



# What's Driving Self-Storage Lawsuits Today? Know the Risks and How to Avoid Them

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# How Is That a Lawsuit?

It's a common question, but we are self-storage. We rent squares of space ... not complicated...

- Wrongful sales/auction
- Personal injury
- Theft-burglary
- Mother nature
- Mold
- Roof, maintenance, construction
- ADA claims
- Water claims



# How Do Cases Get Filed?

- Lawyer or individual writes or types a lawsuit
- Files papers at the courthouse
- Pays filing fee or claim indigency
- Serves papers on you



# Latest Trends

- Environmental/maintenance (vermin, mold, water)
- Theft/burglary: safety
- Personal injury (golf carts, doors, slips and falls, wrongful-death cases)
- Wrongful sales (most common)
- Economy-driven to some degree



# Avoid Litigation: Personal Injury

- Personal-injury claims (slips and falls)
- Issue: Are you aware of a hazardous condition and yet failed to warn of or remedy the condition?





# Avoid Litigation: Personal Injury

**Common causes:** wet and uneven surfaces, weather, inadequate lighting, trip hazards, staircases, bad handrailing on ramps or stairs, side curbs

## **Remedy:**

- Maintenance plan
  - Know your property.
- Visual inspection daily
  - Consider internal reports.
- See it, mark it, warn about it, fix it!
- Be kind and properly reactive.
- Keep records!

# Maintenance/Roofing/Mold

- **Issue:** Water intrusion through roof, air-conditioning malfunction, floods, landscape issues
- Did the negligence of the self-storage operator cause the damage to the stored items?



# Maintenance/Roofing/Mold

- If your facility isn't "climate controlled," then likely not an issue (except for roof and AC leaks)
  - **Control:** The power to influence or direct the course of events; a means of limiting or regulating something
  - **Climate:** The weather conditions prevailing in an area in general, or over a long period
- Juries fear these claims because many people are afraid of mold. They believe it will cause life-long problems.
- Causes:
  - Tenant stored wet stuff
  - Humidity in facility
  - Water leak
  - Flood/rain/roof leak

# Maintenance/Roofing/Mold

## Remedy:

- **Lease-agreement language:** “We do not guarantee temperature or humidity ranges anywhere in the Facility, including in Your Unit, and you assume all risk of Loss due to fluctuations in temperature and humidity from any cause.”
- Maintenance plan, maintenance plan...
- Water: Have an action plan for informing tenants of floods or pipe bursts.
- Check your roof regularly (regular maintenance).
- Tenant advice (explain dangers of wet property)

# Theft/Burglary Cases: Security

- **The Lease:** Does it disavow security completely? Some states consider this golden while others still allow suits for negligence regarding safety or maintenance.
- **Your actions:** What do managers/brochures/signage say? What do you advertise? What is your name? (SecureSpace, Safe-Keeping Self Storage, Safe Self Storage)



# Theft/Burglary Cases: Security

- Cameras and keypads ... what are they for?
- **Don't promise security.**
- Avoid bad verbiage like, "We never have break-ins; your stuff is very safe and secure here. This is the safest self-storage in this area."
- **The law:** Generally, a person has no legal duty to protect another from the criminal acts of a third person. "An exception to the general rule is that one who controls premises has a duty to use ordinary care to protect invitees from criminal acts of third parties if it knows or has reason to know of an unreasonable and foreseeable risk of harm to the invitee." (Control is the key.)

# Theft/Burglary Cases: Security

- **What can I do if I'm experiencing break-ins?**
- The reality is that if you do nothing in the face of multiple break-ins, it will look as if you are negligent in the maintenance of your property. Consider:
  - Better fencing
  - Better lighting
  - Better cameras
  - Better gate control
  - Better door locks/hasps
  - Better walls (I'll explain...)



# Wrongful Sales: Let's Avoid Them

**This is the easiest lawsuit to avoid and/or the easiest to win. You just have to be perfect!** Why? “With great power comes great responsibility.”

- **Timing:** Have a checklist. Make sure you aren't just exactly in line with your state law on notice, publication, etc., you have some breathing room.
- **Wear the white hat:** Be the hero, not the villain. Keep ledger notes of all calls, emails and letters and go above and beyond to notify the tenant and their designated alternative contact.



# Wrongful Sales: Let's Avoid Them

- **Follow your state's law *perfectly*.**
  - Notice
  - Publication
  - Signed agreements
  - Actual sale
- **If you don't feel it, don't deal it.**
  - If it seems off at all, halt the process and make sure you have done everything correctly.
- **Use alternative process.**
  - If the sale can't happen because of any legal issue, look to evictions or foreclosures or other options in your state.

# Tenant Information and Complaints

## A. Information

You have a legal and ethical duty to secure sensitive information by creating safeguards to protect customer data (Social Security number, date of birth, address, phone, email, driver's license number) from unauthorized access, disclosure or misuse.

- **Take stock:** Know what you have.
- **Scale down:** Keep only what you must have.
- **Lock it:** Protect the information.
- **Pitch it:** Properly dispose of it.
- **Plan:** Create a plan to respond.

# Tenant Information and Complaints

## B. Complaints

- Ledger notes—only the facts!
- Hear them and be sensitive, even when you want to scream.
- Remember, this is month to month.
- Timely address them
- Follow up
- "They never responded to me!"

# Risk of Remote Operation

- We love AI and remote operations. They cut down on costs and personnel and allow for smooth, error-free leasing.
- But:
  - Fraud/theft problem
  - Onsite maintenance issues
  - Addressing tenant issues in a timely fashion
  - Emergencies (elevator, locked in, crime)
  - Criminal deterrent

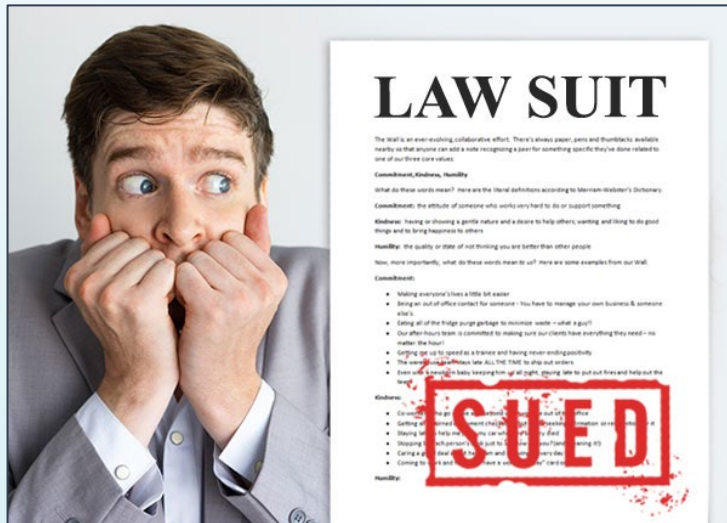
# I've Been Sued ... Now What?

**Panic and freak out! (No, don't do that!)**

- **Keep everything**, including documents, videos, emails, notes, files and photos.
  - Avoid spoliation: fancy word for purposeful “shredding”
- **Notify the insurance company promptly**, though there may be an exception.
- **File an answer**. If the insurance is slow to respond, get an attorney to at least make an appearance to avoid default.
- **Consider immediate resolution** if it is the right case.

# I've Been Sued ... Now What?

- Consider how you are set up at the corporate level.
- Cooperate with counsel, even when inconvenient.
- Keep counsel informed of personnel changes.



# You Cannot Avoid Crazy

Lawsuits happen for three reasons: communication, emotion and crazy.

- Property sold at auction for non-payment. Tenant tried to redeem on day of sale with bad check. Property ultimately sold. Tenant sued for \$750 million.
- Tenant's unit flooded during Hurricane Harvey. They sued, saying we should have known it was coming and guarded against the flood.
- Tenant sued when city pipe burst under the facility, flooding the units. Claimed that our notice to tenant was negligent, so they couldn't come save their items. In reality, notice was given within 58 minutes.

# Contact the Presenter



**SUBMIT  
FEEDBACK!**



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