

Mini- Storage Messenger

QUESTION: Do I give up the right to overlock if I decide to pursue eviction?

Answer: Previously on these pages I have expressed an opinion that in some states and in certain circumstances an eviction of a delinquent tenant may be a faster, safer, and better way to get the tenant out of the unit rather than pursuing your lien sale options. Without rehashing, I especially believe eviction to be a good option for vehicles in default in most states. Several of my clients now exclusively do evictions for all self storage units because of the speed and safety that it provides compared to a lien sale. That has led several of our readers to ask the same question. If I decide to proceed with an eviction am I giving up the right to overlock the unit (upon default) because the eviction implies that the tenant must have access to leave voluntarily? The answer to that question varies state by state and you will have to check with a local attorney who does a lot of eviction work. My general opinion is that you are correct that you would give up the overlock if you decided to proceed with an eviction.

Let me explain with this column why I am not sure that giving up the overlock right is as bad as you may think. The main reason to overlock, in my opinion is to get the tenant's attention. Specifically, there will come a certain day in the default cycle after which the tenant will be denied access to his stored goods unless the debt is paid. The idea being that the tenant wants to get access to his goods regularly, and the overlock will act as that "coercion" to finally get the tenant to pay because he will need to put something in or get something out of his storage unit.

I understand overlocking is a valuable tool. That being said, in self storage many state lien rights are not enforceable for a relatively lengthy period of time after the original default occurs, and in many of those states, I question whether you can really overlock a unit or deny access to the unit itself unless or until that full "continuous default period" has run its course. Even if there is no question in your state about when you can overlock, many of your states still have a 30-90 day continuous default requirement before you may begin the certification and lien sale process. Often the lien sale statutes require that the continuous default period expire before you can send the certified notice, or at least before you can advertise or give other public notice. In short, due to the nature of the statutes in many states the lien sale process takes a minimum of 60-90 days between the date of first default until you have conducted your lien sale and cleared

the unit. Still other states require that along with the default you send some type of notice to your tenant giving them the right to contest your sale rights if the tenant sends that form back within a prescribed time you have to go to court and have a hearing on your right to sell or otherwise dispose of the stored property, also adding time to the length of the sale.

Isn't the most important objective when a tenant goes into default, to get the tenant to pay and if not to pay then to get out as quickly as possible so that the unit can be re-rented to someone who will pay?

The overlock will get a certain percentage of your tenants to pay but most of you seem to still be doing lien sales once a month or once a quarter. There are therefore, tenants for whom even an overlock is not coercion enough to obtain payment.

The eviction generally happens much more quickly. It is my understanding that if you are not going to consider the property subject to your self storage lien and proceed with an eviction that you do not have to wait the 30 to 90 day continuous default period before you can begin bringing an eviction action. Eviction actions are often summary proceedings which means that they are heard quickly and efficiently, often 7 to 20 days after the date you file the eviction and, generally eviction laws are designed that once you win your case the tenant will have to vacate quickly. Evictions are served by the clerk of the court either via certified mail letter or, by an officer of the court often the sheriff or constable in uniform. Thus, while you may be giving up the right to overlock, nothing gets attention better than a good certified letter from the clerk of courts indicating that you are being sued, or a uniformed sheriff showing up at your door to serve you with process. Let us assume that summons gets the desired attention and the tenant realizes either they have to pay or they have to get out quickly before their property is set out of the self storage unit. Admittedly, the unit is not overlocked and the tenant can come "in the middle of the night" and remove their property. But isn't this your objective? By proceeding with an eviction you have avoided 30 or more days of delay or extra time the tenant may have to decide whether or not they wish to pay, the tenant is still under pressure to pay but the pressure is asserted not by overlock but by pending lawsuit and, if tenant was not going to pay you at overlock he is not going to pay you at eviction time either. However, if tenant comes and gets his stuff you got your unit back that much faster (often 30 days earlier than in most states by using the lien sale procedure) and you have avoided all of the potential liability coming back upon you

for all the upcoming lien sale activity that you are about to incur, then I think you have achieved the second best possible result and avoided a lot of liability along the way.

Under the right circumstances giving up your right to overlock may not be as bad as you think.

You can send your questions, comments, or suggestions for future topics to Jeffrey Greenberger at info@selfstoragelegal.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, or visit his website at www.selfstoragelegal.com.