



## **A Two Part Special - Property Management Edition**

### *Part I: Deceased Tenant's Security and Stuff*

*By Christal Park Keegan, NVR Legal Information Line Attorney*

*October 18, 2021*

This two-part special covers the burning questions from our property managers. Property management questions easily outnumber the questions into the Legal Information Line. We also know that an overwhelming majority of disciplinary actions in front of the Nevada Real Estate Division concern *mis*-property management. This article sets out to help our members who practice property management in order to better serve clients and the public, increase professionalism, to make informed decisions and enhance one's overall practice.

#### **Question 1. How should security deposit refunds when a tenant is deceased be handled?**

**Answer 1.** We all know (or should know!) that landlords/property managers can statutorily use security deposits for three things:

- 1) Unpaid rent,
- 2) Repairs above normal wear and tear, and
- 3) Cleaning. (*see* NRS 118A.242).

**Remember! The remaining portion of the security deposit, if any, is not the property manager's and/or landlord's to keep!** The property manager has 30 days to return any remaining deposits (NRS 118A.242(4)) to the executor of their estate or next of kin, if none, to report it as unclaimed property to the Nevada State Treasurer.

*What if there is no executor and no next of kin?* This is a slippery slope where property managers can easily slide into a territory beyond expertise and exceed the scope of duties memorialized in the property management agreement! (*see* NRS 645.254) **The best practice is to refer your client to:**

- 1) Reach out to the Public Administrator, and**
- 2) To hire an attorney for additional guidance.**



***What if the security deposit is not enough?*** Again, refer your client to hire an attorney to look into filing a creditor's claim on their behalf if the estate is in probate, or to encourage your client to work directly with the executor in getting the funds. Better yet, how can property managers get ahead of the ball so clients/landlords are not left holding the bag? **Consider clarifying the matter in your lease agreement by specifying a beneficiary for the tenant's security deposit if the tenant passes away during the lease term.** If the tenant elects not to or the lease doesn't account for that, then the security deposit will be returned to the tenant's estate and the courts will determine that through the probate process, and if none, it escheats (or is paid back) to the State.

**Question 1 Part 2. What's the proper procedure for regaining possession and disposing of the deceased tenant's personal property?**

**Answer 1 Part 2.** First, consider notice of the tenant's death as terminating the lease. If next of kin or the executor of the estate has been identified, work with them on getting the personal property out so the property can be re-let. If there's no next of kin/executor, the landlord/property manager would proceed as the law provides for abandonment. *See* NRS 118A.460 and NRS 118A.480 for guidance.

**Note:** If the property manager is the one who discovers the deceased tenant, it's important to immediately reach out to the authorities such as calling 911 non-emergency for the police, and/or calling the county coroners and medical examiner's office to respond to the scene. Do not touch anything, secure the unit before leaving (closing windows, locking doors, etc.) and defer to the authority's instructions as far as permitted entry and biohazard cleanup questions.

Statements made by the Nevada REALTORS® Legal Information Line attorneys on the telephone, in emails, or in legal eNews articles are for informational purposes only. Nevada REALTORS® staff attorneys provide general legal information, not legal representation or advice regarding your real estate related questions. No attorney-client relationship is created by your use of the Legal Information Line. You should not act upon information you receive without seeking independent legal counsel. Information given over the Legal Information Line or in these articles is for your benefit only. Do not practice law or give legal advice to your clients! Inform your clients they must seek their own legal advice.