

TSSA Legal Update



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The Heart-Pounding Thrill Ride of Self-Storage Evictions

by Murphy Klasing

Okay, admittedly, the title might be a bit of an exaggeration, but I wanted to at least grab your attention for a moment. If you can hang on for a few minutes, I would like to give you some information that will be helpful to your self-storage business and hopefully keep you from getting embroiled in a nasty lawsuit.

Before we talk about evictions, we need to be reminded of why we have such a convenient mechanism called auctions to deal with delinquent tenants. One of the most important things to remember when conducting an auction is that this process by which a self-storage company can, without an order from a judge, foreclose on the belongings of a tenant, is considered an extraordinary remedy. Think of the word "extraordinary." If you are a normal person (not a lawyer), you think of words like "remarkable," "exceptional" and "amazing." Conducting a lien



sale at auction is rarely amazing. But lien sales are "extraordinary."

In my world (the non-normal world of the law), "extraordinary" has a very different meaning. It relates to a remedy that is "out of the ordinary," or something you can only do if you have been given an extreme privilege under the law. That extreme privilege

is the ability to conduct an auction without a judge's involvement.

One hundred percent of lawsuits I have handled where the plaintiff is claiming that the lien sale was conducted improperly involve allegations that one or more technical aspects of the lien sale were not followed. Plaintiffs accuse self-storage facili-

ties of not properly noticing the sale, conducting it on the wrong day, not posting it in the newspaper long enough, not conducting a proper inventory, failing to have sufficient number of bidders and failing to have a written lease. When plaintiffs are correct on even one of these or other technical violations, the self-storage facility can be in trouble.

Put yourself in the shoes of the court. From the court's perspective, the Texas Legislature has gone around the court and granted you the authority to take someone else's property without the court's assistance. Remember, we live in the United States, where your life, liberty and property cannot be taken from you without Due Process of Law. And in this context the only "due process" the tenant is given is a set of specific rules that the self-storage facility must follow instead of going to the court and getting a foreclosure order. In that context, the court's view is, if a self-storage facility wants to act as judge and take someone's property away, they better follow every single rule, without exception or excuse.

Therefore, when you can't follow the rules exactly, you should not conduct an auction. If you are in any of the following situations, you need to conduct an eviction, not an auction:

1. Your rental agreement is lost or not in writing;
2. Your rental agreement is not signed by the tenant;
3. Your rental agreement is signed by someone other than the tenant;
4. Your non-TSSA rental agreement does not contain the necessary language from §59.041(b) of the Texas Property Code in underlined or bold print; or
5. Your tenant is not in default but you want to terminate his/her lease for another reason.

HOW DO I GET STARTED?

You have determined that you cannot legally foreclose on the unit and you have to evict. Why not just foreclose anyway? After all, the tenant hasn't paid in eight months, it's not like he/she will know you lost the lease or it isn't signed properly.

If you choose that route and the tenant files a suit claiming you conducted an improper foreclosure sale, you could be faced with a potential judgment in the amount of his/her damages, plus treble damages, plus attorneys' fees, plus mental anguish damages. One lawsuit like that can be devastating.

Instead, it's time to evict and obtain a court order awarding possession of the unit back to you from the tenant. Start with finding your court. You have to file the eviction in Justice Court that is in the precinct of the self-storage facility. Depending on which county you are in, you may be able to find your court online through a county website or you can call a constable's office in your county and ask them for assistance.

Next, you need to send the tenant a "notice to pay" or a "vacate" letter or notice. For tenants who have defaulted due to nonpayment of rent, the letter needs to provide three-days notice prior to filing the eviction suit. That letter needs to tell the tenant what is owed and that he/she has three days to pay or vacate the unit. If you want them out for some other reason (they are rude to your staff, they are living on the property, they are an otherwise horrible tenant), you will need to give them whatever notice your lease requires for terminating a lease (TSSA's lease requires 15 days notice). The default notice period is 30 days if your lease doesn't mention a time. Send the notice to the last known address of the tenant. You can send it regular mail, but I would strongly advise sending it certified or verified mail so you have proof it was sent and received.

Next, you need to file the eviction lawsuit. You can hire a lawyer to do this or use an online form. There is a filing fee and service fee that must be paid at the time of filing. Those fees are also online at your county's Justice Court webpage.

TIP: Be sure that you have a good physical address for your tenant, not a P.O. Box. When I file evictions, I state the tenant's last known address in the petition AND I include a statement following that provides

the storage unit itself as an alternate address. Some courts allow you to have the constable simply place the eviction suit on the door of the unit. Some don't, so you will need to get to know your court's peculiarity on this point.

You will also need to attach proof that your tenant is not in the United States Military. Most courts require you to conduct a search on the Servicemember's Civil Relief Act website to determine if your tenant is currently serving in the military. That website is <https://scra.dmdc.osd.mil/>. You will need a valid date of birth and full name to run a search. If you have a social security number, it makes the search much easier.

Now that you have filled out the form, paid the fee, attached proof of non-military service and filed the eviction, you are ready to proceed.

THE EVICTION HEARING—YES, IT IS IN A COURTROOM

The court will set a hearing/trial for your eviction within 21 days of the date you filed it. **BIG TIP:** Call the court the day before the hearing to make sure it is still going forward. Sometimes the court doesn't have proof that the eviction suit was served in time and has to reset the trial. Don't waste your time going to court only to find out it was reset.

Once you arrive, and the judge is familiar with evictions of self-storage unit evictions, you will simply need to be prepared to tell the court the following: (a) Monthly rental charge for this tenant; (b) Number of months unpaid; (c) Total rent amount currently due excluding any late fees or lien fees; and (d) That you sent Tenant a timely notice to vacate.

Tenant will likely not show up and it will be over. That is the perfect world.

"TENANT SHOWED UP, JUDGE WAS CONFUSED AND THE ENTIRE HEARING WAS A FIASCO"

An associate in my law firm years ago came back from a hearing and made this statement out of great frustration! Let's take these one at a time.



1. Tenant Shows Up: Assuming the tenant has not paid, you can proceed with the trial. Simply state to the court who you are, that you are there as the manager/owner of Awesome Self Storage and the tenant is behind on rent, the amount that is past due and that you want possession of the unit and back rent. That should do it, because the tenant either has to prove payment was made or give up. You may also want to take the tenant aside on an eviction based on something other than rent and say, "If you will agree to be out by ____ then we can just tell the court to enter an agreed order that you will be out by that date." That way, you can avoid the trial and still have an order to enforce if they don't honor their word. In any event, when the tenant shows up, it usually makes the hearing a little longer, but that is all. It is your property. You have the right to take it back from a delinquent tenant, a defaulting tenant, or a tenant that you just want off your property as long as you have followed the steps above correctly.

2. Confused Judge: Occasionally I run into a judge who says, "I've never seen a self-storage eviction before, can you even do that?" I have a simple speech I tell them that goes something like this: "Your Honor,

normally we have this awesome statute that allows us to foreclose on a unit. You know, like on those *Storage Wars* television shows. But, when we don't have a fully executed lease or we cannot find it, we have to evict instead. It is simply a commercial lease under Chapter 93 of the Property Code like any other, just happens to be for a small space and a small amount." Or in the case of a tenant I just want off the property, I remind the judge that this is like any other commercial lease. When the judge gives you the evil eye, then say, in a nice soft Texan accent, "Now judge, that self-storage chapter just applies to auctions, it doesn't by itself deal with evictions." You should be okay—but if not, call me and I'll send you a brief I drafted on this for the Texas Judicial Training Center that covers it in detail.

TIP: The Texas Property Code states in Section 93.001: "Commercial Rental Property' means rental property that is not covered by Chapter 92." And Section 92.002 says: "This chapter [which is Chapter 92] applies only to the relationship between landlords and tenants of residential rental property." So to be clear, if it is a lease for property and it is not residential, then it is commercial—period.

NOW WHAT?

You have your eviction order. You wait five days to see if the tenant appeals. If they do, then you will have to repeat the trial in a county court, which is highly unlikely. If not, then you can go back to the court and obtain a writ of possession and have the constable come and assist you while you move the items out of the unit onto the premises or at a nearby location. If the unit is filled with trash, I recommend you take pictures of the items in the unit before throwing them away. Once they are moved out, they are NOT your responsibility any longer. You do not have to store them or keep them safe or secure them in any way. Just use common sense on how you handle them. For example, if you realize that a box in the unit contains a gun, take a picture and turn it over to the constable.

As always, if there is a wrinkle in your eviction process, call an attorney and at least get some advice before moving too deep into the wrinkle. Most evictions are problem-free and sail smoothly. As you handle someone's rented space, keep the Golden Rule at the forefront of your brain, "Those with the gold, make the rules," No...that isn't it, "Do unto others as you would have them do unto you." ■