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Client Bulletin

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Duty Owed by Residential Landlord to Guests of a Tenant

In a unanimous decision resolving differing opinions from Courts of Appeal, the Ohio Supreme Court held that under Ohio's Landlord-Tenant Act (Ohio Revised Code Chapter 5321), a landlord owes guests of a tenant the same duties a landlord owes to a tenant, which duties are set forth in Ohio Revised Code § 5321.04(A), and that a landlord is liable for injury and loss sustained by a guest of a tenant if the landlord has not complied with the duties imposed on the landlord by Ohio Revised Code § 5321.04(A). In this case (*Mann v. Northgate Investors, LLC*, Slip Opinion No. 2014-Ohio-455), the plaintiff, going down an unlighted stairway in the dark to leave the apartment building, tripped on the bottom step and fell through a glass panel adjacent to the glass exit door, suffering injuries. The trial court granted summary judgment to the defendant landlord, holding that (a) the darkness was an "open and obvious hazard" and (b) the duties imposed on landlords by Ohio Revised Code § 5321.04(A) were intended to establish the duties between landlords and tenants and not applicable to plaintiff as a business invitee. On appeal, the Franklin County Court of Appeals reversed, holding that guests of tenants are entitled to the protections of Ohio Revised Code § 5321.04, that a landlord's violation of Ohio Revised Code § 5321.04 constitutes negligence per se (negligence as a matter of law) by the landlord, and that the "open and obvious" doctrine does not apply when the landlord is negligent per se. On appeal, the Ohio Supreme Court held that a landlord owes a tenant, and, therefore, a tenant's guest, the duty to "keep all common areas of the premises in a safe and sanitary condition" pursuant to Ohio Rev. Code § 5321.04(A)(3) and that a landlord's violation of that duty "constitutes negligence per se and obviates the open-and-obvious-danger doctrine." Ohio Revised Code § 5321.13 invalidates any lease provision that purports to modify or waive the duties imposed on a landlord by Ohio Rev. Code § 5321.04. It should be pointed out that this decision does NOT apply to commercial leases as Ohio Rev. Code Chapter 5321, the Landlord-Tenant Act, only applies to residential premises. Ohio has no statute that governs non-residential premises.

The Importance of IRA Beneficiary Designations

Many IRA account holders worry about what will happen to the funds in their account upon their death. It is essential for IRA account holders to fill out a beneficiary designation form to ensure that their intentions are achieved. Upon the death of the account holder, the funds in the account go to beneficiaries based on the beneficiary designation forms, which notify financial institutions who will inherit the accounts. With an IRA, account holders can readily name beneficiaries as they so choose, including friends, family, a trust, or charity. This differs from a 401(k), as for a 401(k), the account holder must first get a spouse's written permission to leave it to anyone other than the spouse. If there is no beneficiary form on file, then the financial institution's default policy controls the fate of the IRA account.

Account holders often want to ensure that their grandchildren will receive a share of their IRA account if their son or daughter predeceases them. This can be accomplished by selecting a "per stirpes" designation. In the case of an account holder with three children, for example, the account holder should list each child/beneficiary and indicate that they should each get one-third of the account. If one child dies before the account holder, the deceased child's share then goes to his/her children. "Per stirpes" simply means that inheritance is passed down to the next generation if one named beneficiary dies before the account holder.

It is imperative to make sure all beneficiary designation forms are in order and up to date. If an account holder opened an account several years ago, they should check the designation to make sure it is still what they intend. Changes in families, such as births, deaths, marriages, and divorces, often impact who is entitled to inherit from these accounts, as well as the intentions of the account holder. The importance of naming contingent beneficiaries should also be noted, as the primary beneficiaries could predecease the account holder.

What Happens with a Reverse Mortgage after Death?

A reverse mortgage is a type of home loan that allows a homeowner to convert into cash a portion of the equity in the home that accumulates over years of making mortgage payments in the home. The Home Equity Conversion Mortgage (HECM) is the FHA's reverse mortgage program. This type of plan can be beneficial to seniors as it can provide them with additional income during retirement. Many seniors use a reverse mortgage as a means to supplement Social Security or pay medical expenses or various other unexpected expenses. A reverse mortgage is different from a traditional home equity loan in that the homeowner does not have to repay the loan until he or she no longer uses the home as a principal residence or fails to meet the obligations of the mortgage.

In order to qualify for an FHA HECM, the borrower must be at least 62 years old, own the property outright or have paid down a substantial amount, use the property as a principal residence, not be delinquent on any federal debt, have the financial resources to make payments on ongoing property charges such as taxes and insurance, and participate in a consumer information session presented by HUD. Additionally, the home must be a single family home or a two to four unit home with one unit occupied by the borrower. HUD-approved condominiums and manufactured homes that meet FHA requirements are also eligible.

Potential borrowers often wonder how a reverse mortgage will impact heirs upon death. No debt is passed along to the estate or heirs; however, it is important that the homeowner let potential heirs know if they have a reverse mortgage because the lender must be repaid within specified time limits. Although the spouse of the deceased borrower may continue to live in the home, at the death of the last spouse, the heirs must do one of three things: pay off the mortgage and keep the property, sell the property and pay off the mortgage, or turn the keys over to the lender. When making the determination of what to do with the property, a key factor in making the decision is whether there is any equity left in the property. The heirs get an initial six months with the option to request up to two 90-day extensions as long as they can prove that they are making progress in obtaining financing or that they are actively attempting to sell the house.

The lender will get the home appraised within 30 days after receiving notification of the borrower's death. The lender is entitled to receive the lesser of the reverse mortgage loan balance or 95% of the appraised market value of the home. If the heirs make the decision to sell the home, they must list it for a minimum of the appraised value. If there is no potential equity in the home, the heirs may choose to hand the keys over to the lender to avoid the hassle of selling the home.

A positive aspect of a reverse mortgage is that if the loan amount exceeds the value of the home, the lender cannot seek the difference from the estate or the heirs as it is covered by federal mortgage insurance, which is paid by the HECM borrower. Sale proceeds beyond the amount owed on the HECM belong to the estate.

Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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