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# ABANDONMENT

## "Best Practice" Tips for Treatment of Abandoned Personal Property

**W**hen a tenant vacates leased premises, the landlord may find itself with more than just an empty space. Tenants frequently leave behind personal property, begging the question: what can and should the landlord do with it?

**#1 File a dispossessory.** This is the safest and most conservative course of action. The standard for a tenant's legal abandonment of a leased premises is a high one and fact-specific. There is no Georgia statute which outlines the elements of abandonment of leased premises – instead, landlords must analyze and rely on the totality of the circumstances in making a determination that a tenant has legally abandoned the property. For example, even though a tenant may have failed to pay rent and has not occupied the premises for a period of time, those circumstances may not rise to the standard of legal abandonment in the eyes of the courts.

The potential risk for a landlord if it makes the wrong conclusion about the tenant's abandonment of a leased premises is great – the tenant could bring an action for wrongful eviction, which carries with it the possibility of punitive damages.

To avoid any uncertainty, filing a dispossessory proceeding ensures that the landlord regains legal possession of the premises, protects it against claims by third parties, and upon the court's issuing a writ of possession, the landlord may apply to the sheriff to conduct the eviction and remove any personal property remaining in the premises. Per O.C.G.A. § 44-7-55(c), upon the execution of a writ of possession, personal property remaining in the premises is "regarded as abandoned." The sheriff will remove the personal property and place it at the landlord's curb, whereupon, subject to compliance with local ordinances, the landlord is relieved of liability with regard to that personal property.

Note: A dispossessory is the recommended course of action, even if the lease term has expired. If the tenant has been occupying the leased premises and leaves behind personal property beyond mere detritus (trash), then a dispossessory will always be the safest choice for the landlord in terms of the its liability with respect to that property.

**If the landlord concludes that the tenant has legally abandoned the leased premises,** then the landlord should implement these steps with regard to any remaining personal property:

**#2 (If tenant has legally abandoned):  
 Treat Personal Property in Accordance with the Lease**

If the tenant has truly legally abandoned the leased premises, and personal property remains in the space, the landlord should read

the lease carefully. The language regarding personal property will likely be in the same section as the surrender provision or holdover provision. If the lease specifically addresses how the landlord should treat abandoned personal property, then the landlord should strictly comply with the lease in this regard, such as crediting the tenant's account with proceeds generated from a sale of the personal property. Some leases may provide that the landlord must give the tenant notice and an additional opportunity to remove its personal property prior to taking any action to remove or dispose of it. If the landlord does not comply with the lease, it could be liable for "conversion," which is the tort of wrongfully exercising control over the personal property of another (inconsistent with the landlord's rights to the real property).

If the lease is silent as to how to treat abandoned personal property, the landlord must use extra care to avoid any potential liability to tenant for loss of the personal property or a possible conversion claim.

One option is for the landlord is to notify the tenant in writing that the landlord considers the property abandoned and that tenant has a certain number of days to collect it. If the landlord needs to clear the premises out immediately, another option is to store the property and send the tenant a notice explaining that the property will be stored for "X" days, and that the tenant may contact "Y" to pick it up.

**Keep records**

If the tenant has truly legally abandoned the leased premises, the landlord should thoroughly document the abandoned property with photographs. At a minimum, the landlord should maintain an itemized list of the property. If the landlord plans to remove property itself, it should do so in the presence of a credible third party witness.



## Store the property

Particularly if the personal property is valuable (e.g., equipment) or sensitive (e.g., medical records), the landlord should consider storing the personal property for a period of time, perhaps sending another notice to the tenant to give the tenant another chance to collect the property prior to disposing of it. However, if the personal property is valuable, the landlord should consider filing a dispossessory to relieve itself of liability in connection with such property. (See Best Practice Tip #1 above.)

## Special Circumstances

### Personal Property Subject to a Security Interest

Landlords are advised to conduct a search of the Uniform Commercial Code financing statements prior to removing or disposing of any seemingly valuable personal property (i.e., equipment, furniture, machinery, inventory). Oftentimes, a third party may have a security interest in that property stemming from a purchase money loan or an equipment lease. Examples I have seen of this in my practice are an abandoned soda machine (subject to a lease) and grocery store shelving (subject to a purchase money loan).

The landlord should search the UCC records for the tenant's and the tenant's principal's name as "debtor" to determine if any of the property is subject to these third party interests. If the UCC search reveals that a third party has a security interest in the personal property, the landlord should notify the named secured party in a similar manner to the tenant notice outlined above. The secured party may make arrangements to retrieve the property, or perhaps the landlord will want to purchase the property from the secured party and add value to the premises.

Note: A UCC search is not required if the landlord files a dispossessory since the filing of that action relieves the landlord of liability in connection with personal property removed from the premises by the sheriff or marshal.

## Confidential Personal Property

Some tenants may leave behind patient medical records or financial data containing third parties' private information. In such cases, if the tenant fails to respond to a notice to retrieve the property, a judicious



landlord should dispose of the records pursuant to O.C.G.A. § 10-15-2, which outlines the proper procedure for disposing of business records containing personal information. This statute requires, among other things, that prior to disposing of the materials, the disposing party shred the record, erase personal information, modify the record to make it unreadable, or take such other action as necessary to ensure that no unauthorized person will have access to the personal information.

In sum, unless the landlord is comfortable in its legal conclusion that the tenant has legally abandoned leased premises, the landlord should file a dispossessory as a first step in the process to ensure that landlord has legal possession of the premises.

# YOU NEED TO KNOW: REALTOR

**A**ll people who live in Chicago live in Illinois...but not all people who live in Illinois live in Chicago. Pretty obvious. What's not quite so obvious (because of the massive clout of the professional association that offers the designation) involves the term REALTOR®. All REALTORS® are real estate licensees... but not all real estate licensees are REALTORS®. In fact, **only real estate licensees who are members of the National Association of REALTORS® (NAR) are properly called REALTORS®** and can use the term on their business cards, stationary and marketing literature. That's true whether the licensee is a salesperson or a broker.



Unlike the way the term is often misused, **a REALTOR® is not an occupation.** The person who has that appellation is a member of an association (and occupationally-speaking is a real estate broker or a real estate salesperson). He or she pays dues which are used by the association for a variety of purposes in furtherance of its purposes. **Unlike a CPM®, an RPA®, an FMA®, a CCIM®, a SIOR® or any designation which is conferred by a professional real estate association on the basis of educational achievement, the designation REALTOR® is a benefit of membership. No specific education beyond that which is required to become licensed by the state is required.**



Members of NAR belong to one or more of some 1,400+ local associations (also called boards) and 54 state and territorial associations. They subscribe to a code of ethics and are expected to

maintain a higher level of knowledge of the process of buying and selling real estate. The principals of a real estate firm must first join a REALTOR® association before any non-principal can join. Then then all agents, brokers and appraisers that are licensed or affiliated with him or her have the option of also joining as members of the association.

Each member firm appoints one of its principals as the "designated REALTOR®". If any agents, brokers, or appraisers affiliated with the firm choose **not** to be REALTORS®, the "designated REALTOR®" must pay a non-member assessment to the association for each non-member. If any principal who otherwise qualifies for REALTOR® membership decides **not** to join the association, then none of the individuals affiliated with the firm can be REALTOR® members of the association.



The CCIM® designation, by the way, is conferred and owned by the NAR and is based upon the completion of an educational curriculum. Its official name is The CCIM Institute of the National Association of REALTORS®. The SIOR® designation - held by approximately 2800 worldwide - is also owned/conferred by the NAR. IREM®, an affiliate of NAR, requires that to maintain your CPM® designation, you must hold membership in NAR - either as a REALTOR® or an Institute Affiliate.

To learn more about the two dozen NAR designations, go to [www.realtor.org/designations-and-certifications](http://www.realtor.org/designations-and-certifications).