
A LEGAL PERSPECTIVE

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HOW WELL DO YOU KNOW YOUR TENANTS?

You Should Know a Whole Lot More

At first glance, this column may not seem like my normal type of topic, this one is more a suggestion for your consideration. How well do you really know the person that you may allow to move who-knows-what into one of your units in your multi-million dollar investment tomorrow? I am not just speaking of knowledge from a terrorism perspective, which has been such a concern over the last two years, although it does factor into my thinking in this column. Before you answer, I know that, generally, these are short-term relationships where the average tenant remains six months, and that the industry is suffering along in a bad economy like every other industry, and that this business is incredibly price-sensitive. This is particularly true in Ohio where operators have just had to add approximately 7% to their rent in the form of a State sales tax beginning August 2003.

I also know that not all of your tenants have “A”-rated credit. The industry certainly has a segment of its clientele that is “temporarily” between housing, or people trying to get a fresh start after a separation, divorce, bankruptcy, death of a family member, etc. I also am the first person to state that you do not want to get too involved with your tenant’s storage lest somebody claim your business to be one of warehousing as opposed to Self-Storage.

All of that being said, I still think as an industry you need to know more about the people you are taking in as tenants, other than collecting driver’s license information, a credit card number, and an emergency contact phone number. There are some other quick resources that you can have at your fingertips when a prospective tenant tries to rent from you. These are items you can look up on the internet, either through public records or through a private subscription service that may help you avoid those tenants who are terrible and dangerous risks to your facility.

As examples -

- (1) If you were able to look at a tenant’s credit report or summary of their credit, you

would be able to quickly recognize that there are some people to whom it is simply not worth it to rent. The type of prospective tenant where you know you will lose on this transaction, no matter how much money you get up front and how fast you start and finish your lien sale procedures. As an example, if you were able to see that there were fifteen credit card companies, mortgage lenders, auto loan companies, etc., that are actively collecting or have made profit and loss writeoffs in the last year before the tenant shows up on your doorstep, would you not imagine that this tenant is a perfect candidate for bankruptcy? The risk is that after placing their possessions in your facility for thirty days, the tenant may file bankruptcy and tie you up for sixty to ninety days before you can commence your lien sale, and while you may get Relief from the Automatic Stay, it will then be 30-60 more days before the lien sale or eviction is completed, and on top of all that, you will probably spend \$750.00 to \$1,500.00 in attorney's fees to get to that point. I venture to say that the tenant I have described is a guaranteed money-losing proposition for your facility.

(2) If you could see that a tenant files a lot of lawsuits against people, including landlords and credit grantors, might you want to avoid being the next lawsuit? By checking certain court records, you can detect a trend that certain prospective tenants are never happy with anything except a lawsuit at the end of a relationship, and I know most of you want to say that you are lucky enough never to have been sued, but still, if you take on one of these litigation-happy malcontents, would you not agree that you are almost certainly going to be the next lawsuit and that you are setting yourself up for a loss?

(3) If you could look to see whether the person has been convicted of any crimes and if so, what crimes and how recently, might you want to reject that tenant's application? Certainly, you have to set limits somewhere, and I am not advocating that you refuse rent to anyone who has ever been given a payout ticket for marijuana; on the other hand, what about two recent counts of aggravated arson, or hazardous waste transport and disposal without proper EPA licensing, fencing stolen property, petty theft from other Self-Storage facilities, etc.? What about previous drug convictions, particularly operation or distribution of substances that you can manufacture in a Self-Storage facility, such as methamphetamine? Under Federal drug forfeiture laws and, even more strictly, under certain State drug forfeiture laws, if you knowingly and intentionally rent a premises for the use, manufacture, storage, or distribution of a controlled substance in your business, liability

can be imputed on your business, and you can have your property forfeited to the Government as part of a drug seizure or be fined. This has happened recently to a business that allowed its commercial spaces to be used for teen parties known as “raves”, where methamphetamine had been distributed and consumed, the owner was fined \$2 million. The government then seeks to not only punish the manufacturers, distributors, and consumers of the methamphetamine, but the people who allowed the party to occur on their private property.

Please do not read this article to say that if you accidentally discover a methamphetamine lab in your facility, that you should not report it to the police for fear of drug seizure. The terms “knowingly and intentionally” have very specific definitions. Stumbling across someone making drugs or having a drug dog sniff it out should not constitute the actual knowledge. However, if you have been watching the video cameras of people bringing 50 gallon barrels of farm fertilizer in and out of your facility and have not done something about it, you may be subject to liability.

This is a different day and age for the Self-Storage industry. Your tenants seem much more willing to put off paying the Self-Storage facility for longer periods of time, even allowing more and more property to go to lien sale, and your tenants seem much more willing to sue the facility when property is damaged or their goods are sold, even if done properly. Your tenants, are storing hazardous waste or using your facilities for the manufacture of illegal substances more than ever before, and I fear that this is a trend that will continue.

My hypothesis is that the stricter your standards for rental, the more likely you are to discourage these kind of people from renting at your facility. I can not promise you that you can rid all Self-Storage facilities of these sorts of folks, however, the smart readers of this column can put up enough barriers to entry not to make it so difficult that you lose good clients. However, you may want to lose the bad ones.

So what can you do now to be looking a little more closely at your prospective tenants? The first and simplest thing to do is to make sure you have a strict photograph identification requirement. You should never rent a unit to a tenant who can not produce at least two pieces of photo identification, one of which is government-issued, including either a social security number (SSN) or individual taxpayer identification number (ITIN) if the person is in the country legally, but is not a citizen. The second thing you can do is use the internet. The internet has become a wonderful tool

for checking backgrounds if used properly. There is a lot of free information out there. The first place I would check, which will only add a few minutes to the verification process, is the website of the Clerk of Courts in the county or counties where you applicant has most recently resided. Hopefully, your rental contract asks for at least one prior address if the current address has not been their permanent address for at least a year. You should contact your local Clerk of Courts to determine whether or not they have a searchable database by name of civil lawsuits and criminal charges or convictions. Most counties now do. If you don't know where to turn to find your Clerk of Courts website, there is a website that keeps track of all the various Clerks that have a website, that is *www.courts.net*. It is worth playing around with a little bit on the website to see what sort of information may be out there for civil records. For lawsuits, I recommend you check the lowest level above small claims court that your county may have. Normally, this is a "District" or "Municipal" court. These are where small to medium size dollar lawsuits are filed, and they normally handle evictions. If your tenant shows up as having been evicted five times in the last year, or has filed many lawsuits against their creditors or prior landlords, you may want to reject this tenant. Also, if criminal records are available, you might be able to do a quick criminal records check just to see if you can determine if your proposed tenant has criminal convictions, and if so, for what crimes. In your county, you may need a criminal records release which might slow down the rental process. Even if you do not actually conduct the criminal records check, if you ask for the release to do so and walk back to a computer and type in some information, it may be enough to scare off a prospective drug manufacturer or other type of criminal.

Additionally, for a relatively low price, you can join one of the three major credit bureaus and pull actual credit profiles on your tenant. You do have to enroll with these services. The three major services are Equifax, Experian, and TransUnion. Information about each of these can be obtained on the web or by looking for a customer service phone number in your phone directory.

www.experian.com 1-800-831-5614
www.equifax.com 1-888-202-4025
www.transunion.com (no 800 number)

Once you join, you would have internet access to a database where you can enter the name and social security number, and in about 15 seconds, have a credit report back. There is some training you will

need to understand how to read a credit report or abstract, but they are not that hard. With a credit report it will not take you long to develop a standard for where you want to draw the line with tenants.

One final and very important point. If you are going to establish some sort of screening process, you must be consistent in the application of those screening criteria; that is, if you are going to reject anyone who has had a prior felony conviction for distribution of controlled substances, you must reject all applicants who turn up having that type of conviction. You can not deviate because you think the person is a really good person, except for that one conviction. You also have to set and maintain a standard for the number of prior evictions or lawsuits, open collections, unpaid bills where you may want to reject. I am not asking you to set the standard very high at the start. I think you may find that if you set a standard for open, unpaid debts, evictions, or criminal convictions, you will be happy to see some of the people go that you reject once you really know their true background.

Apparently, some companies tried, about five years ago, to sell credit and criminal screening services to Self-Storage facilities as a package on the internet. These services apparently never got off the ground because owners were hesitant to charge the \$5.00-\$7.00 extra that it would cost to have a complete report. I contend that that is a small price to pay to avoid having your unit not earning income for three or more months while you are performing a lien sale, and even longer if you are trying to get a bankruptcy stay lifted, or while the hazmat team cleans up and investigates methamphetamine. I am interested in hearing from the readers of this column as to whether or not there would be interest in using a comprehensive screening service if one became available. I advocate that it would be wonderful for our industry if one of those services were to come back and service the Self-Storage industry.

If you are interested, or if you believe it is an awful idea, please drop me an e-mail at the address below.

In the meantime, there are certain precautions that are inexpensive, easily available and fast which may give you enough information about a prospective applicant or tenant that could end up saving you hundreds, or maybe thousands of dollars in lost revenue and attorney's fees because you can avoid the one or two relationships that go significantly sour each year.

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., as well as a regular presenter at Inside Self-Storage Trade Shows. You can send your questions, comments, or suggestions for future topics to Jeffrey Greenberger at jig@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.