
Judiciary Committee

HB 1229

Title: An act relating to an authorization directing the disposition of personal property.

Brief Description: Concerning the disposition of a tenant's personal property.

Sponsors: Representatives O'Brien and Warnick.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Creates a directive that the tenant may sign authorizing a third party to remove the tenant's personal property when the tenant dies.

Hearing Date: 2/18/09

Staff: Trudes Tango (786-7384)

Background:

The Residential Landlord-Tenant Act (RLTA) governs the relationship between landlords and tenants of residential dwelling units, establishes the duties and liabilities of the parties, and provides procedures for each side to enforce its rights. The RLTA does not have procedures addressing what a landlord can and cannot do to a tenant's property when the tenant dies.

There are procedures under the RLTA that address what the landlord must do with regard to abandoned property. The landlord may immediately take possession of the property and store it in a secure place. The tenant is liable for the actual or reasonable moving and storage costs, whichever is less. Depending on the cumulative value of the property, the landlord may sell or dispose of the property after providing notice to the tenant. The landlord may apply any income from the sale to the costs of moving and storage, and then must hold any excess income from the sale for the tenant up to a year. If the tenant does not claim the remaining income within a year, the balance becomes the property of the landlord.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the probate and trust laws, there are procedures addressing the disposition of property when a person dies without a will and without surviving heirs. There are also procedures governing the disposition of property of small estates. For small estates, a successor (a person who is entitled to claimed property under the terms of a will, intestate succession, or community property) may claim possession of the deceased's property after providing certain documentation. Generally, after 40 days from the person's death, any person who has possession of personal property belonging to the decedent must deliver the property to a person claiming to be a successor.

Summary of Bill:

When there is a periodic tenancy, the tenant may make a directive to a third person allowing that person to remove all of the tenant's personal property upon the tenant's death. The directive must be in the format prescribed by statute.

The directive must state, among other things, the following:

- It is not a substitute for a will and does not transfer ownership of the tenant's property.
- The landlord is charged with the statutory directives set forth in the probate and trust laws relating to disposition and release of personal belongings of deceased tenants.
- The current policy of the landlord is to require a person to have a certified copy of testamentary letters or an affidavit of successor before the person can enter the tenant's unit.
- The tenant wishes to designate a person to enter the tenant's unit after the tenant's death without being required to obtain letters testamentary or a successor affidavit or otherwise comply with the probate and trust laws.

The directive provides that the tenant and landlord agree to the following:

- The third party may remove the tenant's personal property.
- If, prior to the third party removing property, the landlord is presented with a certified copy of letters testamentary or an affidavit of successor by a person other than the third party named in the directive, the landlord must allow access to the individual rather than the third party named in the directive.
- The tenant and all successors, heirs, and assigns release the landlord from any claims, actions, and damages that may arise from the directive and the actions or omissions of the third party.
- The tenant and the third party agree to indemnify and defend the landlord from any claims made as a result of the landlord carrying out the terms of the directive.

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.