
Mini-Storage Messenger

Initial Here - A Bad Idear

There are many important provisions in a Self-Storage lease between the operator and a tenant. As a matter of fact, I often argue that if you bother to put a provision in your Lease Agreement with a tenant, it must be very important to you and relevant to the relationship that you want to have with your tenant. Why, then, are you as an operator choosing to emphasize and de-emphasize certain provisions in your lease? This is what you are doing by asking the tenant to initial by certain provisions in your lease.

Also, what happens when you forget or neglect to get certain provisions that have pre-printed “initial here” lines in the lease initialed by the tenant?

These are the types of hard questions that some lawyers are asking operators nowadays when operators are sued by tenants seeking to hold the operator liable for loss, damage or even personal injury of the tenant, and a situation which I hope by the end of this column you will decide you do not want to find yourself in if and when a tenant ever decides to sue you.

There are really two major issues with “initial here” lines. The first problem is the selection or identification of the provisions that you are asking the tenant to initial. I certainly understand that many operators want to make sure that they confirm with the tenant that the tenant understands clearly items such as that the operator does not provide insurance and that the tenant understands what date rent is due, and late fees. However, by doing this, you are giving the tenant the opportunity to challenge whether or not the tenant was aware of or understood all of the other provisions of the lease that were not initialed.

The argument goes something like this:

“Mr. Operator, did you give the tenant the lease and give the tenant the opportunity to review the lease fully before executing the lease?”

Answer: “Yes”.

Tenant’s attorney continues: “I notice that several provisions have ‘initial here’ next to them”.

Operator’s answer: “Yes”.

Tenant’s attorney continues: “How did you pick these particular provisions to have

initialed?”

Landlord’s answer: “They were the ones that are the most important or raise the most questions”.

Tenant’s attorney: “Do you specifically discuss these provisions, word for word, with the tenant before having them initial?”

Operator’s answer: “We describe the provision to them.”

Tenant’s attorney: “Do you specifically describe each and every provision in the lease to them before they sign it?”

Operator’s answer: “No.”

What you can see from this description is a situation where an attorney could make an argument that since only certain provisions were “highlighted and explained” to the tenant, that if the lawsuit involves a non-initialed lease provision, the tenant’s attorney will try to argue an exception to enforcement of that lease provision, since it was one of the non-initialed, unexplained provisions. As I mentioned above, I hope that each of you believe that every provision in your lease is there for a purpose and is just as important as every other one. To set off certain provisions with initials can lead to an argument that you would hold certain provisions to be more enforceable and more important than others. This is a mistake.

It also does not make any sense to have the tenant initial each and every provision. It is obvious that the better solution is to simply obtain a signature at the end of the lease.

The second problem with the policy of requiring initials that it is Murphy’s Law that if there is one lease where you are going to miss having an important provision initialed, that will be the one tenant who will have the claim arising under that provision. For example, you require all of your tenants to initial a provision that says the landlord does not provide insurance and the tenant waives any claim that they may make against the landlord that would otherwise be covered by insurance. If this provision for some reason is not initialed, you can bet that the one tenant who has a loss without obtaining insurance will not have that provision initialed, leading to an argument that there was some sort of waiver to that provision, or that provision was intentionally glossed over or ignored by you as the landlord.

Before you say that you would never miss initialing a provision in a lease, let me assure you that it happens every day. Many of you have managers that you trust with your business and your money, and they are probably all wonderful people. However, everyone has a bad day, there are floaters, there are weekend fillers and/or employees who do not understand what they are doing. Worst of all, there are occasionally employees who set out to do you some sort of harm because of a problem with your employment relationship that you may not be aware of at the time. If the provision that is relevant to a case is not initialed, you can be certain that you will be served with discovery to show all of your other leases had the provision initialed. If every other lease has that provision initialed, there is at least a potential that the attorney for the tenant could raise a waiver-type claim saying that this provision is unenforceable because it was not initialed, and ergo the provision is waived or not important or it would have been initialed just like in every other circumstances because every other lease is initialed in that exact same spot.

While this case may or may not win, you are leaving yourself open to an unnecessary exposure. As long as people are filling in leases, as long as there are part-time employees, weekend employees, summer employees, or disgruntled employees, there is always a chance that the employee may forget to dot every “i” and cross every “t”. One of the dottings or crossings includes having all these lines initialed throughout your lease.

Since you can create such unnecessary exposure by having only certain provisions highlighted by initialing or missing getting provisions initialed, and it sets you up for such high risk of unnecessary exposure, there is one simple solution - remove all the “initial here” boxes or lines from your lease and all reference to the “initialing” provisions in your lease.

This is a very simple change that can dramatically reduce your risk of liability in the event of a future problem between the operator and the tenant.

Some operators do not have “initial here” provisions by the provisions, but have them on each page with a signature on the last page, or vice versa, a signature on the first page with “initial here” on all other pages. While this practice is less risky, it is still not recommended. If you have “initial here” lines on each page, and if for some odd reason you fail to have the lines initialed on a page, and a problem arises later with a tenant, you are going to open up the grounds for the tenant to assert that you have switched pages in the lease as proven by the fact that the

tenant's initials do not appear in a spot where initials should appear.

Again, unless or until we are all perfect and know that all of our employees are working perfectly each and every day, the "initial here" boxes by provisions or at the bottom of pages create a risk you simply do not need to take, and I would recommend you not exposure yourself to this additional risk, which has no real perceivable benefit for you.

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