

# CLIENT ALERT

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## NEVADA LANDLORDS BEWARE: AVOIDING INTELLECTUAL PROPERTY LIABILITY DURING THE EVICTION PROCESS

by Caleb L. Green

It is no secret the pandemic has caused an unprecedented economic crisis throughout the state of Nevada. Throughout the duration of the pandemic, the Nevada unemployment rate has, at one point, exceeded 30 percent, hindering thousands of Nevada tenants from meeting their lending and lease obligations. At the beginning of the COVID-19 pandemic, Nevada Governor Steve Sisolak signed Emergency Directive 008, which temporarily barred evictions and foreclosures of commercial and residential properties. However, as the temporary moratorium will soon expire on September 1, 2020, and evictions and foreclosures are slowly being phased back into effect, landlords are likely to resume evictions proceedings or will enter into lease addendums with existing tenants. As landowners contemplate how to proceed with tenants who are past due on their rent, they should not overlook potential intellectual property liability.

### Expiration of Nevada's Eviction Moratorium

On June 25, 2020, Governor Sisolak signed Declaration of Emergency Directive 025, which gradually lifts the stay on the statewide eviction and foreclosure moratorium. Namely, landlords and property owners are permitted to resume commercial foreclosures and evictions to starting, July 1, 2020. Additionally, residential landlords can institute five-day eviction notices for violations of lease agreements. Further, starting on September 1, 2020, the remaining moratorium restrictions will expire and landlords can begin the eviction process for non-payment of rent and 30-day, no-cause evictions.

### Nevada Eviction Arbitration

Nevada lawmaker recently enacted a new law that provides renters additional means to delay and combat evictions once the state's eviction moratorium expires on Sept. 1, 2020. This new law will allow courts to delay evictions for up to 30 days, during which tenants and landlords can pursue alternative dispute resolution such as third-party mediation. The consequences of a successful eviction proceeding could leave empty properties for landlords. As a result, landlords and property owners may be inclined to participate in eviction mediation and enter into new lease agreements addendums, and repayment plans with delinquent tenants instead.

### INTELLECTUAL PROPERTY CONCERNS WITH THE EVICTION PROCESS

It is anticipated that Nevada lenders and landlords will begin pursuing remedies against their delinquent counterparties as soon as possible, seeking evictions or entering into repayment plans or addendums to prior lease agreements. Whether property owners seek eviction remedies or explore alternative dispute options to satisfy rental and lending obligations, they may overlook potential intellectual property liability if proper care and legal precautions are not taken.

As I pointed out in my previous [Client Alert](#), property owners should take care throughout the eviction process and include protective provisions in repayment plans and lease addendums to avoid intellectual property liability. The novel case, *Narkiewics-Laine v. Doyle*, provides some unique guidance on this particular issue.

*Narkiewics-Laine v. Doyle* involved the unique overlap between commercial landlord-tenant law and intellectual property law, wherein the United States Court of Appeals for the Seventh Circuit affirmed a jury damages award of \$300,000 to a tenant whose landlord destroyed his abandoned artwork during an eviction process.

### The *Narkiewics-Laine v. Doyle* Case

In 2004, Narkiewics-Laine, an artist, leased storage space from members of the Doyle family. The lease lasted about six years until Mr. Narkiewics-Laine failed to make several payments for the storage space and utilities. Like any reasonable landlord, the Doyles then discarded of Mr. Narkiewics-Laine's stored property and cleared the rental premises. Mr. Narkiewics-Laine asserted that among the discarded items, the Doyles destroyed 1,457 pieces of artwork that he created. In an effort to recover damages from his destroyed property, Narkiewics-Laine brought suit in federal district court asserting, among other claims, a violation of the Visual Artists Rights Act of 1990.

### The Visual Artists Rights Act of 1990 (VARA)

VARA rights extend to works of art that may be destroyed in the eviction process—a lesson the Doyles learned the hard way. VARA, an amendment to Copyright Act, adopted in 1990, protects a limited set of moral rights for artists. Specifically, under VARA, the United States recognizes: (1) the right of integrity and (2) the right of attribution. An artist's right of integrity includes the right to prevent the modification, mutilation, or distortion of the artist's work, and in some cases, to prevent its destruction. Rights of attribution generally include an artist's right to be recognized as the author of his/her work, to publish anonymously and pseudonymously, to prevent the attribution of his/her name to works he/she did not create, and to prevent his/her work from being attributed to other artists.

Although VARA is an amendment to the Copyright Act, registration with the U.S. Copyright Office is not required for an artist to bring claims for violation of VARA. However, VARA's statutory coverage is restricted to specific categories of fine art, namely paintings, drawings, prints, sculptures, and specific photographs.

### Lessons for Nevada Property Owners

So, what should the Doyles have done? And, more importantly, what should Nevada landlords do as the statewide moratorium expires? The *Narkiewics-Laine* case has one significant and practical implication: property owners and landlords must take steps to avoid infringing on their tenants' moral rights during the eviction process. In the case of *Narkiewics-Laine v. Doyle*, we see VARA rights extended from the traditional fine arts landscape and evolve into a tenuous landlord-tenant dispute, resulting in a six-figure damages award. However, property owners could have eliminated their liability by taking prophylactic measures.

#### 1. Take Caution with a Tenant's Personal Property

Property owners beware: A piece of art protected under VARA may not be apparent at first glance. Such was the case in *Narkiewics-Laine*, where the landlords discarded what they thought was "trash, not art."

Property owners must recognize that courts have a broader interpretation for "works of art" than one may initially assume. For

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example, in *Mazer v. Stein*, the U.S. Supreme Court determined a lampstand constituted a sculpture and was protected under the Copyright Act. Additionally, Nevada has specific notice requirements for abandoned personal property that evicted tenants fail to remove from the premises. As such, property owners should consult with an attorney before disposing of a tenant's personal property, regardless of the circumstances under which the tenancy was terminated.

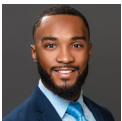
## 2. Include Protective Provisions in Lease Agreements

As Nevada landlords consider entering into lease addendums and repayment plans with delinquent tenants, they also should ensure their prospective lease agreements contain waivers of liability for intellectual property claims, including VARA claims.

In light of the ongoing economic crisis and the expiration of Nevada's eviction moratorium, it is crucial for landowners to take care of their tenant's personal property throughout the eviction process. Additionally, it may be necessary to consult with an attorney to include protective provisions in your lease agreements insulate intellectual property liability.

*This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of Intellectual Property law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in here.*

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