
Judiciary Committee

SSB 5538

Title: An act relating to deceased tenants.

Brief Description: Concerning procedures and requirements relating to the death of a tenant.

Sponsors: Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators Angel and Sheldon).

<p style="text-align: center;">Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Establishes procedures for the disposition of the personal property of a residential tenant upon the death of the tenant.
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Hearing Date: 3/18/15

Staff: Edie Adams (786-7180).

Background:

The Residential Landlord-Tenant Act (RLTA) regulates the creation of residential tenancies and the relationship between landlords and tenants of residential dwelling units. The RLTA establishes rights and duties of both tenants and landlords, procedures for the parties to enforce their rights, and remedies for violations of the act.

The RLTA addresses a landlord's obligations with respect to the property of a tenant under two circumstances: when the tenant has been evicted under the unlawful detainer process; and when the tenant has abandoned the tenancy. The RLTA does not specifically address what procedures a landlord must use with respect to a deceased tenant's property.

The abandoned tenancy statute provides that a landlord may take immediate possession of the tenant's personal property and store the property in a reasonably secure place once there has been a default in the payment of rent and the landlord determines that the tenancy is abandoned. The landlord must make reasonable efforts to notify the tenant of where the property is stored and the

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date of any sale or disposal of the property. The landlord may sell or dispose of the stored property if the tenant does not claim the property within 45 days of the notice. The landlord may apply the proceeds of the sale against amounts due to the landlord, including storage costs, and must hold excess proceeds for the benefit of the tenant for one year.

The probate laws allow for an alternative process for disposition of the assets of an estate where the value of the estate does not exceed \$100,000. Under this process, 40 days after a decedent's death a person may turn over property that is owed to or belongs to the decedent to a person claiming to be a successor if the successor provides proof of death and an affidavit that contains certain statements. The required affidavit must state that:

- a personal representative has not been appointed and no petition has been made for appointment of a personal representative;
- all debts of the decedent have been paid;
- the personal property claimed is subject to probate;
- at least 10 days have elapsed since the successor has given written notice of his or her claim to the property to all other successors of the decedent; and
- the successor is personally entitled to the property or entitled to receive the property on behalf of and with written consent of all other successors.

Summary of Bill:

The RLTA is amended to establish a procedure for the disposition of the personal property of a deceased tenant who is the sole occupant of the leased premises. A landlord is prohibited from using the procedures of the abandoned property statute for the disposition of a deceased tenant's property.

Upon written request of a landlord, or upon the tenant's own initiative, a tenant may designate a person to act for the tenant on the tenant's death when the tenant is the sole occupant of the property. A designation must be in a writing separate from the rental agreement and include:

- the designated person's name, mailing address, address for electronic communications, and telephone number;
- a signed statement authorizing the landlord to allow the designated person to access the tenant's dwelling, remove and dispose of the tenant's property consistent with the tenant's will or intestate laws, and receive refunds of amounts due to the tenant; and
- a conspicuous statement that the designation remains in effect until it is revoked in writing or replaced by a new designation.

A designated person's authority to act on behalf of a deceased tenant terminates once the landlord or the designated person knows of the appointment of a personal representative for the deceased tenant's estate or of a person claiming to be a successor of the deceased tenant who has provided the landlord with proof of death and an affidavit that complies with the law governing small estate property disposition.

Upon the death of a tenant who is the sole occupant of the premises, the landlord must provide written notice to any known personal representative, known designated person, emergency contact, known person reasonably believed to be a successor of the tenant, and to the deceased tenant at the address of the leased premises. The notice must include:

- the name, address, and date of death of the deceased tenant;

- the rental amount and date through which rent has been paid;
- a statement that the tenancy will terminate 15 days from the later of the date of mailing or personal service of the notice or the date through which rent is paid, and that the tenant representative must remove the tenant's property during that time period or make arrangements for removal of the property at a later date;
- a statement that failure to remove the tenant's property or make arrangements within the time period will allow the landlord to remove the tenant's property, store it in a reasonably secure place, and charge actual or reasonable drayage and storage costs; and
- a copy of any designation of a person to act for the tenant.

A landlord must turn over possession of the tenant's property to a tenant representative if a request is made within the specified time period or other date agreed by the parties. A landlord must refund to the tenant representative any unearned rent and the tenant's deposits, less lawful deductions including reasonable costs of removal and storage of the property.

If the tenant's property is stored, the landlord must send a second written notice to any known personal representative, known designated person, emergency contact, known person reasonably believed to be a successor of the tenant, and to the deceased tenant at the address of the leased premises. The second notice must state that the landlord may sell or dispose of the property on or after a specified date that is no earlier than 45 days after the second notice is mailed if a tenant representative does not claim and remove the property.

The landlord may turn the property over to a designated person or any person the landlord reasonably believes to be a successor if the landlord has no knowledge that a personal representative has been appointed and no person claiming to be a successor has provided the landlord with proof of death and an the affidavit required under the small estate chapter. Upon removal of the property, the landlord must refund to the tenant representative any unearned rent and the tenant's deposits, less lawful deductions including reasonable costs of drayage and storage of the property.

A tenant representative who removes a tenant's property must provide the landlord with an inventory of the removed property and a signed acknowledgement that he or she has been given possession and not ownership of the property.

If a tenant representative does not contact the landlord within 45 days after the second notice by the landlord, the landlord may sell or dispose of the property. Property that has a value in excess of \$1,000 must be sold in a commercially reasonable manner, if available, and any property remaining may be disposed of by the landlord. If the property has a value of \$1,000 or less, the landlord may dispose of it in a reasonable manner. A landlord may not dispose of personal papers and personal photographs until 60 days after the sale or disposition of the deceased tenant's other property.

A landlord and his or her employees and family members are prohibited from acquiring the property of a deceased tenant that is disposed of or sold. A landlord may apply the proceeds of a sale of the deceased tenant's property against any costs of sale and moneys due to the landlord and any excess income must be retained by the landlord for a period of one year. If the excess income is not claimed within the year period, the landlord must turn it over to the Department of Revenue as abandoned property.

All notices sent by the landlord must include the landlord's mailing address, address for electronic communications, and telephone number.

A landlord, upon learning of a tenant's death, may enter a deceased tenant's dwelling unit to immediately dispose of perishable food, hazardous materials, and garbage, and to turn over any animals to a tenant representative or an animal control officer, humane society, or other individual or organization willing to care for the animals.

A landlord who knowingly violates the requirements for disposition of a deceased tenant's property is liable to the tenant's estate for actual damages. A landlord who complies with these requirements is relieved from any liability relating to the deceased tenant's property.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.