

## A LEGAL PERSPECTIVE

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### Master Key Lock Systems For Your Self-Storage Facility

This column addresses an issue which I am asked about all the time. What are the pros and cons of having a master key to all locks used at a Self-Storage facility?

While my answer to my clients is that I am not in favor of master-key systems, I always qualify that statement by saying that it is a business decision that a Self-Storage facility operator needs to make, understanding the risks of a master key system and weighing the pros and cons of such system. After such a conversation, some operators elect to use master-keyed lock systems. Many others do not.

While it may be restating the obvious, a master-key system is a lock system in which the operator purchases locks for the facility and either installs the lock or requires the occupant to use a lock provided by the operator, and the Self-Storage operator has a master key which can open all of the locks. There are also other systems that allow for a master key that does not open the lock, but allows the operator to deactivate or overlock the lock with a master key. This type of system is not subject to the concerns expressed in this column.

There are two types of risks of maintaining a master key system. The first is that the operator creates a bailment over all of your tenants' property stored in your facility. In some states, a bailment can represent a deviation from the requirements of a Self-Storage facility under your state lien statute. In all states, a bailment implies the duty of care that you owe to the tenant to protect their property. In a typical Self-Storage situation where the operator does not have a key and has no regular access to the property, the operator has no, or at best, a minimal duty of care. That is, if there was some extraordinary issue such as a landslide, fire, or flood and the operator could do something to protect some or all of the occupants' property, the operator may have that duty to protect the property. However, when you the operator has a key to the unit, the operator creates a bailment, and the bailment implies the operator exercises what is called an "ordinary duty of care". The best way to insure you do not create a bailment is to include a lease clause that disclaims a bailment, but this may not be effective in a court if the operator has a key. Think of terms of a valet car parking service. Even though there is language on the back of the

valet ticket that says the valet is not liable for damage to your car, you would certainly expect to have the valet parking service pay for damage that occurs if the valet parking service is not ordinarily careful with your vehicle, for example, speeding down the parking lot and hitting something. In this case, you would expect, correctly, that the valet parking service would be liable to you for the damage to your car because the valet violated its duty of ordinary care for your vehicle. The same is true in the Self-Storage relationship where you maintain a key that opens the units. You may be assuming a duty to do more to insure the safety, security and well-being of your tenants' stored property. For example, if there is an infestation of mice, by maintaining a master-key system, you may have created a duty to inspect all the units to make sure the rodents have not entered the other units. In a Self-Storage relationship where the operator does not retain a key, you have assumed no such duty unless or until you are on notice that there is a condition which may force you to either enter or contact the tenant to provide access. Therefore, you may not have the duty to enter the unit unless or until you know multiple units have been affected by mice.

The second risk is that retaining a key to the unit opens up the operator to liability for losses claimed by the tenant. Generally, as an operator, you should not want to take inventory of the property being stored by your tenant, or know specifically what is stored. However, tenants can come back and claim later that they had stored some items in the Self-Storage unit that are now missing. In some situations, especially where you do not limit the value of the stored property, the items that are claimed to be missing can be extensive. While some losses can be explained by theft, vandalism or other forced entry methods, if there is no forced entry, the tenant is going to look to you or your employees as the chief suspects for an alleged theft. A master key system does invite the possibility that a dishonest manager or other employee such as a maintenance worker could easily steal property. However, even in the cases where your employees have not done anything wrong, it certainly invites this type of accusation that an operator who does not maintain a key to a unit does not have to face this regularly. In my legal practice, at least 15% of the lawsuits that I see arising from Self-Storage relationships arise from a tenant claiming property is missing from their unit and blaming the operator for one reason or another for the loss. These reasons include often an allegation that the landlord had some entrance or access to the premises via a master-keyed system.

Certainly, one possible solution in keeping a master-keyed system that could help diffuse the potential litigation for wrongful entry would be individual door alarms with records maintained by a computer database. Of course, if you have entered during the period of time when the theft allegedly occurred, these computer records can act as handing over the proverbial smoking gun to the tenant. Further, records of access via door alarms must be maintained and retained for a long period of time, as claims are often brought for missing or stolen merchandise when the tenant moves out. Think about your longest remaining tenant in your facility. Has it been three or four years? It is recommended that these types of records be maintained for at least seven years. If you do not have the data capacity or memory ability of a computer system to maintain these records, then the door alarms are not a solution.

There are also advantages to a master-keyed system. Many operators believe that when they use master-keyed systems and the tenants know about the system, their tenants do not give them nearly as much trouble with storage of inappropriate or illegal goods because, in theory, the tenant knows that the operator reserves the right to enter at any time, and if the operator finds illegal or improper materials, these could be reported to authorities and/or could result in a termination of the lease. The second advantage is if there is an odd odor or fluid from a Self-Storage unit, it is much safer for you or the first responders, be it the police or fire department, to have a key that easily opens the unit, rather than grinding or drilling a lock which could cause a spark, and if what is leaking or emanating from the unit is a toxic or flammable substance, there is much less risk of fire, explosion or damage to units or people by simply being able to use a key to open the lock rather than using grinding and friction caused by drilling or other forcible methods of removing a lock. Operators also feel that it is a customer service or selling point to have a key to the unit to allow deliveries to the unit such as rentals to pharmaceutical representatives, or tenants who are moving in or out of town or are out of town who need to receive business materials. Having a key or master key to the unit allows the operator to open the unit for delivery or pickup, previously authorized by the tenant, and allows the operator the flexibility to enter the unit if there is any question about possible damage, for example, a leaking roof, when the tenant is inaccessible or unreachable. Finally, operators like the master key system because it allows them to perform maintenance as needed, and reduces tenant complaints about problems with their storage units. For example, if a tenant calls the answering service and

says that their door spring is not functioning properly, being able to key in and make the repair rather than being on standby for the tenant to come in, or cutting the lock and replacing the lock in order to make the repair is often preferable to an operator.

One final note - among the list of questions that some insurance carriers ask an operator in preparing a quote for a facility insurance policy or renewal of a facility's insurance policy is whether or not you use a master-keyed system. It is my understanding that in some circumstances, a master-keyed system, from an underwriting perspective, is considered a liability and may cause your insurance rates to increase. Make sure you understand what may or may not happen to your insurance rates if you switch from or to a master-key system.

After reviewing the pros and cons of a master-key system, in the end, such a decision is a business decision, not a legal decision. The question in making that business decision is, "Are you, as an operator, prepared to accept the additional risks and additional liability exposure and the increased duty of care to all of your tenant's property in exchange for the conveniences and customer service aspects of a master-keyed system?" If you are prepared to accept those risks after understanding the nature of the risks, then a master-key system may be an option for you.

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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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