

Whose House is it Anyway?

Sales are subject to existing leases.

And in fact, sales can be subject to *oral* leases. That is why a seller signs an affidavit at settlement saying there are no such leases and that no one else is in possession of the property at closing. It is also why the standard contract obligates the seller to deliver possession at closing. Note, however, that these provisions and documents only serve to give the buyer the right to sue the seller; they do not give the buyer the right to remove a tenant in possession of the property pursuant to a lawful lease. So, if your listing-to-be has a tenant then you need to request copies of any written leases or a summary of any oral lease. You should confirm those facts directly with the tenant. Moreover, you should disclose the existence of tenants in the MLS and you might need to accept offers subject to the tenants terminating their lease and moving out on or before settlement.

Property managers frequently encounter landlord tenant issues but sales agents rarely do. So, assuming the tenants do not have a valid lease or are holding over, how does one remove a tenant from property, and is the tenant obligated to allow the property to be shown to buyers?

When a landlord seller wants to have a tenant removed, either due to the tenant's rent default or because a tenant refuses to leave at the expiration of the lease term, the landlord must get the assistance of the courts. Virginia does not permit a "self-help" residential eviction – changing the locks to the door, cutting off utilities, etc. – even if the lease allows for it. One should note that in Virginia a lease can be oral – express or implied – and if a landlord has accepted any money from a tenant then there is *at least* a month-to-month tenancy requiring thirty day written notice of termination. Generally (the lease may require otherwise) the first step is for the landlord to send a five-day notice to pay or quit to the tenant. The landlord seller may then file an unlawful detainer (eviction action) with the court, which can ask for rent, late fees, attorney's fees if allowed in the lease, and other damages. The initial court date will be two to three weeks away. The tenant must be served with the pleadings and given the opportunity to defend. If the tenant contests the eviction at the initial return date then the matter will be scheduled for trial 20 to 60 days later. Assuming the landlord wins, either at the initial return date or the later contested trial date, then the landlord can obtain a writ of

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Legal Corner

possession directing the sheriff to physically remove the tenant and the tenant's property if the tenant does not leave voluntarily. Note that tenants subject to the Virginia Landlord Tenant Act have a one-time right to redeem the lease after suit has been filed by paying all sums then due, including costs and attorney's fees. Lastly, a tenant is obligated to allow showings of the property only if there is a written lease and the written lease specifically and expressly requires the tenant to permit showings for the purposes of sale.

Please do not hesitate to email the author at bdlytle@erols.com if you have any questions or need help removing a tenant.

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