

HOW TO DEAL WITH AND AVOID SURPRISE GARAGE PROBLEMS

Property left in garages is problematic for countless reasons. Surprisingly, the variations of garage scenarios we see at the firm are endless. However, landlords most often encounter two specific garage scenarios. One, the landlord discovers that a former tenant has left property in a garage. Two, the landlord comes across a garage packed with property, but has no idea who owns the property. This month we will discuss how to avoid these problems and how to handle property left in a garage.

Eviction is not the proper remedy to address property left in a garage. An eviction is the proper remedy when somebody unlawfully holds possession of real property. For example, when a tenant fails to pay the rent, the tenant is unlawfully holding possession of your real property because the tenant's lawful possession is contingent on paying the rent. By leaving or storing personal property in a garage, a person is not attempting to unlawfully hold possession of the garage, even a locked garage. This is why under Colorado law public self-storage facilities do not have to file an eviction to recover possession of a storage locker when the rent goes unpaid.

Attempting to get rid of property left in a garage through an eviction is problematic due to address and service issues. Tenants are evicted from leased property with a specific address. The eviction statute requires an address. Garages don't have an address, but rather go with a property that has an address. Sheriffs execute writs of restitution based on addresses. Sheriffs will not execute a writ of restitution without a proper address or if the Sheriff isn't comfortable with the address. Thus, if you try to have personal property removed from a garage through the eviction process, you could get all the way to the end only to have the sheriff tell you that he won't execute the writ of restitution. Finally, an eviction remedy is problematic because frequently you can't serve the eviction. You either don't know where the former resident is or you don't even know who to serve because you don't know whose property is in the garage.

For these reasons, we will not file an eviction where the only purpose is to get a court order so that the sheriff can set out the property in the garage. If you can't file an eviction against a garage, how do you address the problem? Specifically, when you come across property in a garage, how do you proceed? How you proceed is determined by several factors. Do you know who owns the property? If you know who owns the property, are you able to deliver a written communication to them? If the owner is unknown, then the key consideration is the value of the property.

If you know whose property is in the garage, the next step is to try to find their lease. Just because you have a name, doesn't mean you have a lease that goes with the name. The property may belong to a tenant that leased several owners or management companies ago. The property could also belong to a number of individuals that never leased, e.g. squatter, friend of former tenant, etc. If you can identify the owner and have a lease, the next step is to review the lease to determine your lease-based rights. If your lease contains strong language, then the risk of disposing of the property can be significantly reduced.

The following is an example of strong lease language. “If Tenant abandons or vacates the Premises for any reason and leaves personal property within the Premises, Tenant intentionally, specifically, and irrevocably abandons and waives all title and interest to such property and grants to Owner full authority to immediately dispose of the same without notice, court order, accountability, or liability. Tenant shall indemnify Owner, Owner’s employees and representatives against any claim or cost for any damages or expense with regard to the removal, disposal or storage of any property, including attorneys’ fees and costs, regardless of who makes a claim against Owner or any other person indemnified in connection with Owner’s removal of any property.” Note, “Premises” includes all leased space, including a garage.

Strong lease language is important because in Colorado personal property is not automatically abandoned when it is left behind. In other words, just because a tenant leaves property in a garage, it doesn’t mean the tenant abandoned the property. Rather, property found in a garage could be mislaid, lost, or abandoned. Property is mislaid if the owner intentionally places it in a certain place and later forgets about it. Lost property includes property the owner unintentionally parts with through either carelessness or neglect. Abandoned property is thrown away or intentionally forsaken by its owner. Thus, in Colorado, a tenant must intend to abandon property, and strong lease language supports the conclusion that the tenant intended to abandon left behind property.

Regardless of lease language, a landlord should always send a written communication to the owner of found garage property if the landlord knows who the owner is and delivery of a written communication is possible (you either have a confirmed address or email). Your written communication should address several key issues. You should inform the owner that you found and are in possession of the property. You intend to dispose of the property within thirty-five days. The property is, has been, and will continue to be available for the owner to claim. You should inform the owner where and how the owner can claim the property. Finally, you should advise the owner if the owner fails to claim the property that you will conclude from the owner’s failure that the owner intends to abandon the property, and that you will promptly dispose the property.

If you cannot identify the owner of the property, the first thing a landlord should do is secure the property. For example, since the property is located in a garage and the garage is accessed either through a remote, a door, or both, the landlord should change the remote code and change the locks to the garage. We realize this goes against standard eviction advice, but remember this isn’t about possession. It is about ownership of the property. When you secure the property, you should also post a notice in a conspicuous place stating that you will deliver the property upon demand from its lawful owner. If the owner was using the garage as a storage locker, the owner may see the notice when they come to get some of the property or to check on it. You could then make access to the property contingent upon the owner immediately removing it. We also advise circulating a memo or notice community-wide to all tenants regarding the discovered garage property.

If you secure and post and the owner does not come forward and is still unknown, a landlord should then inventory the property to document its value. To avoid disputes, the inventorying of found garage property may need to be well documented and methodical. The

necessary detail and documentation of an inventory is determined by the amount and quality of property. Sparse junk warrants little attention, but a full garage of potentially valuable antiques requires great attention. Former tenants or others may make all sorts of unfounded or unscrupulous allegations about property left in a garage at your community. These allegations can be intentional or folks may have just forgotten that they left Aunt Grace's pearls somewhere else. Without a detailed and documented inventory, a landlord is vulnerable to these types of allegations. Inventories should involve multiple persons, detailed lists, and photos. In some cases, given the time involved, you may want to consider involving a reputable third party. When inventorying property, you should always keep in mind the sentimental value of property. How much are all of your family photos worth to you?

In cases where the owner is unknown and the landlord determines the property is not worth much, the landlord has two choices. One, the landlord may decide to simply dispose of the property. Two, in order to insulate itself from liability, the landlord could obtain a court order declaring the property has been abandoned. However, under these facts (little value and owner unknown), the best financial decision is to inventory to the extent necessary and dispose of the property because the cost and trouble to obtain a court order would greatly exceed the value of the property.

If the owner is unknown but the property is valuable either in dollars or sentimentally, a landlord should consider insulating against liability by obtaining a court order. Specifically, the landlord can file a lawsuit seeking a declaratory judgment that the property has been abandoned, and seek permission from the court to dispose of the property. Who do you bring the lawsuit against (who are the defendants) if you don't know who owns the property? The lawsuit is called an action In Rem (involving property), and the named defendants are "All Unknown Persons Who Claim Any Interest In The Subject Matter Of This Action."

Similarly, since the owner is unknown, there is nobody to serve the lawsuit on. Fortunately, the rules of procedure address this by allowing service by publication. Specifically, notice of the lawsuit including the property at issue is published for five consecutive weeks in a newspaper that circulates in the county where the lawsuit is filed. If nobody answers within the time allotted, the court should enter an order declaring the owner of the property has abandoned the property, that the landlord can dispose of the property, and granting the landlord other relief sought in the lawsuit. Keep in mind a declaratory judgment action is not an eviction, and thus is not quick or inexpensive.

Contrary to what you may think or have been told, you cannot solve the problem by evicting the garage alone. You can avoid the problem by making sure that you evict the garage when you evict the unit by including the garage in the address of the eviction notice. If you don't know, or are unable to contact the owner, or the owner doesn't claim the property, you must decide whether actions will be blessed (approved by a court) or non-blessed (you act on your own and take your chances). The value of the property determines whether you should spend the considerable time and money to obtain a court order. The best way to deal with unexpected garage property is to avoid it in the first place. You can avoid or significantly limit surprise garage property issues by regular garage audits. We recommend at least once a year. Garage

audits should be incorporated into your due diligence protocol when you buy or take over management as well. Otherwise, you may be surprised down the road.