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LANDLORD'S RIGHTS AND RESPONSIBILITIES UPON THE DEATH OF A LEGAL TENANT

When a legal tenant dies, a landlord is often left wondering how to lawfully regain possession of the apartment and what to do with the tenant's belongings if no one comes forward to claim them. For your information, a lease does not simply terminate with the death of the tenant. Instead, the lease remains in effect until its expiration unless the landlord takes legal action to terminate it and regain possession before the expiration date. With years of experience in landlord/tenant matters, our office can assist you legally regain possession of the apartment so that it may be re-rented as well as collecting the rent despite the death of the legal tenant.

In cases where the landlord takes no action to regain possession, the leasehold interest automatically passes to the estate of the deceased tenant like personal property; it does not automatically revert back to the landlord. The estate is then liable for the rental payments owed under that lease until its expiration. Even though the lease passes to the estate, the executor or administrator (the person legally in charge of settling the estate of the decedent) does not have the power to simply transfer the interest or to allow anyone into possession of the apartment without the landlord's consent. This is because a lease is not a property right that passes from generation to generation upon the leaseholder's death.

An executor or administrator may request that the landlord consent to the assignment of the lease or request that he/she be allowed to sublet the apartment to another person. In this situation, the landlord has the option to consent or to refuse consent, however courts have held that any refusal of consent by the landlord must be reasonable. If it's not, the Court can terminate the lease, discharge the estate from any further obligation to pay rent under the lease, and the landlord will then be able to re-rent the apartment. What constitutes reasonableness depends on the terms of the lease and the facts and circumstances of each case.

Another option a landlord has at the death of a legal tenant is to take legal action to terminate the lease, instead of collecting rental payments from the estate. In instances where no next-of-kin either exists or are readily obtainable, the landlord should contact the Public Administrator's Office before attempting to regain possession of the apartment.

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Disclaimer: The information provided is not intended to be legal advice, but merely conveys general information related to legal issues commonly encountered.

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