

DECEASED TENANT PROPERTY

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Disposition of Personal Property of Deceased Tenants

Introduction

Dealing with the death of another is never easy. Dealing with the death of a single tenant living alone in a rental property is made more difficult by applicable laws in Washington. Many landlords and property managers do not know what to do or how to handle deceased tenant's property. The existing statutes are helpful when the deceased's estate is probated but are painful in their application to small estates that frequently are too small to probate. A recent change in law offers a new proactive approach to handling deceased tenant property.

Contrary to popular belief, the death of the tenant does not automatically terminate the tenancy. *In re Barclay's Estate*, 1 Wash. 2d 82, 95 P.2d 393 (1939). The Notation of continued tenancy is problematic when the tenant lives alone and the rental agreement prohibits assignment or subletting of the tenancy. It's hard to envision the public interest in requiring the landlord to continue renting to a deceased person. It's similarly baffling as to why the deceased estate should be required to continue paying rent for an uninhabited dwelling.

Synopsis

The following is a synopsis of the current Washington statutory authority relating to the disposition of deceased tenants' personal property. Included is a summary of applicable statutes: RCW 11.08.300 Transfer of property to the department of revenue; RCW 11.42.010 Notice - Qualifications; RCW 11.42.020 Notice to Creditors - Manner - Filings - Publications, and a Non-probate Notice to Creditors RCW 11.42.030; RCW 11.48.020 Right to possession and management of estate; RCW 11.62.010 Disposition of personal property, debts by affidavit, proof of death - contents of affidavit - procedures - securities; and RCW 11.62.020 Effect of affidavit and proof of death - Discharge and release of transfer or Refusal to pay or deliver - Procedure - False affidavit - Conflicting affidavit - Accountability.

RCW 11.08.300 Transfer of property to department of revenue provides in part:

Escheat property may be transferred to the department of revenue. The department of revenue shall furnish proof of death and an affidavit meeting the requirements of RCW 11.62.010 to any person who has possession of any personal property belonging to the decedent. Upon receipt of such proof of death and affidavit, the person shall deliver the personal property, or as much of either as is claimed, to the department of revenue pursuant to RCW 11.62.010.

RCW 11.42.010 Notice agent - Qualifications provides in part:

- (1) Subject to the conditions stated in this chapter, and if no personal representative has been appointed in this state, a beneficiary or trustee is qualified to give non-probate notice to creditors under this chapter.
- (2) A person or group of persons is deemed to have received substantially all of the decedent's probate and non-probate assets.
- (3)(a) The "notice agent" means the qualified person who:
 - 1) Pays a filing fee to the clerk of the superior court in a county in which probate may be commenced regarding the decedent, the [notice county], and receives a cause number; and
 - 2) Files a declaration and oath with the clerk.
 - a) The declaration and oath must be made in affidavit form or under penalty of perjury and must state that the person making the declaration believes in reasonable good faith that the person is qualified under this chapter to act as the notice agent and that the person will faithfully execute the duties of the notice agent as provided in this chapter.

RCW 11.42.020 Notice to creditors - Manner - Filings - Publications provides in part:

(1) The notice agent may give non-probate notice to the creditors of the decedent if:

- 1) As of the date of the filing of the notice to creditors with the court, the notice agent has no knowledge of another person acting as notice agent or of the appointment of a personal representative; and
- 2) According to the records of the court, no cause number regarding the decedent has been issued to any other notice agent and no personal representative had been appointed.

(2) The notice agent must give notice to the creditors of the decedent, as directed in RCW 11.42.030, announcing that the notice agent has elected to give non-probate notice to creditors.

- 1) The notice agent shall first file the original of the notice with the court.
- 2) The notice agent shall then cause the notice to be published once each week for three successive weeks.
- 3) The notice agent may at any time give actual notice to creditors.
- 4) The notice agent shall also mail a copy of the notice to the State of Washington department of social and health services'.

The notice agent shall file with the court proof by affidavit of the giving and publication of the notice.

RCW 11.48.020 Right to possession and management of estate provides in part:

Every personal representative shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased... and shall keep in tenable repair all houses, buildings, and fixtures thereon, which are under his control.

RCW 11.62.010 Disposition of personal property, debts by affidavit, proof of death - Contents of affidavit - Procedure - Securities provides in part:

At any time after forty days from the date of a decedent's death, any person who has possession of any personal property belonging to the decedent which personal property is an asset which is subject to probate shall deliver such property to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

An affidavit meeting the requirements of RCW 11.62.010 (2) shall state:

- 1) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;
- 2) That the decedent was a resident of the state of Washington upon date of death;
- 3) That the value of the decedent's entire estate subject to probate does not exceed one hundred thousand dollars;
- 4) That forty days have elapsed since the death of the decedent;
- 5) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;
- 6) That all debts of the decedent including funeral and burial expenses have been paid or provided for;
- 7) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;
- 8) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice;
- 9) That the claiming successor is either personally entitled to delivery of the property claimed on the behalf and with the written authority of all other successors who have an interest therein.

(A copy of such affidavit is attached for your review. Said affidavit upon receipt must be mailed to the department of social and health services, office of financial recovery.)

RCW 11.62.020 Effect of affidavit and proof of death - Discharge and release of transferor - Refusal to pay or deliver - Procedure - False affidavit - Conflicting affidavits - Accountability provides in part:

The person delivering personal property pursuant to RCW 11.62.010 is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such delivery, such person had actual knowledge of the falsity of any statement which is required by RCW 11.62.010 (2). Such person is not required to see to the application of the personal property, or to inquire into the truth of any matter specified in RCW 11.62.010 (1) or (2).

An organization shall not be deemed to have actual knowledge of the falsity of any statement contained in an affidavit made pursuant to RCW 11.62.010 (2) until such time as said knowledge shall have been brought to the personal attention of the individual making the delivery of the personal property claimed under RCW 11.62.010.

If any person to whom an affidavit and proof of death is delivered refuses to deliver any personal property, it may be recovered or its delivery compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. If more than one affidavit is delivered with reference to the same personal property, the person to whom an affidavit is delivered may deliver any personal property in response to the first affidavit received, provided that proof of death has also been received, or alternatively implead such property into the court or payment over to the person entitled thereto. Any person to whom delivery, transfer, or issuance of personal property is made pursuant to RCW 11.62.010 is answerable and accountable therefore to any personal representative of the estate of the decedent or to any other person having superior right thereto.

The above statutes appear to indicate that upon the demise of a tenant the landlord/management company has the ability to surrender personal property to an individual who possesses letters testamentary or other proof that he/she is appointed the personal representative, executor, executrix, or notice agent of the decedent's estate. If there is no such personal representative or notice agent, the landlord/management company must wait forty (40) days after the tenant's death prior to delivery of personal property of the decedent to an individual who furnishes an affidavit consistent with requirements set forth in RCW 11.62.010. If no such personal representative, notice agent or affiant claims personal property of the decedent then it appears that the decedent's personal property may be transferred to the department of revenue pursuant to RCW 11.08.300. A better approach is found in new law arising out of RCW 59.18.590 and .595.

NEW LAW REGARDING DISPOSAL OF DECEASED TENANT'S PROPERTY

A new Washington law that took effect July 24, 2015 is designed to provide certainty for both landlords and tenants if a tenant who is the only occupant of the unit dies. The following is a summary of the main points of the law but is not intended to provide thorough legal advice that is best obtained from a competent landlord – tenant attorney.

1. DESIGNATED PERSON. The portion of the law allowing a sole occupant tenant to designate a person to act for that tenant on the tenant's death is optional not mandatory. A landlord may request but not demand that a resident sign a form that designates a person that the landlord may deal with if the resident dies during the tenancy (**designated person**). The resident may also sign such a form and give it to the landlord even though the landlord has not made a request.

The designation form cannot be part of the rental agreement and must contain specified information. The form gives the **designated person** access to the rental unit; the right to remove the deceased tenant's property; receive any refunds due the deceased tenant; and dispose of the property consistent with any last will and the laws of **intestate succession** (these laws provide for the disposition of a person's property if there is no will.) If the landlord or the **designated person** knows of a **personal representative** appointed under a will or a person claiming to be a **successor** under the small estate statute, the designation automatically terminates and the landlord should not allow access to the **designated person**. A form for use by a tenant to designate a person is attached.

2. ACTIONS BY LANDLORD. The new law sets forth specific actions a landlord either **may or must** take in the event of the death of a resident who is the sole occupant of the unit.

a. The landlord **may** enter the unit, immediately dispose of any perishable food, hazardous materials and garbage found in the unit or on the premises. The landlord may also turn over any animals to a tenant representative, animal control officer, humane society or other individual or organization willing to care for the animals.

b. The landlord **must** promptly mail or personally deliver a written notice that states: 1) the name of the deceased tenant and address of the dwelling unit; 2) the rental amount and the date through which the rent is paid; 3) a statement regarding termination of the tenancy unless a tenant representative takes action; 4) a statement that failure to remove the deceased tenant's property before the termination of the tenancy will allow the landlord to enter the unit, take possession of the property, store it in a reasonably secure place, charge the actual or reasonable costs for moving and storing the property, and after another notice sell or dispose of the property. A form to advise that a tenant has died is attached.

c. The notice **must** be sent to the deceased tenant at the address of the dwelling unit, to any emergency contact person listed on the rental application and to the following, all of whom are referred to in the law as "**tenant representatives**": 1) any **personal representative** (this is a person designated in a last will and appointed by a court); 2) any known **designated person**; 3) any person **known** to the landlord and who the landlord reasonably believes to be a surviving spouse or surviving domestic partner of the deceased and any persons **known** to the landlord and who the landlord reasonably believes to be the children, parents, siblings, grandparents or children of the grandparents of the deceased (**successors**). The law specifically states that the landlord has no obligation to identify all of the deceased tenant's **successors** and, therefore, the landlord has no obligation to search for **successors**. It must be pointed out that an emergency contact person may or may not be a **tenant representative** as defined in the new law. Although the law says that the notice can be delivered either in person or by mail, it is recommended that a copy always be mailed even if it has also been personally delivered. If the landlord knows of any an address used for electronic communications (email), a copy must also be sent to that address. The landlord should complete a "declaration of service" form after delivering the notice just as is done when serving notices to pay rent.

3. RESPONSE. Who might respond to the landlord? It is difficult to predict who might respond to the first or second notice sent out by the landlord. Therefore, it is recommended that the landlord contact an attorney before taking any action if someone has contacted the landlord about the deceased and the deceased's property. If the landlord is contacted by a **tenant representative** after the first notice but before the second notice and given a written request for the deceased's property, the law requires the landlord to deliver the property to the person making the request. The law does not allow the landlord to collect any funds from the **tenant representative** in this circumstance. After the second notice, the landlord may, at its discretion, deliver the property to a tenant representative either with or without payment of storage and moving costs. If a person listed as emergency contact responds to the landlord, it will be necessary to determine whether that person meets the definition of **tenant representative**.

4. PAYMENT OF ADDITIONAL RENT. A **tenant representative** may pay additional rent for the premises for up to 60 days after the resident's death in order to arrange for orderly removal of the resident's property. Any such payment should be made within the 15-day period provided for in the law and set forth in the first notice sent by the landlord. If an additional rent payment is made the landlord must send out a **second notice** to the deceased tenant, any emergency contact person and to **tenant representatives** advising that the payment has been made, the amount of the payment and date through which rent is paid, the name and contact information of the person who made the payment, and a statement that the landlord may sell or dispose of the property if not removed from the unit by a certain date. A form to advise that additional rent has been paid is attached.

5. STORAGE. If no **tenant representative** contacts the landlord within 15 days of the first notice, the landlord may remove the property from the unit and store it in a reasonably secure place. If no **additional rent** payment is made, the landlord may also remove the property from the unit and put it in storage. The landlord could also choose to leave the property in the unit until the allotted time expires for sale or disposal. The property could be in storage for up to 60 days. After putting the property in storage or deciding to leave it in the unit, the landlord must send a **second notice** to the deceased tenant, any emergency contact person, and all **tenant representatives**. If the landlord chooses to leave the property in the unit, the landlord will not be able to charge **tenant representatives** the regular monthly rent for the unit if they seek to claim it. The landlord can charge the rent that would be charged at a commercial storage facility plus the costs that would have been incurred for packing and moving the property into storage. A form to advise that the property is being stored is attached.

6. VALUE OF TENANT'S PROPERTY. What is the value of the resident's property? It is up to the landlord to determine the value of the deceased tenant's property. The measure of value is what a willing buyer would pay for the property in its current condition. The value is not determined by replacement cost. If you have any doubts about value it would be advisable to bring in an independent third party to assist in appraising the property.

7. TENANT PROPERTY. The landlord may give the property to any **tenant representative** with the following exceptions and provisos. If the landlord learns that a **personal representative** has been appointed, that person alone is entitled to take possession of the property. If a **tenant representative** contacts the landlord within 15 days after the first notice is sent, the landlord must allow that person to claim and remove the property. If the property has been stored, the landlord may require the **tenant representative** to pay the actual or reasonable costs, whichever is less, of removing and storing the property (see comment in 6 regarding costs if the property is left in the unit.) If the tenant died more than 40 days earlier, it is possible that someone may present the landlord with a declaration provided for by state law for disposition of a "small estate." In this event, the landlord should contact a lawyer and follow the lawyer's advice. Anyone who claims and removes the property is required to give the landlord an inventory and sign an acknowledgment that he or she has only been given possession and not ownership of the property.

8. What monies can you collect before turning over the property? See 3 and 7 above.

9. SECURITY DEPOSIT AND UNEARNED RENT. The new law states that the landlord is to provide an accounting and a refund of any monies due the tenant within 14 days after the property is removed either from the unit or from storage by a **tenant representative**. This implies that the landlord is required to hold the security deposit and any unearned rent until the last possible day for a **tenant representative** to remove the property and appears to supplant the regular requirement to provide such information within 14 days after the termination of the tenancy and vacation of the unit by the tenant. Once the property has been removed from the unit, the landlord should perform the normal move out inspection, complete the move out inspection form and an accounting for the security deposit. If no one claims the property and it is disposed of or sold, depending on the value, any monies due the tenant can be used to help pay for the costs of moving and storage and added to the proceeds of sale.

10. NO ONE CLAIMS THE PROPERTY. If the property has been put in storage and all appropriate notices have been sent, the landlord may sell or dispose of the property depending on the value except for “personal papers and personal photographs.” If the reasonable estimate of the fair market value of the property is more than \$1000.00 the landlord must arrange to sell the property in a “commercially reasonable manner and may dispose of any property that remains unsold in a reasonable manner.” Any proceeds from the sale may be applied to the costs of the sale and any monies due the landlord. Any excess income from the sale must be held by the landlord for one year and if no claim is made for the excess it must be treated as abandoned property and deposited with the state department of revenue. If the value of the property is less than \$1000.00 “the landlord may dispose of the property in a reasonable manner.” Any personal papers and personal photographs must be held for at least 90 days after the sale or disposition of the other property and if not claimed by a **tenant representative** within that time, they may be destroyed. The law also specifically provides that no landlord, employee of a landlord, or his or her family members may directly or indirectly acquire any of the property that is disposed of or sold. Once again we encourage a landlord to seek competent legal advice before any sale or disposition of property.

11/12/15

**TENANT DESIGNATION
PURSUANT TO
RCW 59.18.590**

The undersigned, _____, a resident at _____,
_____(City), WA, hereby designates _____(designee),
as the person to act on my behalf pursuant to RCW 59.18.590 in the event that I am the
sole occupant of the premises on the date of my death.

My designee's mailing address and phone number are: _____
_____; and
the address for electronic communications, if any is: _____.
My designee is allowed to have access to the premises, remove my personal property,
receive funds due me from my landlord, and dispose of my property consistent with my
last will and testament and any applicable intestate succession law.

**I understand that this designation will remain in effect until revoked by
me or replaced with a new designation. I also understand that I may
change my designee or revoke this designation in writing at any time
prior to my death.**

Dated: _____

_____, resident

**NOTICE OF RESIDENT'S DEATH
RCW 59.18.595**

Each of you is hereby notified that _____ (resident) who was the sole occupant of the premises located at _____, died on approximately _____.

Pursuant to RCW 59.18.595, you are advised that the monthly rent of \$_____ for the premises is paid through_____. Pursuant to state law, the tenancy for the premises will end on _____(1) unless a tenant representative as defined in RCW 59.18.030(25) makes arrangements with the undersigned prior to that date and pay additional rent in advance for no more than 60 days from the date of resident's death to allow for orderly removal of the resident's property. If a tenant representative fails to remove the resident's property from the unit by either _____(1), or the date through which additional rent is paid, the tenancy ends, the landlord will take possession of the property and store it in a reasonably secure place. If the property is stored, reasonable moving and storage costs must be paid prior to retrieving the property and, after sending a second notice; the property may be disposed of or sold.

Dated:_____

Signed: _____

Address:_____

Phone:_____

Email:_____

This notice is being sent to the following:

A copy of the designation signed by the resident, if any, is attached.

¹ Insert date that is the latter of date through which rent is paid or at least 15 days after this notice is mailed.

**NOTICE OF RENT PAYMENT
RCW 59.18.595**

This is to notify you that a tenant representative for _____
who died on approximately _____ has made arrangements to pay rent for the
premises at _____
in the amount of \$_____. This amount pays the rent through
_____.

Pursuant to RCW 59.18.595, the undersigned landlord may sell or dispose of the property
on or after _____ (1)¹, if a tenant representative as defined in RCW
59.18.030(25) does not claim and remove the property from the premises on or before
this date and pay the reasonable costs of moving and storing the property.

The person who paid the rent is _____, whose mailing
address, phone number and any other contact information are as follows:

Dated: _____

Signed: _____

Address: _____

Phone: _____

Email: _____

This notice is being sent to the following:

¹ Insert date that is the later of 45 days after this notice is mailed or the date through
which the additional rent has been paid.

**NOTICE OF STORAGE OF PROPERTY
RCW 59.18.595**

This is to notify you that the undersigned landlord has taken possession of the personal property of _____ who died on approximately _____. The deceased was a resident at _____. The property is being stored in a reasonably secure place.

Pursuant to RCW 59.18.595, the undersigned landlord may sell or dispose of the property on or after _____¹, if a tenant representative as defined in RCW 59.18.030(25) does not claim and remove the property from storage on or before this date and pay the reasonable costs of moving and storing the property.

Dated: _____

Signed: _____

Address: _____

Phone: _____

Email: _____

This notice sent to the following:

¹ Insert a date that is at least 45 days after this notice is mailed.