

SELF-STORAGE NOW

Finding Guns in a Unit During a Lien Sale

Self-Storage operators on more than one occasion find in a tenant's unit which has gone to lien sale weapons, including guns. Rarely does the operator know what to do with the guns and whether or not they are able to sell the gun as part of the lien sale process.

Unfortunately, for the purposes of answering that question in this column, the answer varies by state and often by city. While federal law requires a background check before selling a gun, there is an exception for guns sold from a "private collection", such as individual collectors at gun shows selling second-hand or used guns. Thus, in some states, the Self-Storage operator may be able to sell the gun without following all of the requirements for a background check. Other states, however, have added to their state or city requirements the requirement of a background check even on collectors, firearms or guns from private collections.

There are a few common threads which the Self-Storage operator should know as a basic introduction to this subject.

First, the best person to help you through this process is a local gun dealer. Establish a relationship with a gun dealer who can, among other things recommended in this column, come out to evaluate any firearms found to determine if they are valuable enough that it would not be "commercially reasonable" to sell them as part of a whole lot of a Self-Storage unit. The gun dealer can also explain the local laws and customs to you and help establish a value.

Second, establish a relationship with the local police department. Many states require that a gun be checked against a database of guns used in crimes prior to the transfer of the gun, especially since a gun has been left behind, it is possible that it may have been used in a crime. No operator would certainly want to sell a gun that would be evidence in solving a crime.

Third, in order to be able to sell a gun at all, you should attempt to arrange having several people who are knowledgeable about guns available to bid on the guns and sell guns

as separate lots not part of the whole unit.

Fourth, if a background check is required to sell guns by your city or state ordinance, it may no longer be “reasonable” to sell a gun as part of your lien sale because of the expense and difficulty involved in performing background checks on any bidder. At that point, it may be more appropriate to give the gun to the police for appropriate disposal rather than trying to sell it or sell it directly to a licensed dealer.

Fifth, generally it is illegal to sell ammunition under any circumstance. Ammunition must be handled with extraordinary care as it is, obviously, explosive. Arrangements should be made to have ammunition properly disposed of by your local police department if it is found, and in the interim, treat it with extraordinary caution.

Sixth, it is always illegal to sell a firearm to someone of the age of minority, in most states, under the age of 18 or 21. If you are allowed to sell the guns at all, you must insure that you are selling a gun to an adult.

Seventh, some cities and states require that any gun sold be sold with a gun lock or other safety device either in place or conveyed with the sale of the gun. You should familiarize yourself with these rules if you are going to sell guns.

Eighth, a gun may not function properly, or be in otherwise defective condition. If after you have read in this column, you still might consider selling a gun, it should be done with necessary releases prepared by your local attorney to insure that if the gun malfunctions that you are not liable for making any sort of warranty as to the condition or the fitness of the gun for any purpose.

You should also consider the potential negative publicity. For example, in Indianapolis, Indiana, Channel 9 KMBC News ran an extensive expose’ about how people ended up committing murders with guns purchased from unregulated sources, including classified advertising, which embarrassed the *Indianapolis Star* into changing their advertising/gun policy. As an operator, you probably do not want to have the next investigative report stating that a criminal bought his/her gun from a lien sale at your Self-Storage facility.

The long and short of this list is that if you find a gun in a unit, the best thing to do after checking with the police to make sure that they are not interested in the gun is to have a gun dealer or other person knowledgeable in the laws of gun sales in your city, county or state handle the sale for you, if the gun has any resale value. The risk you take is that most state Self-Storage lien statutes require you to have a sale at the facility or within a reasonable proximity of the facility, thus taking the gun off the property may violate a Self-Storage statute, but in my opinion, having a gun dealer sell it for you is still the best course of action. This, of course, presumes the gun is saleable at all and that the police do not have interest in it or there is not an ordinance requiring a Self-Storage operator, such as an apartment owner or other person who finds a gun not their property, to turn it into the police for donation or destruction.

For polar opposite views of the rules and regulations regarding gun sales and for a listing of state gun sale laws, which may include local ordinances pertinent to your decision making, see the National Rifle Association website (www.nra.org), or for the opposite view on issues, see the Brady Campaign website (www.bradycampaign.org).

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

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