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LOCK IT RIGHT

- Basics of Lock-Outs
- Proceedings

.....> **BASICS OF LOCK-OUTS**

This month, we'll discuss: The Lockout, a "self-help" remedy available to Arizona commercial landlords, used when your formerly good tenant goes bad.

Typically, a landlord invests a great deal of time, and money in procuring tenants: by developing and maintaining an attractive center in a good location; hiring great leasing agents and paying them commissions on deals done; and giving the incoming tenants the benefits of initial periods of free rent and contributions toward their improvements to the space. In most cases, the new tenant establishes himself, works hard, improves his business, and works within the parameters of the lease. Everyone is happy. However, most centers contain at least one of those "special" tenants that, while they expect the landlord to fulfill all of HIS commitments to THEM, consider their responsibilities back to the Landlord that are stated in the lease as mere "suggestions", especially when it comes to paying the rent.

When a tenant begins the slide from making on-time payments in full, to late payments, to partial payments, to no payments,

continued on reverse



Prior to a lockout:

Make sure your lease document states that:

- Retaking the premise is one of the landlord's options under a tenant default.

Make sure "proper notice" has been given:

- Send "default notices" to the proper "tenant" entity, delivered to the correct address(es) and in the correct manner as stated in the lease, and to any other entities the lease specifies are to be copied with "Notices to the Tenant".
- Give the tenant time to "cure" the default, as required by the lease.

Make sure the default is not "cured" already:

- Maybe someone at your office took a partial payment, rendering your default notice moot.
- Or the tenant actually got the building permit and City approval for the "bootlegged" tenant improvements for which you had declared him in default.

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LOCK IT RIGHT continued

.....> Landlords, or their property managers, will usually have made every attempt to communicate with the tenant to find out what the problems is and if it is fixable. Finally though, it may become evident that your rent invoices will always be at the bottom of the tenant's priority list, and that it is time to take action.

Arizona law allows the commercial landlord to "retake possession" of the leased premises if a tenant is in default of its lease and does not "cure" the default. Most generally the default is for non-payment of the rent. The retaking of the suite can be through a forcible entry and detainer action (eviction) filed through the court, but it can also be done by locking the tenant out of the space. Lockouts can be a fast and effective method of getting the errant tenant's attention that you are serious about collecting your money, or in regaining control of the space so it can be re-let to a viable business. However, just as towing someone's vehicle improperly can create liability for the landlord, performing a "bad lockout" can have even greater consequences, so make sure you do it right. (See bullet points on reverse and at right)

Once the lockout is completed, that is just the beginning of the journey to getting what you are owed. In many cases you have to hold the tenant's property for a statutory time period, sell it by public auction, incur legal fees (not to mention the cost of the locksmith's work), and pay other administrative costs.

The above information is general and may not cover every requirement of your specific circumstance, so you should always consult with your attorney before locking a tenant out. A lockout

can be useful in getting closure with a difficult tenant but it's a drastic measure that could have serious consequences if done incorrectly.

Is your property management company capable of locking a bad tenant out if necessary and in looking out for your best interests in the process? If not, contact Case, Huff & Associates...

When you decide to proceed:

- The lockout must be done without "disturbing the peace" (without the tenant, or others being inside the suite).
- You should have at least one person besides yourself and the locksmith with you to act as a witness.
- Take lots of photos or video of the inside of the suite.
- Have your ID and a copy of the lease, just in case the police arrive on scene.
- If the tenant or his employees show up during the process do not let them in and do not let them take anything out.
- Post notices on the inside of the windows next to the doors stating that the landlord has retaken possession of the premises (your property manager or attorney can provide proper language, including citation of Arizona statutes). This notice serves to notify anyone who has property in the suite that does not belong to the tenant who to contact about recovering it. It also alerts locksmiths NOT to aid the tenant in re-entering the space.



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