

## A LEGAL PERSPECTIVE

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### Maximizing Collections

One area of operations where operators are quick to give up is collection of their bad debt. Collecting your delinquencies can be an additional source of revenue, but most operators throw up their hands and say, "I am just happy to have my space back". However, just making the tenant think that you actually collect your delinquencies, even if you do not, will help operations in several ways. There are also some things you can do in advance to help ensure that you have a chance of collecting your bad debt.

At the outset, let me be clear that I am not, by this article, advocating keeping delinquent tenants on hope of collecting the rent instead of taking all efforts to get the tenant out of the premises as quickly as possible. These two concepts are actually congruous. You should do everything to get a non-paying tenant out of the premises as quickly as possible, so as to minimize your damages, even if this course of action means not collecting some or all of the rent before letting the tenant have their property back. I have said it before, and I will say it again in this article - lien sale is the last thing you want to do if you can avoid it in any way.

That being said, many of you offer to forgive all past rent and charges due in exchange for the tenant getting their stored property out of the facility instead of offering to let them out with payment of a nominal amount and reserving the rent claim for a later day. Operators also either do find abandoned spaces and do nothing to pursue the tenant for the balance after they vacate and/or not try to collect the balance after the application of the sale proceeds.

It seems that the main reason operators do not pursue their collections is because they see each delinquency as a small amount, not worthy of expending additional money. I believe that if operators did a few things differently, in many cases, they would have enough information to give them the confidence that it is worth trying to collect the debt because the operator knows where he/she can go to collect the money.

Look at your bottom line at the end of each year of bad debt expense or write off. If that amount is more than a few thousand dollars a year, that should tell you two things: (1) you are missing out on a source of revenue; and (2) you are not doing the right things at the inception of the tenancy to let your tenants know that you are tough about collecting unpaid rent.

This column serves two purposes. It is a discussion of how to increase your collection revenues. However, it is also about how you are establishing the mindset of your tenants regarding your willingness to collect delinquent or unpaid rent and charges.

So what do I recommend?

One of the most important and significant things you can do from both an active collection perspective and a mindset perspective is to join one of the credit bureaus to allow you to report the delinquencies to the credit bureau and hopefully affect your tenant's credit in the event they leave you with a delinquency.

There have been many changes to the Fair Credit Reporting Act and Fair Debt Collection Practices Act over the last several years, which makes it much harder for you to be an active member of a credit bureau. However, several services have been created to act as your intermediary with the credit bureau so that you are not the active reporting entity; the service is the intermediary. While there is a fee for the service, sometimes there can be no stronger statement on the wall of your facility than "We report all delinquencies to the XYZ Credit Bureau". You may also want this sign even if you do not actually report to the credit bureau. If you use a collection agency to try to collect your bad debt, make certain that they are reporting your debts to the credit bureaus for you. If they are not, you should consider using another collection agency.

The most certain way to get and keep a delinquency on someone's credit report is to file a lawsuit against that person and obtain a judgment. The credit bureaus pull this information directly from the court records; therefore, you are not the reporting entity and do not have all of the various reporting requirements. Yes, I do know that you might be spending \$35.00 to \$50.00 to file a small claims complaint over a few hundred to a few thousand dollars, however, nothing is more likely to get you paid by a former stubborn tenant than having a notation on their credit report so that the next time the former tenant goes to purchase a house, car or obtain other credit, they are denied until your debt is paid.

In order to have a chance of a successful lawsuit, you need to get good information up

front from your tenant. The time when the tenant is signing the lease is, for lack of a better term, what I call the "honeymoon period". You have finally sold them on your facility being the best for their needs, they have fallen in love with the idea of the need to store their property with your facility, and they are willing to give you whatever information you want or need to get the transaction over with and get them on their way to unloading their belongings into one of your units. This is the time to be asking a lot of questions and recording a lot of information about your new tenant. Above and beyond obtaining the standard name, address, and social security number, ask for a few other things, such as all work phone numbers. You do not even need to necessarily ask where they work; the phone number will tell you where they work when you call. That will give you another way to reach your tenant in the event you need them during the tenancy, or give you a place to look to garnish or attach wages in the event you have to sue them for their delinquency. You should also ask for next of kin and/or emergency contact information. Often, we rent to people who are in "housing flux". Six or nine months from now when the tenant is delinquent in their rent, it is nice to be able to call mom or dad and find out where our tenant ended up and explain to mom or dad that you are about to sell their property because they have not paid their rent. Maybe you will get paid, maybe you will find out where your tenant is, or maybe not, but it is better than having nowhere to start trying to collect.

If your state permits, copy the tenant's photograph identification that you should be collecting when you rent spaces. I can not tell you how many times a tenant has provided a client of mine some sort of false name or identification, normally their brother's or their children's, something along those lines, to avoid detection for all their prior bad deeds in the event you run any sort of credit report or check the internet for criminal activity. If you are not collecting a copy of an identification, you are giving away the shop. You have nowhere to start because you do not even know if your tenant gave you his or her real name. It is helpful to have a copy of that identification to declare a default if you realize later you have been given false identification. It is also helpful to have the identification, if it is legitimate, for a street address and height and weight in case you need it. Additionally, if your state is one that still places social security numbers on photo identification, please make sure the social security number

given to you on the lease matches the one on the identification provided to you. As a simple extra precaution, if the person trying to rent from you appears to be 40-50 years old, and the identification birth date is from the 1980s, you probably have a false identification. You may actually end up not using this information to make a rental decision. On the other hand, once this person is delinquent to you, it is helpful to have all of this information to both contact the tenant and to follow up on your collections.

Next, make a habit of at least twice a year photocopying all payments you receive from your tenants, except for the automatic debit/credit card payments. Set a requirement in your office to do this in February and August of each year. This allows you to keep track of where your tenants are banking, and you may even capture a new address off the checks. Further, if and when the tenant defaults, you know what bank to contact for garnishment, if you choose to obtain a judgment.

Don't be shy about asking for information such as "where do you bank?" as part of your lease/application process. Many of your tenants pay with cash or money order but do have bank accounts. You need to know where those are if you want to enforce a judgment later. I contend you will feel more comfortable spending the money to file the lawsuit and obtain a judgment against someone if you thought you knew where they worked and where they banked. Many of our tenants pay with a credit card, or you require automatic charge to a credit card, or auto bank debit. You should see that credit card. While you do not want to obviously copy the card, a manager should note from what bank/financial institution the credit card is issued. While there are certainly national providers, and you may not be able to figure out from the credit card where the tenant banks, if you know whom the credit card is issued through, if and when you have to take a judgment, you can often subpoena the credit card company and ask for their records on your former tenant as part of your discovery or debt collection process. If all you know is that they have a MasterCard, you will never know whom to subpoena. However, if you know the MasterCard is issued by MBNA or Provident, or one of the other large providers, or a small bank right down the street, you have an avenue through which you can pursue collection.

Additionally, although the economy is tough, keep deadlines tight. One of the most

common mistakes that I see when I am asked to look at policies and procedures of a self-storage facility is that the facility is allowing its tenants to become thirty or forty-five days delinquent before doing much of anything to collect, overlock, or terminate the tenancy. Certainly, there are states that have Self-Storage statutes that provide that you may not exercise your remedies under the Self-Storage Statute until a tenant is, for example, 45 or 60 days delinquent. However, those statutes do not say that you can not do anything until 45 or 60 days; they say you can not start the lien certification process until the 45 or 60 days are up. I believe all Self-Storage facilities make calls at some point after the tenant is a few days late. Most self-storage facilities even overlock or deactivate a gate code a short number of days after the delinquency. However, that seems to be it. So your calls and letters have to get as much attention as possible. Your calls or other activities will get more attention from your tenants if you say, "I would hate for this delinquency to become a judgment and have to garnish you at XYZ Company, your place of employment" or "attach your accounts at XYZ Bank". If the tenant knows that you are aware of where they work, or where they bank, it is an extremely powerful tool to get your debt paid ahead of others.

Do not let the tenants slip away from you. The United States Postal Service forwarding orders are good for one year from the date that they are filed with the Postal Service. If you are not sending something to your tenants at least once a year, with the words "Address Service Requested" on the outside of your envelope, you are missing a valuable way of keeping track of your tenants. For about \$1.00, you will get back from the post office the little yellow mailing label on a post card advising you of any forwarding address that has been filed on any of the tenants to whom you send communications. All of the marketing people tell you not to lose sight of communication with your tenants and not just communicate with them when you want to raise rents. Here is another great reason for you to go ahead and spend the money at least once a year to send a newsletter, or some sort of update, to your tenants so that you keep track of where they have gone before it costs you more money to skip trace your tenants.

Several of our clients are sending out "record updates" to their tenants. The letter reads something like, "We are updating our files or upgrading our database. Would you be so kind as

to make sure we have all of your current information” and either print that information or give them blanks to fill in asking for the name of the person filling in the form, their current address, current employer, when the credit card that they have used for auto payments may expire, and if they are still banking at the same location. My clients are offering to everyone who responds an entry into a drawing for a \$50.00 or \$100.00 gift certificate to a local restaurant. You would think that no one would bother to reply to these forms. However, wave gift certificates under the tenants’ noses, and the replies come in droves. Some of my clients report response rates as high as 75%. If a tenant is not using an auto debit, credit card or checking account debit, do not be afraid to ask if the tenant would now like the option to have the account auto-paid by a draft, withdrawal, or credit card payment. My clients report that after tenants have been in for a while, they learn to trust the Self-Storage concept, and now trust your facility to provide services you promised and are willing to opt into the automatic fund withdrawal from the bank account or the automatic debit to the credit card. The best way to avoid a delinquency problem is to be automatically entitled to collect as much rent as possible, up front.

You also should include language in your leases that allows you, at the time of the application, or any time during the tenancy, and even after the tenancy for a period of time, to pull consumer credit reports and criminal records on your tenants. This is a simple paragraph which can be placed in your rental agreement or on a separate addendum, such as:

“I hereby authorize XYZ Self-Storage to obtain consumer reports, and any other information it deems necessary, for the purpose of evaluating my application. I understand that such information may include, but is not limited to, credit history, civil and criminal information, records of arrest, rental history, employment/salary details, vehicle records, licensing records, and/or any other necessary information. I understand that subsequent consumer reports may be obtained and utilized under this authorization in connection with an update, renewal, extension or collection with respect or in connection with the rental or lease of a residence for which application was made.”

While you may not be pulling credit or criminal reports or reports on your tenants at all, some day you may choose to. In the meantime, it is nice to know that you have these releases on file to allow you to pull credit histories or criminal records if you believe that a tenant may not be able to honor their obligations, e.g., they fall two months behind on their rent. For the small

fee of a credit report, you will be able to tell whether or not your tenant is falling behind on all of their bills or if they are simply ignoring your bills. This is valuable in your negotiations with your tenant to get them out. If they are 60, 90, or 120 days behind on their mortgage and credit cards, our tack with our tenant may be, "please just come get your stuff out and we will forgive the debt because you are hopelessly uncollectible". However, if everything else is up to date payment-wise, it adds a lot of ammunition to your telephone calls with your tenant to say, "It appears that you are current with your other credit grantors. Why is it that you do not seem to be interested in payment our bill, and we would hope to not have to sue you, take judgment against you and take the various actions, including garnishing your wages at XYZ Company or garnishing your bank account at XYZ Bank."

In collections, victory is at least as much about mindset with your tenants as the actual activities that you undertake to collect your debts that will make your accounts receivable grow or shrink. Keeping close track of your tenants, their whereabouts, where they bank, where they work, where they are sending you checks from, and updating that information on a regular basis, as well as using that information when you speak to your tenants about their delinquencies, gives you a strong upper hand in your negotiations to get the rent paid.

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 [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.

