

# DOES YOUR LEASE TERMINATE UPON THE TENANT'S DEATH?

*Author(s): Alison E. Geddes*

Unless you work in the areas of estate planning, insurance sales or medicine, death is not something that is casually discussed as part of business. But, as we all know, death is a certainty. What happens when a tenant of a commercial lease dies? The answer to this question, at least in California, depends on the lease term and whether the death occurs during an unexpired lease term or during a month-to-month tenancy.

If the death of a tenant occurs during the term of the lease, California law provides that the lease will remain in force and the executor or administrator of the decedent's estate will become the tenant for the duration of the lease term. As with many aspects of California law, there is an exception to this rule: if the lease contains a clause specifying that the lease will terminate upon the death of the tenant, then this provision will control.

On the other hand, California law holds that in the case of a month-to-month tenancy, regardless of whether that tenancy results from an express month-to-month lease term or by operation of law when a holdover tenant remains in possession after the expiration of its lease term, the lease is terminated when the tenant dies. In the case of a month-to-month tenancy, the lease will be deemed terminated on the 30th day from the last rent payment made during the tenant's lifetime.

Regardless of whether the lease terminates as a month-to-month tenancy or where the lease expressly states that it is terminable by death, landlords may have to serve eviction notices upon the deceased tenant's estate and possibly file an unlawful detainer lawsuit to complete the termination of the lease if possession of the premises is not voluntarily returned to the landlord.