

Surprise! These Words Will Get You In Trouble

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A Caveat

- The information I provide today is general in nature and represents my opinion.
- Do not make changes to your rental agreement, forms and other procedures without consulting your own legal counsel.
- This presentation does not establish an attorney-client relationship between us.
- Do not think these slides constitute full clauses you can copy and place in your own rental agreement.
- Review the existing clauses in your rental agreement to ensure you aren't creating conflicts.

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Easy Fixes – Statutory Terms

- "Operator", the owner, operator, lessor or sublessor of a self-service storage facility, or an agent or any other person authorized to manage the facility; except that, the term "operator" does not include a warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored.
- "Occupant", a person, lessee, sublessee, successor or assignee entitled to the use of a leased space at a self-service storage facility under a rental agreement.

Easy Fixes – Statutory Terms

- "Rental agreement", any written contract or agreement that establishes or modifies the terms, conditions or rules concerning the use and occupancy of a self-service storage facility, which is signed by the occupant and the operator.
- "Personal property", movable property which is not affixed to land, including, but not limited to, goods, wares, merchandise, motor vehicles, watercraft, household items, and furnishings.
- "Self-service storage facility", any real property used for renting or leasing individual storage spaces in which the occupants themselves customarily store and remove their own personal property on a self-service basis.

Easy Fixes – Statutory Terms

- "Leased Space" the individual storage space at the self-service facility which is rented to an occupant pursuant to a rental agreement.
- "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.

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The Missouri Requirements

- 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.
- The lessee shall be informed in writing that the lessor either does or does not have casualty insurance on the lessee's property.
- If the rental agreement contains a limit on the value of property stored in occupant's space, such limit shall be deemed to be the maximum value of the stored property and the maximum liability of the owner for any claim for loss of or damage to stored property.

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The Missouri Requirements

- The rental agreement shall contain a statement, in bold type, advising the occupant of the existence of such lien and that property stored in the leased space may be sold to satisfy such lien if the occupant is in default, and that any proceeds from the sale of the property which remain after satisfaction of the lien will be paid to the state treasurer if unclaimed by the occupant within one year after the sale of the property.
- Any late fee charged by the operator shall be stated in the rental agreement. No late fee shall be collected unless it is written in the rental agreement or an addendum to such agreement.

Free

“Free” is defined by **Merriam-Webster** as:

- Not costing or charging anything
- Having a scope not restricted by qualification

Are there any conditions or costs associated with your first month free offers?

Do you offer a free truck?

When was the last time you really got a free cell phone?

Safe or Secure

“Safe” is defined by **Merriam-Webster** as:

- Free from harm or risk
- Secure from threat of danger, harm or loss
- Affording safety or security from danger, risk or difficulty

So ... how completely free from danger, harm or loss
is your facility?

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Safe or Secure

- Follow up questions:
 - How well do your security features (fences, gates, cameras, lights, perimeter alarms, door alarms or motion detectors) really protect the occupant’s personal property?
 - What about the occupant’s individual safety while at your facility?
 - How “guaranteed” are these features to be working at all times?

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Surveillance or Monitoring

Surveillance: Close watch kept over someone or something (as by a detective)

Monitor (as a verb): To watch, keep track of, or check usually for a special purpose

When you claim to have a surveillance camera, or that cameras are monitored, is someone watching them all the time?

Try terms such as CCTV, cameras in use or video recording.

Climate Control

You do not control the climate!

If a customer comes to you from another facility where climate control meant that the building was kept at 72 degrees year-round, with redundant heating and cooling systems along with a back-up generator, what does this occupant expect when they rent a climate control leased space from you?

Perhaps, you control the temperature.

Humidity Controlled

Unless you have systems to both add and remove humidity to maintain a constant relative humidity, your facility isn't humidity controlled.

Perhaps, your leased spaces are dehumidified.

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Grace Period

This term implies an extension or delay of enforcement.

If you're allowed to declare a default or impose a late fee at "default" or as stated in the Rental Agreement (in Missouri) if you offer a five-day grace period, then there is a question when you can impose your late fee.

This is especially important because you cannot enforce the lien until the Occupant is 45 days late, and you can't sell or tow for 60-plus days delinquent.

All the sudden, a legal sale or tow becomes a defective one due to a grace period not being calculated into the default equation.

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Sole Discretion

This is one of those terms that can get you into a “discussion” with your occupant about why you're refusing, for example, a partial payment, a late payment, a payment by check, etc., because your rental agreement states it's within your sole discretion to accept or reject.

Consider also the language: Which may be unreasonably withheld, often found with “permission” type clauses.

Abandon/Abandoned

Abandon: To give up with the intent of never again claiming a right or interest in (*abandoned* property)

This means you have to know the intentions of your occupant when they last left the facility.

A contractual definition of abandonment might be one solution.

Source: Miriam Webster Dictionary

Authorized Access

Why do you want people to believe you are the gate keeper?

Anyone with a key and a gate code can get in.

When you collect this information, you're saying you'll prohibit anyone not listed from accessing the storage space.

Have you ever had a couple getting divorced fight over the contents of the unit?

A completely different term is alternate contact, which you should/must collect.

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Anniversary

Anniversaries happen once a year on an annual date.

If your rental agreement renews on the anniversary date, you may be locked in to a rate of rent for a year at a time and be prevented from changing terms or kicking the Occupant except one time a year.

Better terms: Execution Date, Signing Date, Monthly Due Date.

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Size (Approximate)

If you quote a size, it better be an approximate size. Size matters.

There has been too much class action litigation over this subject not to take precautions.

Three concepts need to be in your rental agreement:

- Sizes provided are for demonstration purposes only;
- Occupant has had the opportunity to inspect the storage space and finds it acceptable;
- Occupant is not entitled to a refund or rebate if the storage space is, within "X" tolerance, smaller than quoted/represented.

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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

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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 The MSSOA Annual Meeting

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