

REAL ESTATE

A Roommate Dies; Must His Estate Pay the Rent?

Ask Real Estate

By RONDA KAYSEN NOV. 5, 2016

Q. My boyfriend and I were both named on the lease of a garage apartment that we shared in Woodmere, N.Y. He died in July 2014 and I remained in the apartment, continuing to pay the full rent. Is my boyfriend's estate liable for the balance of his half of the rent for the remainder of the term of the lease? I filed a claim with the surrogate court, but I am still waiting for a response.

A. When you and your boyfriend signed a lease with the landlord, you agreed both jointly and independently to pay the full rent each month. A landlord does not care (or usually even know) how rent is divided each month, as long as the checks arrive on time. If rent goes unpaid, the landlord could sue either or both tenants named on the lease for rent due, said Matthew J. Zangwill, a real estate lawyer in the Long Island law firm Ruskin Moscou Faltischek. For this reason, it is good that you continued to pay the rent in full, despite your questions about your boyfriend's estate.

Presumably, you and your boyfriend split the rent, as many couples and roommates do. Sometimes people who live together draft written agreements known

as “roommate agreements” that address how the rent and other household bills will be divided. (Templates for these agreements are available online.) These agreements can also answer potentially thorny questions, like what would happen if one person died. A written agreement like this might have bolstered your claim against the estate.

“It’s a backdoor guarantee,” Mr. Zangwill said. “It keeps the landlord out of it, but it sets the obligations.”

If you do not have such an agreement, you are not alone, as many couples do not put these sorts of details in writing. Regardless, you can still file a claim against the estate for reimbursement, Mr. Zangwill said.

Will you prevail? It depends on whether the estate has the assets to reimburse you, and what other debts your boyfriend left. Secured creditors, such as banks holding a mortgage on property, would be paid first.

Assuming there is enough money in your boyfriend’s estate, a judge could award you his portion of the remaining rent from the time he died until the end of the lease. But it all depends on the size of the estate.

Submit your question as a comment, or email realestateqa@nytimes.com.

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