

## **Self-Storage Now!**

### **Background Checks Is Change Around the Corner?**

The hot topic in the Self-Storage industry is no longer the latest and greatest lock, late fee lawsuits or manager's overtime. It is tenant screening. Since September 11, our industry has received multiple warnings from Homeland Security, the FBI, and other law enforcement agencies that Self-Storage facilities are expected to be used and/or may currently be used by terrorists. In August 2004, most of you received the Notice from the SSA that the FBI requested the assistance of Self-Storage facility owners, operators, and employees in the fight against terrorism. The memo states that there have been recent discoveries indicating that Al Qaeda may be planning an attack using improvised explosive devices ("IED"s). Further, the memo stated that, "Historically, terrorist plots involving IEDs have utilized rental storage facilities to house parts of the bomb or other supplies until the plotters have time to assemble the weapon or prepare for the attack." The FBI in its memo noted that in April 2004 individuals were arrested in the United Kingdom for their involvement in a plot to set off an ammonium-nitrate bomb in London.

In the Self-Storage industry, typically, you do not know much about your tenant, but now you are going to have to know more. While pragmatically, you may not have a terrorist renting from you, screening will help you avoid tenants in your facility who are convicted of the types of crimes that if you knew about them, you would want to avoid them. As examples, if you knew that the applicant standing at your counter attempting to rent a Self-Storage unit had been convicted of arson, breaking, entering, and fencing stolen property, or of manufacturing methamphetamine, you may want to reject that person as a prospective tenant. Understanding screening, how it works, and how to effectively screen are the keys to successful screening of tenants.

What is screening? Screening is the process of comparing the identity of your applicant to various databases (criminal, credit and/or other background) ,which will provide you with some type of report back about the applicant's history. You apply these results against your pre-determined rental standards or requirements. Most screening services combine the data based on your requirements and provide an instant and easy-to-read report to you so that you can make an immediate decision whether or not this person at your counter should be permitted to rent from

your facility. Clearly, gone are the days of renting to anyone who has first month's rent and a security deposit in hand.

Screening reports can be as simple as checking the criminal record on your local Clerk of Courts website or calling for a reference. Screening can be as extreme as having an algorithm applied based on a credit score, a landlord history, and a criminal report, either local, statewide, multiple statewide, national and/or Federal Most Wanted List, or "watch" lists. The more extensive the background check and the more inclusive of various databases, the more expensive the report. The most important thing you need to understand about screening is loosely based on the old expression, "garbage in, garbage out". You need to draw from the right information databases to be effective for your business. For example, often I do not recommend that my clients use a credit report in their screening process. This industry has a history of catering to people who may not have good credit because tenants are between homes because of an eviction or foreclosure; they are in the middle of a divorce; or they otherwise need additional space, and stellar credit is not always necessary to make a \$50.00 to \$150.00 a month Self-Storage rent payment. It is far more important to obtain the proper criminal reports. As an example, while of course every owner and operator would love to avoid having an Al Qaeda terrorist on the FBI's Most Wanted list renting from their facility, there are, in fact, not that many people on these lists compared to the population of the United States. I personally recommend that the better database to use contains local crimes that would most likely lead you to believe that the tenant might be a problem in my Self-Storage facility. Of greater concern should be local or regional criminal records for crimes, such as rape, theft, receiving stolen property, and manufacture of drugs. Conversely, perhaps you need not be too concerned about someone who has been convicted of DUI or tax evasion. It is incumbent upon the owner or manager of a facility to make the appropriate determination as to the breadth and width of the requested criminal reports. As an example, if you are only ordering criminal records from the county in which you are located, and you are close to a county line, you are obviously not going to be made aware through the screening process that the person who is renting from you has been convicted of the manufacture of methamphetamine in an adjoining county. The same could be said of a state-wide search. If your facility is located in the middle of a state, 500 miles in all directions from a border, a

statewide search might be appropriate. However, if your facility is located in a place like Cincinnati, Ohio, with two border states ten miles away, a tri-state criminal search might be a better option. While the FBI may encourage you to run the reports from the most wanted federal lists, running the reports from those lists alone is probably not effective. As an analogy, after the 9/11 hijackings, a national rental screening company for apartments was asked to run all the names of the hijackers through their database. Nine of the hijackers had some sort of criminal record, mostly for crimes such as theft, receiving stolen property, or drug sales, which, if the apartment complexes had run these people through the system, probably would have caused the applicant to be rejected from rental housing. To the best of my knowledge, none of the actual hijackers on 9/11 were on a terrorist most wanted list with the FBI, but at least nine of them were known, in their home states, for other criminal activity. I contend that these are the exact same people that would have potentially been rejected from your facility if you had screened tenants in 2001. While your rejection of these potential tenants down the road may not stop the next terrorist attack, you may give the law enforcement officials the head start that they need to break up the potential act of terrorism. If nothing else, at least the news crews will not be reporting from the front of your facility that all the materials used to make the bomb were held in your facility, assembled in your facility, driven out in your rental truck, and taken to the spot where the bomb was detonated. The more compelling argument for background checks is that trial attorneys are starting to advance the argument of reliance. That argument goes something like, "My client relied on your facility insuring that it was safe for the tenant to store their property at your facility. By failing to perform background checks, you allowed somebody to move into the facility who otherwise would have been detected as an (arsonist, rapist, theft, larcenist, drug manufacturer), which would have avoided my client being raped, the facility to burn down, explode, the property to be stolen, etc., that but for your failure to properly screen tenants, this class of litigants would not have been injured". This is an argument we are beginning to see more and more often in rental industries, particularly, the apartment industry. It will not be long until this argument is made regularly against Self-Storage operators. For that reason alone, you simply must start screening your tenants to avoid those with prior criminal histories just for liability avoidance.

The Self-Storage Association seems to agree with this position. They have recently launched a service known as Counter Measures, a service available to members of the SSA that will allow any member to screen against certain criminal lists. Counter Measures appears to currently rely too much on credit reports and national crime lists rather than giving you the ability to check local criminal records. There are other screening services that provide more local criminal records. Nonetheless, Counter Measures is a nice first step for the SSA.

There have been some rumors in the industry that background checks will become mandatory. I do not believe that this will happen. However, in this day and age, anything is possible. I would be concerned that any mandated background checks would have to be the “right” background checks, checking the types of crimes that will actually on a day-to-day basis affect your business. While it is a noble aspiration to say that you should check all the national databases, plus your local databases, it will be cost prohibitive to do this, and it will be counter-productive to require national “crime list” type of background checks. It is difficult to believe that the government will regulate this type of landlord/tenant relationship, and that they will be able to dictate to private property owners how they must run their business. There are some advantages to a nationally-mandated background check system. First, if everyone is required to perform background checks, no facility performing the background checks is put at a price disadvantage with other facilities. Second, once the word is out that all Self-Storage facilities run a certain level of background check, the type of people who would trigger a rejection in the background check would stop renting Self-Storage facilities.

Michael Scanlon, CEO of the SSA, recently stated how important it is that this industry continue to self-regulate itself, so that government regulation does not have to occur. That is why I am such a strong advocate of appropriate background checks now by all Self-Storage facilities. The more operators that get on board with doing some form of background check, sooner rather than later, will help the industry avoid the potential of a mandatory, government-regulated background checks.

Jeffrey Greenberger is a Partner with the law firm of Katz Greenberger & Norton LLP in Cincinnati, Ohio and is licensed to practice in the states of Ohio and Kentucky. This column is for the purpose of providing general legal insight into the Self-Storage field and should not be

substituted for the advice of your own attorney.

Mr. Greenberger's practice focuses primarily on representing the owners and operators of commercial real estate including self-storage owners and operators.

Mr. Greenberger is the legal counsel for the Ohio Self-Storage Owners Society, Inc., and the Kentucky Self-Storage Association, Inc. You can send your questions or comments to Jeffrey Greenberger at [jjg@kgnlaw.com](mailto:jjg@kgnlaw.com), or mail them to Jeffrey Greenberger c/o Katz Greenberger & Norton LLP, 105 E. Fourth Street, Suite 400, Cincinnati, Ohio 45202 or you can reach Mr. Greenberger at (513) 721-5151.