

CHAPTER 65
FORMERLY
HOUSE BILL NO. 171

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO ADMINISTERING A DECEDENT'S ESTATE AND TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO DEFINITIONS AND SUMMARY POSSESSION PROCEEDINGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 12, § 2306(c) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(c) The named executor in the decedent's will who is not disqualified by the provisions set forth in § 1508 of this title and next of kin of a decedent shall have the right upon the death of the decedent:

(1) To take possession of the decedent's motor vehicle or vehicles; and

(2) To enter any premises for the sole and exclusive purpose of removing from the premises clothing belonging to the decedent to be used for the burial or viewing of the decedent: and;

(3) To enter the residential rental unit of the decedent, when the decedent is the sole tenant of a residential rental unit for the purpose of removing therefrom and taking possession, but not ownership, of all of the decedent's belongings in that unit. Access and removal shall take place during business hours at mutually agreeable times to the parties with standing unless otherwise agreed to and must be completed within thirty (30) days of the death of the decedent or else the rights granted under this subsection shall expire.

The executor shall have preference over the next of kin to carry out the actions set forth in this subsection. If the decedent did not leave a will that names a qualified executor and no next of kin is available, a funeral director may have access to enter the premises for the aforementioned purpose of securing clothes only. The Register of Wills shall provide a form limited to facilitating action taken pursuant to this subsection. Such a form must be obtained prior to any person acting pursuant to this subsection.

Section 2. Amend Title 25, § 5141 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5141. Definitions.

The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Action" shall mean any claim advanced in a court proceeding in which rights are determined.

(2) "Building and housing codes" shall include any law, ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(3) "Certificate of mailing" shall mean United States Postal Form No. 3817, or its successor.

(4) "Commercial rental unit" shall mean any lot, structure or portion thereof, which is occupied or rented solely or primarily for commercial or industrial purposes.

(5) "Deceased sole tenant" shall mean the sole leaseholder under a residential rental agreement entitled to occupy a residential rental unit to the exclusion of all others who has died. The right of non-leaseholder authorized occupant(s) of the residential rental unit, if any, to occupy the residential rental unit at the sole discretion of the deceased sole tenant while that tenant was alive shall immediately terminate upon the death of the sole tenant. The deceased sole tenant is also referred to as the decedent pursuant to Section 2306(c)(3) of Title 12.

~~(5)~~ (6) "Disabled or handicapped" person shall have the same meaning as found in the Americans with Disabilities Act (1992) [42 U.S.C. § 12101 et seq.] as amended.

~~(6)~~ (7) "Domestic abuse" shall mean any act or threat against a victim of domestic abuse or violence that either constitutes a crime under Delaware law or any act or threat that constitutes domestic violence or domestic abuse as defined anywhere in the Delaware Code. Domestic abuse can be verified by an official document, such as a court order, or by a reliable third party professional, including a law-enforcement agency or officer, a domestic violence or domestic abuse service provider, or health care provider. It is the domestic violence or abuse victim's responsibility to provide the reliable statement from the reliable third party.

~~(7)~~ (8) "Equivalent substitute housing" shall mean a rental unit of like or similar location, size, facilities and rent.

~~(8)~~ (9) "Extended absence" shall mean any absence of more than 7 days.

~~(9)~~ (10) "Forthwith summons" shall mean any summons requiring the personal appearance of a party or person or persons at the earliest convenience of the court.

~~(10)~~ (11) "Good faith dispute" shall mean the manifestation of an honest difference of opinion relating to the rights of the parties to a rental agreement pursuant to such agreement, or pursuant to this Code.

~~(11)~~ (12) "Holdover" or "holdover tenant" shall mean a tenant who wrongfully retains possession or who wrongfully exercises control of the rental unit after the expiration or termination of the rental agreement.

~~(12)~~ (13) "Injunction" shall mean a court order prohibiting a party from doing an act or restraining a party from continuing an act.

~~(13)~~(14) "Landlord" shall mean:

a. The owner, lessor or sublessor of the rental unit or the property of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the premises, including any person who, directly or indirectly, receives rents or any part thereof other than as a bona fide purchaser and who has no obligation to deliver the whole of such receipts to another person; or

b. Any person held out by any landlord as the appropriate party to accept performance, whether such person is a landlord or not; or

c. Any person with whom the tenant normally deals as a landlord; or

d. Any person to whom the person specified in paragraphs (13)b. and c. of this section is directly or ultimately responsible.

~~(14)~~(15) "Legal holiday" shall mean any date designated as a legal holiday under § 501 of Title 1.

~~(15)~~(16) "Local government unit" shall mean a political subdivision of this State, including, but not limited to, a county, city, town or other incorporated community or subdivision of the subdivision providing local government service for residents in a geographically limited area of the State as its primary purpose, and has the power to act primarily on behalf of the area.

~~(16)~~(17) "Month to month" shall mean a renewable term of 1 month.

~~(17)~~(18) "Normal wear and tear" shall mean the deterioration in the condition of a property or premises by the ordinary and reasonable use of such property or premises.

~~(18)~~(19)a. "Owner" shall mean 1 or more persons, jointly or severally, in whom is vested:

1. All or part of the legal title to property; or

2. All or part of the beneficial ownership, usufruct and a right to present use and enjoyment of the premises.

b. The word "owner" shall include a mortgagee in possession.

~~(19)~~(20) "Person" shall include an individual, artificial entity pursuant to Supreme Court Rule 57, government or governmental agency, statutory trust, business trust, 2 or more persons having a joint or common trust or any other legal or commercial entity.

~~(20)~~(21) "Pet deposit" shall mean any deposit made to a landlord by a tenant to be held for the term of the rental agreement, or any part thereof, for the presence of an animal in a rental unit.

~~(21)~~(22) "Premises" shall mean a rental unit and the structure of which it is a part, and the facilities and appurtenances therein, grounds, areas and facilities held out for the use of tenants generally, or whose use is contracted for between the landlord and the tenant.

~~(22)~~(23) "Rental agreement" shall mean and include all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a rental unit.

~~(23)~~(24) "Rental unit," "dwelling unit" or "dwelling place" shall mean any house, building, structure, or portion thereof, which is occupied, rented or leased as the home or residence of 1 or more persons.

~~(24)~~(25) "Security deposit" shall mean any deposit, exclusive of a pet deposit, given to the landlord which is to be held for the term of the rental agreement or for any part thereof.

~~(25)~~(26) "Senior citizen" shall mean any person, 62 years of age or older, regardless of the age of such person's spouse.

~~(26)~~(27) The terms "sexual offenses" and "stalking" shall here have the same meanings as in Title 11. Sexual offenses and stalking can be verified by an official document, such as a court order, or by a reliable third party professional, including a law-enforcement agency or officer, a sexual assault service provider, or health care provider. It is the sexual assault or stalking victim's responsibility to provide the reliable statement from the reliable third party.

~~(27)~~(28) "Sexual orientation" exclusively means heterosexuality, homosexuality, or bisexuality.

~~(28)~~(29) "Support animal" shall mean any animal individually trained to do work or perform tasks to meet the requirements of a disabled person, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items.

~~(29)~~(30) "Tenant" shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others, and the word "tenant" shall include an occupant of any premises pursuant to a conditional sales agreement which has been converted to a landlord/tenant agreement pursuant to § 314(d)(3) of this title.

~~(30)~~(31) "Utility services" shall mean water, sewer, electricity or fuel.

Section 3. Amend Title 25, § 5702 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5702. Grounds for summary proceeding.

Unless otherwise agreed in a written rental agreement, an action for summary possession may be maintained under this chapter because:

(1) The tenant unlawfully continues in possession of any part of the premises after the expiration of the rental agreement without the permission of the landlord or, where a new tenant is entitled to possession, without the permission of the new tenant;

(2) The tenant has wrongfully failed to pay the agreed rent;

(3) The tenant has wrongfully deducted money from the agreed rent;

(4) The tenant has breached a lawful obligation relating to the tenant's use of the premises;

(5) The tenant, employee, servant or agent of the landlord holds over for more than 15 days after dismissal when the housing is supplied by the landlord as part of the compensation for labor or services;

(6) The tenant holds over for more than 5 days after the property has been duly sold upon the foreclosure of a mortgage and the title has been duly perfected;

(7) The rightful tenant of the rental unit has been wrongfully ousted;

(8) The tenant refuses to yield possession of the rental unit rendered partially or wholly unusable by fire or casualty, and the landlord requires possession for the purpose of effecting repairs of the damage;

(9) The tenant is convicted of a class A misdemeanor or any felony during the term of tenancy which caused or threatened to cause irreparable harm to any person or property;

(10) A rental agreement for a commercial rental unit provides grounds for an action for summary possession to be maintained; ~~or~~

(11) Or, if, and only if, it pertains to manufactured home lots, for any of the grounds set forth in the Manufactured Home Owners and Community Owners Act, as amended; or

(12) The tenant who is the sole tenant under the rental agreement has died and become the deceased sole tenant under the residential rental agreement.

Section 4. Amend Title 25 of the Delaware Code to add a new § 5719 as shown by underlining as follows:

§5719. Landlord regaining possession of residential rental unit upon the death of a deceased sole tenant.

(a) Possession of a residential rental unit upon the death of a sole tenant shall be returned to the landlord without an action for summary possession if:

(1) an affiant or personal representative of the deceased sole tenant's estate presents the landlord with valid documentation issued by the Register of Wills evidencing such representation pursuant to Title 12, in which case the landlord shall allow the affiant or personal representative access to the residential rental unit of the deceased sole tenant to remove the deceased sole tenant's belongings, and

(2) an affiant or personal representative informs the landlord that further access to the deceased sole tenant's residential rental unit is not needed by the affiant or personal representative and/or their agents or 30 days have elapsed since the death of the deceased sole tenant and the affiant or personal representative has not provided the landlord written notice that access to the deceased sole tenant's residential rental unit is still needed by the affiant or personal representative and/or their agents.

(b) If an affiant or personal representative of the deceased sole tenant's estate presents the landlord with valid documentation issued by the Register of Wills evidencing such representation pursuant to Title 12, the landlord still retains the right to initiate at any time an action for summary possession and/or monies due, in which case the landlord shall bring the action against the estate of the deceased sole tenant and serve the complaint upon the affiant or personal representative at the address provided by the affiant or personal representative and, if no such good address is provided, then to serve the complaint upon the Register of Wills in the county in which the residential rental unit is located. If an affiant or personal representative of the deceased sole tenant's estate does not present the landlord with valid documentation issued by the Register of Wills evidencing such representation pursuant to Title 12, the landlord must serve the Register of Wills in the county in which the residential unit is located in order to bring an action for summary possession to obtain possession of the residential rental unit and monies due, if any. Anytime the Register of Wills is to be served as a registered agent for an estate, prior to initiating the action, the landlord must place a notice of such action in a paper that is circulated in the county in which the residential rental unit is located. The notice must identify: the name of the landlord; the name of the deceased sole tenant; the residential rental unit address; the type of action to be brought; the court in which such action will be brought; and the amount of the claim, if any.

(c) If at the time of the execution of the writ of possession there is still property inside the deceased sole tenant's residential rental unit that does not belong to the landlord then the landlord shall have the right to immediately remove and store such property for a period of 7 days, at the expense of the estate of the deceased sole tenant. If at the end of such period, a representative of the estate, who has valid documentation of such representation issued by the Register of Wills pursuant to Title 12, has failed to claim said property and reimburse the landlord for the reasonable expenses of removal and storage, such property shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to any party. Upon rendering a final judgment for plaintiff, but in no case prior to the expiration of the time for the filing of an appeal or motion to vacate or open the judgment, the court shall issue a writ of possession directed to the constable or the sheriff of the county in which the property is located, describing the property and commanding the officer to remove all persons and put the plaintiff into full possession.

(d) If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within 20 days of receiving possession of the residential rental unit (or, if storage of property that was inside the deceased sole tenant's residential rental unit is required, then within 20 days after the storage of said property has ended) to a representative of the estate of the deceased sole tenant, if any, who has valid documentation of such representation issued by the Register of Wills pursuant to Title 12. Within 20 days after receiving

possession of the residential rental unit of the deceased sole tenant (or, if storage of property that was inside the deceased sole tenant's residential rental unit is required, then within 20 days after the storage of said property has ended), the landlord shall provide the representative of the estate of the deceased sole tenant, if any, with an itemized list of damages to the premises and the estimated costs of repair for each and shall tender payment for the difference between any rental amount due and owing, the security deposit and such costs of repair of damage to the premises. Failure to do so shall constitute an acknowledgment by the landlord that no payment is due. The representative's acceptance of a payment submitted with an itemized list of damages shall constitute agreement on the rental amount due, if any, and damages as specified by the landlord, unless the representative of the estate, within 10 days of the representative's receipt of such tender of payment, objects in writing to the amount withheld by the landlord. Failure for a representative of the estate to present the landlord with valid documentation of such representation issued by the Register of Wills or failure of the representative to provide the landlord with a good address shall relieve the landlord of responsibility to give notice of any damages and potential liability for double the amount of the security deposit, but the landlord shall continue to be liable to the representative of the estate for any unused portion of the security deposit; provided, that the representative of the estate shall make a claim in writing to the landlord within 1 year from the landlord receiving possession of the residential rental unit of the deceased sole tenant.

Section 5. This Act shall become effective 60 days after the date of enactment.

Approved June 30, 2013