

Kimball, Tirey & St. John LLP

When a Resident Dies on the Property

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When a resident dies on the property, questions frequently arise about management's responsibilities.

What is the effect of death on rental obligations? Death does not terminate term lease obligations. The resident's estate remains responsible through the end of the lease term.

Month-to-month residential tenancies terminate thirty days after the last rental payment by the deceased tenant (Civil Code §1934). A thirty-day notice is not required in this situation.

The estate will remain liable for unpaid amounts (subject to the landlord's obligation to mitigate). The deceased's family member and heirs are not personally liable if the estate does not have enough money to pay all claims. The estate may or may not have assets from which to collect. Any security deposit can be used to pay amounts due.

What should management do upon the tenant's death?

- Notify authorities (911, police, etc.) if a body is found by the landlord. In cases of homicide, suicide, accidents and sudden/unexpected natural deaths, the coroner will generally take custody of the body and notify the next of kin.
- If death occurs off-premises (in a hospital or otherwise), and the landlord is notified, the landlord should request contact information for a responsible party.
- If any pets are in the unit, contact animal control. Under California law, if an animal is "involuntarily deposited" with someone, the person with whom the animal is "involuntarily deposited" must immediately notify animal control officers.
- If there is no ascertainable next of kin or responsible party, notify the Public Administrator duty officer. The Public Administrator will secure the unit and search for next of kin or responsible party. If no one can be located, the Public Administrator will either take the contents to the County Warehouse for disposition/auction or, if low value, will turn it over to the landlord for disposition as abandoned property. In that case, the landlord should follow statutory abandoned property procedures to the extent possible.
- To avoid the appearance of improper actions, search the unit only with permission and presence of next of kin or officials. Avoid self-help to prevent theft claims.
- To avoid potential liability, provide access and possession only to authorized persons (described in more detail below).
- If a unit is relinquished with biological waste in it (blood, etc.), for liability purposes, compliance with labor laws, etc., hire appropriately trained people or companies to clean the biological waste.
- The landlord must name the proper party (Executor/Administrator/Trustee) if litigation is necessary to regain possession of the unit or to recover unpaid amounts.

When can the landlord retake possession of the unit?

To avoid potential liability, a landlord should not retake possession of a unit because a resident died unless:

- An authorized person (see below) returns possession of the property to the landlord; or
- No family member, representative of the deceased or some other person claims right of possession and the tenancy has terminated because (a) the end of the lease term has expired or (b) more than thirty days has passed since the last rental payment was made on a month-to-month residential tenancy.
- The landlord has gone through an unlawful detainer action or the belief of abandoned real property procedure described in Civil Code §1993.

Who should be given access to the unit, its contents & security deposit?

California law establishes who is authorized to act after someone has died. Allow access only to police, coroners and other government officials or an authorized person described below. It can often be difficult to determine who is an “authorized person.”

- An “executor” is named in a will and is appointed by a court. An “administrator” is appointed by a court when the deceased does not have a will. Both are “personal representatives” appointed by a probate court judge, and “Letters” issued by a court document the person’s authority. However, probates are not opened for every deceased person, and opening probate can take weeks or months.
- If the deceased had a trust, the successor trustee may be authorized to act under the trust. You can verify authority by asking to see a copy of the trust and verifying that the person is named as the trustee or successor trustee under the trust.
- If no probate is required because the “probate estate” (meaning items not in a trust or in beneficiary form) is less than \$150,000.00, authority to deal with the deceased’s personal property can be established through the “40-day procedure” that is outlined in the California Probate Code §13100 et seq. If this procedure is used, at least 40 days must elapse from the date of death and a “40-Day Statutory Declaration To Receive Tangible Personal Property” would be provided to the landlord. During the 40+ day period, the landlord should store the personal property.
- While it is safest to wait for Letters to be ordered by the court, or for the “40-Day Statutory Declaration To Receive Tangible Personal Property,” this is often impractical, due to a lack of storage space, relatives from out-of-town who need to resolve things quickly, etc. If a landlord feels comfortable with the people claiming the property and believes there will not be a fight about it, and is willing to accept some risk, the landlord may choose to (but is not required to) release the personal property earlier, to the apparently authorized person. The landlord can reduce risk in this situation by requiring the apparently authorized person to sign a document in which the apparently authorized person certifies to the landlord he or she is authorized, and agrees to indemnify the landlord in case of any issue regarding the

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- person's authority. (*Attorney assistance drafting this document (which Kimball, Tirey & St. John refers to as a "Declaration to Provisionally Receive Tangible Personal Property from Residence of Decedent Without Court Administration") is recommended.*

A landlord is under no legal obligation to turn the property over until the landlord is given proof of authority, so if someone is unwilling to sign the provisional document or if the landlord has doubts about the authority of the person claiming the property, the landlord should use caution and insist on the more formal procedure.

A power of attorney does not establish that someone is authorized to act after a death, as a power of attorney expires at death.

If a landlord has questions about whether someone is an authorized person, or if there are conflicting claims regarding possession of the unit or its contents, or if a landlord feels uncomfortable because of the possibility there may be disputes, consultation with an attorney may help avoid potential liability.

- Within 21 days after retaking possession of the unit, the landlord should provide the security deposit accounting and refund to the authorized person. If the landlord cannot determine the authorized person within the 21-day period after regaining possession of the property, the security deposit accounting and deposit should be sent to the deceased at the deceased's last known address (probably the property address), and let the heirs, court, public administrator or others determine who is entitled to it.

Disclosures to future residents

In California, if a death occurs in a unit, the landlord must disclose the death to any new prospective tenants for the next three years. This disclosure should be in writing. A landlord has no obligation to disclose that an occupant of the unit died from AIDS.

After three years, the landlord is not required to volunteer the information but, if asked a direct question, can't give incorrect information. A landlord can respond by giving correct information or by stating that the landlord declines to provide any information.

These situations can be complicated; you would be wise to obtain legal counsel before proceeding to avoid problems regarding the disposition of the property.

For assistance when there has been a death on the property, or for your estate planning needs, contact Charles Scott, Esq. or Leanne Barbat, Esq. at 619-231-1422.

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