

# NHSAA Newsletter

Member of the National Self Storage Association

July 2011

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## Notice and Technology

Notice can be important in any contractual relationship. In self storage it can be very important because the tenant spends relatively little time at the rented premises. Because of costs and other considerations, most self storage operators do not send monthly bills and months may pass without their having a reason to contact their customers. This lack of contact can result in addresses becoming stale and contact difficult to establish when it is most needed, such as when the operator sends notice of rent increase or sends a lien notice. It is possible that more effective use of technology can help keep the lines of communication current and more effective.



Self storage operators should have an electronic address for each customer. It may be too soon to require it, but at most facilities it is better for the owner if a high percentage of customers provide email addresses.

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**Important  
Announcement:**

*Save the date!*

**11<sup>TH</sup> ANNUAL NEW  
ENGLAND CLAM BAKE**

**JULY 27, 2011  
12:00 Noon - 6:00PM**



## NEW HAMPSHIRE SELF STORAGE ASSOCIATION

11<sup>TH</sup> ANNUAL NEW ENGLAND CLAM BAKE  
JULY 27, 2011  
12:00 Noon – 6:00PM

WINTER HARBOR YACHT CLUB, Inc.  
On Welch Island in LAKE WINNIPESAUKEE

**All regular members and vendor members with their significant other are urged to attend.**

Menu: Appetizers on arrival  
Steamed clams, lobster, corn on the cob & dessert  
For meat eaters: Steaks will be available.  
Beer, Wine & Cold Drinks

**Cost: \$10.00 per person 2 members max. / \$40.00 for non members of NHSSA**

Guest boats are Welcome. Bring your bathing suits, towels, and enjoy the beach and the sun.

Meet at 12:00 Noon Plenty of Parking available.

**Provided boat transportation stops at 12:45 pm sharp! From Mountain View Yacht Club**

Please RSVP by July 20, 2011 to Laurie Barlow  
603-623-8843 or email @ [lauriejeanne51@gmail.com](mailto:lauriejeanne51@gmail.com)  
(RSVP required in order to provide adequate food and drinks)  
(Please indicate whether you prefer lobster or steak)

Meet at Mountain View Yacht Club @ 73 Weirs Blvd. (Rte. 11B) with boat departing from pedestrian bridge at 12:00 Noon. Directions from Rte 93 Exit 20 in Tilton, follow Rte 3 & 11, take Laconia By-pass to end, turn left past Gilford Self Storage & Rte 11B in next left. MVYC is on the right. From Alton, Wolfeboro, or Portsmouth follow Rte 11 from Alton & take a right turn at Rte 11B @ Sawyers Dairy Bar to Mountain View Yacht Club.



## Unlike traditional mail, this notice can be sent at no cost and can be completely automated.

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If email addresses are provided, most self storage management software systems can be set up to automatically send out email bills 10 to 15 days before the rental due date. Unlike traditional mail, this notice can be sent at no cost and can be completely automated. The email bill could also provide a link to the facility website where the bill can be paid, if the website is set up to accept rent payments. The email notice could also contain a provision that reminds the customer to provide any changes to their mailing address. This is another task that could be done at the facility website. Now is the time to think about the implications of technology that is already available. However, email billing is only the beginning.

### Taking Full Advantage of Electronic Mail

If the customer is receiving bills by email, other communications can be made in this way. For example, rent increases and other changes to rental agreement terms and conditions could also be sent by email. While lien

notices in most jurisdictions would need to be sent by the USPS, parallel notices could also be sent by email. This parallel notice can be helpful in wrongful sale litigation when a tenant raises the argument they will never get the statutory notice. The storage operator will have a record of sending notice not just to the physical address but also to the email address provided by the customer. Also looking to the future, it is clear that legislatures are becoming more comfortable with legal notices being sent by email and that in the next five years this will be a legal method of sending lien notices.

The starting point is convincing new customers to provide email addresses and having a provision in the rental agreement stating that the storage operator and tenant can use this form of communication. Equally as important is using this information on regular basis. This can range from “send a friend” offers to a monthly bill. By maintaining regular contact with their customer storage operators are more likely to be able to contact them when they need to.

Source: SSA Magazine

Notice can be as important as any contractual relationship.

## Don't forget to support our valuable members!

<b>Boyd &amp; Boufford Insurance Agency, LLC</b>	(603) 673-7228
<b>Can-Am Building Systems Corp.</b>	(508) 272-9724
<b>Collin Box &amp; Suppy</b>	(508) 230-5833
<b>Cross Insurance</b>	(603) 742-2552
<b>Emove Inc. Web Self Storage</b>	(866) 693-6683
<b>Flexospan Steel Buildings, Inc.</b>	(800) 245-0396
<b>Marcus &amp; Millichap</b>	(203) 672-3326
<b>Northeast Record Retention</b>	(877) 603-3100
<b>On the Move Inc.</b>	(800) 645-9949
<b>Rabco Corp.</b>	(508) 269-9866
<b>Storage Auction Solutions</b>	(978) 777-5850
<b>Storage Business Owners Alliance</b>	(508) 425-7111
<b>Swisher Industries</b>	(603) 622-1111
<b>Syrasoft Management Software</b>	(800) 817-7706
<b>Trachte Bldg. System</b>	(800) 356-5824

www.NERRecordRetention.com

**NORTHEAST RECORD RETENTION, LLC**

## Vendor Spotlight!

### Record Storage

At NERR we can quickly and accurately gain access to a specific document stored within your files, or have a document added to a file stored in our Record Center. Should you ever need them, your files can be retrieved and delivered very quickly to your facility.

Our service relieves your company of the space and personnel requirements associated with managing and tracking boxes of information. Here at NERR we like to think of ourselves as an extension of your office or filing room.

We use the O'Neil Software Inventory System that with barcodes: locates, tracks and organizes all your critical information.

### Document Shredding

Today, all types of companies, medical offices, law firms, etc. are finding it necessary to destroy their outdated confidential records. Tossing these records into the trash receptacle/dumpster may cause a breach of security for your company, your clients and your employees.

Northeast Record Retention will pick up and shred all types of records including: paper, blue prints, microfilm, microfiche, CD's, magnetic tapes and more.

We encourage our customers to develop a destruction policy that all employees will follow and set up retention schedules so they are not keeping records any longer than needed.

Source: [www.NERRecordRetention.com](http://www.NERRecordRetention.com)

# Illinois Prohibits Employment Credit Checks

On January 1, 2011 Illinois joined a growing group of states that have laws that effectively prohibit employers from using an applicant's credit report in making hiring and promotion decisions. The Employee Credit Privacy Act (HB 4659) forbids employers from inquiring about an applicant or employee's credit history or obtaining a copy of their credit report; the law does not affect an employer's ability to conduct a thorough background check that does not contain a credit history or credit report. In addition, under the new law, employers may access credit checks under limited circumstances, including positions that involve employees:

1. Who must be bonded pursuant to state or federal law;
2. Who will have unsupervised access to more than \$2,500;
3. Who will have signatory power over business assets of more than \$100;
4. Who will have management and control of the business;
5. Who will have access to personal, financial or confidential information, trade secrets, or state or national security information.

Oregon and Washington have enacted similar legislation and more states are likely to follow. Bills have been introduced in 18 states including California, Connecticut, Georgia, Florida, Indiana, Kentucky, Maryland, Michigan, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Vermont and Texas. The laws are a response to the credit crisis, high unemployment and belief that it is unfair to base hiring decisions for many jobs upon a credit history. While most of the states considering these measures will not enact them, some will. A bill in California (AB 22) has passed the Assembly and will be considered by the Senate this summer.

Source: SSA Magazine

# Property Manager Not Subject to FDCPA

The 9<sup>th</sup> Circuit Court of Appeals, in *De Dios v. International Realty Investments*, 2011 U.S. App. LEXIS 7421, has ruled that property managers are not subject to Federal Fair Debt Collections Practices Act (FDCPA) regulations. The suit arose when International Realty sent a collection letter for unpaid rent to a tenant of an apartment complex that it managed. De Dios filed suit alleging that International Realty violated various disclosure provisions applicable to debt collectors under the FDCPA. Under the FDCPA statutory scheme, only debt collectors are subject to liability for violations. The trial court dismissed the suit, concluding that the FDCPA did not apply to the defendant. De Dios appealed.

The court of appeals affirmed. The court agreed with the trial court that FDCPA does not apply to a property manager because a property manager is not a debt collector. The FDCPA defines debt collector as follows:

***“[A]ny person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due...another.”***

Under the FDCPA statutory scheme, only debt collectors are subject to liability for violations.

The purpose of the FDCPA was not to regulate all debt collection activity.

The court noted that statute contains several exemptions including:

***“any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity...(iii) concerns a debt which was not in default at the time it was obtained person.”***

The court pointed out that International Realty had been retained as property manager, which included responsibility to collect rents before the debt became due. Since International Realty had responsibility to collect rents became due, it was not a debt collector as defined by the FDCPA and was not subject to its regulation. The purpose of the FDCPA was not to regulate all debt collection activity. Its purpose was to regulate the activities of companies that are in the business of collecting debts on behalf of others. While property managers collect debts on behalf of their clients, the central purpose of the arrangement is not debt collection but the providing of an array of services for income property owners.

Under the typical self storage property facility management agreement, the property manager would not be subject to the FDCPA. However, some states have similar laws and their applicability may be interpreted more broadly than federal law. Also, harsh collection actions against defaulting tenants could give rise to common law claims, such as intentional infliction of emotional stress.

Source: SSA Magazine

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