

WHAT IS SELF STORAGE?

The self-service storage business is the rental of commercial real estate. The facility operator is a landlord and the customer is a tenant. The self storage operator does not store the tenant's personal property. The storage operator rents a space suitable for storage purposes to the tenant. All storage activity is conducted by the tenant. Unlike a warehouse operator, a self storage facility operator has no direct relationship with the tenant's stored property. The self storage operator is not a bailee and does not have care, custody or control of the tenant's stored property.

Self storage operators, like most other commercial real estate businesses, use a rental agreement or lease to document the rental transaction. One distinguishing characteristic of self storage is that virtually all rentals are on a month-to-month basis. While customers do rent spaces for months and even years, the rental agreement can be terminated by either the facility operator or the tenant on not less than 30 days advanced written notice. This gives owners greater freedom of action than office or retail landlords who typically lease a premise for one to five-year leases. For example, rents can be adjusted quickly when market conditions change.

The rental agreement is the storage operator's most important document. It states the terms and conditions of renting the space. A good self storage rental agreement will contain standard provisions such as the amount of the monthly rent and when it is due. Self storage rental agreements will also contain paragraphs that tenants must insure their stored property and that the facility operator is not liability for loss of or damage to stored property. Storage operators seeking more information about drafting a self storage rental agreement should purchase the Self Storage Association's *Rental Agreement Handbook*. This publication provides a detailed explanation of the terms and conditions that a self storage rental agreement.

In most states the rental agreement must contain specified provisions if owners are to take advantage of the self storage lien remedy. The statutory self storage lien is a self-help remedy available to storage operators when tenants fail to pay rent. Forty-nine states and the District of Columbia have enacted statutory self storage liens. Unlike other landlords, self storage operators do not have to go to court when a tenant stops paying rent on a space. Rather, the operator goes through the state authorized lien procedure that ultimately results in the sale of contents for unpaid rent. The operator is typically required to first send the delinquent tenant one or two statutory notices informing the tenant of the rent default and possible sale of the contents. This is followed by a public notice of sale that is published in a newspaper or in some states even posted online. If the tenant persists in not paying rent the property is eventually sold. The Self Storage Association publishes the *Self Storage Lien Law Annotated* series that provides a detailed review of the lien laws of 29 states.

It should be noted that self storage is a rental of commercial, not habitational, real property. Commercial property is subject to less regulation than apartments. It is easier to terminate a self storage tenancy than an apartment tenancy. The self storage operator has far more flexibility when drafting the rental agreement than residential landlords. Courts are also less protective of tenants of self storage facilities than apartment tenants. Storage operators should make sure that tenants do not live in the rented space. This has happened!

Storage operators should always keep in mind that they rent empty spaces and do not store the goods of their customers. They are not warehouse operators nor are they bailees and do not want to be one. Unlike self storage operators, these businesses store goods for their customers.

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