

Mini- Storage Messenger

QUESTION: Do I need to make any changes to my lease if I am going to allow leases to be executed either via the internet or via a kiosk?

Answer: In either situation you are relying on the acceptance of the terms and conditions to be by a digital signature. There are certain exceptions with a kiosk that may allow you to actually capture a signature. Some upper end models have a feature which allows for a signature on an electric “pad” which places the signature electronically on the lease, some lower-end models do not and certainly, it is not possible to capture a signature over the internet. This answer is not intended to discuss those who take reservations over the internet or via a kiosk but actually have tenants come in and sign the leases.

If you are going to lease over the internet or via a kiosk you will need, at a minimum, to make some changes to your lease which will recognize that the tenant has somehow accepted the terms and conditions of your lease without obtaining an actual signature. While this area of the law is in its infancy of development I always say, if digital signatures or digital acceptance of terms and conditions is good enough for a company like Microsoft, it is probably good enough for your use. You can be sure software companies will fight any law or case that tries to challenge the validity of the acceptance of a license agreement that you have to click on before opening any piece of software for the first time.

Thus, at a minimum you need to add a provision to your lease which says something to the effect of “by pressing the “accept” button [on the internet or whatever you would use for the kiosk] you are indicating that you have reviewed the lease, found it to be acceptable as written and agree that you as the within named [Tenant/Lessee/Occupant (state specific term)] are accepting and agree to abide by and be bound by the terms and conditions as set forth in the Lease Agreement. Further, your payment of rent at this time and in the future constitutes your ongoing acceptance of the terms of the lease and any modification of the lease of which you are notified at least 30 days in advance.” While, I never recommend that clauses be initialed if signed in person, you can have the internet or kiosk set up to have some sort of button or checkmark to say “I accept”.

Beyond that, you have to look at the type of operation that you are going to run with the internet or kiosk to determine whether additional changes to your lease are necessary. For example, if you are running the facility unattended or attended only on a sporadic basis you may want to add a clause which provides that the facility is unattended or not attended on a regular

basis and provide both disclaimer of any security that people might think exists with an attended facility and provide a method by which someone can reach the owner or manager for any event. You also have to consider changing your notice provisions. Many operators have leases which require notice either via certified mail or in person at the facility of intent to vacate or change of address etc. If you are not going to have someone there to provide the “form” that you require for a change of address or a termination, make sure your lease reflects how people can really give you notice.

If you are going to have a kiosk operation you may want to change the method by which rent can be paid to reflect that the kiosk will be the place to pay rent and prohibit use of a “drop slot” or payment in person at the office. Also, you should want to require, on rentals via internet or kiosk, that the tenant sign an ongoing credit card authorization form or an ECH form so that you can charge/withdraw the rent, or at least allow yourself to secure the rent in the event rent is not paid on time. Sometimes an unmanned or sporadically manned facility gives the tenants the feeling that rent can be paid whenever desired. This type of authorization is to allow you to “hit” the credit card or checking account each month by a certain date or any time after a certain date if rent is unpaid. This strategy reduces the impression of lax rent collection.

Finally, make sure your lease properly reflects how to access the space after the rental is complete via the internet or kiosk. To many, self storage facilities are long winding hallways or rows of buildings of identical looking roll up doors. If there is not some sort of text which describes how to find the unit, how to enter the unit, how to use the gate, etc., add it now. Too many people get too confused and end up either dissatisfied with the rental situation which cuts short and otherwise potentially long tenant relationship or they start looking for discounts or other offsets because of a “breach of contract”.

Give your lease a review and make sure that a) you have the proper acceptance of terms and conditions language for electronic acceptance; and b) make sure the lease really accurately reflects how the operation works if the facility is being remotely managed, part time managed or managed in a manner different than you originally anticipated when buying or drafting your lease agreement.

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.