self-Storage) Attorney?

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If Your Occupant Files Bankruptcy

- Bankruptcy law is counterintuitive. Not only is the law different than what you'd expect, it's unfair to all creditors, including yourself-storage business.
- Neither life nor law is always fair, but I know that 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, it's important to call your attorney.

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Bankruptcy

1. Is the occupant delinquent or current at the time of filing?
2. Is the occupant delinquent post-petition (from the date of filing forward)?
3. What chapter of bankruptcy did the occupant file?
 - **How do you know when a Occupant has filed bankruptcy?**
 - Notice from a court (examples later)
 - Statement from Occupant or letter from an attorney
 - Word-of-mouth
 - Rumor/innuendo

Bankruptcy

- **The first thing you need to know about automatic stay:**
 - It is in place as soon as it's filed. The stay is automatically in force.
 - 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)].

Bankruptcy

The automatic stay includes:

- Bills, late notices and automatic texts
- Imposition of fees
- Lien notices
- Lien sales
- Evictions

Bankruptcy

There are three common types of bankruptcy:

- Chapter 7
- Chapter 13
- Chapter 11

Bankruptcy

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.

Bankruptcy

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.

Bankruptcy

Chapter 11

- Business reorganization similar to Chapter 13
- Expensive
- Requires an attorney, as it's complicated
- Best for large businesses (American Airlines, GM, etc.)

Bankruptcy

Lease Rejection

- Remember: Unless you receive a lease rejection (which is unlikely), the debtor is required to remain current in all post-petition obligations for your storage facility.
- So, if the Occupant isn't paying rent (for a certain period after filing), you may be eligible to get relief from the automatic stay.

Bankruptcy

These are some of the mistakes you can make if you don't work with an attorney as soon as you hear or learn about an occupant filing for bankruptcy:

- Trying to collect pre-petition debt
- Incorrectly submitting the proof of claim
- Violation of the automatic stay
- Preferential payments

Bankruptcy – So You Need To Call An Attorney

- As controversial as it sounds, there's one thing you can do to make the claim of a bankruptcy filing go smoother.
- If someone says they'll file bankruptcy before you sell their stuff and then goes radio silent, you're on notice that a bankruptcy is possible. If you sell their stuff **and** a bankruptcy was filed before you sold, you strongly risk a contempt-of-court finding against you.
- Filing of a bankruptcy can be checked through a database called PACER; your attorney should have access to it.

I've Said It Before, If You Call, I'll Say It Again

- To get an absolutely certain answer, the kind you can rely on to stay out of jail, you need to obtain your occupant's **full Social Security number (SSN)** at the time of rental.
- You can keep it in your management software, in an encrypted format just like a credit card number. You can ask the occupant to input it into the software, but when you need the SSN, you really need it.



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Bankruptcy

• Relief from stay – 11USC 362(c)

Certain parties (including landlords/owners) may move for relief from the stay order to regain possession of the leased space when (notice what this says):

- The debtor isn't current in payment of rent post-petition.
- The landlord isn't adequately secured.
- The premises isn't necessary for the debtor's effective reorganization.

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Call A Self-Storage Attorney To Update Your Rental Agreement

- Here are some sure signs it's time for an update:
 - Your state statute has been updated more recently than your rental agreement.
 - You have no idea where the language of your rental agreement came from.
 - You know you borrowed an agreement from another self-storage operator to form your own.
 - Your rental agreement is one page.
 - It was written by an employee who hasn't worked for you in five or more years.
 - The spot for the year still says 19__.

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Use A Self-Storage Attorney For Vehicle Storage

- If you operate a vehicle-storage business with your self-storage rental agreement:
 - Vehicle storage, especially outdoor or indoor “valet-style” vehicle storage, is a bailment business.
 - You need to do a lot more to avoid or reduce bailment liability than you would traditionally do in a “place your own lock and leave with the key,” self-storage business.

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Use A Self-Storage Attorney For Vehicle Storage

- You should be concerned with ownership of the vehicle.
- You should be concerned with insurance in place and remaining in place during storage of a vehicle.
- You should know about all lienholders on the vehicle.
- You may even need special rules about storage of the vehicle.

Use A Self-Storage Attorney For Abandoned Units

- If you think a self-storage unit is abandoned, remember that this term is defined as:
 - To give up by leaving or ceasing to operate or inhabit
 - To surrender one's claim to, right to, or interest in; give up entirely

There is an intent level implied in this action. How do you prove that intent later when you're sued by the occupant?

Use A Self-Storage Attorney For Abandoned Units

If you want to declare a unit abandoned:

- Your attorney should define terms or parameters in your rental agreement to create an abandonment.
- How do you prove that “intent” to abandon when the occupant comes back and sues you? Simply by coming back “proves” the occupant didn’t intend to abandon.
- Have your attorney create a written release and/or relinquishment document to keep in your office. If you can’t get the occupant to sign, then sell or evict.

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Purchasing A Self-Storage Facility

Do you need a self-storage attorney to purchase a self-storage facility?
Maybe.

While we generally recommend that you use a local attorney experienced with the customs and practices of the purchase of commercial real estate in your community, there are several specialty clauses self-storage attorneys add, simply from experience, that may help protect you, especially from “mystery meat” units.

Generally, we work in conjunction with your local real estate expert on specialty contract terms.

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Selling A Self-Storage Facility

What if you are the seller? **Probably not.**

Local real estate counsel should be able to advise you on everything you need to successfully sell your facility. Your accountant or attorney can help with all the tax implications.

What about zoning? **Almost never.**

Use local counsel with expertise in zoning. If you need help with fire-code issues, etc., a self-storage attorney or the national Self Storage Association can help.

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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

Call us Today at 513.204.9633

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Late2Lien™

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.

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QUESTION & ANSWER TIME

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Thank You For Attending

I Hope To See You At A Live Meeting Sometime Soon, Until Then, Stay Healthy

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