

Mini-Storage Messenger

The Pitfalls of Screening

I am and have been for quite some time a great advocate of both employee and tenant screening at self-storage facilities. The number one reason why I am a proponent, particularly of tenant screening, is that you can help to control the quality of tenants who may be renting in your multi-million dollar facility, to help the facility remain safe for your tenants, thus protecting your investment. There are, however, some caveats about tenant screening, which you must be aware of before embarking on a tenant screening program.

First, if you are going to screen tenants, you must screen all of them. That is, you can not decide to screen a tenant only when they look “shifty” or dangerous, and save the money when a suburban housewife wants to rent from you. While fair housing laws do not apply to the rental of self-storage (which prevent you from discriminating based on certain protected classes because of a rental), by renting a unit, you are still extending credit to the tenant. Thus, many of your state Civil Rights or Equal Opportunity organizations or agencies would still have the right to bring some sort of discrimination charge against you if it turned out that you were not screening all applicants or your screening standards tended to target certain groups of people who might be protected by your state’s laws. For this reason alone, if you are going to institute screening, you are going to screen every potential individual tenant. Really, this makes sense in the long run. Sometimes it is the most innocuous tenant who turns out to be the biggest problem. Thus, it does not really do you any good to screen some and not all tenants because if you miss or skip one, you have defeated the purpose of screening.

Second, you must have a policy regarding your commercial tenants. Screening can be difficult when you are dealing with a large commercial tenant or a commercial tenant who will give lots of people access. This is particularly true of corporations such as drug companies that want to rent units for their representatives. You may screen the tenant such as the individual owner of a company, but that would not work for Pfizer or Frito Lay. However, the company may send workers to the facility to pick up equipment or supplies from the unit. Also, companies may change the “authorized” employee(s) often. Thus, you have not screened the people who will then be driving in and out of the facility every day. If you are going to have a tenant where you know that there is going to be people regularly entering and exiting the facility on behalf of

the tenant you should have a policy that you screen all of the workers so that you know that while you have let a good tenant into the unit, you are not allowing his employee who has been convicted 25 times of larceny onto the property with access to all of the units every day. Otherwise, your option is to not screen any tenant who enters into a lease in a corporate name or prohibit corporate tenants. You need to judge which policy will be best accepted by business tenants and what is best for your business.

Third, depending on the location of your facility, and your type of clientele, you are going to have to set the appropriate parameters by which you will accept or reject a tenant based on tenant's criminal background. Credit scoring, although it is not something done often at self-storage facilities, is easy. There is a score given, and you can set a range stating that you will accept you or not accept you based on a range of "x or above" credit score. This is not true of background screening. Background screening draws from a variety of sources, everything from the Office of Foreign Asset Control lists to local criminal records, including reports from the Bureau of Prisons, Department of Corrections, Probation Departments, etc. Once you get a report back on a tenant, your employee will have to, at that time, superimpose that list of pre-determined or "automatic refusal" crimes on the tenant's report. There are some crimes that I think everyone would want to exclude from their facility. They fall into several categories. For example, we would all probably want to exclude recent convictions for felonies. However, you are not going to be able to blanket exclude all felonies. As examples, there is felony non-support of a child. That is probably not a reason to keep a person from renting at your facility, despite your feelings on payment or non-payment of child support. The most ridiculous example of a felony, perhaps, is public urination in New Orleans. Again, not a crime I would think you would want to exclude from your self-storage facility. However, there are certain felonies you would want to reject, such as aggravated murder, murder, or voluntary or involuntary manslaughter. There are also the crimes of passion and harm, such as rape, gross sexual imposition and sexual battery, felony domestic violence, or any crime involving sexual menacing, assault, or molestation offenses involving children. We all probably would also like to exclude any sexually-oriented offender, whatever those crimes are called in your state, including sexual predators, habitual sexual offenders or sexual offenders. You would probably also want to avoid felonies involving the use of a weapon such as armed robbery. Additional felonies that you may or may not wish to exclude may include reckless homicide or aggravated vehicular assault. You would also want to exclude people who have histories of crimes against property, whether a

felony or misdemeanor, such as breaking and entering, receiving stolen property, robbery or aggravated robbery, theft, arson, burglary, forgery or vandalism.

Also, you will probably want to exclude people who have been convicted of certain drug offenses. Again, most of you are not going to want to refuse to rent to someone who has a conviction for possession of a small amount of marijuana, I think you would all want to reject someone who has a history of manufacturing and distributing methamphetamine because it is at least likely that he is renting a self-storage unit as a new place to “brew” the drugs.

The last pitfall of screening is, so far, not many services offer to allow the manager to avoid knowing the type of crime committed. Thus, when your manager gets the criminal report rather than just getting a “yes” or a “no”, or “further inquiry necessary”, your manager may have to see that the person sitting before them has previously been convicted of something like armed robbery, rape, etc. This can be rather unnerving for your managers. Development is in progress or exists with some vendors to allow this to be a fact that is not disclosed to your manager, but currently several products still reveal this information and can be disconcerting.

Remember, every time you want to screen a tenant, you are required to get a signed release from tenant. I recommend a release that provides for all types of screening, even if you are not performing all of them now, such as credit, criminal, and character checks. This release should allow you to perform these checks now, before the tenancy, before any renewal, and even after the tenancy ends. There may come a time where you hear that your tenant is in some sort of legal trouble, and you may want to run a screen before you decide whether or not to allow them to remain for another month. After the tenant has moved out, if they left owing you money, screening - particularly, credit screening - may help you locate the tenant.

Any tenant that you reject, or do not accept on the same terms and conditions as every other tenant - sometimes called conditional acceptance, - must receive what is called an adverse action notice from you, advising them where you obtained the information and how they can dispute it. The screening program should print out an adverse action notice every time. However, it can be a very ugly mess for you financially and legally to not have provided an adverse action notice after you use a credit or criminal report. Therefore, make certain that your provider is providing you with appropriate adverse action notices either after every screen or after

every screen is going to end up in a rejection or conditional acceptance. Do not proceed to run any screen without a signed, written release, and without adverse action notices ready to go.

Finally, as you will be collecting protected personally-identifiable information (although social security numbers are not used in the criminal screening), you must guard these records so that that information does not fall into the wrong hands. Sometimes the best way to guard this information is to keep it as a computer database if possible with the information encrypted. However, if you are keeping a printout in the tenant file, you must ensure that your tenant files are appropriately locked up, with keys only to those who absolutely have to have access to the files, and that when you are finished with a tenant file, it is properly stored and once you are done storing it, properly shredded or disposed of so that the personal identifiable information does not fall into the wrong hands and get you in trouble.

Most of our clients, who have begun screening, have posted signs in their office advising prospective tenant that he or she will be screened, and the name of the provider who does the criminal background checks. Our clients believe that this alone deters many people who would not pass the screen from even submitting the lease to be screened to be considered for tenancy. However, do not post a sign like this if you are not really doing screening as you may bring upon yourself a reliance argument in a lawsuit by a tenant who later sues when something criminal happens at the facility, saying that they thought, because of the sign, the facility might be safer due to the screening, and in fact there is no screening.

Screening is relatively simple, inexpensive and instantaneous. For the protection of the quality of the multi-million dollar investment that you have made in self-storage, it is appropriate to screen your tenants. There are certainly some down sides and pitfalls that you can find along the way if you are not properly trained to read the reports if you do not screen everyone equally or do not understand how to interpret the screening reports, but all in all, screening is certainly the wave of the future, and you will improve the quality of tenants, and the safety and security of the facility. If you can avoid one dangerous tenant with designs on entering your facility for reasons other than self-storage, such as access for break-ins, brewing drugs, selling drugs, storing items used in crimes, parting out cars, or even worse - potentially waiting in lurch to rape a tenant, then screening is the best investment you can make in your facility.

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.

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