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Thinking of Letting a Family Member Stay at Your Hamptons Estate?

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As summer rental season in the Hamptons moves into high gear with Memorial Day weekend in the rear-view mirror, a question I was asked seems particularly timely.

“My nephew just graduated from college, and when I asked him what he would like for graduation he replied that he’d really love it if he could stay at my Hamptons house until my tenants come the first weekend of July. While I’d love to say yes, I’m worried that he may get too comfortable and will never leave, as he hasn’t even started to interview for his first job. How can I be sure that he will leave before the tenants arrive?”

The answer depends on two important factors. First, do you need the money from your summer rental? Second, is your nephew actually your legal nephew?

If you are counting on rental income to support your property, you cannot let your nephew stay at your place, even for the weekend. If you need that money to pay your bills and your nephew doesn’t leave, your act of letting him stay will jeopardize your livelihood. Remember that your creditors do not care about your family. Be responsible first and take care of your obligations—your nephew is not your creditors’ problem.

Now, if you don’t need the money but merely want the money (meaning that you don’t rely upon the funds to pay your bills), let’s discuss what may happen if your nephew just won’t leave. For starters, just assume that your nephew isn’t a legal nephew at all and is instead just your good friend’s child whom you call your “nephew”—so he will be treated as an ordinary individual using your property. In that situation, what happens when a tenant/licensee just won’t leave?

First, do you have a written lease? If you do and you act promptly after the tenant holds over, you will have to file a petition in your local village/town court and get what is called a Warrant of Eviction in order to get him out by way of a court action called a summary proceeding. Then, you will have to wait until the sheriff is good and ready to pull him out by his ear, which in the end can take several months and cost a lot of money, including court fees, attorneys’ fees,

sheriff fees and moving company fees to remove his personal belongings.

If you don’t act immediately with that petition, then you will have to mail him what is called a 30 Day Notice to Quit to first terminate his tenancy before you start with the petition, which will tack on at least an additional month to get him out. Failure to act quickly at the end of the term of a written rental agreement automatically converts that term rental into a month-to-month tenancy, which needs to be ended prior to starting the eviction proceeding. So, either way it will take a while.

On the other hand, if you are trying to evict a true family member and you resort to a summary proceeding, it will likely be dismissed by the court. Instead, you will end up in a prolonged action, called an Ejectment Proceeding in the Supreme Court. Those months to get a non-family member out may become years in an Ejectment Proceeding, which is a much more complex and costly proceeding.

The reason you will need to go the ejectment route is that you generally can’t evict a family member in a summary fashion. This is because a family member’s right to use the property stems from a true family relationship and not from mere permission to use the property—this is why you want to let your nephew stay in your home in the first place, and courts know this fact. You can avoid this problem by getting a written lease, granting exclusive possession and collecting rent from your nephew. As a result, it will become clear to the court that you are not just helping a family member, but are instead renting him your property.

So, you can let him stay if you don’t need the money from the rental to pay your bills. However, it’s never easy to get a tenant to leave who doesn’t want to go, and it’s impermissible to simply lock him out. To mitigate your exposure, use a written lease and have him pay rent. But remember, no good deed goes unpunished. Perhaps you should get him a smartwatch instead.

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