

Malaysia Manual of Advice and Procedure: Preface

The Malaysia Manual of Advice and Procedure (the “MAP”) has been drafted at an early stage in the development of self storage services in Malaysia. It provides important information and instructions for operators of self storage facilities about the most important procedures for facility management.

MAP provides a succinct checklist of necessary provisions for well maintained self storage facilities. It also provides necessary information for the proper running of such facilities.

This document accompanies other signature projects of SSAA to lead the industry in each market self regulated. The highest standards of self regulation are important in order to maintain the necessary standards demanded by the public and self storage stakeholders in order to ensure a safe and sustainable industry.

SSAA’s Standardized Licensing Agreement accompanies this MAP which are being integrated into multiple facility operating procedures.

Within a system of regulation and licensing, self regulation of the industry is of utmost importance in order to maintain an effective and ever evolving industry in order to meet global best practices as they evolve. As industry regulations and technology evolves, both The Standardized Licensing Agreement and MAP will also evolve to meet these changes and ensure our members are kept up to date.

Customizable communication templates/letters will be provided for all members along with a framework of an effective communication time schedule that will be similarly updated as regulations and technology evolves.

As the industry grows, these tools will be even more essential for the industry’s good standing and success. SSAA continually encourages the industry to strive for best market practices by following advices in this and other SSAA sanctioned documents. Implementing the ideas within makes good business practice and could save you from considerable business losses and personal grief from the legal implications of not following its guidance.

Note that all of the communication templates, The Standardized Licensing Agreement, and this MAP are designed and developed for members only and are copyrighted accordingly. Please do not copy, lend, forward or otherwise distribute electronic or hard copies outside your business. SSAA will strictly enforce its legal rights to the ownership of the documents.

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*Disclaimer – This guideline is based on currently adopted international advice. It is up to the user to confirm that these procedures are appropriate for local use and situations. Please determine this with your local authorities and legal counsel.

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1. Using this manual

This Manual of Advice and Procedure provides best practice guidelines for self storage facilities and is encouraged to be followed in the practice of self regulation in accordance to best practices followed around the world.

2. The agreement

SSAA has one storage agreement for use by its members:

- The Standardized Licensing Agreement

2.1 The Standardized Licensing Agreement

i Purpose

The Standardized Licensing Agreement is intended to be used in everyday self storage, where the storer places their goods into their space, and is the only person who has the key. Most self storage relationships will be governed by this agreement.

3. Signing up storer

3.1 Signing The Standardized Licensing Agreement

The Standardized Licensing Agreement sets out the rights and responsibilities of the storer and facility. It is a **legal document**, and entry into the contract must be approached carefully and with vigilant attention to detail.

i No agreement, No storage

A storer must not be allowed to move goods into a space without signing the agreement. Without signing The Signing Storage Agreement you have no legal right to seek payment for use of space or sell items if payment is not made.

ii Signing Up - procedure

The procedures for signing up is as follows:

- The storer must provide **photo identification**, either ID or passport would be accepted
- Check the storer's ID against the information they have provided Ensure ID is photocopied
- Identification showing their current address and mailing address

A storer who is a **company** must produce:

- Evidence that they are entitled to enter into contracts on behalf of the company – in some instances this may require written confirmation from the company by way of a letter
- Identification demonstrating the company's mailing address

iii **Current Address**

Although some storers will be in the process of moving, you should ensure you obtain both a current **street address**, as well as the **new** or **future street address** and a **mailing address**.

4. Contractual notices

The Standardized Licensing Agreement is a contract. The process of entering into these agreements is shaped by the requirements of contract law.

4.1 Emphasizing document is contractual

The storer must be told that the document they are signing is **contractual**, and the sign up procedure must be approached as follows:

- Give the storer The Standardized Licensing Agreement before they sign – terms must be made available **before entering a contract** or they do not apply to the resulting contractual relationship

4.2 Specific notices

The provision is similar in most countries in that contract law requires specific notice of clauses which might be considered onerous or unusual. Specific notices should be made of the following aspects of the contract:

- Allocates the risk and responsibility for goods to the storer, to the exclusion of the facility
- Prohibits the storage of dangerous or illegal goods
- Allows for the charging of late fees
- Allows you to sell the goods if fees are overdue
- Allows you to take certain steps, including the forced entry of the storer's space and the surrendering of items to authorities, in the event that illegal and/or certain other activity is suspected

5. Fees

5.1 Rates

Rates, or storage fees, are set depending upon commercial decisions taken by each particular facility.

i In advance

The Standardized Licensing Agreement specifies that fees are to be paid in advance and facilities should ensure that rates are thus maintained.

ii Security Deposit

It must be maintained in a trust account, and trust accounting rules and regulation will apply. Retention of the deposit in the event that any moneys are owing under the agreement.

5.2 Late payment

A late payment is a fee charged when a payment is overdue. The storer must be notified of the fee on the front of The Standardized Licensing Agreement at the time they sign the agreement. A late payment fee is a one-off charge meant to cover the cost of chasing the payment.

5.3 Increasing rates

Only the storage fee may be altered during the course of the storage relationship. Other fees, including late payment, cannot be increased unless the storer agrees to those increases. The storage fee cannot be increased during the initial fixed period of storage – it can only be increased once the storer is on regular storage rates. The storage fee may be altered by notice advising them of the increase in fees.

It should also be noted that while storage fee increases are at management's discretion. The storer has the right to terminate the agreement upon notification of a fee increase, regardless of any period of notice required.

6. External stored items such as vehicles

Special comment should be made on the approach to storing large items such as vehicles, particularly outside or in communal areas.

6.1 Aim for no key/means of moving item

Cars, boats and other large items may be stored by the facility, along with the means to move those items such as the keys to operate those items. Storing items and retaining the means to move them is likely to be interpreted at law as a bailment relationship between the facility and the storer, and not a license relationship.

6.2 Implications of communal storage

You may still choose to store vehicles and other large items in communal areas, where you and potentially other storers have access to the goods. However you should clearly understand the increased business risk in doing this. In a communal area, bailment will most likely apply.

7. Storer loses key

A storer has the right to access their space. If they lose the key, they are entitled to have the padlock cut off, or the lock drilled, upon the prior communication with the facility owner.

8. Entry to storer's space and overlocking

8.1 Overlocking

Overlocking is the placing of a second lock onto a storer's unit to prevent them from access their space. Overlocking does not allow the facility to access, it merely prevents the storer from accessing. Facilities have a contractual right to overlock as soon as a storer is overdue.

8.2 Contractual right to enter

Entering a storer's space under The Standardized Licensing Agreement is an action which should only be taken when necessary, as it exposes the facility to increased legal risk.

Entry may occur for various reasons, including default on the part of the storer, due to the suspicion of illegal activity or for maintenance. All access falls within two categories: urgent access and non-urgent access.

i Urgent

A facility owner has the right to access a storer's space without prior notification to the storer. To classify as urgent there must be a threat to property, life or the environment, or the suspicion of illegal activity. All other access is non-urgent.

ii Non-urgent

A facility owner has the right to access a storer's space in certain circumstances, such as to relocate the storer, to ensure there is no illegal activity or general inspection of the space. *Non-urgent access requires 21 Days Prior Written Notice to the storer.*

8.3 Default

When a storer is more than 42 days in arrears with storage fees (according to stated regulations in The Standardized Licensing Agreement), they are in default. Facility may access the storer's space. This is non-urgent access, following which keys to the replacement lock will be retained by the facility.

8.4 Suspicion of illegal activity

If a storer is suspected of illegal activity, a facility may access the storer's space without giving any 21 Days Prior Written Notice. The non-urgent access procedure should be followed, but it can be taken **immediately**, and without the need to give 21 Days Prior Written Notice to the storer.

8.5 Maintenance

The facility is entitled to give 21 Days Prior Written Notice to enter and inspect a space. A facility may choose to use this clause to enable essential works, such as the installation of a fire detection system or for pest control.

8.6 Emergency or damage to space and relocation

In the event of an **emergency**, such as a fire, urgent access to the space is permitted.

In the event that the space is **damaged**, such as due to the actions of another storer or through a natural event such as a storm, access to the space is also permitted. Furthermore, the facility is entitled to **relocate** the storer in certain circumstances. This access would be approached as if non-urgent, but without the need to give 21 Days Prior Written Notice.

8.7 Damage to goods through flood fire or other – goods irreparable or likely to cause subsequent loss to facility or other goods

In the event that goods are damaged beyond repair, it is recommended that you try and liaise with the storer before disposing of the goods, but this is for public relations reasons, not legal reasons. If the storer cannot be contacted, refused to act within a reasonable amount of time you can dispose of the goods immediately and without the prior approval of the storer. You should, however, protect yourself by take photographic or video evidence of the condition of the goods, and notify the storer at their last advised address or email of the fact that goods have been disposed and why.

8.8 Liability and access

Whenever a lock is forced open by the facility and a space is accessed, the facility exposes itself to certain legal risk. For this reason, it is recommended access is only taken when there are no viable alternatives. Every effort should be made to contact the storer and have them access the unit for non-urgent matters.

9. Terminating agreement

9.1 When to terminate

The Standardized Licensing Agreement allows for termination of the agreement once the initial fixed period of storage has ended.

i Terminating due to illegal or environmentally harmful activities

If the storer is engaged in illegal or environmentally harmful activity, the facility may terminate the agreement without notice period.

ii Terminating after fixed period

To terminate the agreement, the facility must give notice. The period of notice required will be that specified on the front of the agreement, as agreed at the time the contract was entered.

If the storer wishes to terminate, they should give the request notice to the facility in advance.

iii Terminating after fee increase

Whenever you notify a storer about an increase in fees, they have the right to terminate the agreement at any time before the fee increase is applied. This right exists regardless of any normal period of notice required.

NOTE - You CANNOT increase fees during the fixed term of the contract.

9.2 Procedure for terminating agreement

In some occasions a facility may want to terminate a storer who is a slow payer, abusive, due to redevelopment of the facility, or for many other reasons. To do this you should send a Termination Notice.

10. Disposal of goods/auctions

WARNING: The disposal of goods should be well managed and recorded. Disposal of goods lays more along the path of debt collection and should be treated as such, versus for example 'just getting rid of goods'. Doing so in an open, transparent, and fair manner will be seen favourably by the courts of law.

There are three methods of disposing of goods. 1) Dispose 2) Closed Door Auction 3) Open Auction. Please consult SSAA for more information.

10.1 Identifying goods

In disposing of goods, either through attempts to recover money owed by defaulting storer or due to goods being left behind by a storer after storage, goods will vary and judgement should be used when disposing of them. In the opinion of SSAA, in the former case, the goods should be left alone for future public auction. In the latter, this is the facility's judgement.

i Environmentally harmful

Both the safety of staff and the environment should be considered, as well as the facility's legal obligations. Goods must be disposed of in accordance with various legislation and regulations.

ii Illegal goods

Notification to authority (e.g. Police). Goods will usually be confiscated.

iii Sensitive papers

Papers may be disposed of by usual paper disposal means, e.g. recycling and we recommend, as per the rule on auctions, to not be judge and jury for the paperwork. There is no need to identify all the paperwork available.

iv Personal items

Such as photographs, wedding certificates, etc. There is no legal duty to retain these items.

v Goods belonging to someone other than storer

If the facility is on reasonable notice that the goods belong to someone other than the storer, you may not rely on the agreement to sell the goods. Reasonable notice includes for example radio rental stickers on equipment, notice from a finance company that goods in fact belong to another person, or a legal notice stating that the goods belong to another person.

Merely having a person say that the goods belong to them will not usually, in itself, be enough. In those circumstances, advise the person who claims it is their goods that a storer has authorized you by way of contract to sell all items in the space, and the claimant should contact the storer.

vi Items of no or negligible commercial value

Under the most recent version of The Standardized Licensing Agreement, it is suggested to follow a method that implied the least liability.

vii Items left behind after termination OR items left in communal areas

Items left in communal area of the facility may be disposed of immediately. Items left behind in a storer's space after termination (by either party) may be disposed of 7 days after giving notice to the storer of the impending disposal. In the event that there is a cost for disposal, you can charge the storer.

11. Notices

11.1 Not all communication is ‘Notice’

Notice is a defined term in The Standardized Licensing Agreement. Communication between the facility and the storer will NOT always constitute notice.

11.2 Defined

A notice under The Standardized Licensing Agreement must be in writing UNLESS the storer opted for email only at the start of the agreement. In the case of notice from the facility to the storer, it can be either posted, left at or faxed to the last notified address of the storer, or emailed to the last advised email address.

11.3 When is notice required

Communication which must meet the defined term notice is:

- When the storer changes address, or the storer’s alternate contact person changes address – such notice must be given within 48 hours of the change
- When the facility wants non-urgent access to the storer’s space—21 Days Prior Written Notice is required (this is under The Standardized Licensing Agreement)
- To terminate the agreement once the initial fixed period has passed
- Fee increases

11.4 Notice not required by contract, but considered best practice

Sale of goods—Although not required by the storage contract to give notice of your intention to sell, it is best practice to do so.

11.5 When to send Registered Notice

You are not required by The Standardized Licensing Agreement to send notice by registered post. However, it is considered best practice to send some notices leading to the entry of the storer’s space and/or the selling up of a storer’s goods by registered post.

12. Bankrupt storer

For this section, it can be country specific and we suggest it best to follow country specific paths on dealing with the matter.

12.1 Identifying

A storer who goes into bankruptcy will have a trustee appointed. You may never receive notice of the appointment because the bankrupt may not list you as an unsecured creditor in the Statement of Affairs. If you receive notice, then it is likely to be within 6-12 weeks of the bankruptcy.

12.2 Once notice is received

You should endeavor to determine if the items in storage are vested in the trustee in bankruptcy or in the bankrupt alone. You should ask the trustee to identify if the trustee has an interest in the items. To do this they will need access to the goods. They have the right to have the lock removed for this purpose. Bankruptcy does not terminate the agreement for storage.

12.3 Outstanding fees

In all probability you will not be able to sell the stored goods to cover your storage fees. This is because your debt merges in the bankruptcy as a provable debt unless you can claim a lien over the goods as uncollected goods for your fees. You can only lodge a Proof of Debt in the bankruptcy for the debt incurred up to the date of bankruptcy.

12.4 Trustee's right to remove goods

The trustee is entitled at law to remove goods. If the goods are vested in the trustee, he will provide notice to you and you will not need authorization from the storer.

13. Insolvent company

(Please follow the related requirement of Law of Malaysia when dealing with Insolvent Company).

13.1 Identifying

A storer which is a company may become insolvent and can have a number of different forms of insolvency being:

i Receivership

A Receiver is personally liable for the debts which he incurs during the term of his Receivership.

ii Administrator

During the period of the administration, he is liable for debts which the company incurs and of which he is on notice. Once he is on notice of an existing contract, he has 10 days in which to adopt the contract. All the goods belong to the company and the administrator must decide what he wants to do with them.

iii Liquidator

All of the goods in storage belong to the company and the liquidator must determine what he wants to do with them.

13.2 Once notice is received

You should remove any overlock you have placed on the storage space. Because you do not have priority over other creditors, you are unable to sell or deny access to the goods.

13.3 Account

Just because the storer has gone into liquidation/receivership/administration does not prevent you from enforcing the terms of The Standardized Licensing Agreement. The company remains the same contracting party. You are entitled to sell the goods and obtain payment for outstanding fees if you have a lien.

14. Dead storer

When a storer dies, a facility is not able to release goods to any person other than the person to whom probate is granted.

14.1 Family member/other has key to space

Because you do not have control over the space, you will not be in a position to deny or grant access. This means that if a family member has the key to a storer's space, you do not have the legal right to refuse access to the space. Allow the space to be cleared.

14.2 No key, no access

If there is no key to the space, you are not in a position to grant access to any individual. If the space is licensed under The Standardized Licensing Agreement, you do not have the means or the right at law to grant access. The executor has the right to access the goods for the purposes of finalising the deceased person's estate. They cannot remove the items. The only person who may remove the items is the person to whom probate has been granted, or the person to whom a court has granted a letter of administration in the event of the storer dying intestate.

14.3 Account

The cost of storage may continue to accrue against the estate of the deceased. This bill can be sent to the executor of the estate. If the bill is not paid, the right of sale is available to the facility.

15. Handling information

15.1 Information collection

Through the process of signing up a new storer, information is obtained about that person. Some of this information is considered private which is regulated by the relevant privacy act of your home country.

15.2 Personal information document

At the time of entry into a contract (signing up a storer), a storer must be presented with The Standardized Licensing Agreement and sets out what information you are collecting, why, how it will be used, and to whom you will release it.

15.3 Request for information about a storer

Facilities often receive requests from agencies and authorities inquiring whether or not a person is storing with them, or details regarding that person. You may release any information you have to any of the agencies and authorities listed below.

16. Access on demand from agencies and authorities

A demand for access can only be enforced if the person against whom the demand is made has the ability to actually access the space.

If you do not have/hold keys to a storer's space, and cannot access the space without breaking the lock, then the demand for access should be served on the storer.

16.1 Who might want access?

Periodically, you will be called upon by various agencies and authorities to grant access to a storer's space or records you hold concerning a storer. The agencies and authorities that may seek access include the Malaysia Taxation Office, Malaysia Police, and the Customs and Excise Department to name only a few. Many agencies and authorities have the power to search and/or seize goods and information.

16.2 What will they produce demanding access?

You are required to grant access or give information upon legal demand. An agency/authority seeking access to records, information or a storer's space will produce a notice, or a warrant, or in very limited circumstances merely identification and a verbal statement that they have the right to access/seek information.

16.3 Must I grant access?

i Access to your records or information you hold

A demand for access to your records is a demand for access to information within your control. Any legal demand, in any of the forms described above, for access to your records or information held by you must be complied with. If the demand includes a power to seize or copy documentation, you must comply.

16.4 Access to a storer's space

This scenario differs depending upon whether you have keys to the storer's space or not. If you DO NOT hold keys, a legal demand must be issued against the storer and not the facility, as you have no means of granting access to the space without using force. If a demand is made against you, you do not have to comply. Explain your reason to the authority.

If the legal demand is made against the storer, then you do not have to physically facilitate access, nor should you assist.

ALWAYS ask to see the search warrant. You have a legal right to see this UNLESS it is a covert warrant. Ask to take a copy of the warrant. If this is not permitted, it is important that you obtain identification from the officers. Ask for identification from the officers. This can be a business card.

16.5 Your contractual obligations and rights

Even if you do not have a spare key, under the agreement you have the right to take action if you have reason to believe that a storer is not complying with the law. In the event that you are informed, verbally or through legal documentation that a storer is engaging in illegal activities, you are entitled to take all action necessary.

i Can I inform the storer?

In most instances, there is no legal requirement for you to keep the contents of a notice/warrant confidential. This means you can contact the storer and inform them that you are cooperating with an agency/authority. The storer may wish to be present in attendance for the execution of the warrant/notice on their space (in many cases they may not!).

16.6 Keeping it all on file

It goes without saying that entry to a storer's space without their prior consent is a contentious issue. You must keep detailed and accurate notes about the entire procedure.

16.7 When in doubt

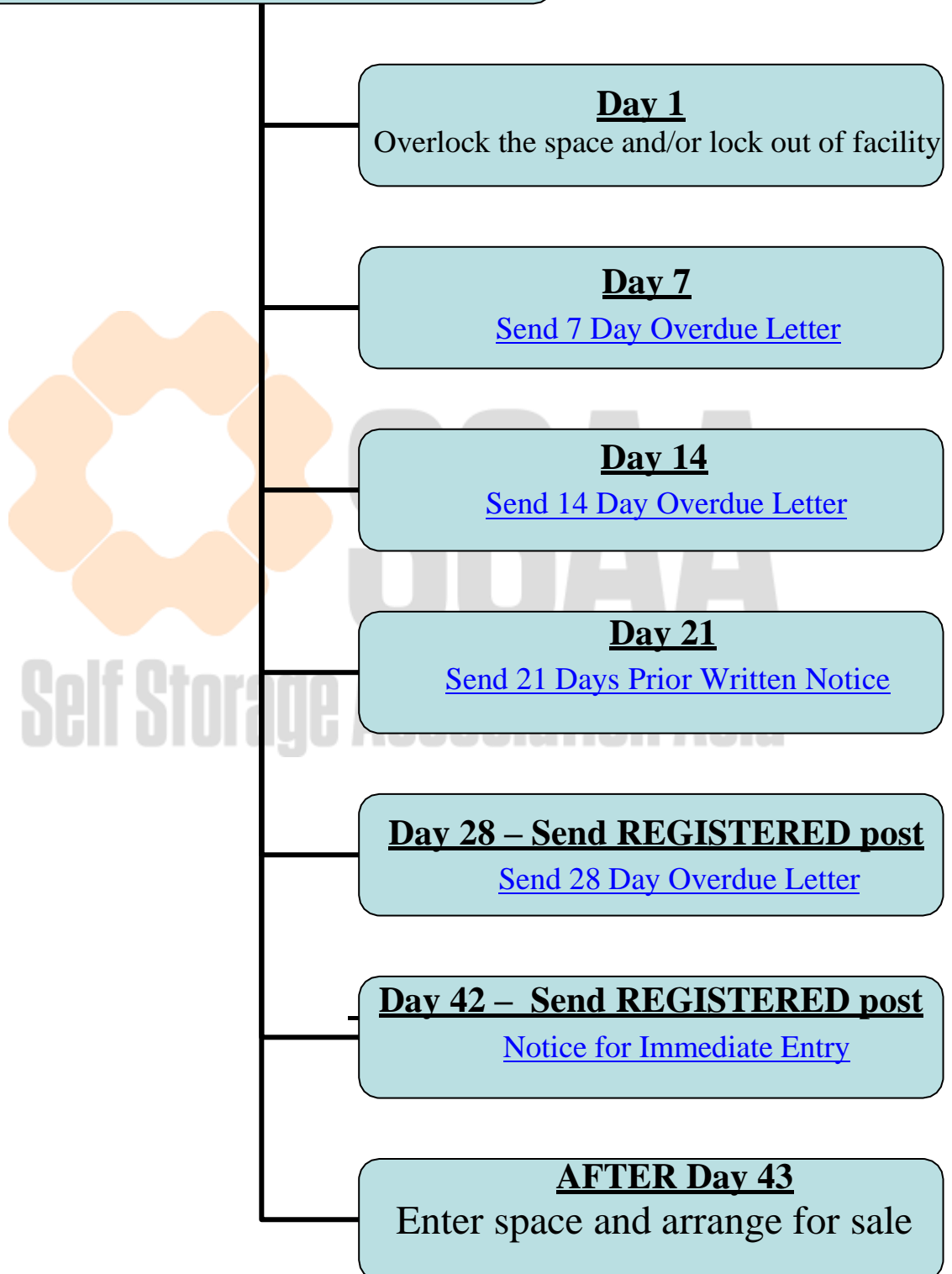
Because there are so many government bodies that could seek to access a storer's space and the methods employed to do so vary, it is impossible to cover all scenarios in detail in this Manual of Advice and Procedure. If you are at all in doubt as to the legality of a request of this nature which is made on your facility, you should contact your solicitor. You may also contact SSAA if you have question about the Manual of Advice and Procedure.

The key is: read the document carefully, do as it says and make a file note keeping an accurate record of any demands.

17. Payment default flowcharts

17.1 The Standardized Licensing Agreement

Management of defaulting Storers



Notes

