



Roll Door Review

The only newsletter that gives a "HOOT" about the self storage industry in Arkansas

18 Freeway Drive, Suite 3 Little Rock, AR 72204 | 501-607-4775 | www.arssa.org | Fall 2017

a word from your president



Charles Snapp

Do you ever wonder what your yearly dues are used for? Better yet, do you wonder what you're getting out of your ASSA membership? Sometimes the benefits of membership aren't at the top of our minds until it's too late and a facility is facing legal trouble!

The survey we conducted at the 2017 expo provided us with crystal clear results for what members had on their minds. Overwhelmingly, they expressed Legal Communication and Legislation are the top benefits of being an ASSA member. Having legal and legislative information in a timely manner provides protection for your business and badly needed direction for future legislation that may impact the self storage industry as a whole. It's the Board of Directors goal to provide each and every member of the ASSA with new and updated information as it relates to the self storage industry and we want you to have that information in a timely and efficient manner. To achieve this goal, we need your help! Please provide the ASSA office with any changes in your contact information, especially your e-mail address. Believe it or not, the associations e-mail

list proved to be of great value during the last legislative session. With the timely e-mail response from our membership, legislators were able to see the overwhelming amount of support we had for Acts 628 and 738 and they passed. Sure, the Board and I would like to take credit for that win in the legislature, but the truth is plain and simple; we are stronger as a unified group and together we can continue to impact and change our industry for the betterment of business and the consumers who do business with ASSA members.

Education and Information were second on the list of survey results. The ASSA continues to provide the membership with information and we try to keep educational opportunities available through our annual Expo and Convention, but the opportunities to be informed and up to date are also available through other sources we provide on a regular basis. Think about the articles in our newsletters, the email we share, the Lien Sale Handbook,

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Join us for the
**2018 ASSA
EXPO**
**August 22-23
in Little Rock**

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2018 Membership Dues Can be Paid Online

To pay your 2018 Facility Membership Dues, go to www.arssa.org and click on the banner that says Pay My Dues.

Thank you for your continued support of the ASSA!

Your ASSA Board Members

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PRESIDENT

Continued from page 1

and coming soon we will have an updated Operations Manual. And please don't underestimate the Arkansas Self Storage Association Facebook page. It can be as informative as the membership wants it to be. In fact, in the upcoming months we will increase use of our Facebook page for information sharing. If you haven't followed us on Facebook yet, search @arkansasselfstorageassociation.

What EXACTLY are your membership benefits with the ASSA?

- Legal Communication and Legislation
- Education and Information to grow your profits and protect your business
- Experienced network to address general business, lien law problems, public sales, property tax, and tenant issues. Have a specific question about a Lien Law Sale? With the support of the Board Members, a simple phone call to our office will get you an answer or plan of action.
- Documents for download on www.arssa.org, including a Model lease reviewed by attorney with national Self Storage Association. Our hope is that a current and reliable lease will give Arkansas operators a degree of protection from unnecessary legal disputes.
- Access to the Arkansas Lien Law Handbook. This takes members through the steps of a public sale and the current Arkansas Lien Law for self storage facilities.
- Lobbyist in state legislature to monitor for proposals that affect self storage.
- Annual convention and expo filled with education, exceptional speakers, tradeshow for vendor networking, and manager development and education.
- Membership decal for your office or facility that indicates participation in the ASSA.
- Quarterly "Roll Door Review" news-

letter published by the ASSA including local news, trade articles, vendor promotions and periodic member alerts to specific problems or issues facing the industry.

- Emails that keep you aware of what's going on in the association, national hot topics, and educational information.

The ASSA partnered with the SSA for 2018 and your affiliate membership with the SSA provides these additional areas of support, as an extension of your ASSA membership:

- Access to the SSA-MiniCo Health Insurance Programs (both Major Medical as well as Limited Benefit plans)
- Access to the SSA-Self Storage Legal Network Affiliate Plan (\$300 as compared to out of pocket attorney fees)
- Special discounted pricing to all SSA Conventions, Trade Shows (minimum of \$75 in savings)
- Special discounted pricing on all SSA Publications (minimum of \$20 discount)
- Special discounted pricing on all SSA stand-alone educational seminars or programs (varies but average of \$100 savings per meeting)
- Special discounted pricing on all SSA-REIS Quarterly Rental Rate & Occupancy Data Reports on the Top Fifty U.S. Markets (\$100 discount).
- Free call in attendance to SSA's On-Line University webcasts
- Monthly SSA Globe Magazine

In summary, what does your support mean to the ASSA and the self-storage industry in Arkansas? A strong association supports important legislative and educational opportunities that protect your personal business and the self-storage industry in the state. We hope that you value your membership as much as the Board of Directors value having you as a member. Think about it, "Together we are strong!" Sincerely,



Charles E. Snapp, President



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Thank You for your support in 2017 and attendance at this year's expo!



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Legal Monthly Minute

Bankruptcy and Lien Sales

By Scott Zucker

Three days after you have conducted a lien sale, you get a notice in the mail from the bankruptcy court. One of the tenants whose property was sold filed for bankruptcy two days before the sale. You check with site personnel about the tenant and all are certain that neither the tenant nor an attorney contacted the facility about pending bankruptcy. This situation does not occur often, but when it does, it creates an uneasy situation for any storage operator.

Most operators are aware that when they receive a notice that a tenant whose unit is in the lien process has filed a bankruptcy petition, the lien sale may not be held. Federal bankruptcy law imposes a 90-day automatic stay on all state creditor remedies upon the filing of a bankruptcy petition by a debtor. The self storage lien remedy is a state remedy, and self storage operators must refrain from all further collection action when the petition is filed. However, is a self storage operator liable to the bankruptcy estate for damages when a lien sale takes place after the petition is filed but before the formal notice is delivered?

Willful violation of the stay

The United States Bankruptcy Court for the Northern District of Ohio answered this question in *In re McDuffie*, 2017 Bank. LEXIS 2006. The suit arose when LaTonya McDuffie filed for bankruptcy under Chapter 7 (liquidation of assets). A lien sale was held for

McDuffie's space four days after the filing. The storage facility did not receive notice of the bankruptcy until three or four days after the sale. The debtor brought suit against the facility alleging a willful violation of the automatic stay. To recover for a willful violation of the automatic stay the plaintiff must prove: (1) a defendant's action was in violation of the automatic stay; (2) the violation was willful; and (3) the violation caused actual damage. The self storage facility did not dispute that the lien sale was a violation of the automatic stay.

However, it did dispute that the sale was a willful violation. The court concluded that the plaintiff presented no credible evidence that the facility has knowledge of the bankruptcy filing. In fact the plaintiff offered conflicting testimony concerning a call she made to the facility the day before the lien sale. The court concluded that the facility operator was not aware of the bankruptcy filing until after the property was sold. The bankruptcy judge concluded:

When Euclid Self Storage took action against the debtor by selling the contents of the storage unit, Euclid Self Storage had no knowledge of the pending bankruptcy. The debtor has failed to establish by a preponderance of the evidence that Euclid Self Storage had any knowledge of the debtors bankruptcy case until December 8, 2016.

While Euclid Self Storage violated the stay by intentionally selling

the debtor's property, its action was not willful, because it had no knowledge of the debtor's bankruptcy case until after the contents of the storage unit had been sold at auction and removed by the winning bidder.

Accordingly unless Euclid Self Storage took actions in violation of the automatic stay after December 8, 2016, for example, by attempting to collect the balance due from the debtor or by failing to restore the debtor to the status quo as of the petition date (to the extent that such a requirement exists), its violation of the automatic stay was not willful, and the debtor is entitled to no relief under 11 U.S.C. 362(k).

Proof of Notice

The court noted that liability may not be imposed for violating the automatic stay without proof of notice. Any other result would raise constitutional due process concerns. The court also noted that the debtor's attorney was in a position to prevent the sale by giving the storage operator prompt notice that the bankruptcy had been filed. The court provided advice to bankruptcy attorneys and storage tenants who filed for bankruptcy shortly before a lien sale is scheduled:

Finally, the Court makes this additional observation, which might fall under the category of "best practices," should any debtor's attorney be faced with similar situation in the future. In a situation like the present case, when a debtor is in imminent

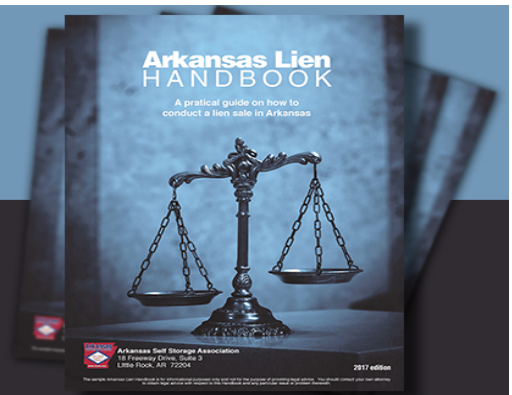
danger of losing property due to ongoing collection efforts, it is incumbent on the debtor's attorney to take the initiative in promptly notifying the affected creditor of the debtor's bankruptcy filing. Had the debtor's attorney promptly sent a fax, sent a text message, made a phone call, or made a quick visit to Euclid Self Storage on the same day that the bankruptcy was filed, and notified it of the debtor's bankruptcy case number and date of filing, the debtor's property would likely never have been sold at auction in violation of the automatic stay.

This decision holds that a self storage operator is not liable for violation the automatic stay for selling tenant property pursuant to the lien remedy after the filing of a bankruptcy petition when notice has not been given. It does not hold that an owner may ignore non-formal notification of bankruptcy, even when the information is incomplete. Site personnel must not ignore a call from a delinquent tenant who claims they have filed for bankruptcy or a call from an attorney that a bankruptcy petition is being filed. Site personnel should ask in what court the petition was filed and what the case number is. An attorney should be able to answer these questions. However, the tenant may not have this information and further inquiry should be taken once the owner is on notice.

Arkansas Lien HANDBOOK

A practical guide on how to conduct a lien sale in Arkansas

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