Proposed Self-Storage Bill for 2011 Texas Legislative Session

by Connie Heyer, Niemann & Heyer, LLP

There have been significant changes in information technology since the ground-breaking Texas Property Code Chapter 59 was drafted way back in 1981. It’s time to catch up to the present! At TSSA, we want to make things easier for Texas self-storage facility owners and operators. So we’re promoting a bill to the Texas Legislature to be introduced in 2011. The bill introduces new, simpler and less costly methods of notifying the tenant about a pending lien sale. Read on to find out what we’re proposing!

TSSA firmly believes that these changes will benefit both facilities and tenants, perhaps most importantly by authorizing alternate means of communication with tenants aside from certified mail.

The TSSA Legislative Committee is headed up by Robert Loeb, TSSA’s incoming president, and the members are Jay Kanter, Mark Skeans, Dan Small and Brad Young. The group has spent hours reviewing the bill draft and helping create the talking points shown on the next page. The committee strongly encourages members to specifically refer to the talking points if asked about the bill, or when communicating with legislators in the future. The committee strongly encourages members to specifically refer to the talking points if asked about the bill, or when communicating with legislators in the future.

Alternatives to Certified Mail
The bill would authorize methods of communication other than certified mail. Certified mail is no longer the only type of mailing for which proof of mailing is available. In addition to the cost and required trip to the post office associated with certified mail, for many reasons it is no longer the preferable method for reaching a tenant. As most of you know, many tenants refuse certified mail or simply do not pick it up, sometimes under the misguided assumption that “if I don’t know what it says, nothing bad can happen.”

There are many other reliable and effective forms of communication today. For example, there are various options offered by the United States Postal Service for signature or delivery confirmation for first class mail. Certificates of mailing are also available for many types of mail. E-mail is also an excellent way to maximize the chance that a tenant will actually receive and review important communications from a facility.

Added Protections for Military Tenants
As TSSA members know from the Goldbook© and legal seminars, it is unlawful under the Servicemembers Civil Relief Act (SCRA) to knowingly foreclose upon a storage unit leased by an active-duty military tenant without an executed SCRA waiver. However, identifying military tenants can be challenging, especially if the tenant was not in active service at the time the lease was signed. The bill supported by TSSA would add required language regarding military

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SELF-STORAGE BILL
AT-A-GLANCE

The original Texas Property Code Chapter 59 was created in 1981, and there have been significant changes in information technology since that time. The changes in this bill reflect an effort to update, modernize, and streamline the self-storage lien process. An important purpose of the bill is to support our armed forces by adding new military language on the lien notice. In addition, updating the delivery methods would make it more likely that all self-storage customers would receive notice when a sale involving their stored belongings is pending.

### ACTIVE-DUTY MILITARY CUSTOMERS

**Issue:**
- Need to be able to easily identify active-duty military customers
- Need to ensure that military customers receive the benefit of federal protection of Service-members Civil Relief Act (SCRA)

**Solution:**
- Additional military language added to lien notice currently required
- Provides another opportunity to protect military customers under SCRA

### NOTICE TO CUSTOMER WHEN DELINQUENT

**Issue:**
- A large percentage of customers do not accept certified mail, the mailing method currently required by statute
- Need to provide ways to maximize the chances that customers actually receive the notification

**Solution:**
- Replace the certified mail requirement with the option to send notice one of two ways:
  - Verified mail (first-class mail with evidence of mailing), OR
  - Electronic mail—increases the chance the customer will receive important notices

### HOW SALE IS ADVERTISED TO THE PUBLIC

**Issue:**
- Printed newspaper notice of auction sale is no longer the only or best way to advertise the sale to the public
- Most self-storage customers do not peruse the newspapers to see if their belongings are going to be auctioned
- Increasing the number of bidders at auction is to the customer’s advantage, as it may reduce the amount owed

**Solution:**
- Allow option for either newspaper notification or the alternative of publicizing the auction via a website, available to both the customer and the public

### CONSOLIDATE ALL SELF-STORAGE STATUTES

(Texas Property Code 70.004-70.006)

**Issue:**
- Current law has additional statutory requirements for self storage in a separate section for mechanics lien statutes

**Solution:**
- A non-substantive change to separate self-storage lien statutes from the statutes designed for mechanics liens; self-storage statutes would all be contained in one section

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service to the Notice of Claim. The Notice of Claim would have to include a conspicuous notice that if a tenant is in the military, he or she is requested to contact the facility immediately and inform the facility of his or her military status.

This is a final, and important, attempt to ensure that all military tenants receive the legal protections (the federal SCRA, and its Texas equivalent) to which they are entitled. (If at the time of leasing you have been made aware that the tenant is in the military, and he or she signed a lawful waiver of SCRA rights, the provisions of that waiver would be unaffected, something you could explain if contacted by a military tenant.)

Advertising the Foreclosure Sale
Under current law, a sale must be advertised in a newspaper of general circulation once in each of two consecutive weeks. A printed newspaper advertisement is likely not the most effective way to communicate information to tenants. The proposed bill language authorizes Internet advertising in lieu of newspaper notices. In lieu of publishing two newspaper notices, a facility would be able to publish an equivalent notice on a publicly-available website for at least 10 consecutive days.

Consolidating Self-Storage Statutes
Currently our statutes are somewhat confusing for liens involving vehicles, trailers, boats, and outboard motors, as Chapter 59 is not the only applicable chapter of the Texas Property Code. Sections of property code Chapter 70, which primarily applies to mechanics liens, also applies to self-storage liens. This causes confusion, and also causes unintended consequences when mechanics lien laws are amended, as any such amendment inadvertently affects self-storage law.

The proposed bill would amend Chapter 70 to make it inapplicable to self storage, and would also amend Chapter 59 to include all applicable self-storage laws previously contained in Chapter 70.

Summary
TSSA is hopeful that it will be successful in supporting these meaningful statutory reforms, and that as a result our members and their customers will have updated, modernized and even better Texas laws governing self-storage rentals. TSSA appreciates the grassroots legislative contact information many of you have been able to provide. In the coming months, TSSA will keep members updated on the bill’s progress.

When to use
Acknowledgement of Insurance Availability (ADD-7). This form can be used if you have obtained a specialty license to sell tenant contents insurance onsite. It is an acknowledgement by the tenant that the tenant has received your insurance brochure and either chooses to purchase the coverage you offer, or declines to purchase the insurance.

Addendum for Requirement of Tenant Insurance (ADD-12). This form can be used regardless of whether you have obtained a specialty license to sell tenant contents insurance onsite. Whether or not you have such a license, if you choose to require your tenants to carry insurance, use this addendum, which the tenant signs, to acknowledge obtaining insurance is a contractual requirement for the tenant.

How to use
Acknowledgement of Insurance Availability (ADD-7). If you have a specialty license, use this form with every lease signed. In this form, the tenant checks one of the two check boxes, indicating that he either elects to purchase your insurance coverage, or declines coverage and will accept full responsibility for all losses. The tenant then signs the form.

The TSSA lease already makes clear that the Lessor is not responsible for property damage. But this added “sign off” by the tenant is additional help when the tenant experiences a loss, and expects your facility to cover the costs. In addition to pointing out the lease language, you can also pull out the form—a separate sheet of paper—on which the tenant expressly declined coverage and agreed to assume all responsibility. TSSA members who use this form report it is highly effective in taking the “wind out of the sails” of a tenant who is bent on trying to hold the facility liable for whatever type of property damage occurred.

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Tips for Use
Always keep a copy of all executed addenda in a tenant’s file. Keep in mind that you cannot legally require the tenant to purchase insurance specifically from your provider, but you can legally require the tenant to purchase insurance. So, if you do require the tenant to obtain insurance, do not alter the form to require the tenant to purchase this insurance from your facility—tenants must always be given the choice concerning the insurance provider.

Both ADD-7 & ADD-12 can be found on the forms CD included in your Goldbook©.
Q: A tenant who stores an RV on our property claims the gate closed and hit the back of his RV. What is our liability for this situation?

A: Hopefully you used TSSA Addendum ADD-1 or ADD-2 from the TSSA Goldbook® CD. These are, respectively, the “Rental Agreement Addendum for Code Access Gates,” and “Rental Agreement Addendum for Card Access Gates.” These addenda expressly release the facility from any liability associated with the access gate. They also contain rules for using an access gate. They also contain rules for using an access gate. They also contain rules for using an access gate. They also contain rules for using an access gate. They also contain rules for using an access gate. They also contain rules for using an access gate.

The TSSA lease itself also addresses this situation in Paragraph 37(d). It says, “Lessor is not liable for malfunction of mechanical or electrical devices which control facility gates; but Lessor will proceed diligently to repair after the problem is discovered by Lessor.”

Also, there is a general, conspicuous release that the tenant initials on the bottom of the first page of the lease. This release expressly absolves the facility from any negligence, and any loss or property damage associated with property stored in the facility or transported to or from the tenant’s space. (And, it is worth noting, a malfunctioning gate is not a negligence situation unless, for example, you knew the gate was broken and did not take reasonable steps to fix it.)

Furthermore, Paragraph 20, of both the “Regular” and “Vehicle, Trailer or Boat” lease contains additional language making it clear that the Lessor is not liable in these instances, and requiring the tenant to carry insurance or self-insure.

Presumably your tenant has his own insurance on his vehicle. Most facility owners require proof of insurance as a condition of leasing for vehicle storage. I would suggest that you remind the tenant of the above-mentioned sections of the TSSA lease, which expressly absolve you of liability, and that you suggest that the tenant contact his own insurance carrier.

Q: Several prospective tenants have inquired about storing ATVs, boats, tractors, etc. in enclosed units. We are using the TSSA lease, which prohibits such storage unless approved by us. What types of things should I consider when deciding whether or not to allow this?

A: I recommend that whenever a vehicle, boats, or trailer is stored, whether indoor or outdoors, that the Lessor use the TSSA vehicle, trailer or boat lease. This lease is especially tailored to the unique needs of vehicle/trailer/boat storage. In addition to using this lease, Lessors should consider adopting rules especially tailored to a vehicle/boat leasing situation (see...
for example TSSA CD form BUS-3, “Special Rules for Storing Motor Vehicles, Motorcycles, or Boats Inside Enclosed Storage Units.”)

The next best thing would be to use TSSA Goldbook© CD form ADD-10, the “Rental Agreement Addendum for Storage of Vehicle or Trailer,” or ADD-11, the “Rental Agreement Addendum for Storage of Boats and/or Motors,” coupled with leasing rules such as those outlined in TSSA CD form BUS-3.

By fully filling out these addenda (or the TSSA vehicle lease), you will obtain the important information for the vehicle or boat, such as insurance confirmation, VIN or HIN number, and other important information. The vehicle/trailer/boat lease, and the “Special Rules” outlined in form BUS-3, details important requirements for indoor storage. For example: the tenant’s requirement to furnish a fire extinguisher at the entrance to his unit; the requirement that the vehicle have no leaks; that fuel tanks must have caps; and that no portable fuel containers are allowed in the unit.

Q: We have two vehicles in one outdoor parking spot. How do we handle the sales tax?

A: The sales tax due is based on the rent itself, regardless of how many vehicles are in the space. For example, if you charge $100 rent when one vehicle occupies one space, but $200 in rent when two vehicles occupy one space, you collect sales tax on $100 in rent per month in the first example, and $200 in rent per month in the second example.

If two different tenants are sharing one space, again the sales tax is solely based on rent. Whatever you are charging each tenant, sales tax must be collected/paid on that rent.

Please see the legal article titled “Sales Taxes on Parking and Storage of Motor Vehicles, Boat Trailers, or Boats” behind the “Business, Property & Tax Laws” tab in the TSSA Goldbook©.

Q: We have a unit rented with a car that the renter was restoring. The renter passed away unexpectedly and his wife is unaware of any title, nor does she have any interest in keeping the unit or its contents. We followed normal lien foreclosure procedures, but not special procedures for a motor vehicle. During the auction, we arranged to auction the unit contents minus the car itself and did so successfully. How should we proceed? Do we need to follow through with the special foreclosure procedures in order to sell the car to the buyer of the unit?

A: Yes, any time you have a vehicle, the special foreclosure procedures must be followed. The only exception is in the case of a vehicle without a “body” or “frame.” According to TXDOT, vehicles without a “body” or “frame” (so, parts of vehicles) can be sold as parts without the need to follow the special foreclosure procedure for vehicles.

Q: Can you raise the rent with a 30-day notice after six months if the tenant has pre-paid rent for a year? If you already sent the 30-day notice with a new rental amount, and the tenant continues to pay the old amount, can you foreclose?

A: Pre-paid rent is addressed in Paragraph 28 of the TSSA lease. The lease states that several conditions must be met before the tenant may receive a refund of any pre-paid rent (including 10-days notice being given, tenant’s lock must be removed, tenant must leave the space broom clean, etc.) However, unless you have agreed otherwise with your tenant, pre-paid rent is not a guarantee that rent stays the same throughout the tenancy – it is normally simply a convenience for the facility and the tenant.

As you noted, the TSSA lease Paragraph 30 also allows for rental increase at any time after 30-days notice to the tenant (in order to give the tenant ample time to terminate the lease should he choose not to pay the increased rent). In other words, should you choose to raise the rent, 30 days notice must be given. In the case of pre-paid rent, though not legally necessary, I would recommend that in the notice, you make a special note to the effect of “You have pre-paid rent at the former rental rate. All pre-paid amounts will be applied to rent coming due. However, please make arrangements to ensure that additional payments are made as necessary to avoid late fees accruing.”

Q: Is it okay to offer 24-hour gate access to only certain tenants and not to others?

A: Yes. You may offer different services to different tenants, and if you choose, charge a premium for these services. You may offer, for example, 24-hour access to tenants who pay a premium, or to long-time tenants. In short, you may offer different services based on criteria you decide is in your best business interest. Of course, you should not offer 24-hour access based on an arbitrary reason—for example, you should not offer 24-hour access to male but not female tenants, or to minority but not non-minority tenants.

I would suggest that in your facility rules, you outline “standard” facility operating/gate hours, and make a note in the rules, something to the effect of “Gate hours may, in Lessor’s discretion, be extended on a case-by-case basis.” Lessor may revoke any extended gate hours made available to tenant at any time at Lessor’s discretion, upon notice to tenant.” This way, you have something specific in your rules to govern this situation. For those tenants to whom you do grant 24-hour access, the language at the end of the suggested rule would give you the ability to revoke that access at any time.
Bankruptcy of a Tenant—Statutory Revisions Shorten ‘Lease Limbo’ Period

Bankruptcy is a no-win situation for a landlord. In general, when a tenant files bankruptcy, a landlord’s hands are tied for at least a few months when it comes to collecting overdue amounts. Once a bankruptcy is filed, unless you have received permission from the bankruptcy court, or unless a certain time period has passed, you cannot file for eviction, begin foreclosure, or exercise any of these remedies. If you have started any of these procedures, you must “freeze” your efforts until the law allows you to continue. Bankruptcy results in an “automatic stay” — this means that until this “stay” is lifted, you cannot take any action against a bankrupt tenant such as eviction, foreclosure, or even sending late notices on amounts that came due before the date of the bankruptcy filing.

Tenants Given a Firm Deadline to Assume or Reject Lease

There have been relatively recent changes to federal bankruptcy law that affect a tenant’s deadline to “fish or cut bait” with your lease after filing for bankruptcy. Under the law as previously written, a tenant (or in the case of a Chapter 7 bankruptcy, the tenant’s bankruptcy trustee) had 60 days to “assume or reject” a commercial lease like a self-storage lease. In other words, the tenant had 60 days to make a decision to cancel or honor the lease. Sounds good in theory, but what happened more often than not is that bankruptcy judges would grant virtually unlimited extensions of this 60-day period, so that your lease could be in limbo literally for years, requiring you to hire an attorney to go to court and seek to lift the bankruptcy “stay” in order to evict or Foreclose on the non-paying tenant.

Under the law as revised, the tenant has 120 days to accept or reject a commercial lease like a storage lease, and a judge is only authorized to extend this period for up to 90 days without the consent of the lessor. So, tenants now have a firm timeline — no more unlimited extensions of the “lease limbo” period.

“Assumption” of a lease means that a debtor/tenant accepts a lease and agrees to cure all defaults (agrees to bring rent current and continue to pay rent, for example). “Rejection” means that the debtor declares the lease void and is relieved from further obligation under the lease, generally leaving the landlord with an unsecured claim for all unpaid rent prior to the date of the bankruptcy filing. If a tenant fails to assume or reject a lease by the deadline, the lease is deemed rejected. However, the “bright” side of rejection is that once a lease is rejected, you may proceed with your remedies as if the bankruptcy did not exist. The ball is in the landlord’s court at this point to terminate the lease, give an eviction notice, or begin the foreclosure process.

The tenant’s bankruptcy plan (which you should receive a copy of) should tell you whether the tenant or trustee is accepting or rejecting your lease. If you have a question and the time deadline for acceptance or rejection is nearing, you should call the trustee or the tenant’s bankruptcy attorney and find out if acceptance or rejection of the lease is intended. The attorney’s and trustee’s name and contact information should be on all court documents.

What Should You Do When a Tenant Files for Bankruptcy?

Consider Hiring an Attorney

The action that is warranted often depends on the dollars that are at issue. If the tenant does not owe you a significant amount of money, it may not be worth your while to retain a bankruptcy attorney — better to “strike a deal” (see below). If the tenant owes you a significant amount of money, however, it may well be worth your while to hire a bankruptcy attorney to file a “Proof of Claim” with the bankruptcy court (to get you in line with the other creditors for payment), to file a “Notice of Appearance and Demand for Notices” with the court, and likely to seek a lift of the “automatic stay,” allowing you to pursue foreclosure in the event that the tenant does not pay rent as it comes due after the date of the bankruptcy filing. All tenants are required by law to keep current on rent and other amounts that come due after the date of bankruptcy filing. Most self-storage tenants, in this author’s experience, do not do this.

Strike a Deal

Try to negotiate a deal with the tenant if the tenant has filed under Chapter 11 or 13. If a tenant has filed for Chapter 11 or Chapter 13 bankruptcy, you might want to consider forgiving his debt (or even paying him a token amount!) to come and take his things away. In a Chapter 11 or 13 bankruptcy, you may lawfully agree to forgive all of the tenant’s debt in exchange for voluntarily vacating the unit. The tenant will probably need this agreement in writing to show to his lawyer so his bankruptcy plan can be amended. You cannot legally make a deal to forgive only part of the debt in exchange for immediate payment — even if it is partial payment. A debtor (tenant) does not have the authority to pay you anything except what a court approves under a bankruptcy plan.

Forgiving a debt entirely or even paying a tenant to move out is difficult to do when you know a tenant owes you money, but on the other hand, you are otherwise looking at going for up to seven months without payment (120 days, plus potentially a 90-day extension, for the tenant to accept or reject a lease), spending attorneys fees, and possibly getting 50 cents on the dollar or less as repayment under the tenant’s bankruptcy plan.

If a tenant has filed for Chapter 7 bankruptcy, the law prohibits you from making any type of agreement directly with the tenant. In a Chapter 7 bankruptcy, the items in the unit now legally belong to the tenant’s bankruptcy trustee and not the tenant. Any “deal” would have to be approved by the Chapter 7 bankruptcy trustee. The bankruptcy notice you receive will tell you what chapter the tenant filed under.

File a Proof of Claim With the Bankruptcy Court

When you receive notice of the bankruptcy in the mail, you should file a document called a Proof of Claim with the bankruptcy court (however, if it is a Chapter 7 bankruptcy, normally no Proofs of Claim are allowed to be filed absent court request).

In a Proof of Claim, you list all debts the tenant owes you that were due before the bankruptcy was filed. Normally, the court will send you a Proof of Claim form that you can fill out. Otherwise, your lawyer can

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There are several things you can do to prevent yourself from being hurt by a tenant’s bankruptcy. Probably the most important thing is to make sure you don’t let a tenant get too far behind in rent payments. Exercise your foreclosure rights quickly or evict the tenant quickly before the tenant has the time to declare bankruptcy.

What if you have received no paperwork, but the tenant comes to your office, or calls you, to tell you that he has filed for bankruptcy?

If you knowingly violate the automatic “stay,” you are subject to sanctions and potentially punitive damages if you move forward with your action (e.g. foreclosure) and a bankruptcy has indeed been filed. It is therefore not a good idea to ignore someone’s statement that he or she has filed. However, while you should not disregard your tenant’s claim of filing, in TSSA legal counsel’s opinion, you should do your best to confirm the tenant’s claim. If the tenant is not being truthful, and has not filed, you may move forward with your action. You can ask the tenant for a case number and/or the name and phone number of his bankruptcy attorney. It is easy to verify bankruptcy filings with the bankruptcy court, especially with a case number. If you act reasonably in attempting to verify the filing, you may avoid punitive sanctions, should you elect to go forward. But clearly, the most cautious approach, and the recommended one, is that if someone tells you that he has filed for bankruptcy, stop (“freeze”) any ongoing collection activity (for example, if you have already overlocked, you can leave the overlock on, but do not proceed to foreclosure), until you can verify the bankruptcy filing.

Rent After Bankruptcy Filing

What about rents that become due after the tenant declares bankruptcy? What if the tenant was current in rent before bankruptcy was declared, but since the time he declared bankruptcy he has not paid any rent or has missed certain payments? Under bankruptcy law, the tenant is required to keep “post-petition debt” (debt that has become due after the bankruptcy was filed) current. If the tenant doesn’t do this, the first thing you should do is call the tenant’s bankruptcy attorney. Tell the attorney that his client is not keeping post-petition debt current and that you will turn the matter over to a lawyer if payments are not made immediately. The tenant’s bankruptcy attorney should then instruct the tenant to get the debt current. If the tenant does not bring post-petition debt current, then in order to enforce your claim for rents, you (your lawyer) must file a motion with the bankruptcy court asking the debt to be classified as an “administrative claim” which is given a high priority for payback.

Submit a Proof of Claim on your behalf. There is a deadline for filing the Proof of Claim, so make sure you read the court’s documents and comply with that deadline.

When you file your Proof of Claim, make sure you file it as a “secured” claim rather than a “unsecured” claim (there will be a check box on the form where you can indicate that it is a secured claim). Your claim is secured by a lien on the contents of the unit. The lien is described in Paragraph 22 of your lease and in Chapter 59 of the Texas Property Code. You will need to attach a copy of your lease to the Proof of Claim that you submit.

If a debtor has listed you as a creditor, you should receive a Proof of Claim form from the court in which the debtor filed bankruptcy. If not, and the debtor did not file for bankruptcy in the Western District, you may get a copy of the proper proof of claim form by calling the clerk for the appropriate court (most courts have a website, and the clerk can tell you how to download the appropriate form or how to get a hard copy if you don’t have Internet access). The clerk’s contact information should be on the notice of bankruptcy you receive.

If you knowingly violate the automatic "stay," you are subject to sanctions and potentially punitive damages if you move forward with your action (e.g. foreclosure) and a bankruptcy has indeed been filed. It is therefore not a good idea to ignore someone’s statement that he or she has filed. However, while you should not disregard your tenant’s claim of filing, in TSSA legal counsel’s opinion, you should do your best to confirm the tenant’s claim. If the tenant is not being truthful, and has not filed, you may move forward with your action. You can ask the tenant for a case number and/or the name and phone number of his bankruptcy attorney. It is easy to verify bankruptcy filings with the bankruptcy court, especially with a case number. If you act reasonably in attempting to verify the filing, you may avoid punitive sanctions, should you elect to go forward. But clearly, the most cautious approach, and the recommended one, is that if someone tells you that he has filed for bankruptcy, stop (“freeze”) any ongoing collection activity (for example, if you have already overlocked, you can leave the overlock on, but do not proceed to foreclosure), until you can verify the bankruptcy filing.

The article is not a substitute for obtaining advice from legal counsel specializing in bankruptcy, and all members with further questions in the event of a tenant bankruptcy are encouraged to consult with an attorney specializing in bankruptcy law.
Occasionally facility owners or managers are presented with a request from a law enforcement officer for access to a unit. Almost always, the officer will present a search warrant. In these instances, the facility can (and must) allow the officer entry into the facility (you do not have to physically open the unit for the law officer).

The TSSA lease, Paragraph 19, allows you, upon presentation of a search warrant by a law officer, to open the space or allow the officer to open the space. It is fine to lend the officer bolt cutters, etc. The lease further states that the officer may lock the space, or you may, but are not required to lock the space.

You should not allow an officer to enter a unit without a search warrant. An officer should, as a general rule, never even ask to enter a unit without a search warrant—with very limited exceptions, anything found without a search warrant would be inadmissible in any trial. It should raise a red flag if an officer demands entry into a unit without a search warrant—the officer might not be who he says he is.

**Search Warrants**
A search warrant authorizes a law officer to conduct a search of a specific place. The officer must demonstrate “probable cause” before a judge in order to have a warrant issued. Probable cause means that it is more likely than not that the specific items to be searched for are connected with criminal activity, and those items are expected to be found in the area to be searched.

**Warrantless Searches**
The general rule is that warrants are required for searches. Without a warrant, no item (drugs, etc.) that is found can be admitted into evidence at a trial. However, there are limited exceptions, and warrants are not required in the following circumstances: 1) searches incident to an arrest (in other words, a police officer can search your person when he arrests you); 2) if you are arrested in a vehicle, the officer may search the vehicle; 3) “hot pursuit” (aka “exigent circumstances”)—circumstances which demand immediate action such as to avoid the destruction of evidence; 4) plain view—no warrant is needed when an object is in plain view (drugs in the seat of a car that an officer pulls over for a traffic violation, for example); 5) consent—if you consent to a search of your body, your vehicle, or your home for example, police do not have to have a warrant. However, you are not ever required to consent to a police search.

**Entry Under TSSA Lease Paragraph 18**
The TSSA lease contractually defines when you, as the facility owner/manager, may enter the unit. The only situations in which you are allowed to enter the unit are defined in Paragraph 18. Namely, you as the facility representative have the contractual right to enter the unit when: 1) you have express written or oral authority from the tenant; 2) you reasonably believe there is an “emergency,” such as danger of fire, flood, broken locks, animal storage, volatile chemicals, etc.; 3) you have reasonable grounds to believe that criminal activity is occurring in the space; 4) you have made written request to the tenant by mail—with at least seven days notice—for access to the space and the tenant has failed to provide you access at the time requested; and 5) you are exercising your lien rights due to nonpayment of amounts due.

Keep in mind that in the case of entry for emergency purposes, you must provide the tenant with notice of the entry after the entry (versions of the TSSA lease prior to 2009 require notice to the tenant in other situations; so check Paragraph 18 of your lease version—and then update to the latest version of the TSSA lease!).

**Police Drug Dogs**
“Dog sniffs” (having a trained drug detection dog walk the halls of the property, for example) have been held not to be searches for which a search warrant is needed. So, following this case law, you could allow a police drug dog to walk the halls of your facility without a warrant (and then the officer could come back with a warrant if the dog “alerted” at the door of a certain unit).

**Consent Searches**
“But you as property manager can consent to our search of the unit…” the officer might say. Wrong. You can consent to the officer’s search of the “common areas” of your facility—the driveways, the hallways, etc. The unit itself, however, is “cared for and controlled by the tenant” as a matter of law (this is the definition of self storage in Chapter 59 of the Texas Property Code). The tenant himself could consent to the law officer’s search of the unit, but short of that, the officer needs a search warrant to open the unit and search it. You as the facility manager only have the right to enter the unit as defined by the lease. (See “Entry Under TSSA Lease Paragraph 18,” at left.)

However, you do have the authority to consent to an officer’s search of your business records. If an officer asks, “Does Joe Smith rent here, and if so which unit, can I see a copy of his lease, etc.,” you may (but are not legally required to, without a search warrant) answer the officer’s questions and give him access to your business records. Your records are your records; you may consent to searches of them at any time. Especially if you have every reason to believe that the law officer is a legitimate law officer (not a private investigator, or a PI posing as a law officer), it normally simply makes good sense to cooperate with law officers’ requests to review your business records.

**Summary**
You may (but are not required to without a search warrant) provide law enforcement officers access to your business records. However, you should not allow a law enforcement officer access to the inside of a unit without a search warrant. If an officer demands access to a unit without a search warrant, this is a red flag, and it would make sense to try and confirm the officer’s identity, and call your facility’s attorney.