



Cutting Law Office PC

What to do When a Tenant Dies

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What to do When a Tenant Dies

- An estate's rights and responsibilities with rented residential property
- A landlord's rights and responsibilities when his or her residential tenant dies
- Evicting unwanted guests and family from the decedent's home

LANDLORD-TENANT AFTER DEATH

RCW 59.18.590-.595

- Applies “when the tenant is the sole occupant of the dwelling unit”
- Procedure for handling rent and property
- Not required
- Replaces abandonment under RCW 59.18.310

Tenant's Designation

- Name, address, e-mail, and phone number of designee
- Explicit authorization for the designee to (1) enter the unit, (2) remove personal property, (3) receive any refund on the tenancy, and (4) dispose of the personal property
- Conspicuously state that the designation can only be revoked in writing
- Signed by the tenant



Landlord's Procedure

Promptly mail notice to the tenant's designee, any known PR, any emergency contact, any known "successor" of the tenant, and the tenant at the unit identifying:

1. The name of the deceased;
2. The unit's address;
3. The date of death;
4. The landlord's address, e-mail, and phone number
5. A copy of the designation form; and
6. Two statements:

Landlord's Procedure

A statement that the tenancy will end in 15 days or the date that rent was paid through, whichever is last, unless the individual pays for more time (≤ 60 days) to remove the property.

A statement that failure to remove the property by the deadline that the landlord may hold the property for payment of storage costs and sell it.

*Note, the sale is very similar to the .310 sale but with a \$1,000.00 threshold for mandatory sale.



Landlord's Procedure

- Tenant's representative must sign an agreement to give the landlord an inventory of the property and acknowledge that he or she has only possession, not ownership, of the property
- Landlord must account for a tenant's deposit and refund any pro-rated rent within 14 days of final removal of the deceased's property

Landlord's Procedure

If the tenant's representative pays for additional time to remove the property, the landlord must notify the tenant's designee, any known PR, any emergency contact, any known "successor" of the tenant, and the tenant at the unit:

1. The name and known contact info for the person paying;
2. What was paid and to what date; and
3. A statement that the property may be sold or disposed of after the later of 45 days or the date through which rent is paid*



Landlord-Tenant After Death

- A landlord who knowingly violates this procedure is liable for actual damages, costs, and attorney's fees
- A landlord who follows this procedure is immune from liability for the tenant's personal property

EVICTING UNWANTED GUESTS

Key Terms

- “Tenant” is anyone in possession of land who is not its owner in fee simple, e.g. “life tenant,” “month to month tenant”
- “Squatter” is a colloquial, not legal, term for someone who is in possession without permission. The legal term is a “tenant at sufferance” or a “trespasser” or both.
- A “guest” is a tenant at will.

Tenancy at Will

- Any individual in possession of land with the owner's permission, without any explicit term, and without any obligation to pay rent, *Najewitz v. Seattle*, 21 Wn.2d 656, 658-59, 152 P.2d 722 (1944)
- An agreement is any oral or written understanding concerning possession of real property, RCW 59.18.030(29)
- If no permission is given, there is a tenancy at sufferance, *Najewitz v. Seattle*, 21 Wn.2d at 658; see RCW 59.12.030(6)



Tenancy at Will

- A tenancy at will is not one of the seven circumstances that can be terminated via unlawful detainer, *Najewitz*, 21 Wn.2d at 658-59; *see* RCW 59.12.030 (defining the types)
- A tenancy at will is terminated by giving reasonable notice to vacate. *Najewitz*, 21 Wn.2d at 659. There is no form or manner requirement.

Forcible Detainer

“Every person is guilty of a forcible detainer who either—
(1) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or—(2) Who in the nighttime, or during the absence of the occupant of any real property, enters thereon, and who, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to such former occupant.”

-RCW 59.12.020

And entitled to possession, RCW 59.12.140



Forcible Detainer

- Actual violence is not required, the purpose of the statute is to *prevent* breaches of the peace. *Priestly Min. & Mill Co. v. Lenox Min. & Dev. Co.*, 41 Wn.2d 101, 103, 247 P.2d 688 (1952).
- Other states apply the same principals. *Moxley v. Acker*, 447 A.2d 857 (Md. 1982); *Foster v. Hill*, 510 S.W.2d 520 (Tenn. Ct. App. 1973).

Color of Title

- Neither forcible nor unlawful detainer may proceed where the defendant has color of title, *Puget Sound Invest. Group v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944 (1998)
- Record title is generally sufficient to prevent dismissal on this basis, *Selene RMOF II REO Acquisitions II, LLC v. Ward*, 189 Wn.2d 72, 85-87, 399 P.3d 1118 (2017)
- Where a genuine title dispute exists, the plaintiff must proceed in ejectment, Chapter 7.28 RCW



Removing the Guest

1. Make a demand for possession and afford a reasonable time to vacate
2. If the tenant refuses to vacate, serve a forcible detainer termination notice providing at least 3 days to vacate and serve in in the manner provided for by RCW 59.12.040
3. If the tenant again refuses to vacate, serve a summons and complaint for forcible detainer



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Thank you!

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