

# MICHAEL P. MORTON, P.A.

E-Newsletter

January, 2015

## "Til Death Do Us Part"

*Landlord Obligations Upon the Untimely Death of a Tenant*  
By: David Zerbato, Esquire

The death of a tenant is both a tragic and sensitive occurrence. It requires management to simultaneously balance compassion and understanding towards a grieving family with taking proper action to protect the

then, several days later, the executor shows up charging that grandpa's gold watch has gone missing and they are holding the landlord liable. To provide better guidance in dealing with this type of situation, the legislature has recently revised this area of law to

*"The most important concept that a landlord must understand is that a landlord must only deal with an authorized person."*

interests of the community and tenant's estate. Most importantly, a landlord may be held liable for damages or missing property should they let an unauthorized person into the rental unit, the classic example being the landlord permits a family member who has not provided any documentation on his or her authorization to enter the rental unit and remove the personal property of the deceased, and

provide better instruction in how a landlord exercises its rights and deals with difficult issues which are common when a tenant passes away.<sup>1</sup>

The most important concept that a landlord must understand is that a landlord must only deal with an authorized person. A family member, friend, emergency contact, power of attorney<sup>2</sup> or

<sup>1</sup> The full statutes can be found at 25 Del. C. §5719 and 12 Del. C. §2306.

<sup>2</sup> Keep in mind that a power of attorney terminates once the named

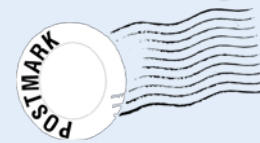
person has passed away. A person holding a power of attorney after the named person has died has no authority to act on behalf of the deceased tenant or estate.

## Briefly Speaking

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### Proof of Mailing

Please make sure that you bring the ORIGINAL proof of mailing to all court trials. The judge must be able to easily decipher the postmark on all mailings, otherwise you run the risk of the case being dismissed.



### J.P. Court #13 – Recording

**RECORDING**

Very shortly JP Court #13 will begin recording trials. The procedures will be more formal in nature and you should endeavor to have enough copies of any documents you wish to present for the Judge and Defendant.

even a spouse do not automatically have authority to act on behalf of the deceased tenant's estate. A landlord must ensure the authorized person has the proper documentation and confirm their identity prior to permitting any person into the rental unit and most importantly, prior to a person removing any property from the rental unit.

The first step in dealing with the death of a tenant is identifying whether the deceased was a sole tenant or if there is a co-tenant(s). This determination is made by simply reviewing the rental agreement. This initial determination will determine what action must be taken. If there are multiple tenants, the remaining tenant(s) will have a right to continue with the lease, or, choose to provide notice of early termination depending on the specific situation. As the recent Code revisions deal only with a situation when a sole tenant passes away, the remainder of this article will provide guidance as to the best way to handle a situation where a sole tenant passes away.<sup>3</sup>

When a tenant passes away, the first step the landlord should take is to secure the rental unit. The landlord must ensure no person without authorization enters the unit or removes any property,

and thus the landlord must secure the rental premises. The landlord should also document the property located in the rental unit by taking pictures. This will aid the landlord if a dispute arises later. Remember that when a tenant passes away, the landlord does not automatically regain possession of the rental unit. Possession can only be obtained from an authorized person providing written notice that they are returning possession, or, alternatively, obtaining a judgment from the Justice of the Peace Court. The landlord must receive valid documentation issued by the Register of Wills to allow any person into the rental unit. Valid documentation may include a Short Certificate also known as a Small Estate Affidavit, Letters Testamentary, Letters of Administration, or a Restricted Affidavit pursuant to 12 Del. C. §2306(c). These documents are issued by the Register of Wills. One will simply need to check the person's ID and confirm they are the person listed on the document.<sup>4</sup> The landlord should also request an address for the authorized person in case the landlord must file a summary possession action to recover possession of unit (should it not be returned by the authorized person) and/or any outstanding rent or other charges. After

receiving the requisite documentation, the landlord may then provide that person access to the unit and allow them to remove any personal property left in the unit. Further, the authorized person has authority to return possession of the rental unit which must be done in writing.



If possession is returned to the landlord by the authorized person, any remaining property in the unit will be deemed abandoned and may be disposed of accordingly. If the authorized person or personal representative does not return possession of the property in writing within 30 days from the death of the deceased, possession shall be returned to the landlord without having to file a summary possession action. In this case, any remaining property should be stored for 7 days from the date possession is deemed to have been received. If the authorized person or personal representative fails to contact the landlord and/or retrieve the property, it will be considered abandoned and may be disposed of

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<sup>3</sup> Please note that an authorized occupant has no rights under the lease or Residential Landlord Tenant Code once the tenant passes away.

They have no right to remain in the rental unit or file an action against a landlord arising from the rental agreement or former tenancy.

<sup>4</sup> Best practices would dictate that the landlord should make and retain copies of any documentation provided.

accordingly. If the landlord is required to obtain a judgment from the Justice of the Peace Court for possession, once possession is received from the Court, the landlord still has an obligation to retain the personal property for 7 days. As with the above situations, after the 7 day period, the property will be deemed abandoned and may be disposed of as the landlord see best.

One very important change to the statute and Code is the addition of the Restricted Affidavit. This newly created document solves one of the most commonly encountered problems when a tenant passes away; the absence of a will. Instead of having to wait at minimum 30 days to allow a relative to obtain Letters of Administration or a Small Estate Affidavit, the revised statute permits the next of kin to obtain this affidavit from the Register of Will immediately and provides authorization to allow that person to remove items from the rental unit as specified in the affidavit. This is an important concept to remember as at this time, there is not a uniform affidavit. Certain affidavits restrict what the person may remove, i.e. clothing for the funeral or personal items **not** belonging to the tenant, while other are much more broad in what they allow the authorized

person to do. The landlord must review this affidavit carefully and limit access or the removal of items in compliance with the affidavit.

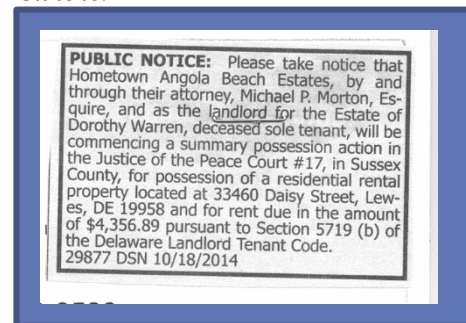
What happens when there is no authorized person and no will, or, if the authorized person fails to provide a valid address and rent is owed? This again is a frequently encountered problem and is the true focus of the revised statute. The statute provides that the landlord must file for summary possession seeking a judgment for possession of the rental unit and any outstanding rent. This process is nearly identical to a normal possession action except there are two main differences. First, the landlord must serve the Register of Wills located in the county where the rental is located, and, second, the landlord must advertise the action in a paper which is distributed in the county in which the rental is located. To serve the Register of Wills, one should simply name the estate, for example, Estate of John Smith, c/o Register of Will, and use the address of the Register of Wills<sup>5</sup>.

Advertising must be done **prior to** filing. It is a fairly straight forward process, simply contact a newspaper circulated in the county in which the rental unit is located, provide the advertisement, and schedule the

publication date. As stated in 25 Del. C. §5719(b), the advertisement must contain the following:

1. Name of landlord;
2. Name of the deceased tenant;
3. Address of the rental unit;
4. Type of action brought, i.e. summary possession or debt;
5. The court in which such action will be brought; and
6. The amount of claim, if any.

As an example, below is an actual advertisement published in Sussex County prepared for the first known possession action to be filed pursuant to this revised statute.



There is no specific length of time the advertisement must run, as such, and due to the cost for each day the ad is published, a landlord may simply advertise for one (1) day. This will be sufficient under the statute and has been successful in court. Once you receive the advertising affidavit from the publisher, simply attach the affidavit to the complaint and file as you normally would.

<sup>5</sup> As a best practice, the landlord should also name the estate as a second defendant and use the rental

address as one would normally do in any other possession action.

While the death of a tenant can create issues including the landlord's obligation to protect and preserve the personal property of the deceased tenant, if a landlord creates and follows a policy whereby only an authorized person is provided

access, they can eliminate any such liability and ensure they are legally protected should any claim arise. Moreover, the revised statute now provides a landlord a fairly simple process to obtain a judgment for possession and unpaid rent should no authorized

person come forward, or, if an authorized person fails to provide an address upon which to serve the estate.

### Michael P. Morton, P.A. regularly handles:

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- Business dispute resolution
- Commercial litigation
- Complex commercial litigation
- Business law
- Corporate law
- LLCs
- Business organizations
- Commercial contracts
- Bankruptcy
- Secured creditors rights
- Unsecured creditors rights
- Commercial leasing evictions
- Landlord and tenant law
- Civil litigation
- Federal civil litigation
- Mobile home law

Thank you for reading our e-newsletter.

If you have any topics that you would like to see addressed in future newsletters, please email David Zerbato at [dzerbato@michaelpmorton.com](mailto:dzerbato@michaelpmorton.com)

### Links in this newsletter:

**The Delaware Code referenced on page 1 can be found below:**

25 Del. C. §5719:

<http://delcode.delaware.gov/title25/c057/index.shtml>

12 Del. C. §2306

<http://delcode.delaware.gov/title12/c023/sc01/index.shtml>

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