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## Working With a Lawyer

**In litigation or routine legalities, a cooperative relationship makes all the difference**

*By Gregory P. Hawkins and Claude T. Hawkins*

For most self-storage operators, litigation is like the typhoon that ravishes a remote country--unfortunate, but far away. Yet a lawsuit is an undeniable possibility for even a well-managed self-storage facility. Win or lose, the process and result



can prove disheartening, sometimes devastating--and always expensive. Frequently, you need competent legal counsel for something more mundane--a contract, partnership agreement, lease or the myriad legal pitfalls of employee relations. But get these wrong and litigation will soon follow.

There are steps you can take to improve your odds when you work with a lawyer. Some are straightforward--the same types of business-management routines you practice daily. Others require planning. As you use these techniques, you also will discover many answers to your most significant but unspoken questions: Is my lawyer qualified? Can I trust this person to work diligently for me?

This information could have proven invaluable to Storage Trust Properties. On March 2, 1996, Randall A. Swanson rented a self-storage unit from Four Seasons Self-Storage in Lenexa, Kan. He paid \$88 dollars per month, plus late fees, as required by the rental contract. On Sept. 30, 1996, he received a letter and new contract from Storage Trust Properties, stating that because it had purchased the property, his Four Seasons' contract was terminated.

Swanson refused to sign the new contract and continued to send the rental and late fees as required by the original. Because he failed to pay the higher late fees imposed by the new Storage Trust contract, his property was sold at public auction on July 23, 1998. He then sued.

### A Cooperative Effort

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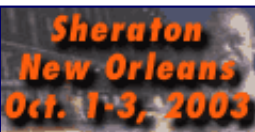
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Whether defending against a potentially serious lawsuit or engaging in the comparatively simple task of negotiating a contract, you may feel tempted to lay your problem at your attorney's feet, step back and hope for the best. This is the most common lawyer/client relationship, and some lawyers prefer this arrangement. It is, however, the least effective. Often, it is the most expensive.

Except for basic legal work, the interaction between client and lawyer should be viewed as a cooperative effort. Obviously, you pay for and expect the lawyer to do the heavy lifting. But do not discount the value of your participation.

### **The Consultation: What to Say and Think**

Before your consultation, preparation is essential. Write a synopsis or "facts statement" of your situation. List the events, in chronological order, that brought you to the lawyer.

In the first draft, aim for a "Just the facts, ma'am" type of summary. Reduce your final draft to one or two pages--something your lawyer can read in a few minutes. Next, gather the documents pertaining to your situation. Put these in chronological order and add a sheet including the contact information of every person involved with the case. Write a sentence or two describing each person's involvement. This represents the first significant service you can contribute to your cooperative effort.

A well-qualified lawyer is predisposed to your benefit from the moment you begin to speak, mentally calculating strategy and tactics as you talk. Still, from your lawyer's perspective, only specifics move the process forward. With this in mind, you should prepare your verbal statement as carefully as the written.

Again, give him just the facts. If you want to stimulate your lawyer to put forward his finest efforts, you must be organized. If you can place the facts before your lawyer in an organized manner, he is more likely to think, "This is someone I can work with." Don't be dismayed if your lawyer interrupts your story, even redirects your narrative. In all likelihood, he is more concerned with potential legal solutions than your feelings at this point.

OK. You presented your written documentation. You verbalized the basics of "your side of the story." Now it is time to assess your lawyer's response. It is possible your lawyer will immediately lay out a strategy. Equally likely, he will need time for research and thought before committing to a course of action. Whatever the circumstances, expect a reasonable explanation of the preliminary steps he will take. You should be wary of any lawyer unable to communicate in simple and clearly understandable language. If he cannot communicate adequately with you, it is doubtful he will do better with a judge, jury or opposing counsel.

### **Define the Working Relationship**

You cannot expect your lawyer to inform you of his every action. Still, you endanger your peace of mind if you rely on your lawyer's discretion to determine a reporting schedule. One of the most frequent complaints made by clients is their lawyers kept them in the dark.

Specifically discuss with your lawyer how often you want a progress report, how much detail you require and if you want the report by phone or in writing. Keep in

mind you will be billed for every phone call and report. Remember this is your business at risk. As your case progresses, you will be left to wonder what is happening unless you make it clear to your lawyer that you expect to be kept informed.

Under the best of circumstances, memory fades with time. Your lawyer will take notes of your conversations. Follow his example. Always take careful notes whenever you talk with your attorney. At your first meeting and thereafter, ask your lawyer to memorialize your discussion in a letter. This letter, or "précis," which means a "concise summary of essential points," becomes a key element of the reporting system. Compare any discrepancies between your lawyer's précis and your written notes, then discuss these differences openly, but without antagonism.

Human nature dictates that people make accommodations more readily at the beginning of a relationship. This includes your lawyer. Every point you fail to resolve with your lawyer early in the process, including fees and expenses, will prove more difficult to correct later. Your lawyer will prepare a "representation agreement." This is a critical contract between you and your attorney, so read each word carefully. Ask questions and request changes to anything that seems unreasonable or unclear.

Throughout the evolution of your case, ask yourself: Are you comfortable with the tone and quality of the meetings--your attorney's answers and the questions he asks you? Can you work with this person over an extended period of time? Bear in mind that the best time to change lawyers is early in the process; but do not hesitate to keep looking if your instincts tell you to select different legal counsel.

### **Strike a Balance**

In the dispute between Swanson and Storage Trust Properties, the U.S. District Court ruled on May 18, 2001, that Swanson remained subject to the terms of the original rental contract as a holdover tenant. In other words, the new contract was void--point in favor of Swanson. However, the court dismissed Swanson's claim that Storage Trust violated his due-process or civil rights. Sound confusing? You bet. Unlike a television drama, real-world litigation often goes on and on. In this instance, after four years of legal wrangling the expense and frustration continued.

Managing your lawyer is a balancing act. You should not attempt to direct your lawyer's every move. It would prove counterproductive and too costly. Nor would the lawyer allow it. On the other hand, this is your case and you must live with the results.

Granting complete control to your lawyer is imprudent. As Jean Hill, an attorney for the Utah Department of Education, observed in the *Salt Lake Tribune*, "All of the strategic decisions that the lawyers make can affect the final decisions in the case, and the client is stuck with the decisions of the attorney." Don't get stuck; participate.

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