

**SELF-STORAGE PROCEDURES  
IN THE WAKE OF A NATURAL DISASTER**

By Connie N. Heyer, TSSA Legal Counsel

Over the years, hurricanes have devastated many self-storage facilities and other businesses in the Gulf area. There have been many questions about the proper procedures for cleaning up after a hurricane or other natural disaster, and dealing with tenants. This article will try to answer the most common questions.

How long should we wait before letting tenants in to look for their things? The answer to this question depends on the extent of damage at the facility. If the facility has been so damaged that allowing tenants in would potentially be unsafe, I would recommend that you check with the police department or fire department for their recommendations, and follow them. If the police or fire department have no recommendations, use your own judgment, but if there is the potential for harm (any potential for structural compromise), you should try and have all tenants sign a release prior to entry. At the very minimum, you should have a sign at the facility so that when tenants who demand entry enter, they will see it. The sign should be very conspicuous and should say something like: "Danger, enter at your own risk. Due to [Hurricane \_\_\_\_\_, etc.] this facility has sustained extensive damage, including extensive potential structural damage. Hardhats are available in the office and you are encouraged to wear one." I would recommend you have a supply of hardhats on hand for tenants to borrow. Also, photograph the sign in place, and document the date it was posted.

How do we get the tenants out of our facility so that we can bulldoze the whole thing and rebuild? There are some units that are still usable and some that aren't, but we want to bulldoze the whole thing. If the tenants in units that still exist will not leave voluntarily, you will need to use your right to give 15 days notice of lease termination. You have this right under paragraph 9 of the TSSA lease. Use form E-1 on the Appendix CD titled "15 Day Notice of Termination of Storage Space Rental Agreement." The TSSA lease gives you the right to terminate upon 15 days notice for any reason or no reason. If the tenants do not vacate the premises at the end of this 15 day period, you will need to go through the eviction process. Or, if the tenant is delinquent in rent or other amounts due, you can go through the foreclosure process.

Also, if you are using a TSSA lease version dated 2006 or later, paragraph 26 of the lease provides that a unit will be "deemed abandoned" if, due to a casualty, the unit contains nothing of value to the ordinary person *and* the tenant fails to remove his or her items from the space within 10 days after you mail the tenant a notice of abandonment due to casualty (Appendix CD form BUS-11). This can greatly assist you if a casualty "wipes out" the facility or several units and it is clear that there is nothing of value left to retrieve from the unit(s). When a unit is legally "abandoned" according to paragraph 26 of the TSSA lease, this gives you the right to consider all of the tenant's rights to the space's contents terminated, and gives you the right to dispose of all contents.

How should our facility handle delinquent tenants now that we don't have any collateral due to the damage that a natural disaster caused? If tenants were delinquent prior to the hurricane and if any of their items are left behind, you can go through the standard Chapter 59 foreclosure process. If there are no items left behind, or if what is left behind has been destroyed to the point of having no value, you may either sue the tenant in small claims court for the delinquent balance or, if you are using a recent version of the TSSA lease, turn the tenant over to a collection agency after giving the tenant 10 days notice as required by Paragraph 11 of the TSSA lease. Check your lease to make sure it has this language; some of the older versions of the lease do not. A sample notice that you can send to the tenant to meet the 10-day requirement is on Appendix CD form BUS-10. Once you verify that your lease contains this language and you send this 10-day notice and receive no response, you may turn the matter over to a collection agency, which will collect the fees on your behalf, and the tenant will also be responsible for any charges the collection agency requires. For example, if the tenant owes you \$500 and the collection agency charges you a 50% fee for collection, the tenant will then owe you \$750.

How long must we wait for a tenant's response before we can bulldoze? What we recommend is that if the tenant's contents are still identifiable (if the tenant's unit still exists and it is feasible for the tenant to come and retrieve his things), give the tenant a 15-day notice of lease termination, or if you have the time to be more cordial, ask the tenant to come and retrieve his things by a certain date. If the tenant does not respond, then give the tenant a 15-day notice of lease termination. If in your judgment there is nothing that is potentially recoverable from the tenant's space, then I would recommend sending the tenant a notice of abandonment informing him that his rent ceased to be owed as of the day of the hurricane, that all of the contents of his unit are either lost or damaged beyond any potential use, and that within a certain number of days the contents will be deemed abandoned unless he comes to the facility and claims any contents that are his.

Regardless of what you do and how you contact your tenant, I would strongly recommend that you shoot video of the site in as much detail as possible. This video will be your proof that items were damaged beyond any potential value.

Additionally, if you have items that are salvageable but you do not hear from the tenant after your communications are sent, don't forget that under Paragraph 18 of the TSSA lease you have the right to relocate the contents of a unit if relocation is needed to protect the contents or space from loss or damage from casualty or theft. Presumably all security at your facilities has been compromised, so theft is an issue. If this is your situation, I recommend relocating the contents to a more appropriate place. If you do relocate the contents, don't forget that per Paragraph 18 of the TSSA lease, the tenant is no longer liable for rent but is liable for reasonable storage charges only. You must also promptly notify the tenant by regular mail or phone of any entry or relocation.<sup>1</sup>

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<sup>1</sup>This article represents the opinion of TSSA legal counsel. Other lawyers may have different opinions.