

## A LEGAL PERSPECTIVE

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### Facility Rules & Regulations: Use Them Properly

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Many Self-Storage operators, somewhere along the way, have developed a separate sheet of paper containing rules and regulations for their Self-Storage facility that is meant to work in addition to, or is an additional page of, your lease agreement.

I am in favor of having a set of rules and regulations. They serve an important purpose which I will discuss below. However, many operators are using their rules and regulations the wrong way, to restate what is in the lease, which is a bad idea. Also, operators have not made appropriate provisions in their actual lease agreement to make the rules and regulations enforceable and do not make the necessary provisions to make the rules and regulations easily modifiable.

First, what is a rule or regulation? A rule or regulation is an item necessary for the operation of the Self-Storage facility that does not belong in the lease because it is more of an administrative issue than a full lease clause, or it may change more frequently than the lease, change by season, or just not fit in the lease because it is a “smaller” item. However, the operator wants these rules and regulations to be just as enforceable as any other provision of the lease. There are things that may seem to better fit as a rule or regulation, but these are also items which should not be contained in the rules and regulations and belong as a lease clause.

Examples of what may be a rule or regulation for a Self-Storage facility are: (1) rules about using the Dumpster or disposal of trash - this is an especially good rule or regulation because you may allow that rule to be modified if someone signs an addendum to pay for the use of the Dumpster; (2) rules about lock cuts, how and when a manager will cut a lock and the charge to do so; (3) rules about the use of electricity; (4) quirks or need-to-know facts about access to the Self-Storage facility, such as a trick to opening the gate, getting out of the facility when the tenant is ready to leave, or alarm use; (5) a speed limit for the property; (6) how the operator wants vehicles to park when loading or unloading, for example, parallel parking to a building as opposed to backing up to the building to avoid damage to a gutter or roof; (7) rules about smoking; (8) rules about semi-truck access to the facility; and (9) rules about how items

are stored in the property - for example, requiring plastic covers for furniture that could get moldy. What is similar about all of these examples of rules and regulations is that, while important issues in your lease, they are small items which may not need a lease clause, and may need to be changed occasionally, for example, if you change the gate hours, method of access or smoking rules.

There are items which should not be part of your rules and regulations. I see these all the time. Most often we see rules and regulations that are repetitions of items already discussed in the body of your lease agreement. As examples, if you already discuss when rent is due and how it is to be paid in your lease, do not repeat it in your rules and regulations. If there is even the slightest difference between your lease provision and your rules and regulations, you are creating ambiguity. If you create ambiguity, a court will enforce the provisions in favor of the tenant. I often see rules and regulations that contain provisions similar to the lease, such as the following, all of which could again create the type of ambiguity that you don't want: when rent is due; procedures for notifying the operator about changes of address; the term of the rental; when landlord can change the rent amount or other terms of the lease; issues regarding termination of the lease; other charges and fees the landlord may collect, including late fees, lock cut fees, overlock charges, administrative fees, inventory and notice fees; other provisions regarding what happens in the event of a default; provisions regarding the use of the unit and the operator's right to enter. I have even seen a lease that contained the "governing law" setting which state's laws apply in the rules an section of a lease.

As you can see from my list above, you do not want to have repetitions of items in the lease contained in your rules and regulations to avoid ambiguity. Further, as my list demonstrates, many of these are not brief items that might be subject to change on a regular basis. My list describes the important, for lack of a better term, "meat and potatoes" of your lease, and these requirements belong in lease provisions, and only in your lease, clearly defined, with all information a tenant and landlord might need in order to understand that portion of their relationship in the lease.

For those operators that think they are doing a good deed by regurgitating lease information in the rules and regulations, this is not a good idea. Rather, I contend a better way to handle this is to prepare an actual summary of important lease provisions. The summary is not

part of the lease agreement or rental document. A summary is a better solution than restating the lease provisions as part of your rules and regulations. However, I am not a big fan of lease summaries that are written and given to the tenant because people have argued for years that if you did not include or discuss a particular portion of the lease in your lease summary, then the tenant alleges it was not an important provision, and perhaps not enforceable, as opposed to other items in the lease summary. While this is a hard argument to understand, and an even harder one to win, there really is no sense in setting yourself up for that potential failure if you can avoid it. Oral lease summaries may be a more appropriate solution to the problem.

Now that you have an understanding of what your rules and regulations should be, there are still two other problems that operators seem to have with rules and regulations. The first is that the rules and regulations are not incorporated into the lease agreement by reference; the second is that the operator does not give him or herself the appropriate ability to change those rules and regulations easily in their lease.

You need an actual provision in your lease that states that the rules and regulations are a part of the lease incorporated into the lease as if fully rewritten. You also, in that incorporation provision, need to give yourself the flexibility to change the rules and regulations in your lease language. We use language such as following in our client's leases: "The rules and regulations of the facility have been provided to the tenant and are incorporated herein by reference. Landlord may change any portion of this lease, including but not exclusively the rules and regulations, upon one calendar month advance notice (or thirty days in advance of your renewal date, depending on whether or not you use the first of the month or the date leased as your renewal date) from Landlord to Tenant by mailing notice of the proposed changes to Tenant or posting the proposed changes at the entrance of the facility, and payment of your rent for the next following period constitutes your acceptance of these changes". We recommend reviewing this provision with your legal counsel before making any change to your lease.

Again, rules and regulations are meant to be modified on a more regular basis than the rest of your lease. If you are making substantial changes to your lease, such as adding several new provisions, instituting a whole new lease, or doing away with the security or climate control or something very dramatic, you are probably going to try to get your tenants to sign the new leases. However, you want to make sure to give yourself the flexibility to change rules and

regulations, which include things such as gate hours, office hours, etc., without having to get the tenant to sign a new lease. Thus, when you decide to change “small items” you can circulate notice with your invoices or send out a general mailing at the time of rent increase, or send out an individual mailing, and/or post notice at the entrance to your project, or all three, and then once the tenant pays their rent for the next month, that would imply tenant’s acceptance of these changes to your agreement.

The next time you are giving your lease a review, make sure that your rules and regulations are not repetitive of your lease provisions, that you have drawn the distinction between those items that belong in your lease and the day-to-day operational issues which belong in the rules and regulations, make sure that your lease incorporates the rules and regulations so you have the grounds to enforce them and the grounds to rely on them if need be, and make sure you have given yourself the ability in your lease to modify your rules and regulations easily when needed.

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