

**T****S****Tschetter Sulzer**

ATTORNEYS & COUNSELORS AT LAW

3600 South Yosemite Street, Suite 828
Denver, CO 80237**MEMORANDUM**

To: Firm Client
From: Tschetter Sulzer
Re: Tenant Deaths update 2019

Firm clients frequently inquire as to the procedures that should be followed in the event of a tenant death. This memorandum and accompanying indemnity agreement address those issues.

WHAT TO DO IN THE EVENT OF A TENANT DEATH**1. Contact Authorities.**

Call the police or other law enforcement agency that has jurisdiction in the area where your property is located. The police will most likely contact the appropriate coroner but in the event they do not, you should.

2. Contact Tenant's Emergency Contacts/Next of Kin.

This should only be done after you have contacted the police and they have arrived. In dealing with these types of unfortunate episodes, please keep in mind the most common potential problems. Relatives of the deceased may accuse management personnel of wrongfully removing property. Relatives of the deceased may accuse other relatives or persons of wrongfully removing property. It is important that the scene not be disturbed prior to the time the police arrive and have an opportunity to investigate. Most tenants pass on due to natural causes. However, this is for the police and the coroner to determine. Their jobs will be much easier if the scene has been disturbed as little as possible and other people have not entered the unit.

If the tenant's lease contains a provision allowing you to give his emergency contact access to his unit, you may do so.

3. Allowing Access to the Unit After Law Enforcement is Finished.

Do not allow anyone access to the unit that does not have a key and proper authority. Proper authority would be the police, the coroner, the public administrator, or next of kin that have provided you with an Affidavit for the Collection of Personal Property (See also section 5). If for any reason, you have to re-enter the deceased's unit

prior to the time other persons take control over and remove the deceased's property, you should never enter alone. Enter with two or more management personnel. Each and every entry should be carefully logged in the tenant's file including date of entry, purpose, and who entered.

4. The Public Administrators Office & Coroners

Some counties in Colorado have a Public Administrator (PA). A PA is appointed by the probate court. The PA may get involved to secure a residence and personal property, in the event that an heir or personal representative is not immediately verifiable. Understand that a PA is not paid by the state; they are private individuals who serve based on court appointment.

If next of kin are found and will be administering the estate, the public administrator may notify the landlord that the next of kin will be accessing the property.

If there are substantial assets, the PA may even pay an additional month's rent to store the assets prior to sale. This does not often happen. For example, there was one tenant who had over four thousand collectible model trains. The public administrator paid an additional month's rent to store the items prior to auction.

If there are few assets and no next of kin, then the public administrator will notify the landlord, and it will be up to the landlord to evict the unit to recover the premises.

Throughout the process of dealing with a tenant's death you may be in contact with the PA if there is no next of kin that has been located or contacted the landlord. Please note that PAs are appointed and do not get involved with every death in the county. Think of the PA as an estate representative of last resort, when there are no next of kin stepping forward to deal with the estate. Should the police not provide you with information regarding the next of kin and you have not been contacted by anyone asserting they are next of kin, you can consider contacting the PA's office to see if they have opened a file on the deceased.

Adams & Broomfield Public Administrator	303.252.1012
Arapahoe, Douglas, Elbert, & Lincoln Public Administrator	303.355.8500
Denver Public Administrator	303.534.5100
Jefferson Public Administrator	720.638.1465

Not all counties have PAs. In the counties below, it is the Coroner's office that will take the lead in dealing with the public on issues of a tenant's death.

Boulder Coroner	303.441.3535
El Paso Coroner	719.390.2450

5. Dealing with People Who Show Up.

Frequently after a tenant dies, relatives or others who are not listed as an emergency contact pop up out of the woodwork. If the relative already has a key to the unit, you do not need to prohibit him from entering the unit to remove the tenant's belongings. If the relative does not have a key and is asking for access, while under the circumstances it is important to be sympathetic, you cannot let the relative have access to the unit until the relative proves his/her identity and authority to take control of the deceased's property. Although, this may offend some, you should explain that it is necessary to prevent people who don't have legitimate claims from taking the tenant's property.

If persons contacting you do not know what documents to obtain to prove they have authority to take control of the deceased's property, you may direct them to the website for the Colorado Judicial Branch, which has the Affidavit for Collection of Personal Property and instructions at www.courts.state.co.us, or they may contact an attorney for legal guidance. The Affidavit for Collection of Personal Property is not effective until 10 calendar days after the tenant's date of death.

Occasionally, relatives will show up with the Affidavit for Collection of Personal Property claiming they are entitled to the property of the deceased tenant. There is a procedure under Colorado law for dealing with small estates that allows an heir to take control over the deceased's possessions. If this occurs, be sure to contact the firm, and we can analyze the affidavit to see if it complies with Colorado law. If the affidavit complies with the law, then access can be granted to the person named on the Affidavit for the person to remove the tenant's. The affidavit has the same effect as the attached Indemnity Agreement. After the tenant's belongings have been removed, be sure to dispose of any remaining property left behind.

It is important to remember that when speaking to friends or relatives in these situations, you should make every effort to conduct such conversations in the presence of at least one other property agent or employee. All phone calls should be immediately noted to the file with sufficient detail to be recalled later if need arises.

Most important of all, do not allow access to the unit to anyone until you have been provided with the appropriate documentation, and they have signed the Indemnity Agreement. If you allow access without first having them sign the Agreement, they might remove property and refuse to sign it. Additionally, if you incorrectly release a deceased resident's property to an individual, there is possible liability. The Indemnity Agreement provides a landlord with the ability to try and hold the individual who signed the Agreement responsible. The Indemnity Agreement should be signed at the property, and be sure to make a copy of the ID of the person accessing the property. **Do not provide this person with a key just provide them with access.**

6. Dealing with the Property if No Next of Kin is Located or Willing to Remove the Deceased's Property.

If you are unable to reach the tenant's emergency contact(s), make reasonable efforts to locate relatives or next of kin. On rare occasions, the deceased's relatives do not wish to take responsibility for the property. What steps to take depends on the facts and circumstances of each case. The most conservative step, to protect management and ownership of the rental, is to initiate an eviction action once there is a default of the lease. Even if there is an abandonment clause in your lease, that abandonment clause offers little protection from a claim that could be raised by an heir that may appear later.

Although, the lease may give you the right to eventually remove the tenant's property, this is not the recommended course of action. However, if you do have this lease language, you have this option. It is strongly recommended that you make a record of the tenant's property for the file, i.e. written inventory or photographic inventory. People may show up after management has disposed of the property because it wasn't initially able to contact anyone. In this event, the record of the actual property is very important to limit potential damages in any lawsuit. **Our office recommends that landlords proceed with an eviction in the event that there is no next of kin located, simply to limit the landlord's liability.**

7. Dealing with a biohazard in the unit.

In the unfortunate event that the tenant's passing caused a biohazard in the unit, you are permitted to hire a contractor to clean and remove the biohazard after law enforcement or the coroner have released the unit back to you. You are permitted to protect your asset and other residents at the community, and are not required to first wait for relatives to remove the tenant's personal belongings. To avoid the risk of claims by relatives, hire a reliable vendor with instructions to clean only the affected area and take precautions to avoid disturbing the tenant's belongings as much as possible.

8. Handling the Security Deposit.

The final accounting of the resident's security deposit should be processed just as it would in the event of an eviction. Any refund check should be made payable to the estate of the deceased resident. For example, "The Estate of Robert Jones." Mail the security deposit accounting and any refund to the last known address, which would be the rental address. If the mail does not forward to the next of kin and there is a refund due to the deceased resident, then the money should be turned over to the state as abandoned property.