

REAL ESTATE

Get Out Girlfriend – Evicting Your Significant Other

By Andrew Lieb

Guess what? If you are trying to evict a family member and you resort to a summary proceeding, it will likely be dismissed. Instead, you will end up in a prolonged ejectment proceeding in Supreme Court or in the appropriate matrimonial / family part depending on your precise circumstances. This jurisdictional result is because Family Member Evictions are typically not available in a summary proceeding. However, should an unrelated paramour be considered a family member after all? Moreover, at what point in a relationship does an unrelated paramour become a family member? Is simply allowing a hook-up into one's house enough to make them a family member? Do you have to put a ring on it first? Should you have to cohabitate? What about sharing bills? If a girlfriend invites her boyfriend to stay over, why should he not have to be subject to a summary eviction if he refuses to leave? What happens if a sugar daddy puts his sugar baby up in a penthouse, but never lives with her — must he resort to the Supreme Court to rid himself of her?

The answer seems to depend on what judge is assigned to the case because we, as practitioners, are stuck with murky guidance without either an Appellate Ruling or an action by our legislature to clear up our understanding of this important field of law. You see, what is the definition of a family member in this day and age after all? Do you know?

One of the best analyses of Family Member Evictions was recently rendered in an opinion by the Honorable Eric Bjerneby, who sits in Nassau County District Court, in June of this year, in the matter of *Kakwani v. Kakwani*. In that case, the petitioner argued that the respondent was a licensee and that the District Court had jurisdiction pursuant to RPAPL §713(7). The respondent moved to dismiss by arguing that she was a family member, and consequently not subject to the court's jurisdiction, as the sister-in-law of the petitioner. The court framed the issue before it as whether the respondent's right to reside stemmed from permission from the proper-



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ty owner or instead “from a true family relationship.”

In addressing this issue, the Kakwani Court looked to precedent and persuasive authority, which contains a split on the issue of the eviction of paramours, albeit not the precise issue before the court. The field seems to have two diverging lines of cases, to wit: the Co-Dependency Test and the Opt-Out Rule. The Co-Dependence Test asks whether the family members lived together under one roof, were financially and socially dependent and whether a legal duty of support existed such that the parties were co-dependent and hence family members. In contrast, the Opt-Out Rule looks to whether the respondent is included in a legislative vehicle, which grants them a greater right than that of a licensee as embodied in RPAPL §713(7).

So, we, as practitioners, require guidance as to which of these rules apply to our clients. However, we should always remember to first look to determine if the issue before the court is licensee versus

family member in the first instance before engaging in both potential analyses. It is suggested that the practitioner should ascertain whether a landlord / tenant relationship exists instead of a license by way of the paramour having received the property for consideration with possession of an exclusive interest in the property. Then, it's submitted that a mere holdover or non-payment proceeding may be proper. Regardless, the legislature should clarify whether it is their intent to except unrelated paramours from summary proceedings and require an action in Supreme Court. More so, we as practitioners should educate our clients, and the public at large, about the peculiar nature of evicting your girlfriend or boyfriend. It's a bet, that the public has no idea.

Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Center Moriches and Manhasset. Mr. Lieb serves as Co-Chair to the Real Property Committee of the Suffolk Bar Association and served as this year's Special Section Editor for Real Property in The Suffolk Lawyer.