

A LEGAL PERSPECTIVE

Should I Rent/Lend a Truck to my Tenants?

Many Self-Storage operators offer the use of a truck at move-in as an incentive to a prospective tenant to choose their facility over the competition. While this column does not attempt to recommend for or against a loaned-truck program, there are certain pitfalls and issues of which you should be aware in order to make a fully-educated decision whether or not this is an avenue that you want to pursue. This column is not intended to discuss whether or not you should offer trucks from a national rental company such as U-Haul, Budget, or Penske, etc., for rent from your facility. This column addresses whether or not you should own or lease a truck that you either lend to new tenants at no charge or at a reduced rate at move-in or move-out.

The first problem is how to even define what you offer with the use of a truck at move-in.

I am always reminded of a story that Jim Chiswell tells as the first cautionary tale about the use of trucks at move-in. If you open up your yellow pages today, you may very well find the same type of ad that Jim Chiswell encountered for one of his clients that said, “Free truck with move-in”. Some smartaleck came in, rented a space, and started giving specifications of the type of truck that he wanted to receive in exchange for the move-in. Therefore, the first lesson in this column is to be extremely careful how you phrase your slogan about the use of the truck.

The second most important lesson is to make sure that your rules and regulations regarding the use of the truck are clear and in writing and that you follow your own rules at all times. Because rules apply to the use of the truck, you must include the following statements in any advertising about the truck: “Certain rules and restrictions apply, see management/facility office, for details”; and, “This offer is subject to withdrawal or change without notice”. These are basic tenets of any advertising that you should include. We will discuss the details of the restrictions you may impose later in the column; however, from the beginning of this column, protect yourself in the event you need to change or withdraw the program at some time in the future.

The problem with the average move-in is that your clientele tend to trade beer and pizza for assistance with the move. You have given someone who has probably consumed a six-pack, helping move furniture, the keys to something three times bigger and four times heavier than

anything they have ever driven before, and you are letting this person back the truck up to your building. It is actually impractical and actually inadvisable for the owner to give any sort of driving instruction or test about the vehicle because the more responsibility you undertake to ensure the tenant knows how to drive the truck, the more liability you take on later in the event there is an accident. You are actually better off doing less testimony or training of the driver.

Unfortunately, it would not be one of my columns unless I brought up the issue of legal liability ramifications of these actions.

While generally state law provides that the liability for the operation of any vehicle follows the driver, not the owner, of the vehicle, there are legal concepts such as agency and negligent entrustment that any lawyer may raise in any lawsuit to try to include the Self-Storage owner, operator, manager, etc., in any claim for giving the truck to someone who did not know how to drive the truck or may have been impaired during the use of the truck. Therefore, the most important rule is that you make certain that you have the best possible insurance with the highest limits and fewest exclusions as possible to protect yourself and your business in the event someone raises a liability claim against the ownership or operators of the Self-Storage facility. Second, follow the rules set by your insurance provider, including confirming that the operator of the vehicle has a valid driver's license. Third, the size of the truck that you may lend varies from state to state and, in all states, there is a certain size of truck that requires a commercial driver's license. Therefore, you need not look for a commercial driver's license, but make sure that the truck you have purchased or leased is legally operable by someone with a standard automobile license.

Unfortunately, there appear to be few companies who will insure these vehicles on behalf of the Self-Storage operator, even though the liability follows the driver. Nevertheless, insurance is available, and as long as you can afford the costs (plural intended) of this insurance, you should generally be well protected.

When shopping for insurance for the truck, you will need to ask at least all of the following questions: What type of documentation does the insurance company require you, the operator, to review and keep about the driver? Does the insurance company require a photocopy of a driver's license, motor vehicle background check, and/or proof that the operators license is in good

standing with the Bureau of Motor Vehicles? By the way, these issues become extra-complicated when you are dealing with tenants who are coming to you from other states.

You also need to understand how the insurance deductible or deductibles apply. There may be more than one deductible, but often not. The deductible normally applies to the collision damage portion of the claim. Most insurance is set up similarly to that of insurance at a national car rental company where the owner of the vehicle has insurance to protect the rental company (in this case, the Self-Storage facility) from liability arising from the tenant's operation of the vehicle, including damage to other people's property and injury to others. There is a second component of the insurance that covers collision damage to the actual rented vehicle. Also similar to a national rental car agreement, the collision damage coverage is designed to be secondary to the tenant's normal automobile insurance, but unlike car rental at a car rental-type chain, it appears that approximately 90% of all personal auto insurance policies now written exclude collision and/or liability coverage when the insured rents or operates the truck. Therefore, the secondary insurance coverage that you think you are buying for the operator/tenant often becomes the primary collision insurance, even if the tenant has good, valid automobile coverage for his or her own car.

What does this mean to you? There is a deductible that applies to these collision policies. You certainly should be aware of it, because at the end of the day, if your tenant causes collision damage to the truck, the first some-odd number of dollars in repairs must be paid by your tenant before the insurance would cover any portion of the claim. If the tenant is not solvent enough to pay for that damage, then that responsibility falls back on you up to the dollar limit of the deductible. It would be up to the operator to later try to recoup this money from the tenant. Therefore, you must understand the collision deductible that you have with the truck policy. Obviously, if the truck is a complete loss or severely damaged, the collision coverage will cover you, except for the deductible, and replace or repair the truck. Still, if the tenant can not pay the deductible, you will have to pay it to get the truck repaired/replaced. It is the \$300.00 damage to a side panel, and \$500.00 the roof and \$850.00 to the liftgate that quickly become large expenses to you if your tenants are unable or unwilling to pay for that type of damage if and when it is caused. This appears to have caused many operators to become creative, for lack of a better term, in their policies regarding "free truck usage at move-in". Operators are charging some sort of insurance

premium (a “collision damage waiver”) to reduce (not eliminate) the tenant’s alleged collision deductible similar to the way an automobile rental company provides a collision damage waiver. This fee, then, in theory builds up a reserve against which you can pay for damages that are caused by your tenants who have not or who are unable or unwilling to pay or buy the collision damage waiver for collision damage less than your deductible. (This may also be the unlicensed sale of insurance. An operator should check with their own legal counsel and insurance broker to determine if this plan is possible.) Additionally, operators are changing their policies to loan the truck for a limited number of hours for free and then impose a rental charge per hour after that. Often, unless a large dollar lease is being signed, the free use period is two to four hours, and it is probably not possible to borrow the truck, load it, and unload it in that period of time, unless the tenant is moving a small amount of personal property into your facility. Therefore, in theory, the truck provides revenue on the over-hour charges, which also helps defray the cost of the insurance that you will purchase to cover the facility (the liability coverage for you) and help defray some of the costs of losses due to damage to the truck that we are not paid by the tenant causing the damage.

I discussed this column with Kirk Nash of “On The Move, Inc.” in Texas. They are one of the suppliers of trucks and insurance for this type of business. Mr. Nash stated that 90% of the collision damage claims occur from operation by the owner, the manager, or family members of the owner or manager who are using the truck without benefit to the facility and that really only about 10% of the accidents occur while an actual tenant is using the vehicle. The majority of damage claims to loaned trucks occur to the roof and sides due to side and height clearance issues. Therefore, the operator must be certain that the collision policy that they purchase does not have exclusions in it for damage that occurs from height or width clearance problems. The tenants apparently tend to be careful with the vehicle because they are not used to driving it. However, the manager and owner are familiar with driving the vehicle and tend to be more careless and cause damage to the vehicle. The standard policy from a company such as “On The Move” provides \$5,000,000 worth of liability coverage for that which happens to people or property while the vehicle is being used by your tenant. This insurance solely protects the owner/operator of the facility. Again, ownership should generally not be liable for injury or property damage while the truck is being used by the Tenant. However, it would seem foolish not to have coverage in this day and age

of at least this amount for the facility arising from operation/ownership of the truck in the event the operator is sued and somehow held responsible for any property damage, death, or injury that occurs. As for collision coverage, the amount you need depends on the value and condition of the truck that you are renting or lending out, so there is no recommended amount except to say that it should be enough to cover the truck being repaired or replaced in the event it is substantially damaged or lost.

You must understand that all of the costs that go in to lending this truck to your tenants. You will have a lease or purchase payment on the truck as well as monthly liability insurance. You also have all of the risk of your tenant causing damage to the truck that they can not or will not pay for assuming the typical deductible on a policy is \$1,000.00. It is not difficult to cause \$1,000.00 worth of damage to a truck. The operator needs to determine whether or not, financially, these expenses can be absorbed into the rent or the other charges the operator may receive for the use of the truck to decide whether or not financially a truck is worth providing. From a legal standpoint, it appears that as long as you have excellent insurance and follow the requirements of the insurance company for verification of your driver, whatever they may be, that you can be involved in this business without too much additional worry.

As in all Self-Storage legal discussions, consistency is the absolute key to success. Every customer must be offered the same terms and conditions of use as any other customer using the truck. I am not suggesting that you can not run a special that is different from other times of the year; I am saying that everyone who qualifies for the special get the same terms and conditions. You must know the requirements of the insurance policy that you purchase and perform all of those requirements, including at a minimum, making certain that you have confirmed the existence of a valid driver's license. Make certain that you have the tenants properly filling in all the rental forms provided by the truck leasing company or your attorney declaring who is the driver, make sure the tenant has received a full disclosure of all costs, and make sure you do not cut different deals for different tenants in the facility. If you do all of the above, you should be able to safely lend trucks to your tenants.

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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.

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