

Bankruptcy and the Self Storage Tenant

By Scott Zucker

It is crucial that a self storage owner takes all the appropriate steps when advised that a tenant is bankrupt. Handling this matter properly will ensure that the owner is not in violation of bankruptcy law and can proceed in his/her efforts to collect the secured debt.

Types of Bankruptcy

Chapter 7 is a "liquidation." In a Chapter 7 case, where the Debtor can be either an individual or a corporation, a trustee under supervision of the Bankruptcy Court collects the Debtor's property, converts the property to cash, and distributes the cash to the creditors.

Chapter 11 is a "reorganization." In a Chapter 11 case, where the Debtor is likely a corporation, the Debtor creates, again under Bankruptcy Court supervision, a plan to pay off the creditors, usually from post petition (after the bankruptcy filing) earnings.

Chapter 13 is also a "reorganization," but is limited only to individuals who meet certain requirements. Here, the individual files with the Court a plan to pay off his debts over time with a so-called "wage earner" plan.

The Bankruptcy Process

What follows are the steps a self storage owner should take upon notification of a tenant's bankruptcy and possible strategies to recover the debt or simply make the occupied unit available for rent.

STEP 1: Stop the Sale

If the facility is contemplating or in the process of a foreclosure sale, all sale efforts must immediately cease. This includes any pre-foreclosure notices, placing any ads and of course selling the tenant's property.

STEP 2: File Proof of Claim

The Proof of Claim is a document which may be obtained from the Bankruptcy Court. It is imperative that one check the notice provided by the Court to determine whether this document is filed with the Bankruptcy Court or the trustee. This often is determined by the type of bankruptcy. This document identifies all the debt which occurred up until the time the petition for Bankruptcy was filed (the "pre-petition" debt). This form will serve to identify the storage facility as a creditor against the debtor. Because most rental agreements provide for a lien against the tenant's property and a possessory interest in the tenant's property, an owner can identify itself as a secured

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FROM THE PRESIDENT

Greetings Friends and Fellow Storage Operators!

By Charlie Fritts, President

After a mild winter we seem to be having odd spring weather so far. Plenty of rain, cool one day, very warm the next. Hopefully summer will be great. Seems difficult to believe we're near half way through 2012 already, but the best part of the busy season lies ahead of us yet!

Please be sure to read the legislative update in this newsletter provided by our lobbyist Andy Markowski. Thank you to Andy, J. R. Clisham and all of the others who worked diligently contacting legislators to ask for support of our bill. We made great progress this session but in the end our bill didn't make the final vote. All the more reason we NEED the SUPPORT of EVERY OPERATOR in the next session. Can we count on you?

I recently attended the MASSA / Northeast Trade Show in MA. They had a new venue this year which was a little distant for CT operators; however the event was good day long mix of exhibitors and educational sessions. Very worthwhile for those who made the trek. Speaking of events be sure to save the date, October 11th for the CTSSA Annual Conference. We too will be at a new venue, this year in Glastonbury.

My most important message is to our membership. I would really love to hear from you. I truly want to know what we are doing well, what could be better and what aspects of storage you would find helpful for us to provide. Our board of directors and I are committed to making CTSSA the best it can be. Please help us define that. Feel free to contact me by phone 716-689-7377 or email Charlie@SIMI.org

Best wishes for a great rental season!
Charlie Fritts, CPM

INSIGHTS

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MEMBER NEWS

Welcome New Member!

Jon Vogel, Bader Company

West Street Storage Goes Green

Working with Ascendant Energy of Maine, West Street Storage, LLC of Simsbury, CT has installed a 13.8 kilowatt photovoltaic solar array comprised of sixty solar panels and three 3-phase inverters. Through an electric net metering agreement, electricity produced by the system serves electric loads on-site and generates an accounting credit with the electric utility when any surplus generation flows to the utility grid. West Street Storage anticipates that the solar system will produce approximately 55% of West Street Storage's annual electricity. It will also offset 10 tons of carbon dioxide emissions from utility electric generators per year, about the amount sequestered by 2 acres of trees that is the same amount of land used by the facility. West Street Storage is professionally managed by Storage Investment Management, Inc.

Save the Date!

The CTSSA Annual Conference will be held at the Glastonbury Hilton Garden Inn on October 11, 2012. There will be an opening reception at the renowned Max Fish at 6:00 p.m. on October 10. Max Fish is diagonally across from the hotel and is part of the Somerset Mall where you will find shops such as Chico's and Talbots plus Starbucks, Max Amore and other interesting hot spots. So, save the dates for self storage networking and education at its best. Registration will open soon. Sponsorships are available. Go to ctssa.org for details.

THERE IS STRENGTH IN NUMBERS.

If you know someone in the industry who should be a member but isn't, forward their contact information to the office.

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CTSSA GOVERNMENT RELATIONS

CTSSA Legislative Initiative Makes Significant Progress But Clock Runs Out Before Final Approval; Association Looks Forward to Reintroducing Legislation Next Year

By Andrew Markowski, Esq., CTSSA Lobbyist

When the 2012 regular legislative session of the Connecticut General Assembly recently adjourned at the conclusion of the "short" legislative session there were many disappointments, as several pieces of significant legislation were caught up in procedural and political hurdles that mounted near the end. There was much tension between the House and the Senate and disagreements between legislators in the waning days and hours of the session, and as a result many good pieces of legislation got caught up in the process and subsequently died.

One such casualty to this process was CTSSA lien law modernization initiative, House Bill 5088, "An Act Concerning Self-Service Storage Facility Liens". After successfully lobbying to get the bill introduced and passed by the General Law Committee following a public hearing where several Connecticut facility owners and managers testified in support, the legislation passed the House in April and was pending final approval by the state senate. As amended, the legislation would have enabled self-storage operators to use e-mail instead of certified mail for delinquency notices, similar to measures that had recently passed in other states. While there wasn't opposition to the measure, a short legislative session and a large number of proposed new laws led to the bill dying on the calendar at the last minute, along with a significant number of other bills.

Following the end of the session, CTSSA received word from key legislators who backed the bill that they intend to reintroduce the legislation next session and help support it through the process. CTSSA will be working with these legislators and others in the coming months to educate them on this priority legislation to help ensure its passage in the next session.

In the meantime, since the regular legislative session ended, things have been fairly quiet at the State Capitol. While many legislators are recovering from the flurry of activity at the end of session and some are looking towards a planned special session to take up budget implementation measures, most legislators have already shifted their attention to politics and the November elections. Recently both the State Democratic and Republican Parties held their nominating conventions. All 187 state legislative seats are up for election in November, along with one U.S. Senate seat and five Congressional seats.

Making political news recently was the surprise announcement by State Senator Eileen Daily (D-Westbrook, 33rd

As amended, the legislation would have enabled self-storage operators to use e-mail instead of certified mail for delinquency notices, similar to measures that had recently passed in other states.

District), who will be retiring at the end of this year following 20 years in office, including serving as the Co-Chair of the powerful Finance, Revenue & Bonding Committee. In addition to Senator Daily's retirement, longtime State Senator Edith Prague (D-Columbia, 19th District), Co-Chair of the Labor Committee had previously announced her retirement. Both of these now open seats should make for competitive state senate races in November. Finally, Sen. Andrew Roraback (R-Goshen, 30th District) will be leaving the state senate to run for Congress in the 5th District. In addition to these senate seats, there will be at least a dozen open House seats as a result of state representatives announcing their retirements or otherwise choosing not to run for reelection. ♦

Andrew E. Markowski, Esq. is a lobbyist with Gara & Markowski, LLC, a Connecticut government relations firm, and serves as CTSSA's lobbyist at the state capitol. If you have questions on how pending legislation or regulations could impact your business, or if you would like more information, please contact him at: (860) 707-3620 or markowski@gmlobbying.com.

Is Your Self Storage Facility Accessible?

New Rules for Self Storage Construction and Renovation Under the Americans With Disabilities Act

By Scott Zucker

Introduction

Title III of the Americans with Disabilities Act of 1990 (ADA) prohibits private entities from discriminating against individuals with disabilities by maintaining places of business that are not physically accessible. The Act requires that places of public accommodation remove architectural barriers that limit access to or use of the public place. The term “public accommodation” in the ADA generally encompasses all private businesses that offer goods and services to the public, including self storage facilities.

Although self storage operators are currently subject to all the ADA building access regulations applicable to structures generally, the 2010 Standards included space accessibility “scoping requirements” that provide that facilities must identify a specific number of units as assessible to be compliant. Based on these Standards, storage operators need to consider if they have thoroughly inspected their property for ADA compliance and whether a property audit is required.

The Standards

Existing buildings, alterations and new construction are all within the scope of the ADA’s public accommodation provisions. The ADA requires that small businesses remove architectural barriers in existing facilities when it is “readily achievable” to do so. Readily achievable means “easily accomplishable without much difficulty or expense.” This requirement is based on the size and resources of a business. So, businesses with more resources are expected to remove more barriers than businesses with fewer resources. Readily achievable barrier removal may include providing an accessible route from a parking lot to the business’s entrance, installing an entrance ramp, widening a doorway, installing accessible door hardware, repositioning shelves, or moving tables, chairs, display racks, vending machines, or other furniture. In 2010 the Department of

Justice issued new Standards of Accessible Design. The 2010 Standards lay out accessibility design requirements for newly constructed and altered public accommodations and commercial facilities. Certain dates in the construction process determine which ADA standards – the 1991 Standards or the 2010 Standards – must be used. If the last or final building permit application for a new construction or alterations project is certified before March 15, 2012, businesses may comply with either the 1991 or the 2010 Standards. If physical construction starts after March 15, 2012, the business must use the 2010 Standards.

Although self storage operators are currently subject to all the ADA building access regulations applicable to structures generally, the 2010 Standards included space accessibility “scoping requirements” that apply specifically to self storage buildings. The storage space regulations are as follows:

Scoping: 5% if less than 200 units, 10 units + 2% if more than 200.

Dispersion: Disperse the accessible units among “classes” of spaces provided.

Since the term “classes” is undefined, it could mean either the size of a unit or it could mean the type of unit (i.e. climate controlled). If there are more classes than the number of accessible units that are required, operators do not need to have additional accessible units just to have one in each class. There also appears to be no need to disperse the accessible units among buildings in a multi-building facility. As with hotels, there appears to be no requirement to hold the unit back from rental solely for a disabled customer if other spaces are otherwise rented and the space is needed.

The Compliance and Audit Process

It is clear that storage operators should focus on making sure that they have

considered accessibility issues generally for their facility. Operators should take the time now to review if their businesses meet compliance with areas such as entry pad heights, parking spaces, ramps to offices, counter heights and restroom design. But self storage operators must now also consider the accessibility to the unit itself. Does the roll up door meet compliance standards? Does the rain lip prevent access to the space? Is a ramp required?

The ADA is not a building code and Title III of the Act does not have any direct effect on state and local building codes. The ADA allows the U.S. Attorney General to certify that a state law, local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum accessibility requirements for public accommodations in commercial facilities. Accessibility compliance can be tested by the Department of Justice as well as private citizens bringing complaints under a private right of action. Self storage facilities that fail to comply with the law by March 2012 may find themselves subject to liability for non-compliance with the law.

The following are some specific areas to address for self storage operators:

Roll up Doors

1. Door Opening Force: “The maximum force for pushing or pulling open a door shall be: 5 pounds.” (The ADA standards do not address the force required to lift or close a lift-type door).

2. Door hardware: “Handles, pulls, latches, locks and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever operated mechanisms, push type mechanisms and U-shaped handles are acceptable designs.” (Questions have been

raised about the use of a looped rope to aid in closing the door)

3. Thresholds at Doorways: “Thresholds at doorways shall not exceed ¾ in (19 mm) in height for exterior sliding doors or ½ in (13 mm) for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:12” (Is a ramp required to provide access over a rain lip exceeding ½ inches?)

It is important to demonstrate a good faith effort to address these types of accessibility issues on the property. One suggestion is to have a knowledgeable architect perform an accessibility audit of your facility. Through such an audit, operators can discover what areas may require changes and whether those changes are readily achievable based on the costs involved. If the audit is performed through an attorney, the audit can be considered work product and therefore privileged. ♦

Scott Zucker is a partner in the law firm of Weissmann Zucker Euster Morochnik, P.C. in Atlanta, Georgia. Scott specializes in business litigation with an emphasis on real estate, landlord-tenant and construction law. Scott is a frequent lecturer at national conventions and is the author of Legal Topics in Self Storage: A Sourcebook for Owners and Managers. He is also a partner in the Self Storage Legal Network, a subscription based legal services for self storage owners and managers. Scott can be reached at 404-364-4626 or at Scott@wzlegal.com.

Get Down To Small Business: Commercial Self-Storage

By Matt Stites editorial intern at SpareFoot.com

One of the biggest challenges in marketing your self-storage facility is determining who to target. To do this, you must think creatively about what “types” of potential tenants your unique facility most appeals to, what features they want, and where to reach that audience. Today we’ll be stepping out of the consumer sphere to focus on small businesses in need of storage – where to find them, and how to attract them to your facility. Storage is a necessity in many fields, and we’ve listed a few industries that are likely to seek out self-storage for commercial needs.

Outdoor Companies

Landscaping and construction businesses rely on bulky, expensive equipment that requires ample and secure storage. Generally, these companies will need large units with drive-up access and flexible hours, while climate-control is often a non-issue. We always advocate online marketing efforts, so target blogs and forums related to landscaping, construction, contracting, etc. In the offline world, try seeking out home improvement stores to distribute fliers or announcements for limited-time offers that appeal to patrons of these businesses.

Auto Sales

This is an excellent market to advertise your vehicle storage options. Stress the space and security, as well as the accessibility of your storage units. Again, climate control might not be much of an issue, but be aware of special cases like custom paint jobs and antique cars. Blogs and forums that focus on auto repair, vehicle ratings and comparisons, and car salesmanship are great online marketing opportunities. Seek out independently owned dealerships opening up in your area, and attend car shows and meet ups with fliers, business cards and discount offers. Experiment with specials like, “Mustangs get half off the first six months.”

Pharmaceuticals

Pharmaceutical reps are known for having a close relationship with the self-storage industry. Climate control, easy access and flexible hours are a must. Many facilities attract pharmaceutical reps by offering package handling services. While this is great for the customer, there are legal ramifications to this that you’ll need to go over with an attorney.

Start-ups

Start-up companies in any industry often grow faster than anticipated, and may need affordable storage solutions for documents and supplies until they can find a larger office. Sizes and features will vary according to the nature of business. Offer shelving units and filing systems to help facilitate their move-in. A growing trend in self-storage is to offer clerical services like faxing and copying, as well as free Internet access. If there is enough demand, you might even consider converting one of your units into a temporary office, which you can offer for free use to tenants and rent out to non-tenants.

Consult potential tenants over the best storage solutions for their business. Helping them figure out how to perfectly (and cost-effectively) fit in to one of your units will make them feel more secure dealing with you, and will set the groundwork for a profitable long-term relationship. As we mentioned in a previous article on tax-deductible storage, you should make business owners aware of opportunities to write off storage use on their taxes.

One final thought: Consider registering your facility at the local Chamber of Commerce. While this shouldn’t be your sole effort, it’s a great place to network with local businesses and get your facility on the radar. ♦

This article originally appeared in The Storage Facilitator, an educational blog for industry professionals. The blog is published by SpareFoot, the world’s largest search engine for consumers to find, compare and reserve self-storage units online. They also offer web marketing tools that help storage facilities reach new customers.

creditor. Because these proofs of claim often have deadlines, the storage facility must file this document with the appropriate entity as soon as possible.

STEP 3: Continue to Charge Rent and Other Charges After the Date of the Petition

Depending on the strategy that is used to proceed in the storage facility's collection efforts, it is important to continue charging the tenant for use of the space. One remedy for recouping the post-petition rental fees is requesting that the storage facility rent be paid as "administrative costs" of maintaining the property as further discussed below. Additionally, a debtor or trustee may assume the rental contact as clarified below.

The owner must also review the tenant's debt by examining the amounts owed and more specifically payments received in the ninety days prior to the filing of the Bankruptcy. The concern about payments within the above mentioned ninety day period relates to "preferential claims." A non-affiliated creditor cannot accept more than \$600 payment toward debt within 90 days prior to filing of the bankruptcy. If money is paid in excess of the \$600, the trustee will demand that the funds be returned to the debtor's estate as a preferential claim and these funds will be distributed amongst all the creditors. Failure to respond to the trustee's demand will result in a suit against the facility owner to recapture those funds.

STEP 4: Contact the Debtor's Attorney and Bankruptcy Trustee

The contact information for the above referenced individuals is listed on the bankruptcy petition. The objective of this contact is to determine the intent of the tenant. The actions that may be taken as to the storage unit following a bankruptcy are as follows:

Assumption of the contract

The debtor can ask the bankruptcy court to allow it to assume the contract. This is called assuming an "executory contract." If the debtor assumes the contract, the monthly rent gets paid while the case is

pending, and also the outstanding past due rent must get paid to get the debtor out of default. This situation moves the self storage owner to the front line of priorities. Nonetheless, if the trustee does not believe that it will benefit the debtor to keep the property in storage, the trustee will reject the contract. If the trustee takes no action to accept or reject the lease within sixty days after the date of the order for relief, the lease is deemed rejected and the automatic stay is terminated under 11 U.S.C. sec. 365 (d)(4).

Relief From Stay or Adequate Protection

A creditor may request a "Relief from the Stay" which if granted, would allow the facility operator to enforce its lien rights to foreclose on the property. A request for Relief from the Stay is filed in the form of a motion filed with the Court and requesting that the Court "lift the stay." In the alternative, a motion for adequate protection may be filed with the Court. Whether a secured creditor is entitled to adequate protection depends on whether the secured creditor is "over secured" or "under secured." An over secured creditor has collateral that is worth more than the debt and conversely an under secured creditor has a debt owed that is greater than the worth of the collateral. Adequate protection can come in the form of post-petition interest on its claim for an under secured creditor and payment of principal and interest for an over secured creditor. When a creditor has interest in property to be used, sold or leased by the trustee or debtor, the court may prohibit or condition such use, sale or lease as is necessary to provide adequate protection to the secured creditor of its interest. Under 11 U.S.C. § 363(o), the bankruptcy trustee or debtor-in-possession has the burden of proof on the issue of adequate protection and the secured creditor who has asserted a lien on the property to be sold has the burden of proof on the validity, priority or extent of the lien.

Apply for administrative costs

In a Chapter 11 or 13, the storage owner can request that the trustee or debtor pay the costs to maintain the property in the storage facility. The Bankruptcy Court

can make the determination that certain costs are required to proceed with the bankruptcy, and the maintenance of the debtor's property in the storage facility could be considered such a cost.

Turnover

Certain creditors may be required to "turn over" property of the Debtor to the Bankruptcy Trustee. This allows the Bankruptcy Court to collect the assets of the Debtor in order to distribute those assets to all of the creditors. If the Bankruptcy Court requires the storage facility to turn over the stored property to the Trustee, the storage facility will receive a Notice of the request in the form of a Motion for Turnover, which will require the storage facility's response. However, turnover may not be required by the Court unless the Debtor can provide sufficient collateral to the creditor to ensure that its claim is protected. The Bankruptcy Court will not require a secured creditor to give up its possessory interest if by doing so it will lose its security rights.

Abandonment

Another approach under a bankruptcy is to file a Motion with the Bankruptcy Court requesting that the Court order the Trustee to "abandon" the tenant's property. The Motion to the Court requesting such abandonment must demonstrate to the Court that this property is burdensome and of "inconsequential value and benefit" to the Debtor. If the Bankruptcy Trustee is ordered to, or chooses to, abandon the property, the property will be released to the storage facility as the secured creditor, the stay will be lifted, and the property can be sold by the storage facility in an effort to recoup monies owed on the storage facility's claim. If nothing else, an abandonment would allow the storage facility to remove the property from the storage facility to rent to new tenants and to begin obtaining revenue on the space.

Statutory Liens

Whether the storage facility's tenant files a Chapter 7, 11, or 13 bankruptcy action, it should be assumed that if the storage facility is holding the tenant's property

and the storage facility has a signed rental agreement providing for a statutory lien, that the storage facility is a secured creditor. The fact that the storage facility is a secured creditor provides the storage facility additional priority over other creditors who are unsecured, and will entitle the storage facility to payment faster for the outstanding debt.

Conclusion

Tenant bankruptcy is a difficult process for self storage operators made worse by tenants who continue to remain on the property after the bankruptcy and still not pay their rent. However, by following the step by step procedures upon learning of a tenant's bankruptcy, the self storage operator can act to establish priority on its secured claim against the tenant and at a minimum, allow the operator to turnover the property to the trustee and open up that space to generate further revenue for the facility. ♦

Scott Zucker is a partner in the law firm of Weissmann Zucker Euster Morochnik, P.C. in Atlanta, Georgia. Scott specializes in business litigation with an emphasis on real estate, landlord-tenant and construction law. Scott is a frequent lecturer at national conventions and is the author of Legal Topics in Self Storage: A Sourcebook for Owners and Managers. He is also a partner in the Self Storage Legal Network, a subscription based legal services for self storage owners and managers. Scott can be reached at 404-364-4626 or at Scott@wzlegal.com.

Protection Plans Dual Benefit – Additional Revenue and Equity Protection

By Harmon Wasserman, CPCU, Risk Manager for West Port Properties.

What is a Protection Plan Agreement

Most Self Storage rental agreements require the tenant to insure their own property. A Protection Plan Agreement (PPA) is a contract between you and your tenant that allows the tenant to be released from the insurance requirement in exchange for the facility accepting a limited amount of monetary responsibility. The amount is up to the facility owner, but most facilities use \$2,500. The types of claims the facility is responsible for are very basic, such as fire, theft, water damage, etc. It also excludes items that are difficult to value such as jewelry, art, collectibles and also excludes high hazard types of losses such as earthquake, flood, and wind if in known wind zone, and the usual exclusions found in insurance policies. It is not designed to be an insurance policy, because it is not insurance. Its purpose is to release the tenant from the insurance obligation and not be viewed as buying an insurance policy. The fact that it is not insurance relieves the operator from acting as an insurance agent and the responsibilities that go with it. This is not the case with tenant insurance. Tenant insurance requires a license, which is available, but unless the operator also buys Insurance E&O, they are at risk.

How profitable is it

In selling tenant insurance, the insurance company pays you a commission and handles the claims. The commissions will vary, so let's use an arbitrary commission of 40% and an arbitrary premium of \$10 a month per unit. This would net you \$4.00 per month per unit. In a PPA, you keep the whole \$10, but you have to pay your own claims. Historically, the claims have been a very small percentage of the premium so you stand to make a lot more money. In order to protect yourself against a catastrophe, you can buy insurance against that which will only take some of your \$10, but still leaves most of the money for you. The premium for this insurance will vary by how much risk you want to assume. If you don't want to assume much risk you may be better off with traditional renters insurance. Most operators assume some risk and make more money by doing it. If you do the math and multiply the number of units you have by the amount you can net out which can be as high as 80%, this can be very profitable. The number of units that will buy the PPA from you can be as much as 90% if done correctly.

Additional benefits

By offering either a PPA or tenant insurance you are pointing out to the tenant the terms of your lease, which is, they must have insurance, you are not responsible for their losses and the other limitations you have in your lease. It is a good business practice.

How Do You Launch a Protection Plan Agreement

You must have the managers on board with the concept and management must support it. Your managers need to understand the value this brings to your customer while storing with your facility and relay that message to your tenants. You don't have to handle your own claims if you don't want to, but it takes a little of the profit away if you sub contract it. At Westport, we have successfully launched this program at over 30 of our locations, and have it down to a science. It does not come overnight but if you need some questions answered we can help accommodate you. For Westport, PPA has become an important profit center and it can for you as well. It does require some work and some risk, but in retrospect it has been very worthwhile. If you wish to e-mail me your questions I will get back to you in a reasonable amount of time. ♦

Harmon Wasserman is the Risk Manager for US Storage Centers and Westport Properties and has been diligently serving the insurance industry for over 37 years. To find out more information pertaining to or implementing a Protection Plan Agreement at your facility please feel free to contact Harmon at HarmonW@usstorage.net

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