

DISPOSITION OF TENANTS' PERSONAL PROPERTY

Section 83.67, Florida Statutes, states that "no landlord [may] remove the tenant's personal property from the dwelling unit unless said action is taken after surrender, abandonment¹, or a lawful eviction." From time to time, a landlord may discover that a tenant has left personal property in an apartment or rental home that has been vacated due to surrender, abandonment, or eviction. How such property is handled may depend on how the rental unit became empty and also whether the tenant's lease contains the notification language set forth in Section 83.67.

First, Chapter 715 of the Florida Statutes, in Sections 715.10 through 715.111, sets forth a complete legal procedure for storing the property, notifying the tenant of the fact that property has been left behind, assessing costs of storage, selling the property if it is not claimed by the tenant, and applying the proceeds from such sale. Those Sections generally must be used by a landlord to dispose of personal property that remains in a rental unit after a tenancy has terminated or expired, or if the rental unit has been vacated by the tenant due to an eviction, surrender, abandonment, or otherwise. A landlord who violates the provisions of Chapter 715 may be held liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, as well as the tenant's attorney's fees and court costs. A complete copy of the above statutes is included with this chapter, as well as some notification forms for use by landlords.

"Lost property" in the possession of a landlord is not covered by Chapter 715; instead, such property should be turned over to a local law enforcement agency. If for some reason the local agency refuses to take possession of the lost property, a landlord may dispose of the property pursuant to Sections 715.10-715.111.

¹ This section states that "abandonment" shall be as defined in Section 83.59(3)(c). That section states that a landlord can consider a rental unit abandoned when he or she has either "actual knowledge" that the tenant has abandoned, or in the absence of actual knowledge, abandonment may be presumed if the tenant is absent from the rental unit for a period of time equal to one-half the time for periodic rental payments. However, this presumption does not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence.

There are two general exceptions to the requirement that a landlord dispose of abandoned property in accordance with Chapter 715. The first exception is found in Section 83.67, Florida Statutes. Subsection (3) of that statute states that if a landlord comes into possession of a former tenant's personal property after surrender, abandonment, or a lawful eviction, "the landlord is not required to comply with [Section] 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property" if the following statement is printed in or clearly stamped on the tenant's lease or an addendum thereto:

BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY .

Although Section 83.67(3) clearly states that a landlord shall not be liable for a tenant's abandoned property if that section is complied with, it does not state what a landlord may do with such property. However, just because a landlord is not liable for the storage or disposition of a tenant's property does not mean that the property is "up for grabs." The property still belongs to the tenant. Should the landlord be in compliance with Section 83.67(3) and not want to store a tenant's abandoned property, the guidelines set forth in the second general exception to Chapter 715, discussed below, may be followed.

The second general exception to the requirement that a landlord dispose of abandoned property in accordance with Chapter 715 is found in Section 83.62, Florida Statutes. Subsection (2) states, "[a]t the time the sheriff executes the writ of possession or at any time thereafter, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line [and neither] the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed." Because the landlord has the right to remove the tenant's personal to the property line at any time *after* the sheriff has executed the writ of possession, the landlord may undertake such task at his or her convenience. It is strongly suggested, however, that if the tenant inquires as to when the landlord intends to remove the tenant's belongings to the property line, that the landlord

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accurately provide the tenant with that information so that the tenant may be present at the property line to regain possession of his or her property. Remember, the property still belongs to the tenant. However, if the tenant is going to take the initiative to marshal the manpower and the trucks or other vehicles necessary to pick up all of his or her belongings, the landlord may want to consider allowing the tenant back into the rental unit for the sole purpose of removing his or her possessions. This will save the landlord the labor of having to move the belongings to the property line, and allowing the tenant back in to the rental unit *does not* reestablish any rights of possession on behalf of the tenant.

Of course, the landlord may always follow the procedures set forth in Chapter 715 to dispose of a tenant's abandoned property if the landlord chooses to do so regardless of the other options available. The following outlines the steps a landlord must follow under Chapter 715.

Pursuant to section 715.104, Florida Statutes, you must notify the former tenant in writing that you are in possession of the tenant's property. If you reasonably believe that the property actually belongs to someone other than the former tenant, written notice must be given to that person instead.

The written notice must describe the all of the property in a manner reasonably adequate to permit the owner of the property to identify it. If a tenant leaves behind a locked trunk or box that cannot be easily opened, you are only required to describe the trunk or box and not the contents.

The written notice must also (1) advise the former tenant that reasonable costs of storage may be charged before the property is returned, (2) where the property may be claimed, and (3) the date by which the tenant may claim the property (the date cannot be fewer than 10 days after the notice is personally delivered or, if mailed, not fewer than 15 days after the notice is deposited in the mail).

The notice must be either personally delivered to the former tenant or sent by first-class mail to the former tenant's last known address. The landlord must send a notice to any other address where the landlord may reasonably expect the former to receive the notice. The notice should read as follows:

Notice of Right to Reclaim Abandoned Property

*The foregoing information is not intended to be, and it should not be considered a substitute for professional legal advice or services when the need arises. Each situation has its own peculiarities and laws frequently change. Therefore, you should always seek the advice of legal counsel when a legal matter arises. **Drake & Associates** – 813-662-1536; www.danielgdrake.com*

To: *[Name of former tenant]*
[Address of former tenant]

When you vacated the premises at *[address of premises, including apartment number]*, the following personal property remained:

[INSERT DESCRIPTION OF PERSONAL PROPERTY HERE]

You may claim this property at *[address where property may be claimed]*. Unless you pay the reasonable costs of storage and advertising, if any, for all the above-described property and take possession of the property that you claim not later than *[insert date not fewer than 10 days after notice is personally delivered or, if mailed, not fewer than 15 days after notice is deposited in the mail]* this property may be disposed of pursuant to section 715.109, Florida Statutes.

[INSERT HERE ONLY ONE OF THE FOLLOWING TWO STATEMENTS HERE:]

"If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the costs of storage, advertising, and sale are deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within 1 year after the county receives the money."

"Because this property is believed to be worth less than \$500, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above."

Date: _____

[Signature of landlord]
[Type or print name of landlord]

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[Address]

[Telephone number]

PLEASE NOTE: A SLIGHTLY DIFFERENT FORM IS TO BE USED IF THE OWNER OF THE PROPERTY IS BELIEVED TO BE SOMEONE OTHER THAN THE FORMER TENANT. CONTACT ME IF THAT IS THE CASE.

Regarding storage, the former tenant's property must be left in the vacated apartment or stored by the landlord in a "place of safekeeping" until the property is released to the former tenant or otherwise disposed of pursuant to the statutes. The landlord must exercise reasonable care in storing the property, but is not liable to the tenant for any loss *unless* caused by the landlord's deliberate or negligent act. The landlord must release the property to the former tenant *if* the former tenant pays the reasonable costs of storage and advertising and takes possession of the property not later than the date specified in the notice described above.

If the former tenant fails to claim the property and pay the costs of storage and advertising, the landlord must sell the property at public sale by competitive bidding. The landlord, the former tenant, and any other person may bid on the property. Notice of the time and place of the public sale must be given by an advertisement of the sale published once a week for two consecutive weeks in a newspaper of general circulation where the sale is to be held. The sale must be held at the nearest suitable place to that where the personal property is being stored. The advertisement must include a description of the property, the name of the former tenant, and the time and place of the sale. The sale must take place at least 10 days after the first publication. The last publication shall be at least 5 days before the sale is to be held. The notice of the sale shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. A locked trunk or box that cannot be easily opened must be described, but not its contents.

After the sale of the property, the landlord may deduct the costs of storage, advertising, and the sale. The former tenant, if present at the sale, may claim the balance of the proceeds. If the former tenant does not make such a claim, the excess funds must be paid into the treasury of the county in which the sale took place not later than 30 days after the date of sale. The former tenant then has one year from that date to claim the excess funds from the county. (I believe the

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county will keep the excess funds even though the statutes don't state exactly what happens after one year.)

IMPORTANT: If the landlord reasonably believes that the total resale value of the property not released is less than \$500, she or he may retain such property for her or his own use or dispose of it in any manner she or he chooses.

IMPORTANT: Regarding storage of a former tenant's property, the former tenant is responsible for the costs of storage *only for the property in which she or he claims an interest*. In other words, if a former tenant shows up to claim property and only claims a portion of it, he or she may only be charged a partial storage charge. A landlord may not charge more than one person for the same costs. If the landlord stores the personal property on the landlord's premises, the costs of storage shall be the fair rental value of the space reasonably required for such storage for the term of the storage.

It is important that landlords follow the above procedures because doing so gives the landlord some protection in the event the former tenant returns at a later date and demands return of his or her personal property. In such event, the landlord's records should show complete compliance with the Florida Statutes or the tenant may have the basis for a suit against the landlord for the value of the property.

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NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

(Property value less than \$500.00)

TO: _____

Tenant's Name(s)

DATE: _____

Tenant's Street Address

City, County, State, and Zip

WHEN YOU VACATED the premises at _____,
the following personal property remained: _____

YOU MAY CLAIM the above-described property at _____

UNLESS YOU PAY the reasonable costs of storage and advertising, if any, for all the above-described property and take possession of the property that you claim not later than _____, 20____ (not fewer than 15 days after this Notice is deposited in the mail), the property may be disposed of pursuant to Section 715.109, Florida Statutes. Further, since the property is believed to be worth less than \$500.00, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above.

By: _____

Name

_____ Community

_____ Title

_____ Community Street Address

_____ Telephone Number

_____ City, State, Zip

CERTIFICATION OF DELIVERY

[For Landlord's Use Only]

I HEREBY CERTIFY that a true copy hereof was furnished by:

- () U.S. Mail
- () Personal Delivery to Resident(s)
- () Certified U.S. Mail to last-known address

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Mailed or delivered by: _____
Date: _____ Time: _____

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Post Office Box 2327, Brandon, Florida 33509-2327 (813) 662-1536

NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

(Property value less than \$500.00)

TO: **MR. AND MRS. ABC**
Tenant's Name(s)

DATE: **January 30, 2002**

1234 ABC ROAD, APARTMENT 201
Tenant's Street Address

EXAMPLE

TAMPA, FLORIDA 33600
City, County, State, and Zip

WHEN YOU VACATED the premises at **1234 ABC ROAD, APARTMENT, 201, TAMPA, FLORIDA**, the following personal property remained: **Twin size bed (1); 25" television; miscellaneous clothing, telephone (2) and pictures**.

YOU MAY CLAIM the foregoing property at **HAPPY PLACES APARTMENTS, 1234 ABC ROAD, TAMPA, FLORIDA**.

UNLESS YOU PAY the reasonable costs of storage and advertising, if any, for all the above-described property and take possession of the property which you claim, not later than **FEBRUARY 14, 2002** (Not fewer than 15 days after Notice is deposited in the mail), this property may be disposed of pursuant to Section 715.109, Florida Statutes. Since the property is believed to be worth less than \$500.00, it may be kept, sold or destroyed without further notice if you fail to reclaim it within the time indicated herein.

By: **JENNIFER GOOD GIRL**
Name

HAPPY PLACES APARTMENTS
Community

ASSISTANT MANAGER
Title

1234 ABC ROAD
Community Street Address

(813) 555-1212
Telephone Number

TAMPA, FLORIDA 33600
City, State, Zip

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CERTIFICATION OF DELIVERY

[For Landlord's Use Only]

I HEREBY CERTIFY that a true copy hereof was furnished by:

- U.S. Mail
- Personal Delivery to Resident(s)
- Certified U.S. Mail to last-known address

Delivered by: JENNIFER GOOD GIRL Date: JANUARY 30, 2002 Time: 12:20 P.M.

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NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

(Property value over \$500.00)

TO: _____
Tenant's Name(s)

DATE: _____

Tenant's Street Address

City, County, State, and Zip

WHEN YOU VACATED the premises at _____
the following personal property remained: _____

_____.

YOU MAY CLAIM the foregoing property at _____
_____.

UNLESS YOU PAY the reasonable costs of storage and advertising, if any, for all the above-described property and take possession of the property which you claim, not later than _____, 2006 (Not fewer than 15 days after Notice is deposited in the mail), this property may be disposed of pursuant to Section 715.109, Florida Statutes.

If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the costs of storage, advertising, and sale are deducted, the remaining money

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will be paid over to the county. You may claim the remaining money at any time within one (1) year after the county receives the money.

By: _____
Name Community

Title Community Street Address

Telephone Number City, State, Zip

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I HEREBY CERTIFY that a true copy hereof was furnished by:

- () U.S. Mail
() Personal Delivery to Resident(s)
() Certified U.S. Mail to last-known address

Delivered by: _____ Date: _____ Time: _____

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NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY
(Property value over \$500.00)

TO: MR. AND MRS. ABC
Tenant's Name(s)

DATE: January 30, 2002

1234 ABC ROAD, APARTMENT 201 .
Tenant's Street Address

EXAMPLE

TAMPA, FLORIDA 33600 .
City, County, State, and Zip

WHEN YOU VACATED the premises at **1234 ABC ROAD, APARTMENT, 201, TAMPA, FLORIDA**, the following personal property remained: **Twin size bed (1); 25" television; miscellaneous clothing, telephone (2), dining room furniture, living room furniture, microwave oven, camera, jewelry and pictures** .

YOU MAY CLAIM the foregoing property at **HAPPY PLACES APARTMENTS, 1234 ABC ROAD, TAMPA, FLORIDA** .

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By: **JENNIFER GOOD GIRL**
Name

HAPPY PLACES APARTMENTS
Community

ASSISTANT MANAGER
Title

1234 ABC ROAD
Community Street Address

(813) 555-1212
Telephone Number

TAMPA, FLORIDA 33600
City, State, Zip

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