

DECEASED TENANT

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You just got the news: One of your tenants passed away. You're stunned, but you don't forget that you're a landlord. You know that the Oregon Residential Landlord and Tenant Act (the "ORLTA") governs landlords' and tenants' rights both before and after the termination of a tenancy. However, you may not have anticipated that this particular termination would result from your tenant departing the premises, umm ... horizontally.

If a residential tenant passes away, the tenancy ends. And, whenever any tenancy ends, you should be thinking of three things: (1) regaining possession of the premises; (2) complying with the abandoned property statute; and (3) complying with the final accounting statute. Let's start analyzing all three items based upon two different scenarios.

SCENARIO ONE: THERE WAS ONLY ONE TENANT

If only one tenant occupied the premises (with no kids, friends or relatives living with him), and he passes away, then you have an immediate right to retake possession of the premises. Go ahead and change the locks, safeguard any personal property, and mark your calendar with the first date upon which you discovered that your tenant had moved on. If the tenant had paid a security deposit, this date will set in motion the 31 day time limit for returning a security deposit and/or serving a final accounting. This date will also mark the start of your obligation to comply with the abandoned property statute.

In years past, landlords received little statutory guidance regarding abandoned property of deceased tenants. However, the abandoned property statute has finally been expanded to address situations in which deceased tenants leave personal property behind. Now, the following persons will have the same rights and responsibilities regarding the abandoned personal property as a tenant: (1) an heir or devisee; (2) any personal representative named in a will or appointed by a court to act for the deceased tenant; and (3) any person designated in writing by the tenant to be contacted by the landlord in the event of the tenant's death.

An abandoned property notice must be: (1) sent by first class mail to the deceased tenant at the premises; (2) personally delivered or sent by first class mail to any heir, devisee, personal representative or designated person, if actually known to the landlord; and (3) sent by first class mail to the attention of an estate administrator of the

Department of State Lands ("DSL"). The abandoned property notice must refer to the heir, devisee, personal representative, designated person or estate administrator of the department, instead of the deceased tenant, and must incorporate the provisions described in ORS 90.425.

The landlord shall allow a person that is an heir, devisee or personal representative of the tenant, or an estate administrator of the DSL, to remove the personal property if the person contacts the landlord within the period provided in ORS 90.425. (This would normally be five or eight days, depending on whether you personally served the notice or mailed it. However, I would not recommend just using personal service. Instead, I'd recommend using mail service for all recipients. Therefore, the recipients will have eight days to contact the landlord.) The person seeking to remove the personal property must comply with the requirements of this section and provide the landlord with reasonable evidence that the person is an heir, devisee or personal representative, or an estate administrator of the department.

If neither an heir, devisee nor personal representative of the tenant, nor an estate administrator of the DSL, contacts the landlord within the time limit described in the Abandoned Property Notice, then the landlord shall allow removal of the personal property by the designated person of the tenant (i.e., the "emergency contact person"), if the designated person (1) contacts the landlord within by the Notice deadline; (2) complies with the requirements of this section; and (3) provides reasonable evidence to the landlord that the person is the designated person.

A landlord who allows removal of personal property under the above described scenario is not liable to another person that has a claim or interest in the personal property. However, this still leaves the final accounting:

Unless you intend to withhold the security deposit and deliver a final accounting, the deceased tenant's estate has the right to receive the security deposit. "What's that mean," you ask? The ORLTA falls short of an answer. If there's an open probate proceeding, then the appointed personal representative has the right to receive the security deposit refund. Otherwise, you have to guess who has the right to the security deposit, and hope you guess right.

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