

Are you handling listings and tenants correctly?

Over the past few weeks, we have noticed a significant increase in the call volume from members with questions on residential listings with tenants and from tenants wishing to complain about members' activities on such listings. Due to this I thought it would be prudent to send out a quick document with a few process reminders as well as some links to resources that members can access to get a more in depth understanding of the responsibilities when acting on either side of a transaction involving residential tenants.

When taking a listing with a tenant residing in it there are a few things to remember: Permissions, Showings, Offers & Possession and in our current climate – COVID-19.

Permissions: While the owner of a tenanted property enters into a written service agreement with you to sell their property, tenants hold certain occupancy rights, and you may need to obtain additional permissions from the tenant. Please remember that these permissions **cannot** be categorically waived either in writing or verbally. The Residential Tenancies Act always takes precedence. Always keep in mind what the Act says when making decisions on tenants and tenancy.

Photos: Typically, the permission to take and use photos and video of the listing is contained in the Personal and Confidential Information section of the Service Agreement (Section 10 of the Common Law agreement, Section 11 of the Designated Agency agreement), you must obtain additional written permission from the tenants to photograph the interior containing all their belongings. AREA has created a form that should be used for this purpose; "Tenant Consent Agreement for Photograph/Video Imaging Use". Find it [HERE](#) or on WEBForms®.

Lockboxes: There really is nothing in the legislation which says that a tenant can refuse to allow a lockbox being placed on the property, however, I would suggest it would be best practice to at discuss it to make the tenant more comfortable with the fact that it is being installed and to discuss a reasonable place to install it if the front door is not an option.

Showings: *The Act* is very clear that proper notice must be always given for access to a tenant's home. Proper notice is defined as "...written notice at least 24 hours before the time of entry." It must be noted that written notice is just that – written notice – it does not mean a text or a notice through an app such as ShowingTime. The government has made it clear that any use of such a process must be followed up by a notice that can be physically delivered. If this does not happen, then the tenant can change their mind at any time and cancel the appointment without cause as it is not deemed to have been serve as proper notice.

Offers & Possession: When working on an offer to purchase on a residential property with a tenant, it is important to keep in mind the type of tenancy agreement and the notice which will need to be given and the need to align the Buyer's possession date with the notice on timing.

There are two types of tenancies; **fixed-term**, which, as the name implies have specific start and end dates, and **periodic** term, which in most real estate transactions will be either month-to-month or yearly.

A fixed-term tenancy ends at noon on the day noted on the tenancy agreement; while no formal notice is required to inform a tenant that the property has been sold as it is expected that the tenant will move out that day. However, it would be prudent and best practice to provide a tenant with some advance notice to make the process and transaction completion go as smoothly as possible.

For periodic term tenancy there is a more stringent notice process that is required. For a month-to-month tenancy you must provide **3 consecutive full months' notice**. This does not mean 90 days; the time frame is months. If notice by the seller is given on May 2nd, you do not count the month of May but count the 3 consecutive months afterwards, being June, July, and August. The tenant would have until noon on August 31st to vacate. Possession date should then be September 1st or later.

In the case of a yearly tenancy the seller is required to give notice 90 calendar days before the end date of the agreement. For example, if a yearly tenancy was to end on August 31st, then notice would need to be given on or before June 3rd (June=28 days, July 31 days, August 31 days, total= 90 days). The potential for a late notice may result in a delayed possession of the property until the tenant is given the proper time to vacate.

Another very important part to remember is that proper notice **MUST** be given to the tenant. The first step is that the BUYER must formally request to the Seller to serve the notice to the tenant. Do not assume that this is contained in the offer to purchase or that it can be initiated by the act of accepting an offer to purchase. Notice to vacate must have a reason beyond simply the sale of the property – if the Buyer intends to simply use the property as an income unit, then they most probably cannot serve notice to vacate; however, if the purchaser intends on residing in the property or have a relative do so then, once they have resolved to buy the property by removing any conditions, then they must request in writing that the tenant be served notice.

IMPORTANT- this is when the timing for notice becomes significant – **when conditions are removed** - a Seller cannot serve notice when a conditional offer is accepted or even when a home is listed since at that time, they have no valid reason for asking the tenant to leave. Please keep the dates and timing for all of this in mind when crafting an offer with your Buyers and Sellers.

A notice must:

- Be in writing;
- Be signed by the person giving notice or that person's agent;
- Identify the premises involved (i.e. the address);
- State the date on which the tenancy is to be terminated; and
- must provide reasons for terminating the tenancy.

COVID-19 Update – According to the Government of Alberta Website many of the temporary measures are no longer in effect. You should always refer to their site or send your clients there so they can be updated on the most recent announcements. At this time there is no proscription on entry for viewings on rented properties other than what is mandated for all showings during the Covid Crisis. Please refer to the AREA website for a refresher on these as they may change as the landscape changes in Alberta.

Also, remember that CARA has created specific questionnaires to use for tenant occupied homes during these times – they can be found on the CARA Knowledge Base here if your Brokerage does not have their own.

Tenant occupied properties have a few more moving parts that need to be handled correctly when representing Sellers or Buyers – it is important to get them right so that the transaction can proceed with as little disruption for either of the three parties involved.

Here are a few resource links below to help further:

Government of Alberta Website

<https://www.alberta.ca/information-tenants-landlords.aspx#jumplinks-0>

2018 Alberta Guide for Landlord and Tenants

<https://static1.squarespace.com/static/5b19871eee1759f2bea0f69b/t/5b3d349803ce6479dfe3d924/1530737820945/2018+-+Landlord+%26+Tenant.pdf>

CPLEA Handbook for Tenants

<https://www.cplea.ca/wp-content/uploads/ThePlaceYouAreRentingIsSold.pdf>

RECA

<https://www.reca.ca/2020/04/23/new-regulations-entering-renter-occupied-premises/>

Regards,

Your CARA Team