

A LEGAL PERSPECTIVE

RV Boat & Vehicle Storage

How Much Extra Service Can You Provide?

Ten years ago, people who wanted to store vehicles at Self-Storage facilities either found themselves either relegated to a grassy or muddy lot along the back fence of the facility, or if it could fit, storing their vehicle in a Self-Storage unit. One only need to look at the advertisements in *Inside Self-Storage* magazine to realize that the business of vehicle storage is no longer a stepchild of Self-Storage but a big business, including buildings built solely for the purpose of storing large RVs and boats. Over the years, operators have expanded their vehicle storage operations to make them more attractive to the customers. Some operators, particularly boat and RV storage operators, are now offering to perform all sorts of additional services. These services are too numerous to list, but include items such as boat and RV maintenance, repair, and restoration; oil changes, chemical toilet cleaning, and washing; and launching boats and retrieving them from the water for facilities near lakes and other bodies of water. Some of the other services being offered are even more interesting, such as gassing the vehicle and stocking it with food and beverages before the tenant arrives. Some facilities, pressed for space, are stacking boats on custom-made racks.

While all of these services, from the outside, seem to be smart and customer-service oriented, there is a problem with offering all of these types of services. That problem is that you are no longer in a Self-Storage relationship with your customer. You are in a valet-type arrangement and have become a bailee of the stored vehicle. In simple terms, a bailment means that you have been entrusted with the item and have control over what happens to the vehicle while it is in your care. In a typical Self-Storage arrangement, operators seek to avoid bailments; that is, operators rent space, and for all intents and purposes what happens with what is stored in that space is the business of the occupant. The occupant controls what goes in and out of the space; the occupant locks the space; and the operators do not go into the space to modify the goods stored unless or until the operator is forced to do so as the result of a default, a lien sale, and auction. This can be the case in RV/Boat and vehicle storage if you let the tenant “park and lock”. However, if you have some additional control over the vehicle, for example the keys to the stored vehicle or RV, or if you are

parking or racking the boat for the tenant, or taking the boat down and launching it into the water for your tenant, you have created a bailment. You have more control over the vehicle and therefore a greater degree of responsibility for the care, custody, and control of the stored vehicle.

Typically, the duty you have assumed as the result of accepting the bailment is the duty of ordinary care. This is the same duty that, as an example, a valet parker at a restaurant or shopping center has over your vehicle. You would expect the valet parker to be ordinarily careful with your vehicle and not race it off at 95 m.p.h. and run into a light post with it. Rather, you expect the valet will carefully park your car somewhere reasonably safe and return it to you in the same condition in which you checked it with the valet parker or you would expect the valet parker to be responsible for the damages which have occurred as the result of the valet parker's negligence. Obviously, in any situation, if the valet parker wilfully damages your car, he or she would be liable; conversely, the valet parker is generally not liable for things that are extraordinary or unexpected, such as parking the car in a safe place, but then a car theft ring happens by the mall and steals several vehicles, including yours. The middle ground is the responsibility you have accepted as bailee. You are responsible for care of the vehicle and are liable for ordinary and foreseeable damage.

Let's look at some of the items specifically. If you keep the keys so that you can park the vehicle for your tenants, or have it pulled up, warmed up, or cooled off as the case may be for your tenants when they arrive, you during storage and delivery have an ordinary duty to ensure that you take all caution to avoid the vehicle being dented, damaged, etc. Normal damage that may occur on your "watch" is now your responsibility. If you gas the vehicle, you are liable if you put in the wrong type of gasoline. If you undertake to have repairs or restoration made to the vehicle, you are liable if the repairs are not made properly. (I would strongly recommend that you do that type of operation under a separate company or LLC and try to separate some of your liability). In general, you, as the Self-Storage facility, are liable for any damages or dissatisfaction that customer has with the services provided.

As a more extreme possible example, if you stock the refrigerator with food or beverages on a boat or RV for your customer at their request, one of the family members using the RV has a peanut allergy, and you mistakenly stock a product that contains peanuts, you could even be liable for the allergic reaction, or death, of the customer.

While you may think I am overreacting, and that you are willing to take on these sorts of risks, let me provide a more concrete example of things that happen all the time in vehicle storage, most particularly damage to an RV or boat. If you have a bailment over the vehicle, the owner of the vehicle may try to blame you for damage that occurs while it is in the owner's possession. As an example, RV drivers tend to be some of the worst back-up drivers around. So while out on the road, your tenant backs their RV into a tree or a bollard, etc., causing \$10,000.00 damage to the rear of the vehicle. The tenant then pulls the damaged RV into the Self-Storage space and parks it, but you retain a key because you provide services or you reserve the right to move the vehicle to allow other vehicles in and out of the storage area, and so you have a bailment. The owner returns a week later and questions how, during the time that the RV was stored at the facility, the vehicle damaged. You obviously did not cause the damage. However, the owner may try to blame you for the damage which they allege occurred in your care, custody and control and seek to hold you liable under the duty assumed under the bailment.

There are several simple steps you can take to help minimize your exposure. First, if you are going to create a bailment with your RV or boat storage customers, you must have a different type of insurance other than Self-Storage insurance. You must have insurance that covers you for losses arising from your bailment, such as the type of insurance that a valet parking service would have for damage that occurs in the ordinary course of business while the vehicle is in your custody and control (the bailment). Having regular Self-Storage facility insurance is simply not enough, since Self-Storage insurance presumes you are not creating a bailment. Remember, some of these RVs and boats can cost upwards of \$500,000.00. By the way, it is not just insurance, but adequate insurance that is required. Second, if you are providing storage for expensive RVs and boats, an inexpensive set of digital video cameras that record the comings and goings of the vehicles is critical. If you can show that the vehicle returned through your gate with the damage to the rear, your tenant will be less likely to succeed in claiming that the damage occurred while the vehicle was in your possession and seek to assert liability against you. Third, make sure that the rent you are charging is commensurate with the value of services that you are providing so that you can afford the liability that you are accepting as a result of the bailment. Do not take on a bailment gratuitously. If you are going to provide gasoline, and your employee is going to drive a vehicle out to a gas station and fill

it up for your tenant, make sure that the price for this service properly reflects all of the additional costs of insurance and liability that the operator takes on. Thus, if your employee is hit while operating the vehicle on the way to the gas station by a drunk driver and is injured, that injury (in most states) will count against your Workers' Compensation rating as well as against your insurance for the damage to the automobile. At the end of the day, if the driver of the vehicle who hit your employee is insured, you may make a recovery, but you must price your services to recognize those risks. Fourth, form separate entities to perform certain types of these services. That is, while you store the vehicle as ABC Self-Storage, subcontract out the repair or moving functions to ABC Transportation Company, which is a separately-owned LLC or Corporation responsible for the moving of the vehicles. That way, if there is a catastrophic loss, and you are not adequately insured, you may still be able to protect your investment in the facility.

Many people at the ISS trade shows ask me about releases of liability. Generally, releases of liability for bailment are ineffective. If this were possible, every valet parking service in the world would have you sign a two-page release before they took your car. Generally, the case law holds that you can not be released from this type of liability because you are undertaking the bailment for a charge. If you undertake the bailment, you are liable for the ordinary and normal consequences if damage occurs. While you may include releases in your Self-Storage contracts and while I still recommend that you do so, do not rely on a release as your sole protection.

Please remember that while all of these services represent a benefit to your tenant and make wonderful marketing statements, you must be aware of the liability that you are undertaking and be ready for it in advance.

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.