

HOUSE BILL REPORT

SSB 5538

As Reported by House Committee On:
Judiciary

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).

Brief History:

Committee Activity:

Judiciary: 3/18/15, 4/1/15 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Allows a residential tenant to designate a person to act on his or her behalf in the event of the death of the tenant.
- Establishes procedures for the disposition of the personal property of a residential tenant upon the death of the tenant.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Goodman, Hansen, Kirby, Muri, Orwall, Stokesbary and Walkinshaw.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Assistant Ranking Minority Member; Haler and Klippert.

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

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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 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;
- forty days have elapsed since the death of the tenant;
- 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 Amended 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 dwelling unit. 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 unless a tenant representative pays rent in advance for no more than 60 days from the date of the tenant's death, and that at the end of the period through which rent is paid the tenancy ends;
- a statement that failure to remove the tenant's property before the tenancy terminates or ends will allow the landlord to remove the tenant's property, store it in a reasonably secure place, charge actual or reasonable drayage and storage costs, and sell or dispose of the property at the end of a second 45-day notice period; and
- a copy of any designation of a person to act for the tenant.

A tenant representative is defined to mean: (a) a personal representative if known to the landlord; (b) if the landlord has no knowledge that a personal representative has been appointed, a person claiming to be a successor who provides proof of death and an affidavit that complies with the law governing small estate property disposition; (c) in the absence of a personal representative or successor with affidavit, a designated person; or (d) in the absence of a personal representative, successor with affidavit, or designated person, any other person who provides the landlord with reasonable evidence that he or she is a successor of the deceased tenant. A landlord has no obligation to identify all of the deceased tenant's successors.

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 dwelling unit. 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.

A landlord must turn over possession of the tenant's property to a tenant representative if a written request is made within the specified time periods. In the case of property removed

from storage, the tenant representative must pay the lesser of the actual or reasonable costs of drayage and storage of the property. Within 14 days of removal of the property from the dwelling unit or from storage, the landlord must refund any unearned rent and give a full and specific statement of the basis for retaining any deposit together with the payment of any refund to the tenant representative. 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, 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 and any property remaining may be disposed of by the landlord in a reasonable manner. If the property has a value of \$1,000 or less, the landlord may dispose of it in a reasonable manner. A landlord must hold personal papers and personal photographs for 90 days after the sale or disposition of the deceased tenant's other property and after that time period must either destroy them or hold them for the benefit of a successor.

A landlord and his or her employees and family members are prohibited from acquiring the property of a deceased tenant. 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 one-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.

Amended Bill Compared to Substitute Bill:

Where a tenant representative contacts the landlord within the first 15-day notice period and makes arrangements to retrieve the property at a future date by extending the tenancy, but then fails to do so before the tenancy ends, the landlord must store the tenant's property and send the second 45-day notice to the relevant parties. Specific requirements are added relating to the refund of unearned rent and the tenant's deposit. This must be done within 14 days of removal of the tenant's property and must include a full and specific statement of the basis for retaining any deposit together with any refund payment due.

When the tenant's property has been stored, the landlord must turn over the property to a tenant representative if a written request is made within the 45-day period as long as the tenant representative pays the costs of drayage and storage and gives the landlord an inventory and signed acknowledgement that he or she has been given possession but not ownership of the property.

With respect to sales of a deceased tenant's property, the landlord must sell property valued at over \$1,000 in a commercially reasonable manner, regardless of whether a commercially reasonable sale is available through a third party. A definition for "commercially reasonable manner" is provided. Personal papers and personal photographs must be held for 90 days, rather than 60 days, after the sale or disposal of the tenant's other property, and then the landlord must either destroy them or hold them for the benefit of a successor.

A number of revisions are made for clarity and consistent use of terms.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) There is currently no guidance in the law for how a landlord must deal with a deceased tenant's property. The bill creates a process that requires the landlord to provide notice to anyone who may have the lawful right to remove the property. There is a specified hierarchy of those able to claim the property. A landlord has no obligation to seek out all of the tenant's successors. This is a good bill that has been diligently worked and all stakeholders are on board. This bill creates a uniform process that will apply across the state and that will be a model for other states.

Landlords need a process that provides certainty for how to deal with a deceased tenant's property. Without that process in the law, landlords have to use the abandoned property process which is not appropriate. There was a situation where two days after a young man died, the landlord wrote a letter to him, knowing he was dead, claiming that he had abandoned his property and that unless he responded, the landlord could take possession of the property. His family had to go to court and pay a \$1,000 ransom to the landlord to get his property back. This issue needs to be addressed to avoid the abuse that can occur under the current law.

(In support with concerns) There is a need for adopting a process to deal with a deceased tenant's property. The bill is a work in progress and the stakeholders are close to an agreement that everyone can support.

(Opposed) None.

Persons Testifying: (In support) Senator Angel, prime sponsor; Chester Baldwin, Washington Rental Housing Association; Kyle Woodring, Rental Housing Association of Washington; Kathryn Hedrick, Washington Multi-Family Housing Association; and Doug Reuter.

(In support with concerns) Greg Provenzano, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: None.