

HANDLING THE INEVITABLE (AND I DON'T MEAN TAXES)

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The role of the property manager is not an easy task. Residents can and will come up with the craziest problems and will regularly drop them onto the manager's desk. Unauthorized pets and occupants, wild parties at all hours of the night, feuding neighbors, and "helpful" individuals are examples of the troubles that regularly crop up to plague those who own or operate residential rental property, but these "regular" problems are just the tip of the iceberg. As a property manager, are you prepared for the more esoteric – and far trickier – problems that may arise?

One of the odder, and sadder, problems to face property managers is when a resident passes away. While it may involve nothing more than that resident passing away peacefully in his or her sleep, a number of problems begin when life ends.

Who to Contact?

When your resident passes away, you need to figure out what happens to the apartment and to all of the deceased resident's personal property. Assuming that you were the first party to be notified (such as by the police), there are three potential courses of action. Of course, if you are contacted by the Personal Representative (what other states call the "executor"), then this process is sped up greatly. However, if you are left with an apartment full of property and no idea what to do with it, these are your three courses of action:

#1 Contact the "passing" designee. If you were proactive, you added a clause into your lease contract that designates an emergency contact "in case of resident's death." Under A.R.S. § 33-1314(F), which was added to the Arizona Residential Landlord and Tenant Act in 2009, the landlord may have the resident designate someone to exercise control over the personal effects in the premises, and the designee's authorization to act supersedes a potential conflict with provisions of the probate code regarding estates. This designee (which lacks a proper name under the statute) may choose to act or to pass and may direct you to a family member or another individual.

#2 Contact family or friends. If you have no designee, you may attempt to use the rental application to find other "emergency contacts" such as family or friends. While these individuals do not have the same level of statutory authority to act as the "passing" designee, they may have copies of the deceased resident's will or know if he/she died intestate.

#3 Contact the Public Fiduciary's Office. If there is neither a family member nor a friend who is willing to get involved, one of the roles of the Public Fiduciary's Office is to intercede in matters involving intestate individuals. While the Public Fiduciary's Office does not involve itself too deeply into personal property matters, it may elect to intercede if asked.

Note that declaring the apartment as "abandoned" is not the proper course of action without taking effort to contact individuals who may have an interest in the estate of the deceased resident. Abandonment is the last recourse for when nobody wishes to be involved in disposing of the resident's physical property.

Disposing the Personal Property

To properly dispose of the resident's personal property, you should follow the steps outlined in A.R.S. § 33-1314(F).

First, contact the "passing" designee (or research the application and find an appropriate family member). Inform that individual that the decedent has personal property in the dwelling and that you are requesting he/she take control of it. The person to whom you write and call is permitted ten (10) days to respond to your inquiry.

Second, if there is a response, and that individual wishes to remove the items, he/she has twenty (20) days from either the response date or the date the rent was last paid (whichever is later) to claim the items. The designee may take all, part, or none of the personal property. This same procedure exists for Personal Representatives as well. If personal property is removed, have that individual sign an Affidavit of Collection of Personal Property (A.R.S. § 14-3971). This affidavit is vitally important to you, as it transfers legal responsibility for the personal property items from you (as landlord) to the individual.

Third, once the disposal period closes (whether the time expires or the designee claims whatever the designee wants to claim and then officially surrenders the rental premises), dispose of the remaining items as if they had been abandoned in the apartment.

Fourth, if nobody responds and the Public Fiduciary has not taken any action, you may proceed with Abandonment under A.R.S. § 33-1370.

Maintaining the Premises

Even in the most peaceful of circumstances, it may become necessary to treat and clean the rental dwelling due to the time that has passed since the resident's passing (or due to the nature of that passing). Bio-remediation may be as simple as excising a small area of the carpeting or having furnishings properly removed, but it could require a thorough cleaning of the entire dwelling by contractors in "bunny suits."

Bio-remediation should not be performed by your employees due to health concerns. Normal cleaning, by employees or contractors, is sufficient after the professionals have remedied issues that arise from pathogen-carrying materials, but the first steps should be taken by those outside companies.

Disclosure

Finally, you may be concerned with the impact of the passing of your resident with regard to the dwelling itself. There is no requirement under Arizona law to disclose that someone passed away in the dwelling, but you cannot refuse to answer if a prospective resident asks about the apartment in question.