

# Table of Contents

## CHAPTER 1. PRELIMINARY CONSIDERATIONS

### I. CONSIDERATIONS PERTINENT TO CASE ACCEPTANCE

- § 1:1 Initial client meeting
- § 1:2 —Preliminary phone contact
- § 1:3 ——Speak to potential client personally
- § 1:4 ——Initial conflict check
- § 1:5 ——Content of the Rules of Professional Conduct
- § 1:6 ——Enforcement by Appellate Divisions
- § 1:7 ——Punishment for Rules violations
- § 1:8 ——Determine client's objectives
- § 1:9 ——Preliminary advice for urgent matters
- § 1:10 ——Statute of limitations or other applicable constraints
- § 1:11 ——Schedule appointment
- § 1:12 ——Setting the meeting date
- § 1:13 ——Client should be encouraged to bring relevant documents
- § 1:14 ——Confirm by letter
- § 1:15 ——Advise of consultation fees
- § 1:16 —Preparation for initial meeting
- § 1:17 ——Preliminary research
- § 1:18 ——“Statement of Client’s Rights”
- § 1:19 —Conducting first meeting
- § 1:20 ——Developing rapport with client
- § 1:21 ——Attorney-client privilege
- § 1:22 ——Necessity of attorney-client relationship
- § 1:23 ——“Confidential information,” defined
- § 1:24 ——Waiver exception
- § 1:25 ——Ascertaining relevant facts
- § 1:26 ——Client narrative
- § 1:27 ——Questions and answers
- § 1:28 ——Combination of approaches
- § 1:29 ——Structuring client interview
- § 1:30 ——Begin with event(s) which led client to seek legal counsel
- § 1:31 ——Proceed chronologically
- § 1:32 ——Question client

LANDLORD AND TENANT PRACTICE IN NEW YORK

- § 1:33 — — —Evaluate case
- § 1:34 Ethical restrictions in accepting representation
- § 1:35 —Competence required
- § 1:36 ——“Competence,” defined
- § 1:37 ——Duty to act diligently
- § 1:38 ——Options when competence is lacking
- § 1:39 ——Associating or consulting with other attorneys
- § 1:40 ——Discipline of attorneys for lack of competence
- § 1:41 ——Supervision of other attorneys and employees
- § 1:42 ——Aiding the unauthorized practice of law prohibited
- § 1:43 ——Exceptions to licensing requirement
- § 1:44 ——Disclosure of unadmitted status
- § 1:45 —Client’s motives and case merits
- § 1:46 —Client motives and merits of case—Applicable standards
- § 1:47 ——Improper purpose
- § 1:48 ——Meritless claims
- § 1:49 ——Sanctions for “frivolous” conduct
- § 1:50 ——“Frivolous” conduct, defined
- § 1:51 ——Certification of documents
- § 1:52 ——Penalties imposed
- § 1:53 ——Hearing required
- § 1:54 ——Discretionary allowances
- § 1:55 —Conflicts of interest
- § 1:56 ——Implications of “of counsel” designation
- § 1:57 ——Adverse party currently a client
- § 1:58 ——Adverse party a former client
- § 1:59 ——Standard for disqualification
- § 1:60 ——Multiple clients
- § 1:61 ——Evaluating circumstances
- § 1:62 ——Limitations on multiple client representation
- § 1:63 ——Client consent to multiple representation
- § 1:64 ——Conflicts arising from representation of organizations
- § 1:65 ——Lawyer’s conflicting interests
- § 1:66 ——Withdrawal as counsel when lawyer becomes a witness
- § 1:67 ——Compare: when attorney is litigant
- § 1:68 ——Compare: when attorney is corporate officer
- § 1:69 Fees and costs
- § 1:70 —Typical fee configurations
- § 1:71 ——Hourly fees
- § 1:72 ——Flat fees
- § 1:73 ——Contingency fees

TABLE OF CONTENTS

§ 1:74	— — Retainer fees
§ 1:75	— — — Non-refundable retainers
§ 1:76	— — — Retainer fees may need to be deposited in attorney's "client trust account"
§ 1:77	— — — "Fees on fees" provisions
§ 1:78	— — Combined fee agreements
§ 1:79	— — Alternative fees
§ 1:80	— Limits on fees charged
§ 1:81	— — Ethical limits
§ 1:82	— — — Relevant factors in determining excessive fees
§ 1:83	— — — "Illegal" fees
§ 1:84	— — Third-party payments
§ 1:85	— — Division of fees among lawyers
§ 1:86	— — — Client consent required after full disclosure
§ 1:87	— — — When fee sharing is not allowed
§ 1:88	— — — Division of fees with non-lawyers
§ 1:89	— Costs arrangements
§ 1:90	— — Typical expenses
§ 1:91	— — Attorney's liability for costs to third parties
§ 1:92	— Fee agreement
§ 1:93	— — General requirements
§ 1:94	— — Specific provisions
§ 1:95	— — Terminating representation
§ 1:96	— — — Consensual withdrawal
§ 1:97	— — — Non-consensual withdrawal
§ 1:98	— — — Fee recovery upon termination of representation
§ 1:99	— — Provisions to secure fees
§ 1:100	— — — Retainer fees
§ 1:101	— — — Retaining liens
§ 1:102	— — — Charging liens
§ 1:103	— — — Non-exclusive nature of remedy
§ 1:104	Interest on unpaid fees
§ 1:105	— Client billings and fee payments
§ 1:106	— — Issuance of invoices and/or billing statements
§ 1:107	— — Suspension of services for unpaid bills
§ 1:108	— — Attorney's billing records may not be subject to disclosure
§ 1:109	— — Fee agreement may be subject to discovery
§ 1:110	— — Recovery of fees premised upon "account stated"
§ 1:111	Fee-Dispute Resolution

**II. UPON ACCEPTANCE OF CASE**

§ 1:112	Ethical restraints on case disposition
---------	--

LANDLORD AND TENANT PRACTICE IN NEW YORK

- § 1:113 —Communications with opposing parties
- § 1:114 ——Communications with adverse party's employees
- § 1:115 ——Advice to opposing parties
- § 1:116 ——Communications between clients distinguished
- § 1:117 ——Improper statements to adversaries
- § 1:118 ——Counsel should comport with "Standards of Civility"
- § 1:119 ——Standard for the treatment of persons involved in legal proceedings
- § 1:120 ——Statements concerning judges and other adjudicatory officers
- § 1:121 ——Duty to report misconduct
- § 1:122 ———"Misconduct," defined
- § 1:123 ——"Frivolous" litigation practices
- § 1:124 —Improper delay tactics
- § 1:125 Counseling as to alternatives
- § 1:126 —Initial advice
- § 1:127 ——No outcome guarantees
- § 1:128 ——Timetables and deadlines
- § 1:129 ——Confirm requests in writing
- § 1:130 —Division of authority between attorney and client
- § 1:131 —Tactical considerations
- § 1:132 ——Landlord's rent acceptance may prejudice case
- § 1:133 ——Pre-termination rent acceptance may constitute waiver
- § 1:134 ——Post-termination rent acceptance may reinstate tenancy
- § 1:135 ——Renewal-lease offers may reinstate tenancy
- § 1:136 —Specific landlord-tenant considerations
- § 1:137 ——If the problem involves initial rent and security
- § 1:138 ——Record-keeping in connection with rent-regulated tenancies
- § 1:139 ——Tenant response to excessive rent payment
- § 1:140 ——Precautionary measures to circumvent security-deposit disputes
- § 1:141 ——If an eviction is sought
- § 1:142 Initial negotiations
- § 1:143 —Negotiating techniques and strategies
- § 1:144 ——Attorney's authority to settle
- § 1:145 ——Duty to communicate all settlement offers to client
- § 1:146 —Ensuring a tenant's compliance with the lease's terms
- § 1:147 ——Investigate the proposed tenant's personal, professional, and financial references

## TABLE OF CONTENTS

- § 1:148 — —Secure personal guarantees
- § 1:149 Maintaining open lines of communication
- § 1:150 —Client must keep counsel updated
- § 1:151 — —Client's responsibilities should be outlined and addressed
- § 1:152 —Attorney's duty to communicate with client
- § 1:153 Attorney liability exposure
- § 1:154 —Legal malpractice
- § 1:155 — —Damage standard
- § 1:156 —Potential liability under federal Fair Debt Collection Practices Act ("FDCPA")
- § 1:157 — —Determining whether attorney is "debt collector" under FDCPA
- § 1:158 — — —Exception for legal remedies
- § 1:159 — — —Application of FDCPA to landlord-tenant matters
- § 1:160 — — —Protects "consumers" only
- § 1:161 — — —"Debts" covered by FDCPA
- § 1:162 — — —Rental arrears fall within FDCPA's definition of "debt"
- § 1:163 — — —Dishonored checks
- § 1:164 — — —Business debts excluded from FDCPA's ambit
- § 1:165 — — —Amount of potential damages
- § 1:166 Complying with the FDCPA
- § 1:167 —Content of communications
- § 1:168 — —Thirty day dispute-validation period
- § 1:169 — —Defining "initial communication"
- § 1:170 — —Standard for determining whether communication violates FDCPA
- § 1:171 —Timing of communications
- § 1:172 —Place of communications
- § 1:173 —Governing statute of limitations
- § 1:174 —Potential liability under New York Consumer Protection Act
- § 1:175 —Liability for acts of agents retained by attorney, such as process servers

## III. FORMS

- § 1:176 Form 1-1: Landlord-tenant client interview checklist
- § 1:177 Form 1-2: Sample hourly rate attorney fee agreement
- § 1:178 Form 1-3: Sample consumer collection letter

APPENDIX 1-1. Statement of Client's Rights and Responsibilities

APPENDIX 1-2. Civil Court Directives, Costs and Sanctions,

Civil Court of the City of New York (8/  
21/89 and 3/12/96)

- APPENDIX 1-3. Standards of Civility
- APPENDIX 1-4. Statement of Client's Responsibilities
- APPENDIX 1-5. Civil Court Directive, Entry of Judgment  
Account Stated
- APPENDIX 1-6. Civil Court of the City of New York

## CHAPTER 2. CREATING THE TENANCY

### I. NATURE OF TENANCY

- § 2:1 Defining the relationship
- § 2:2 —“Landlord,” defined
- § 2:3 ——“Lessors” as landlords
- § 2:4 ——“Landlord” not limited to fee-title holder
- § 2:5 ——“Landlord” as party entitled to rent and possession
- § 2:6 ——“Receiver as landlord
- § 2:7 ——“Assignee as landlord
- § 2:8 ——“Net lessee as landlord
- § 2:9 ——“Mortgagee as landlord
- § 2:10 ——“Purchaser as landlord
- § 2:11 ——“Purchaser generally bound by predecessor’s conduct
- § 2:12 ——“Licensor as landlord
- § 2:13 ——“Employer as landlord
- § 2:14 ——“Sublessor as landlord
- § 2:15 ——“Proprietary lessor as landlord
- § 2:16 ——“Landlord” under rent control, defined
- § 2:17 ——“Landlord” under rent stabilization, defined
- § 2:18 ——“Provider of utility services excepted from definition
- § 2:19 —“Tenant,” defined
- § 2:20 ——“Lessee” is tenant
- § 2:21 ——“Illusory tenant,” defined
- § 2:22 ——“Occupant,” defined
- § 2:23 ——“Tenant” includes rooming-house or hotel resident
- § 2:24 ——“Rent-controlled tenant, defined
- § 2:25 ——“Rent-stabilized tenant, defined
- § 2:26 ——“HUD tenant, defined
- § 2:27 ——“Section 8” tenant
- § 2:28 ——“Tenant’s possession is exclusive
- § 2:29 ——“Tenant’s right to “quiet enjoyment”

TABLE OF CONTENTS

§ 2:30	— — — Compare: warranty of habitability
§ 2:31	— — — Exception to “exclusive possession” for inspection and repairs
§ 2:32	— — — Reversion to landlord at termination of tenancy
§ 2:33	— — — Other essential elements for creating a tenancy
§ 2:34	— — — Term or duration of tenancy
§ 2:35	— — — Periodic tenancy presumed if no term stated
§ 2:36	— — — — Compare: month-to-month tenancy
§ 2:37	— — — — New York City limits tenancy of uncertain duration
§ 2:38	— — — — Perpetual leases disfavored
§ 2:39	— — — — Regulated tenancies may restrict term
§ 2:40	— — — — Example: one or two-year rent-stabilized lease
§ 2:41	— — — — Compare: “statutory” tenant under rent control
§ 2:42	— — — — “Statutory” tenancy held to be contractual
§ 2:43	— — — — Amount of rent charged
§ 2:44	— — — — Rent gouging illegal
§ 2:45	— — — — Dual components: contract and conveyance
§ 2:46	— — — — Landlord-tenant relationship created by contract
§ 2:47	— — — — Distinction between “lease” and “leasehold”
§ 2:48	— — — — Compare: “management contract”
§ 2:49	— — — — Example of implied contract
§ 2:50	— — — — Exception to rule of creation of tenancy by contract
§ 2:51	— — — — Lease conveys interest in property
§ 2:52	— — — — Delivery of lease is required
§ 2:53	— — — — Effect of net lease on “ownership”
§ 2:54	— — — — Net lessee acts as “owner”
§ 2:55	— — — — Lease defines parties’ rights
§ 2:56	— — — — Residential lease is contract for shelter and services
§ 2:57	— — — — Implied warranty of habitability
§ 2:58	— — — — No “luxury” standard
§ 2:59	— — — — Warranty of habitability inapplicable to commercial premises
§ 2:60	— — — — Tenancies subject to laws of contract and real property
§ 2:61	— — — — Compare: landlord’s duty to mitigate under commercial and residential leases
§ 2:62	— — — — Notice of tenancy to third parties
§ 2:63	— — — — Actual notice
§ 2:64	— — — — Constructive notice: possession
§ 2:65	— — — — Constructive notice: recordation
§ 2:66	— — — — Lease for more than three years may be recorded

- § 2:67 ——Unrecorded lease for term greater than three years may be void as against subsequent purchasers
- § 2:68 ——Exception: actual notice
- § 2:69 ——Effect of recording
- § 2:70 ——Example: tenant relegated to action for money damages for owner's breach of recorded lease
- § 2:71 ——Recording memoranda of leases
- § 2:72 ——Recording modification of leases
- § 2:73 ——Compare: registration of rent-regulated rents
- § 2:74 ——Effect of mortgages
- § 2:75 ——Lease subject to all prior recorded liens
- § 2:76 ——Recorded lease superior to subsequent mortgage
- § 2:77 ——Lease subject to foreclosure
- § 2:78 ——Lease with subordination clause can be extinguished in mortgage foreclosure
- § 2:79 ——Conflict between mortgages
- § 2:80 ——Effect of sale of property
- § 2:81 ——Effect of *lis pendens* or "notice of pendency"
- § 2:82 ——*Lis pendens* may not be utilized within context of summary proceedings
- § 2:83 ——Filing procedures
- § 2:84 ——Content of notice
- § 2:85 ——Duration
- § 2:86 ——Cancellation of the notice of pendency
- § 2:87 ——Effect of foreclosure generally; rent-regulated units
- § 2:88 Rights and obligations during the tenancy
- § 2:89 ——Examples: duty to repair
- § 2:90 ——Residential landlord's duty nondelegable
- § 2:91 ——Repairs or alterations by residential tenant
- § 2:92 ——Commercial landlord generally not obligated for repairs
- § 2:93 ——Example: liability for real-estate taxes
- § 2:94 ——Covenant of good faith and fair dealing

## II. TYPES OF TENANCIES

- § 2:95 Unique characteristics
- § 2:96 "Life estate" and "life occupancy" distinguished
- § 2:97 ——"Life occupant," defined
- § 2:98 ——"Life estate," defined
- § 2:99 ——Creation of life estate
- § 2:100 ——Oral creation of life estate may be unenforceable
- § 2:101 ——Oral creation of life estate is generally unenforceable—Perpetual leases distinguished
- § 2:102 ——Landlord entitled to reversion upon death of life tenant

## TABLE OF CONTENTS

- § 2:103 —Landlord's rights limited against holder of "life estate"
- § 2:104 ——Example: life tenant can exclude fee owner from showing property to prospective purchasers
- § 2:105 Estate or tenancy for years
- § 2:106 —Term must be certain
- § 2:107 ——One-month tenancy "for years" distinguished from "month-to-month" tenancy
- § 2:108 —Tenancy expires at stated termination date, not upon tenant's death
- § 2:109 ——Exception: rent-controlled tenancy may convert to periodic tenancy after specified term
- § 2:110 Tenancies-at-will
- § 2:111 —No tenancy-at-will when tenant granted exclusive right to terminate
- § 2:112 Periodic tenancies
- § 2:113 —Month-to-month tenancies
- § 2:114 —"Presumptive" periodic tenancies
- § 2:115 Tenancies-at-sufferance
- § 2:116 —Example: subtenant as tenant-at-sufferance
- § 2:117 —Other legal effect: inapplicability of "automatic stay"

## III. SPECIAL CLASSES OF TENANTS

- § 2:118 Statutory protections, generally
- § 2:119 Rent-controlled tenants
- § 2:120 —Accommodations subject to rent control
- § 2:121 —No written renewal lease required
- § 2:122 —Regulation of rights and obligations
- § 2:123 ——Is a rent-controlled tenancy contractual or statutory?
- § 2:124 Rent-stabilized tenants
- § 2:125 —Accommodations subject to rent stabilization outside New York City
- § 2:126 —Accommodations subject to rent stabilization within New York City
- § 2:127 —Written lease required
- § 2:128 ——Effect of landlord's failure to renew lease
- § 2:129 —Regulation of rights and obligations
- § 2:130 ——Rent-stabilized tenancies ruled "contractual" despite regulation
- § 2:131 Cooperative or condominium occupants
- § 2:132 —Cooperative shareholder as "tenant"
- § 2:133 —Condominium owner is not a "tenant"

LANDLORD AND TENANT PRACTICE IN NEW YORK

- § 2:134 — —Summary nonpayment proceedings are unavailable to condominium boards seeking common charges
- § 2:135 — —Condominium owner can not claim breach of warranty of habitability
- § 2:136 — —Condominium association may hold responsibility for repairs
- § 2:137 — —New York City pet law as applied to condominiums: conflicting opinion
- § 2:138 — —Rights of non-purchasing rent-regulated tenants in conversion process
- § 2:139 — —Eviction plan
- § 2:140 — —Non-eviction plan
- § 2:141 — — —Units held by non-purchasing tenants under non-eviction plan subject to succession rules
- § 2:142 — — —Sponsor-held units: post-conversion tenancy entitlements
- § 2:143 — —Reversion of all units to rent regulation upon a cooperative's foreclosure
- § 2:144 Subtenants and assignees
- § 2:145 — —Subtenant is not overlandlord's tenant
- § 2:146 — —Landlord may not "unreasonably" withhold consent to residential sublet
- § 2:147 — — —"Reasonableness" examined
- § 2:148 — —Acceptance of subtenant's rent by landlord may create tenancy
- § 2:149 — — —Compare: entitlement to "use and occupancy"
- § 2:150 — —Assignee becomes landlord's tenant
- § 2:151 — —Landlord's posture on assignments
- § 2:152 — —Assignment pro tanto
- § 2:153 Manufactured-home park tenancies
- § 2:154 — —Landlord must offer lease and give notice of rent increases
- § 2:155 — —Other rights and obligations
- § 2:156 — —Security deposits
- § 2:157 — —Access
- § 2:158 — —Warranty of habitability
- § 2:159 — —Landlord must register services and park rules with DHCR
- § 2:160 Hotel tenancies
- § 2:161 — —Regulation of hotel rents
- § 2:162 — —Required hotel services
- § 2:163 Residential loft tenancies
- § 2:164 Rooming houses
- § 2:165 Senior citizens

## TABLE OF CONTENTS

- § 2:166 —Statutory protections and benefits
- § 2:167 ——SCRIE
- § 2:168 ——Rent-control eviction restrictions
- § 2:169 ——Rent-stabilization restriction on eviction of tenants in nursing homes
- § 2:170 ——Cooperative/condominium conversions
- § 2:171 ——Termination of lease to relocate to family member's residence, adult-care facility, or senior or subsidized housing
- § 2:172 Military personnel

## IV. FORMS

- § 2:173 Form 2-1: Memorandum of lease
- § 2:174 Form 2-2: Notice to senior citizens: residential lease termination

APPENDIX 2-1. NYC Finance: SCRIE Income Increase Fact Sheet

## CHAPTER 3. OTHER OCCUPANCY RELATIONSHIPS

### I. RELATIONSHIPS SIMILAR TO TENANCIES

- § 3:1 Occupancies similar to tenancies
- § 3:2 Occupancy relationships terminable through summary proceedings or "self-help"
- § 3:3 —Summary proceedings when no landlord-tenant relationship exists
- § 3:4 ——Eviction of occupant who has wrongfully ousted party entitled to lawful possession
- § 3:5 ——"Self-help"
- § 3:6 ——"Self-help"—Example: occupant in apartment for only two weeks
- § 3:7 ——Justification for self-help eviction
- § 3:8 ——Self-help eviction must be effected "peaceably"
- § 3:9 ——Distinction: self-help prohibited when tenant engages in unlawful activity
- § 3:10 ——Compare "illegal use" statute
- § 3:11 Illegal-eviction law protects some occupants
- § 3:12 —Compare prior law
- § 3:13 ——"Unlawful" removal, defined
- § 3:14 —Ousted occupant must have had peaceable possession
- § 3:15 ——"Peaceable possession," defined

- § 3:16 ——Example: illegal-eviction law protects licensee-subtenant
- § 3:17 ——Example: illegal-eviction protection for school operator whose license expired
- § 3:18 ——Example: no illegal-eviction protection for proposed subtenant
- § 3:19 —New York City's "Unlawful Evictions Law"

## II. AGREEMENT BETWEEN LICENSOR AND LICENSEE

- § 3:20 "License," defined
- § 3:21 License distinguished from lease
- § 3:22 —License conveys non-exclusive privilege to occupy premises
- § 3:23 —License generally cancelable at will
- § 3:24 —Exception: "irrevocable" license
- § 3:25 —Rule of construction: license or lease?
- § 3:26 —"Illusory" tenancy
- § 3:27 —"License" may limit perfection of security interests for commercial landlord
- § 3:28 Termination of license
- § 3:29 —Summary proceeding
- § 3:30 —Self-help eviction
- § 3:31 ——Example: newsstand-operator ousted
- § 3:32 Types of licensees
- § 3:33 —Family members
- § 3:34 —Spouses
- § 3:35 —Stepchildren
- § 3:36 ——Domestic partners; non-traditional "family" members
- § 3:37 —Roommates
- § 3:38 ——Roommate distinguished from tenant
- § 3:39 ——Roommate distinguished from subtenant
- § 3:40 ——Roommate distinguished from guest
- § 3:41 —Legal restriction on roommates
- § 3:42 ——Notice requirements
- § 3:43 ——Tenant must maintain primary residence
- § 3:44 ——Overcrowding prohibitions
- § 3:45 ——Legal restriction of roommates—Overcrowding prohibitions—Same-sex partners
- § 3:46 ——Effect of termination of tenancy on roommate
- § 3:47 ——Possibility of tenancy by consent
- § 3:48 ——Landlord's collection of a rent increase for roommates

## TABLE OF CONTENTS

- § 3:49 ——Permissible under rent control
- § 3:50 ——Not permissible under rent stabilization
- § 3:51 ——Exception: roommate added as co-tenant on renewal lease
- § 3:52 ——Amount of rent tenant can charge roommate or subtenant

## III. AGREEMENT BETWEEN PROPRIETOR AND GUEST OR LODGER

- § 3:53 Generally
- § 3:54 Lodger distinguished from tenant
- § 3:55 —Lodger relationship is personal contract
- § 3:56 —Extended occupancy may confer tenancy status
- § 3:57 —Proprietor may evict lodger by self-help
- § 3:58 —Lodger may be evicted by summary proceeding
- § 3:59 —Rule of construction: lodger or tenant?
- § 3:60 —Example: transient hotel guest deemed lodger
- § 3:61 —Example: motel occupants placed by social services not “transient”
- § 3:62 Transient hotel-occupants, defined
- § 3:63 —Definition of “transient” hotel-New York City
- § 3:64 —Mixed-use hotels
- § 3:65 —Rent-regulation of hotel rents

## IV. AGREEMENT BETWEEN EMPLOYER AND EMPLOYEE

- § 3:66 Generally
- § 3:67 No landlord-tenant relationship when occupancy made contingent on employment relationship
- § 3:68 —Prior tenancy not destroyed by subsequent employment
- § 3:69 —Exception: tenancy exchanged for employment-occupancy
- § 3:70 —Occupancy independent of employment duties deemed tenancy
- § 3:71 —Subsequent tenancy can be created
- § 3:72 —Effect of successive employment relationships
- § 3:73 —Occupancy granted as compensation
- § 3:74 —Effect of additional compensation
- § 3:75 Effect of termination of employment agreement
- § 3:76 —When landlord is not the direct employer: conflicting opinions
- § 3:77 —Landlord may be required to demonstrate “good cause” to evict

- § 3:78 —Independent right to possession
- § 3:79 Effect of rent-regulation laws
- § 3:80 —Superintendent not tenant under rent control
- § 3:81 —Succession rights when employee was tenant

## **V. SQUATTERS AND INTRUDERS**

- § 3:82 Generally
- § 3:83 “Squatter,” defined
- § 3:84 —“Intruder” distinguished
- § 3:85 —Notice requirement to commence proceedings
- § 3:86 No landlord-tenant relationship exists
- § 3:87 —Example: squatters enter premises without consent
- § 3:88 ——Compare: original or subsequent permission to occupy premises
- § 3:89 ——Effect of subsequent withdrawal of consent
- § 3:90 —Squatters hold no property rights
- § 3:91 Eviction of squatters
- § 3:92 —Summary proceedings
- § 3:93 ——Compare: sublessee/roommate not squatters
- § 3:94 —Self-help can be used against squatter
- § 3:95 Squatter or licensee?
- § 3:96 —Summary proceeding on alternate grounds:  
conflicting opinion
- § 3:97 ——Squatter/licensee combined proceeding improper:  
minority view
- § 3:98 ——Squatter/licensee combined proceeding proper:  
majority view

## **VI. ADULT-HOME RESIDENTS**

- § 3:99 Generally
- § 3:100 No landlord-tenant relationship under statute
- § 3:101 —Compare: tenancy-at-will

# **CHAPTER 4. RENTAL AGREEMENTS**

## **I. INTRODUCTORY CONSIDERATION; RELATIVE-BARGAINING POSITIONS**

- § 4:1 Generally

## **II. FORM OF AGREEMENT**

- § 4:2 Express or implied agreement
- § 4:3 “Lease,” defined

## TABLE OF CONTENTS

- § 4:4 Oral or written agreement (Statute of Frauds)
- § 4:5 —Sufficiency of writing
- § 4:6 ——Type size
- § 4:7 —Calculating statute's one-year period
- § 4:8 —Indefinite term leases
- § 4:9 Liability absent a lease
- § 4:10 "Agreements to lease" distinguished
- § 4:11 Delivery requirement
- § 4:12 Lease or license
- § 4:13 Pros and cons of written (fixed-term) lease
- § 4:14 —Reduces enforcement problems
- § 4:15 —Fixed lease-term
- § 4:16 ——Landlord's perspective
- § 4:17 ——Tenant's perspective

## III. FUNDAMENTAL LEASE TERMS AND CONSIDERATIONS

- § 4:18 Essential terms
- § 4:19 —Exclusive possession and control
- § 4:20 —Identity
- § 4:21 —Description
- § 4:22 —Amount of rent
- § 4:23 —Specified term
- § 4:24 ——Exception: New York City
- § 4:25 ——Exception: manufactured homes
- § 4:26 Form leases
- § 4:27 Special rules for certain types of housing
- § 4:28 Fraud or mistake
- § 4:29 Unilateral mistake
- § 4:30 Landlord disclosures

## IV. STANDARD PROVISIONS IN WRITTEN RENTAL AGREEMENTS

- § 4:31 Parties to contract
- § 4:32 —Natural persons
- § 4:33 —Entities
- § 4:34 ——Corporations
- § 4:35 ——Not-for-profit corporations
- § 4:36 ——Religious corporations
- § 4:37 ——Partnerships
- § 4:38 ——Municipalities
- § 4:39 ——Agents
- § 4:40 ——Real-estate brokers; license required

- § 4:41 — —Liability for breach of lease
- § 4:42 — —Real-estate brokers; license required—Exception: tenant associations and not-for-profit corporations
- § 4:43 — — —Statute of Frauds
- § 4:44 Ascertainable identities
- § 4:45 —Agents
- § 4:46 —Guarantors
- § 4:47 Description of premises, demised
- § 4:48 —Definite and certain description required
- § 4:49 —Ambiguous description
- § 4:50 Adjoining space
- § 4:51 Special commercial-lease considerations
- § 4:52 —Prelease of space under construction; final description not available
- § 4:53 —Plot map of premises under construction
- § 4:54 Rental term
- § 4:55 —Exception: when agreement is of “indefinite” duration in New York City
- § 4:56 —Commencement and expiration dates
- § 4:57 — —Problems with commencement date: tenancies beginning upon completion of construction or improvements
- § 4:58 — — —Potential for litigation when commencement date is unclear
- § 4:59 — —Problems with ending date: options and pre-emptive renewal rights
- § 4:60 — — —Automatic renewal
- § 4:61 — — —Rule Against Perpetuities
- § 4:62 — — —Non-vested rights
- § 4:63 — — —Options to purchase
- § 4:64 — — — —Compare: rights of first refusal
- § 4:65 —Statutory limits on duration of certain leases
- § 4:66 — —County property
- § 4:67 — —School-district property
- § 4:68 — —Religious corporations
- § 4:69 Rent
- § 4:70 —How, when, where, and to whom rent is paid
- § 4:71 — —Receipts
- § 4:72 —Due date
- § 4:73 —Percentage rents
- § 4:74 — —Exclusive right to conduct business
- § 4:75 —Forms of consideration
- § 4:76 Late charges
- § 4:77 —Excessive late charges are unenforceable
- § 4:78 —Late charges in rent-regulated jurisdictions

TABLE OF CONTENTS

§ 4:79	—Late charges in manufactured-home parks
§ 4:80	Security deposit
§ 4:81	—Deposit pending landlord's approval of lease
§ 4:82	Other charges
§ 4:83	—Utilities
§ 4:84	— —Identify party liable
§ 4:85	— —Manufactured-home parks
§ 4:86	— —Shared meters
§ 4:87	— — —Elimination of shared meter
§ 4:88	— — — —Exception: "legal impediment or extraordinary cost"
§ 4:89	— — — —Exception: leases in effect on October 24, 1991
§ 4:90	— — —Utility obligations
§ 4:91	— — —Future charges
§ 4:92	—Parking
§ 4:93	— —Delineate parking privileges
§ 4:94	— —Payment terms
§ 4:95	— — —Rent regulation
§ 4:96	—Additional occupants
§ 4:97	— —Limitations
§ 4:98	— —Children
§ 4:99	—Special commercial-lease considerations
§ 4:100	— —Operational and common-area maintenance expenses
§ 4:101	— — —Base year escalation approach
§ 4:102	— — —Proportionate charges
§ 4:103	— — —Tenant's audit rights
§ 4:104	— —Cost of living increases
§ 4:105	— —Taxes
§ 4:106	—ADA compliance burdens and charges
§ 4:107	— —Mandatory renovation
§ 4:108	— — —Scope of alterations
§ 4:109	— —No new barriers to handicapped access
§ 4:110	— —Enforcement
§ 4:111	— —Other lease-related considerations
§ 4:112	Authorized occupants
§ 4:113	Rent regulation
§ 4:114	Sublessees/assignees
§ 4:115	—Residential subleases and assignments
§ 4:116	— — —Assignments
§ 4:117	— — —Sublets
§ 4:118	— — — —Exceptions: public housing and co-ops
§ 4:119	— — — —Retroactivity
§ 4:120	— — — —Notice to landlord required

- § 4:121 ——Timing of landlord's consent
- § 4:122 ——Landlord or tenant's failure to comply with N.Y. Real Prop. Law § 226-b
- § 4:123 —Commercial leases
- § 4:124 —No implied restrictions, generally
- § 4:125 —Exception: implied limitation on assignment
- § 4:126 —May be subject to express conditions
- § 4:127 —Enforcement limited by waiver/estoppel
- § 4:128 —Acceptance of rent may waive breach
- § 4:129 —Distinguish: acceptance of rent under protest may not waive breach
- § 4:130 —Distinguish: restriction requiring consent in the future is not extinguished by consenting to one sublease
- § 4:131 —Compare: consent to assignment can eliminate non-assignment provision
- § 4:132 —Lease provisions creating exception to waiver
- § 4:133 —Reasonableness of withholding consent
- § 4:134 —Landlord's burden of proof
- § 4:135 —“Reasonableness” examined
- § 4:136 —Proposed transferee's financial stability or lack thereof
- § 4:137 —Nature of proposed occupancy
- § 4:138 —Existence of waiting list
- § 4:139 —Tenant's failure to request consent under N.Y. Real Prop. Law § 226-b
- § 4:140 —Misrepresentations in information provided
- § 4:141 —Extending prohibitions to “licenses”
- § 4:142 —Compare: manufactured homes
- § 4:143 —Assignment and sublease distinguished
- § 4:144 —Effect of valid transfer of tenant's interest
- § 4:145 —Assignment
- § 4:146 —Contractual release of original tenant
- § 4:147 —Privity of estate between landlord and assignee
- § 4:148 —Absent a release, privity of contract between landlord and assignor/former tenant continues
- § 4:149 —Privity of contract if assignee assumes liability
- § 4:150 —Subleases
- § 4:151 —Subtenant's rights
- § 4:152 —Tenant/sublessor remains bound by master lease

TABLE OF CONTENTS

§ 4:153	— — — Subtenant also bound by master lease's terms
§ 4:154	— Statute of Frauds
§ 4:155	— Occupancy restrictions may constitute unlawful discrimination
§ 4:156	— Racial restrictions are prohibited
§ 4:157	— — Religious-use exception
§ 4:158	— — Children
§ 4:159	— — — Exception: permitting discrimination against children
§ 4:160	— — Immediate family members and roommates
§ 4:161	Condition of premises
§ 4:162	— Warranty of habitability
§ 4:163	— Covenant of quiet enjoyment
§ 4:164	— Inspections
§ 4:165	— — Defects and deterioration
§ 4:166	— — ADA surveys
§ 4:167	— — Building/safety violations
§ 4:168	Maintenance and repair obligations in residential context
§ 4:169	Maintenance and repair obligations in commercial context
§ 4:170	Use of premises
§ 4:171	— Residential-use clauses
§ 4:172	— Commercial-use clauses
§ 4:173	— — Landlord's perspective: exclusive use protections
§ 4:174	— — Tenant's perspective: exclusive use protections
§ 4:175	— Illegal use renders lease void
§ 4:176	— — Landlord liability
§ 4:177	— — Waiver
§ 4:178	Compliance with all laws
§ 4:179	— Scope of tenant's assumed obligation
§ 4:180	— — Parties' intent
§ 4:181	Termination for tenant's breach of covenant
§ 4:182	— Default must be substantial
§ 4:183	— — Breach of warranty of habitability is a defense to nonpayment of rent
§ 4:184	— Termination for chronic violations in commercial context
§ 4:185	Rules and regulations
§ 4:186	— Examples of lease rules
§ 4:187	— Amendments and notice
§ 4:188	— — Impact of rent regulation
§ 4:189	— Manufactured-home leases
§ 4:190	— — Reasonableness limitation

LANDLORD AND TENANT PRACTICE IN NEW YORK

- § 4:191 Pets
- § 4:192 —Pet restrictions
- § 4:193 —Protections for elderly tenants in federal housing
- § 4:194 —Waiver of pet restrictions
- § 4:195 ——Example: New York City
- § 4:196 ——Exception: New York City Housing Authority
- § 4:197 —Emotional-support animals
- § 4:198 Access
- § 4:199 Failure or refusal to permit access may constitute substantial breach of lease
- § 4:200 —Manufactured-home park tenancies
- § 4:201 Insurance
- § 4:202 —Mutual indemnification and insurance provisions
- § 4:203 —Insurance for liability to third parties
- § 4:204 —Terrorism coverage in commercial context
- § 4:205 —Landlord not obligated to compel insurance coverage
- § 4:206 —No exculpation for landlord's negligence
- § 4:207 Damage or destruction
- § 4:208 —Lease provisions concerning damage or destruction
- § 4:209 Property taxes
- § 4:210 —Treatment as "additional rent"
- § 4:211 ——Courts will not permit "windfall" to landlords
- § 4:212 —Effect of tenant improvements
- § 4:213 —Compare: landlord improvements
- § 4:214 —Tax liability when either party is a tax-exempt entity
- § 4:215 ——Private lease of municipal property
- § 4:216 ——Nonprofit organizations
- § 4:217 ——Tax exemptions: New York City
- § 4:218 —Tax-certiorari proceedings
- § 4:219 —Compare: manufactured home park tenants
- § 4:220 Notice provisions
- § 4:221 —Notice to terminate monthly tenancies
- § 4:222 —Notice to rent-regulated tenants
- § 4:223 —Notice to manufactured-home park tenants
- § 4:224 —When notice is deemed given
- § 4:225 Guaranty clauses, generally
- § 4:226 —Landlord-guaranty provisions
- § 4:227 —Recourse against guarantors
- § 4:228 ——Uninformed guarantor may be liable
- § 4:229 ——Jurisdiction over "foreign" guarantors
- § 4:230 ——Personal liability of guarantor
- § 4:231 ——Joinder of guarantor as a party to summary proceeding

TABLE OF CONTENTS

§ 4:232	—Guarantor's rights
§ 4:233	—Limitation on guarantor liability: subsequent change in nature of guarantee
§ 4:234	—Renewal leases
§ 4:235	—Compare: guarantor is not released by assignment
§ 4:236	—Extension of time for payment discharges guarantor
§ 4:237	—Limitation on guarantor liability; “good guy” clause
§ 4:238	Bankruptcy provisions
§ 4:239	Waiver of counterclaims
§ 4:240	—Exception for “inextricably related” claims
§ 4:241	Waiver of jury trial
§ 4:242	Attorney's fees
§ 4:243	—“Prevailing party” fee awards under RPL § 234
§ 4:244	—Retroactive application to residential leases
§ 4:245	—Entitlement to fees cannot be waived
§ 4:246	—“Change in law” is defense
§ 4:247	—Contingent fees
§ 4:248	—Landlord's recovery
§ 4:249	—Identifying the “prevailing party”
§ 4:250	—Any dispute arising out of lease obligations
§ 4:251	—Valid lease required
§ 4:252	—Reciprocal nature of recovery
§ 4:253	—Attorneys' fee claim should be asserted within same action or proceeding
§ 4:254	—Fee recovery by successful <i>pro se</i> or legal services litigants
§ 4:255	—“Reasonable” amount
§ 4:256	—Fees on fees
§ 4:257	—Statutory fee awards
§ 4:258	—Discrimination against children
§ 4:259	—Fees in federal civil-rights litigation
§ 4:260	—Damages for “retaliatory” action
§ 4:261	—Rent-regulated tenants may recover costs
§ 4:262	Interest on money judgments
§ 4:263	Waiver of breach
§ 4:264	Closing formalities
§ 4:265	—Validity and severability
§ 4:266	—Entire agreement; modification prohibited
§ 4:267	—Fraud excepted
§ 4:268	Arbitration provisions
§ 4:269	—Limitations on arbitrable disputes
§ 4:270	Signatures

- § 4:271 Presumption that agreement is understood and accepted once signed
- § 4:272 Signatures—New York State as tenant
- § 4:273 Disability rent increase exemption: New York City
- § 4:274 —Eligible apartment
- § 4:275 —Applicant named on the lease or rent order
- § 4:276 —State or federal disability related financial assistance
- § 4:277 —Income eligibility requirements
- § 4:278 —Amount of household's aggregate disposable income

## **V. LIMITATIONS ON VALIDITY OF TERMS**

- § 4:279 Generally
- § 4:280 Nonwaivable, nonmodifiable rights
- § 4:281 —Attorney's fees
- § 4:282 —Automatic tenancy renewal protection
- § 4:283 —Exculpatory clauses
- § 4:284 —Jury trial in personal injury or property-damage action
- § 4:285 —Occupancy
- § 4:286 —Retaliatory-eviction defense
- § 4:287 —Satellite dishes
- § 4:288 —Security-deposit refund
- § 4:289 —Shared meters
- § 4:290 —Sublets/assignments
- § 4:291 —Tenants' associations
- § 4:292 —Warranty of habitability
- § 4:293 Distinguish: commercial tenancies
- § 4:294 Nonwaivable rights in connection with other types of residential tenancies

## **VI. OPTIONS**

- § 4:295 Renewal provisions
- § 4:296 —Automatic renewal of tenancy
- § 4:297 —Renewal provisions must be definite and certain
- § 4:298 ——Rental amount
- § 4:299 ——Rental amount tied to specified formula or guideline
- § 4:300 ——“Fair market value”
- § 4:301 ——Rental amount deferrable to arbitration
- § 4:302 ——Other details of renewed tenancy
- § 4:303 ——Time and manner for exercise of option
- § 4:304 —Who may exercise?
- § 4:305 —Exercising options to renew

## TABLE OF CONTENTS

- § 4:306 — —Covenants as conditions precedent
- § 4:307 — —Formalities: strict compliance ordinarily required
- § 4:308 — —“Sweetheart” leases, federal law
- § 4:309 — —“Sweetheart” leases, state law
- § 4:310 — —Formalities: strict compliance ordinarily required—Conditional exercise of renewal is ineffective
- § 4:311 — — —Compare: inconsequential discrepancies
- § 4:312 — — —Timeliness of notice of exercise
- § 4:313 — — — —Equitable considerations
- § 4:314 — — — —Acceptance of rent after option period
- § 4:315 —Compare: “right of first refusal” to renew
- § 4:316 Options to purchase
- § 4:317 —Certainty of terms essential
- § 4:318 —Legal effect of purchase option
- § 4:319 —Exercising option to purchase; strict adherence
- § 4:320 — —Exception: equity may intervene to avoid forfeiture
- § 4:321 — —Compliance with lease requirements
- § 4:322 — — —Waiver of breach preserves option
- § 4:323 —Specific performance if landlord refuses to perform
- § 4:324 —Compare: “right of first refusal to purchase”
- § 4:325 —Distinguished from option to purchase
- § 4:326 —Result if landlord refuses to perform
- § 4:327 —Landlord cannot defeat tenant’s right to purchase

## VII. RECORDATION

- § 4:328 Generally
- § 4:329 Memoranda of leases
- § 4:330 Modifications
- § 4:331 Effect of recordation: constructive notice of leasehold interest
- § 4:332 —Tenant in possession as constructive notice

## VIII. ENFORCING AGREEMENTS

- § 4:333 Problems of contract interpretation
- § 4:334 —“Four-corners” rule
- § 4:335 —Ordinary and plain meaning
- § 4:336 —Reasonable meaning
- § 4:337 —Interpretation so as to give all parts of contract effect
- § 4:338 —Extrinsic evidence (parol evidence rule)
- § 4:339 Waiver and estoppel limitations

- § 4:340 —“Waiver” and “estoppel” distinguished
- § 4:341 ——Elements of an estoppel
- § 4:342 —Waiver of eviction grounds by accepting rent with knowledge of tenant’s breach
- § 4:343 ——Rent acceptance from unauthorized assignee
- § 4:344 ——Rent acceptance when tenant notified of default
- § 4:345 —Compare: written agreement specifying no waiver
- § 4:346 —Compare: when waiver would violate public policy
- § 4:347 —Compare: whether landlord’s conduct can “create” regulated tenancy
- § 4:348 —Compare: when renewal lease issues in accordance with requirements of regulatory scheme during course of on-going litigation
- § 4:349 —Compare: when renewal lease issues before or after “Golub” notice

## **IX. FORMS**

- § 4:350 Form 4-1: Standard form of apartment lease subject to rent stabilization
- § 4:351 Form 4-2: Disclosure of information on lead-based paint hazards
- § 4:352 Form 4-3: Window guard rider
- § 4:353 Form 4-4: Standard form of store lease
- § 4:354 Form 4-5: Standard form of office lease
- § 4:355 Form 4-6: Standard form of loft lease
- § 4:356 Form 4-7: Rent stabilization lease rider
- § 4:357 Form 4-8: Escalation clause riders
- § 4:358 Form 4-9: “Good Guy” Guaranty
- § 4:359 Form 4-10: Notice disclosing tenants’ rights to reasonable accommodations for persons with disabilities
- § 4:360 Form 4-11 Good cause eviction law notice

## **CHAPTER 5. HOUSING DISCRIMINATION**

### **I. OVERVIEW**

- § 5:1 Housing discrimination prohibited by federal and New York law
- § 5:2 Illegal “discriminatory practices,” defined
- § 5:3 Application of discrimination laws to commercial tenancies

### **II. STATUTORY PROTECTIONS AGAINST HOUSING DISCRIMINATION**

- § 5:4 No specific protection against housing discrimination under common law

TABLE OF CONTENTS

§ 5:5	Constitutional protections
§ 5:6	—United States Constitution
§ 5:7	— —No constitutional guarantee of shelter/housing
§ 5:8	— —Equal protection guaranteed
§ 5:9	— — —Discriminatory impact and intent required to prove equal protection violation
§ 5:10	— — — —Compare: Fair Housing Act
§ 5:11	— — — —Government action versus private action
§ 5:12	— — — —Grounds for upholding state action
§ 5:13	— — — —Promotion of “general welfare” can include protection from discrimination
§ 5:14	— — — —Government “taking” of private property
§ 5:15	— — — —No “taking” when landlord’s reversionary interest and economic return not adversely impacted
§ 5:16	— — — —Other constitutional provisions may relate to housing discrimination
§ 5:17	—New York State Constitution
§ 5:18	— —Equal protection
§ 5:19	— —Promotion of general welfare
§ 5:20	— — —No obligation to zone or build low-income housing to promote general welfare
§ 5:21	— — —Government “taking” of private property
§ 5:22	Federal statutes
§ 5:23	—Fair Housing Act (Title VIII of the Civil Rights Act of 1968)
§ 5:24	— —FHA administered by HUD
§ 5:25	— —Discrimination against specific “protected classes” prohibited
§ 5:26	— — —Economic groups are not protected classes
§ 5:27	— — —Housing construction not compelled
§ 5:28	— — —“Discriminatory housing practices” prohibited
§ 5:29	— — —Refusing to rent or sell to members of protected classes
§ 5:30	— — —Misrepresenting the availability of housing
§ 5:31	— — —Discriminatory advertising
§ 5:32	— — —Failing to provide tenant with services or rights provided to others
§ 5:33	— — —Failing to make housing accessible to disabled persons
§ 5:34	— — —Discriminatory financing policies
§ 5:35	— — —Racial steering
§ 5:36	— — —Exclusionary zoning
§ 5:37	— —The <i>prima facie</i> case
§ 5:38	— —FHA does not require a showing of discriminatory intent

- § 5:39 — — — Establishing discriminatory intent
- § 5:40 — — — Consent is no defense
- § 5:41 — — — Discriminatory effect
- § 5:42 — — — “Good faith” is no defense
- § 5:43 — — — Legitimate justification may provide defense
- § 5:44 — — — Vicarious liability in FHA cases
- § 5:45 — — — FHA exemptions
- § 5:46 — — — Religious organizations
- § 5:47 — — — Private clubs
- § 5:48 — — — Occupancy limits
- § 5:49 — — — Housing for older persons can discriminate against children
- § 5:50 — — — Persons with drug convictions
- § 5:51 — — — Small buildings/owners
- § 5:52 — — — Civil Rights Act of 1866
- § 5:53 — — — No protection based on religion
- § 5:54 — — — Contract rights
- § 5:55 — — — Property rights
- § 5:56 — — — Discriminatory zoning measures prohibited
- § 5:57 — — — Title VI of the Civil Rights Act of 1964
- § 5:58 — — — Rehabilitation Act of 1973
- § 5:59 — — — Compare: Americans with Disabilities Act
- § 5:60 — — — Americans with Disabilities Act of 1990
- § 5:61 — — — ADA prohibits discrimination in “public accommodations”
- § 5:62 — — — Residential apartments are not “public accommodations”
- § 5:63 — — — Dormitories are public accommodations
- § 5:64 — — — Homeless shelters and halfway houses may qualify as public accommodations
- § 5:65 — — — Inns, hotels, and motels are public accommodations
- § 5:66 — — — Some rooming houses are exempt from “public accommodation” categorization
- § 5:67 — — — Violence Against Women Act
- § 5:68 — — — Protections for victims
- § 5:69 — — — Verification of a victim’s status
- § 5:70 — — — New York State statutes
- § 5:71 — — — New York State Human Rights Law
- § 5:72 — — — Discrimination against certain protected classes prohibited
- § 5:73 — — — Compare: federal law
- § 5:74 — — — Compare: New York City law
- § 5:75 — — — “Unlawful discriminatory practices,” defined

TABLE OF CONTENTS

§ 5:76	— — — Refusing to rent or sell to members of protected classes
§ 5:77	— — — Misrepresenting availability of housing
§ 5:78	— — — Discriminatory advertising
§ 5:79	— — — Discriminatory record-keeping
§ 5:80	— — — Failing to provide tenant with services or rights provided to others
§ 5:81	— — — Failing to make housing accessible to disabled persons
§ 5:82	— — — Exclusionary zoning
§ 5:83	— — — Blockbusting
§ 5:84	— — — Retaliation
§ 5:85	— — — Discrimination in financing
§ 5:86	— — — Exception: some age discrimination permitted
§ 5:87	— — — Exemptions from ban on housing discrimination
§ 5:88	— — — Limits on ban against age discrimination
§ 5:89	— — — Exemption for religious organizations
§ 5:90	— — — Discounts to disabled persons permitted
§ 5:91	— — — Discrimination in sale or rental of commercial space also prohibited
§ 5:92	— — — Nursing-home discrimination against the blind prohibited
§ 5:93	— — — State Division of Human Rights administers law
§ 5:94	— — — Concurrent jurisdiction
§ 5:95	— — — New York State Civil Rights Law
§ 5:96	— — — Discriminatory opposition to transfer of cooperative ownership prohibited
§ 5:97	— — — Disabled persons may keep assistance dogs
§ 5:98	— — — Discrimination in public housing prohibited
§ 5:99	— — — Property-related prohibitions: Gen. Oblig. Law § 5-331
§ 5:100	— — — Discrimination against children prohibited: Real Prop. Law § 237-a
§ 5:101	— — — Penalties and remedies
§ 5:102	— — — Prevailing party entitled to attorneys' fees
§ 5:103	— — — Exemptions
§ 5:104	— — — Child-bearing restrictions prohibited: Real Prop. Law § 237
§ 5:105	— — — New York City statutes
§ 5:106	— — — New York City Human Rights Law
§ 5:107	— — — Commission on Human Rights administers New York City Human Rights Law
§ 5:108	— — — New York City bans housing discrimination against more protected classes than federal or state law

- § 5:109 — — — Compare: federal law
- § 5:110 — — — Compare: New York State law
- § 5:111 — — — Discriminatory housing practices prohibited
- § 5:112 — — — Refusing to rent or sell to members of protected classes
- § 5:113 — — — Failing to provide buyer or tenant with services or rights provided to others
- § 5:114 — — — Discriminatory advertising
- § 5:115 — — — Discriminatory record-keeping
- § 5:116 — — — Blockbusting
- § 5:117 — — — Discriminatory-lending practices
- § 5:118 — — — Retaliation
- § 5:119 — — — Exemptions from housing-discrimination ban
- § 5:120 — — — Private-home rentals
- § 5:121 — — — Minors as applicants
- § 5:122 — — — Senior-citizen housing
- § 5:123 — — — Religious organizations
- § 5:124 — — — Application to commercial property
- § 5:125 Other local housing-discrimination laws

### **III. PROTECTED CATEGORIES UNDER FEDERAL AND STATE LAW**

- § 5:126 Introductory considerations
- § 5:127 Race
- § 5:128 — *Prima facie* racial-discrimination claim
- § 5:129 — *Prima facie* case of housing discrimination
- § 5:130 — DHCR enforces integration in Mitchell-Lama housing
- § 5:131 — Racially discriminatory advertising
- § 5:132 — Pressure to sell only to particular racial group may not amount to racial steering
- § 5:133 — Concentrating homeless shelters in minority communities not discriminatory when there is no discriminatory effect
- § 5:134 Religion
- § 5:135 — Example: religious harassment by neighbor did not constitute housing discrimination
- § 5:136 — Example: installation of electric locks not deemed housing discrimination against orthodox Jewish tenants
- § 5:137 — Example: public-housing authority cannot use religious preference as basis for tenant location
- § 5:138 National origin/ancestry
- § 5:139 — Example: *prima facie* case

TABLE OF CONTENTS

- § 5:140 —Example: market plan did not discriminate against Hispanics
- § 5:141 —No discriminatory conduct found when applicant failed to comport with apartment-interview procedures
- § 5:142 Gender
- § 5:143 —Discrimination on the basis of gender identity or expression
- § 5:144 —Compare: sexual orientation
- § 5:145 —Sexual harassment constitutes gender discrimination
- § 5:146 ——“Sexual harassment” in housing situations, defined
- § 5:147 —“Same-sex” harassment
- § 5:148 —Compare: same-sex composition of family unit
- § 5:149 Family/marital status
- § 5:150 —FHA bars “familial status” discrimination against individuals with children
- § 5:151 ——Compare: similar definitions under New York laws
- § 5:152 ——FHA includes “single person” in “family” definition
- § 5:153 —New York laws prohibit discrimination based on marital status
- § 5:154 ——Examples of laws prohibiting discrimination based on marital status
- § 5:155 ——Compare: New York State bars discrimination based on sexual orientation
- § 5:156 —Exception: senior-housing exemptions
- § 5:157 —Statewide rent-regulations permit tenant succession by nontraditional “family members”
- § 5:158 ——“Family member,” defined
- § 5:159 ——Criteria for nontraditional family member designation
- § 5:160 —Exclusionary zoning and family composition
- § 5:161 Age
- § 5:162 —Exception: senior-housing exemptions
- § 5:163 ——“Senior housing,” defined
- § 5:164 —Additional protections against eviction of elderly
- § 5:165 ——Restrictions on landlord’s recovery of rent-regulated apartments occupied by senior citizens
- § 5:166 ——Rent-stabilization restriction on eviction of tenants temporarily residing in nursing homes
- § 5:167 ——Compare: senior citizens relocating to adult-care facilities can terminate residential leases
- § 5:168 —Religious exemption from fair-housing rules does not permit unwarranted age discrimination

- § 5:169 Disability
- § 5:170 —Compare: definitions of “disability” or “handicap”
- § 5:171 —Under federal law
- § 5:172 —Exceptions to FHA coverage
- § 5:173 —Under state law
- § 5:174 —Under New York City law
- § 5:175 —Limitation on definition of disability for alcohol/drug addiction
- § 5:176 —Reasonable accommodation for disabled required
- § 5:177 —Reasonable accommodation claims
- § 5:178 —Reasonable accommodation for disabled required—Example: reasonable accommodation of tenant-employee with AIDS
- § 5:179 —Example: reasonable accommodation and handicapped parking
- § 5:180 —No-pet clauses and reasonable accommodation
- § 5:181 —Construction standards for new housing accommodations
- § 5:182 —Disability discrimination and maximum occupancy limits
- § 5:183 —People with AIDS protected against discriminatory practices
- § 5:184 —Application of fair-housing laws to claims of disability discrimination

#### **IV. ADDITIONAL PROTECTED CATEGORIES UNDER NEW YORK CITY LAW**

- § 5:185 Sexual orientation
- § 5:186 Partnership status
- § 5:187 Lawful occupation
- § 5:188 Lawful source of income
- § 5:189 Immigration or citizenship status

#### **V. PROTECTIONS AGAINST EXCLUSIONARY ZONING**

- § 5:190 Exclusionary zoning is unlawful
- § 5:191 Balance required within municipality as a whole
- § 5:192 Test for determining validity of zoning ordinance

#### **VI. REMEDIES FOR HOUSING DISCRIMINATION**

- § 5:193 Under federal law
- § 5:194 —Aggrieved party may file administrative complaint
- § 5:195 —Aggrieved party may commence civil action

TABLE OF CONTENTS

§ 5:196	—Statute of limitations
§ 5:197	—Under FHA
§ 5:198	—Compare: no statute of limitations applied to Attorney General's injunctive-relief claim
§ 5:199	—Vicarious liability in FHA cases
§ 5:200	—Under Civil Rights Act of 1866
§ 5:201	—Standing to sue
§ 5:202	—Plaintiff must allege “injury in fact”
§ 5:203	—Municipality can sue brokers for racial steering
§ 5:204	—Tenant-counseling organization may sue when resources expended to stem discriminatory practices
§ 5:205	—Developers affected by zoning ordinance can sue
§ 5:206	—Hotel association lacked standing to sue on behalf of disabled residents
§ 5:207	—Nonminority plaintiffs lack standing when no loss of associational benefits demonstrated
§ 5:208	—Who can be sued
§ 5:209	—Exception: no individual right of action against HUD
§ 5:210	—Attorney General has standing to sue
§ 5:211	—Available relief
§ 5:212	—Injunctive relief: likelihood of success and balancing of hardships required
§ 5:213	—Punitive damages available
§ 5:214	—Criteria for imposing punitive damages
§ 5:215	—Prevailing plaintiff may be awarded attorneys' fees and costs
§ 5:216	—Exception: no fees recoverable in administrative proceedings brought by private parties
§ 5:217	—Penalties
§ 5:218	Under New York State law
§ 5:219	—Aggrieved party may file administrative complaint
§ 5:220	—Aggrieved party may commence civil action
§ 5:221	—Statute of limitations
§ 5:222	—Standing to sue
§ 5:223	—Example: white prospective tenant with African-American roommate can sue for racial discrimination
§ 5:224	—Commercial plaintiffs have standing to sue
§ 5:225	—Cooperative apartment seller could sue based on alleged discrimination against prospective buyer
§ 5:226	—Available relief
§ 5:227	—Punitive damages limited to \$10,000 per plaintiff

- § 5:228 — —Example: \$30,000 in punitive damages awarded
- § 5:229 — —Example: preliminary injunction granted to prospective purchaser of commercial space based on disability discrimination
- § 5:230 Under New York City law
- § 5:231 — Aggrieved party may file administrative complaint
- § 5:232 — Aggrieved party may commence civil action
- § 5:233 — Statute of limitations
- § 5:234 — Standing to sue
- § 5:235 — Available relief
- § 5:236 — —Injunctive relief
- § 5:237 — — —Stay of eviction proceedings
- § 5:238 — —Civil penalties
- § 5:239 — —Criminal penalties

## VII. FORMS

- § 5:240 Form 5-1: Legal apartment application
- § 5:241 Form 5-2: Federal complaint for declaratory judgment, injunctive relief and damages
- § 5:242 Form 5-3: State division of human rights complaint
- § 5:243 Form 5-4: New York City Human Rights Commission Complaint
- § 5:244 Form 5-5: U.S. Department of House and Urban Development, Certification of Domestic Violence, Dating Violence, or Stalking

## CHAPTER 6. AMOUNT OF RENT

### I. AGREEMENT TO PAY RENT

- § 6:1 Payment of rent
- § 6:2 Place of payment
- § 6:3 Application of payments
- § 6:4 —Partial rent tenders may be rejected
- § 6:5 Time for payment
- § 6:6 —Parties may agree to advance rent payment
- § 6:7 —Effect of Saturday, Sunday, or holiday due date
- § 6:8 Acceleration of payment
- § 6:9 Enforceability of acceleration agreement based on rent
- § 6:10 —Acceleration based on some other breach of lease may not be valid
- § 6:11 —Effect of lease termination on rent acceleration
- § 6:12 Mode and medium of rent
- § 6:13 —Percentage rents
- § 6:14 —Rent payment by electronic-funds transfer

## TABLE OF CONTENTS

- § 6:15 Modification or waiver as to time, place, or method of payment
- § 6:16 Receipt for payment of rent
- § 6:17 —No penalty for failure to provide rent receipt

## II. AMOUNT OF RENT UNDER RENT CONTROL

- § 6:18 “Maximum rent” system
- § 6:19 —Maximum rents set by DHCR for previously unregistered units
- § 6:20 Additional rent adjustments under rent control

## III. AMOUNT OF RENT UNDER RENT STABILIZATION

- § 6:21 Legal regulated rent
- § 6:22 Additional rent adjustments under rent stabilization
- § 6:23 Lease must reflect legal rent
- § 6:24 New landlord must obtain rent history

# CHAPTER 7. SECURITY DEPOSITS

## I. NEW YORK GENERAL OBLIGATIONS LAW

- § 7:1 Generally
- § 7:2 “Security deposit,” defined
- § 7:3 —Security deposit is not rent
- § 7:4 —Security deposit is a “substantial obligation of the tenancy”
- § 7:5 —Landlord’s application of security deposit to rent arrears may not cure default
- § 7:6 Security deposit, formerly treated as debt, is now held in trust
- § 7:7 Landlord’s claim to security deposit given priority over other creditors
- § 7:8 Commingling of funds prohibited
- § 7:9 —Deposit of security funds into interest-bearing account not always required
- § 7:10 —Commingling constitutes conversion and may entitle tenant to immediate refund of security deposit
- § 7:11 —Commingling may be corrected
- § 7:12 —Tenant’s breach of lease does not relieve landlord of its duty to maintain segregated security deposit account
- § 7:13 —Example: landlord must return commingled security deposit even when tenant has allegedly repudiated lease

- § 7:14 —Landlord may use security deposit to offset damages
- § 7:15 ——Any excess must be returned to tenant
- § 7:16 Transfer of security deposits upon conveyance of real property
- § 7:17 —New owner generally assumes liability when security deposits are transferred
- § 7:18 —Failure to transfer is a misdemeanor
- § 7:19 —Express conveyance of security deposits required
- § 7:20 Refund of security deposit upon termination of tenancy
- § 7:21 —Refund of security when stipulation of settlement is silent
- § 7:22 —Effect of constructive eviction
- § 7:23 —Effect of breach of warranty of habitability
- § 7:24 Landlord entitled to offsets against security deposits
- § 7:25 —Residential tenant's right to inspection
- § 7:26 —Residential tenant's right to repair damage
- § 7:27 —Security deposit can serve as offset only to extent of damages
- § 7:28 ——Accord and satisfaction
- § 7:29 —Timing of security deposit refund
- § 7:30 —Tenant may not offset rent arrears against security deposit
- § 7:31 ——Interest owed on security monies no defense to rent nonpayment
- § 7:32 ——Accrued interest on security deposit need not be applied to supplemental security owed by tenant
- § 7:33 ——An exception exists when lease and statutory requirements are violated
- § 7:34 —Exceptions to landlord's right to withhold
- § 7:35 “Prepaid rent” must also be held in trust
- § 7:36 —Example: prepaid rent must be transferred to receiver

## II. ADDITIONAL RULES FOR RESIDENTIAL SECURITY DEPOSITS

- § 7:37 Generally
- § 7:38 Security deposit must be held in an interest-bearing account in a New York state bank
- § 7:39 —Exception: fewer than six dwelling units
- § 7:40 —Written notice to tenant required
- § 7:41 ——Effect of violation of notice provisions
- § 7:42 —Landlord entitled to administrative fee
- § 7:43 —Annual interest payments
- § 7:44 —Attorney General has standing to sue

TABLE OF CONTENTS

- § 7:45 Liability of new landlord for security deposits of non-rent-stabilized tenants: N.Y. Gen. Oblig. Law § 7-108
- § 7:46 —Liability not absolute; “actual knowledge” of security deposit required
- § 7:47 ——“Actual knowledge,” defined
- § 7:48 —New landlord must notify tenant when there is no record of security deposit
- § 7:49 ——Purchaser can demand escrow account from seller
- § 7:50 Additional restrictions on security deposits of rent-controlled tenants
- § 7:51 —Maximum amount of security deposit
- § 7:52 —Deposit in interest-bearing New York State bank account required; one-percent administrative fee permitted
- § 7:53 —Liability of new landlord for security deposits of rent-controlled tenants
- § 7:54 —Civil remedy to recover security deposits: N.Y. Gen. Oblig. Law § 7-105
- § 7:55 —Collection of excess security deposit constitutes rent overcharge
- § 7:56 Additional restrictions on security deposits of rent-stabilized tenants
- § 7:57 —Amount of security deposit generally limited to one month’s rent
- § 7:58 ——Exception: larger deposit on base date
- § 7:59 ——Exception: no security deposit upon lease renewal when none collected initially
- § 7:60 —Tenant’s options regarding disbursement of interest
- § 7:61 —Administrative fee
- § 7:62 —Deposit in a New York State bank
- § 7:63 —Liability for security deposit upon conveyance of property
- § 7:64 ——Receiver’s liability is limited
- § 7:65 ——Waiver of benefit void
- § 7:66 ——Effective date
- § 7:67 —“Rent Stabilization Lease Rider” must state security deposit rules
- § 7:68 —DHCR can decide excess security deposit claim
- § 7:69 Security deposit protection for manufactured-home park tenants
- § 7:70 Provision of security deposit for tenants receiving public assistance

**III. COMPARE: “DEPOSIT” PENDING APPROVAL OF TENANT**

- § 7:71 Withdrawal of offer prior to landlord’s acceptance

## CHAPTER 8. DELIVERY AND SURRENDER OF POSSESSION

### I. LANDLORD'S OBLIGATION TO TENDER POSSESSION

- § 8:1 Implied duty to deliver possession
- § 8:2 —Provision for delayed possession
- § 8:3 Delivery of possession
- § 8:4 —Condition of commercial premises
- § 8:5 —Condition of residential premises
- § 8:6 —Exclusive possessory rights during tenancy term
- § 8:7 —Permissible occupants in residential premises
- § 8:8 ——Leases entered into by one tenant
- § 8:9 ——Leases entered into by two or more tenants
- § 8:10 Tenant's failure to take physical possession
- § 8:11 —Exception for statutory tenants
- § 8:12 ——Rent-controlled tenants
- § 8:13 ——Rent-stabilized tenants

### II. TENANT'S REMEDIES FOR LANDLORD'S FAILURE TO TENDER POSSESSION AND DEPRIVATIONS OF POSSESSION

- § 8:14 Statutory remedies
- § 8:15 —Rescission
- § 8:16 —Recovery of consideration
- § 8:17 —Damages
- § 8:18 Actions to compel delivery of possession
- § 8:19 —Ejectment
- § 8:20 —Availability of specific performance, injunctive, and declaratory relief
  - § 8:21 ——Specific performance
  - § 8:22 ——Injunctive and declaratory relief
- § 8:23 Damages
- § 8:24 —Lost profits for tenants never in possession
- § 8:25 —Contract damages

### III. DEPRIVATIONS OF POSSESSION

- § 8:26 Breach of warranty of habitability
- § 8:27 —General considerations
- § 8:28 ——Warranty of habitability applies to residential premises only
  - § 8:29 ——Applicable standards

TABLE OF CONTENTS

- § 8:30 —Remedies and damages
- § 8:31 ——Rent abatements
- § 8:32 ——Compensatory damages
- § 8:33 ——Punitive damages
- § 8:34 ——Attorney's fees
- § 8:35 Constructive eviction
- § 8:36 —Abandonment required
- § 8:37 —Partial constructive eviction
- § 8:38 Illegal lockouts
- § 8:39 —Liability for treble damages
- § 8:40 —“Self-help” generally prohibited
- § 8:41 —Compare: use of “self-help” to evict non-tenants

**IV. TENANT'S OBLIGATION TO SURRENDER  
POSSESSION TO LANDLORD**

- § 8:42 Termination of lease
- § 8:43 —Duty to remove all occupants
- § 8:44 —Renewals and extensions, generally
- § 8:45 —Tenants holding over after expiration of their term
- § 8:46 ——Landlord's right to terminate month-to-month tenancies
- § 8:47 —Liability for use and occupancy
- § 8:48 ——Use and occupancy distinguished from rent
- § 8:49 ——Computation of use and occupancy
- § 8:50 Authority to surrender possession
- § 8:51 Surrender of possession prior to lease expiration
- § 8:52 —Surrender upon destruction of leased premises
- § 8:53 —Surrender upon tenant's entering military service
- § 8:54 —Surrender upon tenant's entering adult care facility, senior or subsidized housing, or to relocate to family member's residence
- § 8:55 Landlord's duty to mitigate damages upon surrender
- § 8:56 —Commercial premises
- § 8:57 —Residential premises
- § 8:58 Tenant's liability for double rent
- § 8:59 Termination based upon tenant's violation of lease terms or statute
- § 8:60 —Termination of rent-regulated tenancies
- § 8:61 —Time periods for termination or surrender of possession pursuant to lease
- § 8:62 Tenant's death
- § 8:63 —Compare: rent-controlled tenancies
- § 8:64 —Procedure for recovery of possession upon tenant's death

§ 8:65 ——Compare: joinder of tenant's estate in holdover proceedings

§ 8:66 ——Compare: joinder of tenant's estate when lease has expired

APPENDIX 8:1. Civil Court Directives, Ejectment Actions in Civil Court, Civil Court of the City of New York (10/02/96)

## CHAPTER 9. WARRANTY OF HABITABILITY

### I. OVERVIEW

- § 9:1 Introduction
- § 9:2 Common-law antecedents
- § 9:3 Legislative history
- § 9:4 Judicial construction
- § 9:5 Modification and waiver void
- § 9:6 —Exculpatory lease clauses
- § 9:7 —Stipulations

### II. TENANTS PROTECTED BY WARRANTY

- § 9:8 Residential tenants and lessees protected by warranty
- § 9:9 —Cooperative shareholders
- § 9:10 —Government-subsidized housing
- § 9:11 —Loft tenants
- § 9:12 —Manufactured-home park tenants
- § 9:13 —Section 8 tenants
- § 9:14 —Subtenants
- § 9:15 Tenants' licensees not covered
- § 9:16 Holdover tenants not covered
- § 9:17 Tenants out-of-possession not covered
- § 9:18 —Non-residents have other remedies
- § 9:19 Condominium-unit owners not covered
- § 9:20 —Condominium-unit owners have other remedies
- § 9:21 Commercial tenants not covered
- § 9:22 —Commercial tenants have other remedies

### III. LANDLORDS SUBJECT TO WARRANTY

- § 9:23 Applicability of warranty
- § 9:24 —Bankruptcy trustees
- § 9:25 —Cooperative-apartment corporations
- § 9:26 —Loft-building owners

## TABLE OF CONTENTS

- § 9:27 —Manufactured-home park owners and operators
- § 9:28 —Municipal or government lessors
- § 9:29 ——Notice of claim against government and municipal landlords
- § 9:30 —Receivers
- § 9:31 —7-A administrators
- § 9:32 Condominium associations and board of managers not covered
- § 9:33 —Other claims available

## IV. CONDITIONS CONSTITUTING A BREACH

- § 9:34 Generally
- § 9:35 —Air conditioning
- § 9:36 —Asbestos
- § 9:37 —Carbon-monoxide detectors
- § 9:38 —Certificate of occupancy
- § 9:39 —Common areas
- § 9:40 ——Snow removal
- § 9:41 —Doorknobs
- § 9:42 —Elevator service
- § 9:43 —Fire-detection equipment
- § 9:44 —Floor tiles
- § 9:45 —Garbage
- § 9:46 —Hall carpets
- § 9:47 —Heat and hot water
- § 9:48 —Illumination
- § 9:49 —Infestation
- § 9:50 ——Bed bugs
- § 9:51 —Kitchen cabinets
- § 9:52 —Lead-based paint
- § 9:53 —Leaks and water damage
- § 9:54 —Light and ventilation
- § 9:55 —Maintenance and construction
- § 9:56 —Mold
- § 9:57 —Noise disturbances
- § 9:58 ——Construction activities
- § 9:59 ——Mechanical equipment/commercial tenant
- § 9:60 ——Neighboring tenants
- § 9:61 ——Pets
- § 9:62 —Offensive fumes and odors
- § 9:63 —Package-room service
- § 9:64 —Painting
- § 9:65 —Plumbing
- § 9:66 —Radiator covers

- § 9:67 —Security
- § 9:68 —Apartment-door lock
- § 9:69 —Building lock and buzzers
- § 9:70 —Drug-dealing neighbors
- § 9:71 —Thefts and burglaries
- § 9:72 —Sewage leaks and spills
- § 9:73 —Smoke detectors
- § 9:74 —Soap dishes
- § 9:75 —Terraces
- § 9:76 —Water service
- § 9:77 —Window blinds
- § 9:78 —Window guards

## **V. MITIGATING FACTORS**

- § 9:79 Tenant's misconduct
- § 9:80 Strike or labor dispute
- § 9:81 Prior agency determinations

## **VI. PROCEDURE AND EVIDENCE**

- § 9:82 Statute of limitations
- § 9:83 Jurisdiction
- § 9:84 —Supreme Court
- § 9:85 —County Court
- § 9:86 —New York City Civil Court
- § 9:87 —District and City Courts
- § 9:88 —Justice Court
- § 9:89 —New York City Loft Board
- § 9:90 —State Division of Housing and Community Renewal (“DHCR”)
- § 9:91 Defensive or offensive application
- § 9:92 —Compare: amount of counterclaim capped by amount of rent sought in nonpayment proceeding
- § 9:93 —Counterclaims: effect of waiver clauses
- § 9:94 —Compare: holdover tenants
- § 9:95 Jury-waiver clauses: effect
- § 9:96 Pleading requirements
- § 9:97 —Notice to landlord
- § 9:98 Evidence
- § 9:99 —Code violations
- § 9:100 —Government records
- § 9:101 —Public records: judicial notice

## **VII. REMEDIES**

- § 9:102 Generally

## TABLE OF CONTENTS

- § 9:103 Damages: how measured
- § 9:104 Damages: expert testimony not required
- § 9:105 Injunctive relief
- § 9:106 Money damages
- § 9:107 —“Rent abatement,” defined
- § 9:108 —“Repair and deduct”
- § 9:109 —Compare: damages for personal property
- § 9:110 —Damages for personal injury
- § 9:111 ——Counterclaim severance: summary proceedings
- § 9:112 Punitive damages
- § 9:113 Nominal damages
- § 9:114 Attorneys’ fees
- § 9:115 Interest
- § 9:116 Costs

# CHAPTER 10. RIGHTS AND OBLIGATIONS OF THE TENANCY

## I. HISTORICAL PERSPECTIVE AND OVERVIEW

- § 10:1 Background
- § 10:2 —Nature of parties’ agreement must be ascertained
- § 10:3 Covenants governing lease
- § 10:4 —“Express” covenants
- § 10:5 —“Implied” covenants
- § 10:6 ——Impact of statutory obligations
- § 10:7 “Independent” and “dependent” covenants distinguished
- § 10:8 —“Dependent” covenants: performance is condition precedent to recovery
- § 10:9 —“Independent” covenants: performance required despite breach
- § 10:10 Mutual covenants
- § 10:11 —Implied covenant of good faith and fair dealing
- § 10:12 —Unconscionable lease clauses are void
- § 10:13 —Unconscionability requires finding of “procedural” and “substantive” overreaching
- § 10:14 ——Procedural unconscionability
- § 10:15 ——Substantive unconscionability
- § 10:16 ——“Fiscal imprudence” is no defense
- § 10:17 ——Liquidated damages
- § 10:18 ——Lease clauses purporting to waive certain statutory rights are unconscionable
- § 10:19 ——Right to have security deposit held in trust
- § 10:20 ——Warranty of habitability

- § 10:21 ——Right to sublease or assign an apartment
- § 10:22 ——Exculpatory clauses
- § 10:23 ——Prohibitions against bankruptcy filing  
invalid
- § 10:24 ——Waiver of rent regulations invalid

## II. A LANDLORD'S OBLIGATIONS AND TENANT'S REMEDIES

- § 10:25 Landlord's duty to deliver full possession
- § 10:26 —Nature and scope of duty
- § 10:27 —Duty to deliver possession extends to assignee of  
tenant
- § 10:28 —Establishing breach
- § 10:29 —Remedies available for landlord's failure to deliver  
possession
- § 10:30 —Right of rescission
- § 10:31 —“Loss of the bargain”
- § 10:32 —Recovery of lost profits
- § 10:33 —Summary proceeding to acquire possession from  
holdover tenant
- § 10:34 —Summary proceeding to dispossess a squatter
- § 10:35 —“Self-help” to remove squatter
- § 10:36 —Equitable relief may not be available
- § 10:37 —Tenant's waiver of breach
- § 10:38 Implied covenant of quiet enjoyment
- § 10:39 —Scope of duty
- § 10:40 —Establishing breach
- § 10:41 —“Actual eviction,” defined
- § 10:42 —“Constructive eviction,” defined
- § 10:43 —Conduct giving rise to breach on grounds of  
constructive eviction
- § 10:44 ——Violation of restrictive-use lease covenants
- § 10:45 ——Violations of health and safety codes and  
administrative regulations
- § 10:46 —Wrongful act by landlord is necessary element of  
any breach claim
- § 10:47 —Tenant's remedies
- § 10:48 —Remedies against landlord
- § 10:49 ——Suspension of rental obligation
- § 10:50 ——Consequential damages
- § 10:51 ——Punitive damages
- § 10:52 ——Action for “private nuisance”
- § 10:53 ——Action for injunctive relief
- § 10:54 ——Remedies against third-parties

TABLE OF CONTENTS

§ 10:55	—Tenant must comply with all lease conditions
§ 10:56	Landlord's duties regarding condition of premises
§ 10:57	—Commercial leases
§ 10:58	— —Duty to maintain premises over which landlord retains control
§ 10:59	— —Establishing breach
§ 10:60	— —Remedies for breach
§ 10:61	— — —No suspension of rent, absent abandonment
§ 10:62	— — —Surrender of possession
§ 10:63	— — —Waiver enforceable
§ 10:64	— — —Equitable relief not available
§ 10:65	—Residential tenancies: warranty of habitability
§ 10:66	— —Distinct and independent nature of protection
§ 10:67	— — —Government landlords held to same standard
§ 10:68	— — —Protections extended to co-ops, but not to condominiums
§ 10:69	— —Establishing a statutory violation
§ 10:70	— — —Premises must be fit for human habitation and serve their intended residential function
§ 10:71	— — —Premises must be free of patent or latent defects
§ 10:72	— — —Violations of health and safety codes
§ 10:73	— —Residential tenants' remedies
§ 10:74	— — —Right to withhold rent and/or to seek set-off
§ 10:75	— — —Punitive damages
§ 10:76	— — —Equitable relief
§ 10:77	— — —Preliminary injunctive relief may be available to tenant threatened with eviction
§ 10:78	— — —Special proceedings may be maintained
§ 10:79	— — —Surrender of tenancy
§ 10:80	— —Property-damage recovery under the statute, generally
§ 10:81	— —Tenant's waiver of breach
§ 10:82	Landlord's covenant to maintain and repair premises during tenancy term
§ 10:83	—Commercial leases
§ 10:84	— —Establishing breach
§ 10:85	— —Commercial tenant's remedies in tort
§ 10:86	—Residential leases
§ 10:87	— —Statutory duty of multiple-dwelling owners to perform repairs
§ 10:88	— —Loft tenants may invoke statutory protections of Multiple Dwelling Law
§ 10:89	— —New York City tenants in premises formerly used for manufacturing and warehouse purposes are further protected from harassment

- § 10:90 ——“Harassment,” defined
- § 10:91 —Establishing breach
- § 10:92 ——Residential landlord has nondelegable duty to comply with statutes and regulations
- § 10:93 ——Application of duties to government landlords
- § 10:94 ——Monetary damages for residential tenants
- § 10:95 ——“Economic infeasibility” defense, generally
- § 10:96 ——Evidence required to establish defense
- § 10:97 ——Pertinence of landlord’s “clean hands”
- § 10:98 ——In the residential context
- § 10:99 ——The “marine rule,” generally

### **III. THE TENANT’S OBLIGATION AND THE LANDLORD’S REMEDIES**

- § 10:100 Tenant’s obligation to use and occupy
- § 10:101 —Percentage leases
- § 10:102 —Rent regulations govern occupancy requirements
- § 10:103 Remedies of landlord for abandonment or early termination of tenancy
- § 10:104 —General rule upon tenant’s abandonment
- § 10:105 —No duty to mitigate damages in commercial context
- § 10:106 —Duty to mitigate damages in the residential context
- § 10:107 —Conflict as to duty to mitigate damages in the residential context—“Mitigation of injury,” defined
- § 10:108 Duty to pay rent
- § 10:109 —“Use and occupancy” distinguished
- § 10:110 —Nature and scope of duty to pay rent
- § 10:111 —Duty to pay rent is relieved in very few circumstances
- § 10:112 ——Duration of obligation to pay rent
- § 10:113 ——When landlord accepts lease repudiation, rent obligation terminates
- § 10:114 —Due date of rent
- § 10:115 —Remedies for breach
- § 10:116 ——Nonpayment proceeding to recoup unpaid rent
- § 10:117 ——Terminating tenancy upon failure to cure and commencing holdover proceeding
- § 10:118 ——*Yellowstones* discouraged for nonpayment of rent
- § 10:119 ——Compare: availability of post-judgment cure in residential context in New York City

## TABLE OF CONTENTS

§ 10:120	— — —Enforceability of conditional limitation for nonpayment of rent
§ 10:121	— — —Enforceable in commercial context
§ 10:122	— — —Unenforceable in both residential and commercial contexts
§ 10:123	— —Landlord's remedies when tenant holds over
§ 10:124	— —Bankruptcy of tenant
§ 10:125	Duty to use premises for legal purposes
§ 10:126	—Nature and scope of duty
§ 10:127	—Landlord's remedies
§ 10:128	—No waiver by landlord
§ 10:129	Duty not to commit or permit waste
§ 10:130	—Establishing waste
§ 10:131	— —Elements of waste claim
§ 10:132	— —Tenant's failure to make proper repairs
§ 10:133	— —No liability when alterations are permitted or are consistent with the intended use
§ 10:134	— — —Life tenant's compliance with certain statutory requirements precludes liability for waste
§ 10:135	— —Failure to pay property taxes, mortgage payments, insurance, and utilities may amount to waste
§ 10:136	— —No liability for waste when landlord explicitly or implicitly consents to alteration
§ 10:137	—Parties with standing
§ 10:138	— —Availability of monetary damages
§ 10:139	Duty of tenant to make repairs in absence of express covenant or statutory duty
§ 10:140	—Remedies for tenant's breach of the duty to repair
§ 10:141	— —Plenary action for money damages

## IV. OTHER RIGHTS AND DUTIES OF PARTIES

§ 10:142	Assignment and subletting
§ 10:143	—Assignments and subleases distinguished
§ 10:144	—Tenant's right to assign or sublet
§ 10:145	— —Commercial leases
§ 10:146	— —Residential-tenant's rights
§ 10:147	— — —Subletting requirements for tenants in buildings with four or more residential units
§ 10:148	— — — —“Reasonableness” of landlord's information request examined
§ 10:149	— — —Effect of emergency rent-laws
§ 10:150	— — — —“Sweetheart” provisions permitting unlimited assignments or subleases of regulated units are void and unenforceable

- § 10:151 ——Certain residential tenancies are not afforded statutory right to sublet
- § 10:152 —Liability of bankrupt tenant upon assignment
- § 10:153 Rights of parties regarding “fixtures”
- § 10:154 —“Trade fixtures,” defined
- § 10:155 —Tenant’s right to remove “trade fixtures”
- § 10:156 —Compensation for trade fixtures
- § 10:157 Impact of condemnation by “eminent domain”
- § 10:158 —“Eminent domain,” defined
- § 10:159 —Procedures followed
- § 10:160 —Effect on tenant’s obligation to pay rent
- § 10:161 —Tenant’s right to receive compensation when premises condemned

## CHAPTER 11. RENT REGULATION

### I. OVERVIEW

- § 11:1 Rent control and rent stabilization
- § 11:2 —Rent control
- § 11:3 —Rent stabilization
- § 11:4 Purpose
- § 11:5 Constitutionality
- § 11:6 Jurisdiction and venue
- § 11:7 —New York State Homes and Community Renewal (“NYSHCR”) formerly New York State Division of Housing and Community Renewal (“DHCR”)
- § 11:8 —New York State Division of Housing and Community Renewal (“DHCR”)—Administrative determinations by DHCR
- § 11:9 ——Two levels of administrative review
- § 11:10 ——PARs to be decided within 90 days
- § 11:11 ——Expedited proceedings
- § 11:12 ——Judicial review
- § 11:13 ——DHCR rulings are upheld if reasonable
- § 11:14 ——Judicial review of PAR “deemed denied”
- § 11:15 —Courts retain exclusive jurisdiction over certain rent-regulation issues
- § 11:16 ——Primary residence
- § 11:17 ——Exception: DHCR determines primary-residence disputes for rent-controlled units outside New York City
- § 11:18 ——Rent overcharge of rent-controlled tenants
- § 11:19 —Concurrent jurisdiction
- § 11:20 ——Rent-overcharge issues

## TABLE OF CONTENTS

- § 11:21 — — —Conflicting opinion on procedure
- § 11:22 — — Attorney General has standing to sue for practices that violate rent-regulation laws
- § 11:23 — — —“Primary jurisdiction” doctrine no bar to Attorney General action

## II. GOVERNING STATUTES AND REGULATIONS

- § 11:24 Enabling legislation
- § 11:25 —Emergency Housing Rent Control Law
- § 11:26 —Local Emergency Housing Rent Control Act
- § 11:27 —Vacancy Decontrol Law
- § 11:28 —Emergency Tenant Protection Act of 1974
- § 11:29 —Omnibus Housing Act of 1983
- § 11:30 —Rent Regulation Reform Act of 1993
- § 11:31 —Rent Regulation Reform Act of 1997
- § 11:32 —Rent Act of 2011, Rent Act of 2015, and the Housing Stability and Tenant Protection Act of 2019
- § 11:33 Rent-control statutes
- § 11:34 —Emergency Housing Rent Control Law
- § 11:35 —New York City Rent and Rehabilitation Law
- § 11:36 Rent-stabilization statutes
- § 11:37 —Emergency Tenant Protection Act of 1974
- § 11:38 —New York City Rent Stabilization Law
- § 11:39 Regulations
- § 11:40 —State Rent and Eviction Regulations
- § 11:41 —New York City Rent and Eviction Regulations
- § 11:42 —Emergency Tenant Protection Regulations
- § 11:43 —Rent Stabilization Code
- § 11:44 — —History of prior code
- § 11:45 Related statutes
- § 11:46 —Urstadt Law
- § 11:47 —N.Y. Real Property Tax Laws § 421-a, § 421-g, and § 485-x
- § 11:48 —New York City Administrative Code § 11-244
- § 11:49 —New York City Loft Law
- § 11:50 Are rent-regulated tenancies statutory or contractual

## III. COVERAGE

- § 11:51 Extent of rent regulation statewide
- § 11:52 —1947 to 1969: rent control only
- § 11:53 —1969: rent stabilization introduced in New York City
- § 11:54 —1971: vacancy decontrol
- § 11:55 —1974: rent stabilization reinstated statewide

- § 11:56      Rent-control coverage
- § 11:57      —No “ignorance” exception
- § 11:58      —Buildings with three or more units covered
- § 11:59      ——“Housing accommodations,” defined
- § 11:60      ——Other units may be subject to coverage
- § 11:61      ——No rent-control coverage for ancillary non-residential space
- § 11:62      —Municipalities subject to rent control
- § 11:63      —Statutory exemptions from rent-control coverage
- § 11:64      ——Furnished rooms
- § 11:65      ——Government-operated and subsidized housing
- § 11:66      ——Hotel accommodations
- § 11:67      ——Motor courts and tourist homes
- § 11:68      ——Municipalities exempt from rent control
- § 11:69      ——Not-for-profit institutions
- § 11:70      ——Other exemptions
- § 11:71      Rent-stabilization coverage
- § 11:72      —“Housing accommodations,” defined
- § 11:73      ——Units covered outside New York City
- § 11:74      ——Units covered within New York City
- § 11:75      ——“Class A multiple dwelling,” defined
- § 11:76      ——“Example: rooming house qualified as Class A multiple dwelling
- § 11:77      ——“Garden-apartment complexes
- § 11:78      ——“Class B multiple dwelling,” defined
- § 11:79      ——Application to hotels
- § 11:80      ——Units covered under tax-benefit programs
- § 11:81      ——“421-a” new construction program
- § 11:82      ——“423” redevelopment program
- § 11:83      —“Housing accommodations,” defined—Units covered under tax-benefit programs—“J-51” Tax exemption and abatement program
- § 11:84      —“Housing accommodations,” defined—Units covered under tax-benefit programs—State-assisted units
- § 11:85      —Zoning may exempt units from rent-stabilization coverage
- § 11:86      —Statutory exemptions from rent-stabilization coverage
- § 11:87      ——Rent-controlled units
- § 11:88      ——Government-operated and subsidized housing
- § 11:89      ——Less than six units
- § 11:90      ——“Combining apartments does not trigger exemption
- § 11:91      ——“Horizontal multiple-dwellings” not exempt

TABLE OF CONTENTS

§ 11:92	— —New construction or substantial rehabilitation after December 31, 1973
§ 11:93	— —Substantial-rehabilitation criteria
§ 11:94	— — —No increase in number of units required
§ 11:95	— — —Tenants in occupancy or those constructively evicted remain rent-stabilized
§ 11:96	— —Units owned or operated by charitable or educational institutions
§ 11:97	— — —Limited exemption for unaffiliated tenants
§ 11:98	— — —“Exclusive” or primary not-for-profit operation of building required
§ 11:99	— —Hotel rooms
§ 11:100	— —“Motor courts, tourist homes,” defined
§ 11:101	— —Furnished rooms
§ 11:102	— —Non-primary residence
§ 11:103	— — —Advance non-primary residence agreement void
§ 11:104	— —Occupancy as incident of employment
§ 11:105	— —Nonresidential use
§ 11:106	— —Cooperative and condominium units
§ 11:107	Deregulation of rent-controlled and rent-stabilized units
§ 11:108	— —Vacancy decontrol
§ 11:109	— —“Luxury” deregulation of vacant housing-accommodations
§ 11:110	— —Under rent control
§ 11:111	— —“Luxury” deregulation of vacant housing-accommodations—Under rent stabilization
§ 11:112	— —Notice to new tenants of high rent deregulation under rent stabilization and rent control
§ 11:113	— —“Luxury” deregulation of occupied housing-accommodations
§ 11:114	— —Under rent control
§ 11:115	— —Under rent stabilization
§ 11:116	— —“Luxury” deregulation when tenant occupies multiple apartments
§ 11:117	— —Exclusions from household income
§ 11:118	— —No allowances for income “anomalies”
§ 11:119	— —Procedure
§ 11:120	— —Income certification
§ 11:121	— — —Methods of service
§ 11:122	— — —Required information
§ 11:123	— — —Service of income-certification form
§ 11:124	— —Luxury deregulation petition
§ 11:125	— —Grounds for petition

- § 11:126 ——DHCR notice to tenant of petition and opportunity to answer
- § 11:127 ——Income verification
- § 11:128 ——Amended returns may not defeat “luxury” deregulation
- § 11:129 ——Governing time limitations
- § 11:130 ——Appeal
- § 11:131 ——Effective date of deregulation determination
- § 11:132 ——Effect of tenant’s failure to timely respond to DHCR’s deregulation notice
- § 11:133 ——Right of first refusal
- § 11:134 Deregulation of rent-stabilized units—Effect of retroactive rent adjustment on \$2,774.76 rent threshold
- § 11:135 Deregulation of rent-controlled and rent-stabilized units—Exemptions
- § 11:136 ——Units under tax benefit programs
- § 11:137 ——Unit otherwise subject to rent stabilization not exempt
- § 11:138 —Loft Law units exempt from luxury destabilization
- § 11:139 —Exemptions—Compare: nonpurchasing co-op tenant subject to luxury deregulation
- § 11:140 —Deregulation of cooperative and condominium units converted after June 30, 1974
- § 11:141 Reversion of deregulated property to rent stabilization
- § 11:142 Reregulation of multiple dwellings purchased from New York City

#### **IV. REGISTRATION OF RENTS AND SERVICES**

- § 11:143 Rent-controlled units
- § 11:144 —Initial registration of housing accommodations
- § 11:145 ——Additional 1984 registration requirement within New York City
- § 11:146 ——1984 registration does not establish legal maximum rents
- § 11:147 ——Effect of failure to register
- § 11:148 ——Registration fees
- § 11:149 —Biannual maximum rent adjustments in New York City
- § 11:150 ——History
- § 11:151 ——Maximum rents include essential services
- § 11:152 ——“MBR,” defined
- § 11:153 ——“MCR,” defined
- § 11:154 ——Example: calculating MBR and MCR

TABLE OF CONTENTS

§ 11:155	— —Procedure
§ 11:156	— — —Violation certification
§ 11:157	— — —Operation and maintenance and essential-services certification
§ 11:158	— — —MBR Order of Eligibility
§ 11:159	— — —Challenging an MBR order
§ 11:160	— — —MBR filing fees
§ 11:161	—Adjustment of maximum rents outside New York City
§ 11:162	—Compare: no DHCR order required for rent-guideline increases under rent stabilization
§ 11:163	—Request for MCR calculation
§ 11:164	—Report of vacancy decontrol
§ 11:165	Rent-stabilized units
§ 11:166	—Rent-registration system effective April 1, 1984
§ 11:167	—Initial registration
§ 11:168	— —Initial legal registered rent registration
§ 11:169	— —Initial registration of required services and other data
§ 11:170	—Annual registration-update
§ 11:171	— —Annual registration and “legal regulated rent”
§ 11:172	—Serving and filing registration forms
§ 11:173	— —Proof of filing
§ 11:174	— — —Initial registration form
§ 11:175	— — —Annual registration form
§ 11:176	—Registered rents and services not subject to FOIL
§ 11:177	—Tenant objection to initial registration
§ 11:178	—Registration fees
§ 11:179	—Penalties for failure to file registration statements
§ 11:180	— —Prospective elimination of penalties by late filing
§ 11:181	— —Effect of failure to register or late registration on MCI applications
§ 11:182	—Initial rent registration required after luxury decontrol

**V. ADJUSTMENTS TO REGULATED RENTS**

§ 11:183	Regulated rent adjustments prescribed by applicable statutes
§ 11:184	Annual adjustment to MCRs in New York City
§ 11:185	Fair-market rent appeal of initial rent-stabilized rent: service of form RR-1(i)
§ 11:186	—Some units not subject to fair-market rent appeal
§ 11:187	Fair-market rent appeal of initial rent-stabilized

rent; service of form RR-1(i)—Proof of service of RR-1(i) form

§ 11:188 —Service of RR-1(i) not required in certain situations

§ 11:189 —Appeal may be dismissed if untimely

§ 11:190 —Formula for determining fair-market rent

§ 11:191 ——MBR/MCR adjusted by special guidelines

§ 11:192 ——Qualifying comparable rents

§ 11:193 ——“Unique” features may warrant additional valuation

§ 11:194 —DHCR may hold hearings on FMRA issues

§ 11:195 —Refund of excess rent

§ 11:196 ——If properly joined, a current owner may be liable for FMRA reward

§ 11:197 —Rent-overcharge remedies do not apply to FMRA

§ 11:198 —Rent-overcharge penalties do not apply to FMRA—No treble damages

§ 11:199 ——No rent freeze for failure to serve RR-1(i) in FMRA

§ 11:200 ——No attorney’s fees

§ 11:201 —Conversion of rent overcharge complaint to FMRA

§ 11:202 Rent increases for vacancy or renewal of rent-stabilized lease

§ 11:203 —Vacancy “bonus”

§ 11:204 —Additional rent-increases set by local RGBs

§ 11:205 —Vacancy increase

§ 11:206 —Renewal increase

§ 11:207 ——Low-rent adjustment

§ 11:208 —Fuel-cost adjustments

§ 11:209 —Summary of recent New York City rent-guideline increases

§ 11:210 —Effect of early vacatur on calculation of next tenant’s rent

§ 11:211 —Effect of “preferential rent”

§ 11:212 ——Preferential rent may bind landlord to lower rent

§ 11:213 ——Documented preferential rent need not result in permanent lower rent

§ 11:214 —Notification to rent-stabilized tenants of prior legal regulated rents

§ 11:215 Fuel-cost adjustments for New York City rent-controlled units

§ 11:216 —Fuel-cost adjustment not added to base rent

§ 11:217 —Maintaining services was a prerequisite to fuel-cost adjustment

§ 11:218 —Procedure

TABLE OF CONTENTS

§ 11:219	Fuel-cost adjustments were cumulative
§ 11:220	Fuel-cost adjustments for New York City rent-controlled units—Computation of fuel-cost adjustment
§ 11:221	Fuel-cost adjustments for New York city rent-controlled units—Tenant appeal
§ 11:222	Fuel-cost adjustments for New York City rent-controlled units—Effect of rent reductions on fuel-cost adjustments
§ 11:223	Labor cost rent adjustment for New York City rent-controlled units
§ 11:224	Rent increase for individual apartment improvements (“IAIs”)
§ 11:225	—Under rent control
§ 11:226	— — Tenant consent and prior DHCR notification required for IAIs
§ 11:227	— — — SCRIE tenant not exempt from IAIs
§ 11:228	— — — Other requirements and considerations
§ 11:229	— — — Rate of increase
§ 11:230	— — — Special provisions for rent increase based on painting
§ 11:231	—Under rent stabilization
§ 11:232	— — Tenant consent required unless improvement made during apartment vacancy
§ 11:233	— — — Lease signature alone does not constitute tenant consent to IAI rent increase
§ 11:234	— — — “Order date” versus “delivery date”
§ 11:235	— — — Prior DHCR approval not currently required in New York City
§ 11:236	— — — Rate of increase
§ 11:237	— — — Qualifying improvements
§ 11:238	— — — Ordinary maintenance and repairs do not qualify as IAIs
§ 11:239	— — — Demolition costs
§ 11:240	— — — IAIs may not be paid for with insurance proceeds
§ 11:241	— — — Confirmation of costs and payments
§ 11:242	— — — Confirmation of costs and payments during prior nonpayment proceeding
§ 11:243	— — — Confirmation of costs and payments—No rent increase for superintendent labor if paid for as part of normal compensation
§ 11:244	— — — Examples: qualifying IAIs
§ 11:245	— — — IAI data should be included in annual rent registration
§ 11:246	—Washing machines, dryers, and dishwashers

- § 11:247 —Window guards
- § 11:248 —Air conditioners
- § 11:249 ——Electrical inclusion buildings
- § 11:250 ——Electrical exclusion buildings
- § 11:251 ——Acceptable operating levels
- § 11:252 Surcharges for sub-metered electricity or other utility service
- § 11:253 —Compare: rent reduction based on electrical conversion
- § 11:254 —Creation of new rent-stabilized apartment results in “first rent”
  - “High-rent” deregulation of first rent
- § 11:256 Major capital improvement (“MCI”) rent increases
- § 11:257 —“Major capital improvement,” defined
- § 11:258 —Eligibility requirements for MCI rent increase
- § 11:259 ——Application should be filed within two years of work’s completion
- § 11:260 ——Notice to new tenants required in vacancy lease
- § 11:261 ——Renewal-lease clause permitting MCI increase required
- § 11:262 ——Source of funds used to pay for MCI affects eligibility
  - Cooperative/condominium reserve funds
  - § 11:264 ——Government grants, low interest loans, and subsidies
  - § 11:265 ——All hazardous violations must be corrected
  - § 11:266 ——Effect of reduced services on MCI rent increase eligibility
  - § 11:267 ——MCI increase collectible if granted prior to rent reduction order
  - § 11:268 ——Rent reduction order bars further rent increases until rent restored
  - § 11:269 ——Effect of failure to register or late registration on MCI applications
  - § 11:270 —Work which constitutes MCIs
  - § 11:271 ——Useful life schedule for major capital improvements
    - Examples: estimated useful life
    - § 11:273 ——Asbestos removal
    - § 11:274 ——Mailbox relocation required in New York City only
    - § 11:275 ——Roofing
    - § 11:276 ——Waterproofing
    - § 11:277 ——Building-wide installation of “low-flush” toilets
    - § 11:278 ——Windows

TABLE OF CONTENTS

§ 11:279	— — — Replacement windows after prior increase for storm windows
§ 11:280	— — — Replacement of hallway or lot line windows not required
§ 11:281	— — — Age of prior windows
§ 11:282	— — — Defects in small percentage of windows may delay MCI rent increase
§ 11:283	— Additional rent-increase for work related to MCI
§ 11:284	— Procedure
§ 11:285	— — Prior opinion
§ 11:286	— — Expedited MCI
§ 11:287	— — Confirmation of costs/payments
§ 11:288	— — — DHCR may seek supplemental documentation
§ 11:289	— — Third-party certification of MCI
§ 11:290	— Calculating the MCI rent increase
§ 11:291	Major capital improvement (“MCI”) rent increases— Calculating the MCI rent increase—Two percent cap on annual rent increase for rent stabilized New York City tenants
§ 11:292	Major capital improvement (“MCI”) rent increases— Calculating the MCI rent increase—Fifteen percent cap for other rent-regulated tenants
§ 11:293	— — Vacating tenant should pay retroactive MCI
§ 11:294	— — MCI rent increase is permanent
§ 11:295	— — Room count
§ 11:296	— — Effective date of MCI rent increase
§ 11:297	— — Example: MCI rent increase calculation
§ 11:298	— — Effect of SCRIE
§ 11:299	Rent increase for building-wide service improvements
§ 11:300	Landlord hardship
§ 11:301	— Comparative-hardship formula
§ 11:302	— Alternative-hardship formula
§ 11:303	— Limitations on hardship rent increases
§ 11:304	— — Six percent annual cap
§ 11:305	— — Cap on rate of equity return
§ 11:306	— — Thirty-six-month limitation
§ 11:307	— Additional eligibility criteria
§ 11:308	— — Maintenance of services
§ 11:309	— — Resolution of pending tax certiorari proceedings or objections
§ 11:310	— — Ownership by same or related entity for thirty-six months required
§ 11:311	— — — 5% equity in property

- § 11:312 ——Immediately hazardous violations should be corrected
- § 11:313 ——Option to cancel lease
- § 11:314 421-a rent-increases
- § 11:315 —421-a rent-increases not included in base rent since 1982

## VI. PROHIBITIONS

- § 11:316 In general
- § 11:317 “Evasion” of rent regulation prohibited
- § 11:318 “Waiver” of benefit void
- § 11:319 No broker’s fee permitted when broker is landlord’s agent or employee
- § 11:320 No “conditional” rentals
- § 11:321 Failure to renew rent-stabilized lease
- § 11:322 —Rent-stabilized lease-renewal requirements
- § 11:323 ——One- or two-year term at tenant’s option
- § 11:324 ——Same terms and conditions upon lease renewal
- § 11:325 ——Exception to “same terms and conditions” requirement
- § 11:326 ——Example: lawful rent-increase notice clause
- § 11:327 ——Example: luxury-deregulation rider
- § 11:328 ——Addition of spouse to New York City renewal lease
- § 11:329 ——Compare: domestic partners
- § 11:330 ——“Window period” for renewal-lease offer and acceptance
- § 11:331 ——Effect of delayed renewal
- § 11:332 —Form of offer
- § 11:333 —Landlord should deliver fully executed renewal-lease copy to tenant
- § 11:334 —Lease-renewal procedure when rent guidelines unknown
- § 11:335 —Example: rent guidelines issued after lease-renewal offer
- § 11:336 —Landlord’s failure to renew, or properly renew, rent-stabilized lease is grounds for tenant’s DHCR complaint
- § 11:337 —Failure to provide rent-stabilization rider also grounds for complaint
- § 11:338 —“Deemed” lease when tenant’s renewal complaint denied
- § 11:339 —Eviction may be delayed while lease-renewal complaint pending

TABLE OF CONTENTS

§ 11:340	— — —Grounds for refusal to renew lease
§ 11:341	— Illusory tenancy
§ 11:342	— Effect of luxury deregulation application on lease renewal
§ 11:343	— Tenant's failure to renew lease
§ 11:344	Rent overcharge
§ 11:345	— Compare: fair-market rent appeals
§ 11:346	— Procedure
§ 11:347	— — —Under rent control
§ 11:348	— — —Under rent stabilization
§ 11:349	— Statute of limitations
§ 11:350	— — —Six-year statute of limitations under rent control
§ 11:351	— — —Six-year statute of limitations under rent-stabilization exception
§ 11:352	— — —Six-year statute of limitations under rent-stabilization exception: rent-overcharge result of fraud
§ 11:353	— — —Effect of failure to register rents on statute of limitations for rent overcharge liability
§ 11:354	— — —Six-year statute of limitations under rent stabilization—Statute of limitations for rent overcharge complaints filed before April 1, 1984
§ 11:355	— Production of rent-history records
§ 11:356	— Rent determined by “default formula” when rent-history incomplete
§ 11:357	— Remedies for rent overcharge
§ 11:358	— — —Treble damages applied to “willful” rent overcharge
§ 11:359	— — —“Willful” overcharge, defined
§ 11:360	— — —Treble damages also applied to negligent rent overcharge
§ 11:361	— — — —Exception: New York City rent-stabilized units
§ 11:362	— — —Treble damages applied to “willful” rent overcharge—Six-year limit on treble damages
§ 11:363	— — —Treble damages applied to “willful” rent overcharge—No treble damages for technical error
§ 11:364	— — —No treble damages when refund offered in response to complaint
§ 11:365	— — —No treble damages for failure to register rent
§ 11:366	— — —Interest on overcharge refund
§ 11:367	— — —Interest rate
§ 11:368	— — —Attorney's fees and costs
§ 11:369	— — —DHCR standard to determine discretionary attorney's fees award

LANDLORD AND TENANT PRACTICE IN NEW YORK

- § 11:370 — — — Attorney's fees recovery against DHCR
- § 11:371 — — Compare: rent freeze for failure to register rent
- § 11:372 — Recovery of rent overcharge
- § 11:373 — — Offset method
- § 11:374 — — Judgment method
- § 11:375 — — Effect of reduction of overcharge award
- § 11:376 — — Disposition of overcharge awards when tenant vacates and leaves no forwarding address
- § 11:377 — — Effect of change in building ownership
- § 11:378 — — Effect of judicial sale of building
- § 11:379 — — — "In rem" building
- § 11:380 — — — Receiver treated as judicial-sale purchaser
- § 11:381 Reduction of "essential" or "required" services
- § 11:382 — "Essential services," defined by rent control
- § 11:383 — "Required" or "essential" services, defined by rent stabilization
- § 11:384 — — Ancillary services
- § 11:385 — — Replacement of defective equipment or appliances
- § 11:386 — — DHCR complaint procedure
- § 11:387 — — — Third person certification of condition creates rebuttable presumption
- § 11:388 — — Grounds for rent reduction
- § 11:389 — — — Tenant complaint should request rent reduction
- § 11:390 — — — Exception
- § 11:391 — — — Calculation of rent reduction
- § 11:392 — — — Under rent control
- § 11:393 — — — Under rent stabilization
- § 11:394 — — — Effective date of rent reduction
- § 11:395 — — — Offset for court-ordered rent abatement
- § 11:396 — — — No further rent increase until rent restored
- § 11:397 — — — Effect of rent reduction order on MBR increases
- § 11:398 — — — No rent reduction if tenant refuses access
- § 11:399 — — — No rent reduction for *de minimis* conditions
- § 11:400 — — — No rent reduction for noise complaints between neighbors
- § 11:401 — — — No rent reduction when delay invalidates inspection
- § 11:402 — — Restoration of reduced rents
- § 11:403 — — Special rules for heat and hot-water complaints
- § 11:404 — — — Heat and hot-water complaint procedures
- § 11:405 — — — Deprivation of "essential services" is not *de minimis*
- § 11:406 Harassment
- § 11:407 — — Penalties

TABLE OF CONTENTS

§ 11:408 —Under New York City local law  
§ 11:409 Security-deposit restrictions

**VII. TRANSFER OF TENANCY RIGHTS**

§ 11:410 Succession rights to rent-regulated tenancies by “family members”  
§ 11:411 —DHCR and courts have concurrent jurisdiction  
§ 11:412 —Applicability of succession regulations to cooperatives and condominiums  
§ 11:413 ——Rent-stabilized tenant’s family member in noneviction cooperative  
§ 11:414 ——Family members of senior citizens or disabled tenants who remain in occupancy under eviction plan exemptions  
§ 11:415 —Residency-term requirements for succession  
§ 11:416 ——“Senior citizen,” defined  
§ 11:417 ——“Disabled person,” defined  
§ 11:418 ——Minimum residency requirements not deemed interrupted by family member’s temporary relocation  
§ 11:419 ——Primary-residence requirement  
§ 11:420 —“Family member,” defined  
§ 11:421 ——Nephews, nieces, aunts, and uncles no longer defined among qualifying successor tenants  
§ 11:422 —Criteria for establishing committed family-type relationship with tenant  
§ 11:423 —Notice to landlord of family members with possible succession rights  
§ 11:424 ——Effect of failure to notify landlord of additional occupants  
§ 11:425 —Succession rights may be applied retroactively  
§ 11:426 —Roommates and other occupants have no succession rights  
§ 11:427 —Joinder of tenant’s estate in succession-rights case  
§ 11:428 —Vacancy increases permitted for second succession  
§ 11:429 Assignment of tenancy  
§ 11:430 —Under rent control  
§ 11:431 —Under rent stabilization  
§ 11:432 Subleasing  
§ 11:433 —Under rent control  
§ 11:434 ——Rent increases during sublet term  
§ 11:435 ———Rent increase for unauthorized sublet  
§ 11:436 —Under rent stabilization  
§ 11:437 ——Furniture surcharge  
§ 11:438 ——Two-year limit on sublease

- § 11:439 — —Landlord may collect “sublet surcharge” during sublet term
- § 11:440 — —Special rules for not-for-profit hospitals
- § 11:441 Profiteering

## VIII. GROUNDS FOR EVICTION

- § 11:442 Generally
- § 11:443 “Certificate of eviction” requirement
- § 11:444 Preliminary notices
- § 11:445 Eviction based on tenant’s wrongful acts
- § 11:446 —Refusal to permit access to landlord
- § 11:447 —Tenant’s failure or refusal to renew lease
- § 11:448 — —Under rent control
- § 11:449 — —Under rent stabilization
- § 11:450 —Nonprimary residence
- § 11:451 — —Proof considered in primary-residence cases
- § 11:452 — —Totality of circumstances determines “primary residence”
- § 11:453 — —Special rules for hospital tenants
- § 11:454 — —No legal grounds for nonprimary residence suit against tenant’s estate
- § 11:455 —Rent-controlled tenant not using unit for own dwelling
- § 11:456 Recovery of rent-regulated units based on landlord’s needs
- § 11:457 —Recovery of unit for owner occupancy
- § 11:458 — —Certificate of eviction is a prerequisite under rent control and rent-stabilization outside New York City
- § 11:459 — —Landlord may recover unit for self and/or immediate family member
- § 11:460 — — —Recovery by “natural persons” only
- § 11:461 — — — —Partnerships and corporate entities are excluded
- § 11:462 — — —Limits on number of owners or units
- § 11:463 — — — “Immediate family,” defined
- § 11:464 — — —Effect of payment of rent by landlord’s immediate-family member
- § 11:465 — —Landlord must now show an “immediate and compelling necessity”
- § 11:466 — —Landlord should evince a “good faith” intent to occupy unit—Penalties for failure to take occupancy
- § 11:467 — —Landlord should show immediate and compelling necessity to recover any rent-controlled and rent-stabilized units outside New York City

TABLE OF CONTENTS

§ 11:468	— — —Exception: small rent-controlled buildings outside New York City
§ 11:469	— — —Exemptions from owner occupancy recovery for elderly, disabled, and long-term tenants
§ 11:470	— — —Under rent control
§ 11:471	— — ——“Impairment,” defined
§ 11:472	Recovery of rent-regulated units based on landlord’s needs—Recovery of unit for owner-occupancy—Exemptions from owner occupancy recovery for elderly, disabled, and long-term tenants—Successor tenant may not qualify for 15-year exemption from owner occupancy recovery
§ 11:473	Recovery of rent-regulated units based on landlord’s needs—Recovery of unit for owner occupancy—Exemptions from owner occupancy recovery for elderly, disabled, and long-term tenants—Under ETPA
§ 11:474	— — —Under RSL
§ 11:475	— — —Timing of relocation offer
§ 11:476	— — —Recovery by not-for-profit institution
§ 11:477	— — —Under rent control
§ 11:478	— — —Under rent stabilization
§ 11:479	— — —Recovery restrictions
§ 11:480	— — —No express ETPA provision
§ 11:481	— — —Demolition
§ 11:482	— — —Under rent control
§ 11:483	— — —Demolition prerequisites are waived in New York City when there are three or fewer occupied units
§ 11:484	— — —Landlord’s duty to relocate tenant
§ 11:485	— — —Exception: no relocation required
§ 11:486	— — —Tenant’s “ability to pay” for the offered accommodation
§ 11:487	— — —Exception to “tenant’s ability to pay rent” requirement
§ 11:488	— — —Under rent stabilization
§ 11:489	— — —Documenting “good faith” intent with the DHCR
§ 11:490	— — —Application procedure
§ 11:491	— — —Tenant relocation and stipends
§ 11:492	— — ——“Suitable housing accommodations,” defined
§ 11:493	— — —Withdrawal of unit from rental market
§ 11:494	— — —Under rent control
§ 11:495	— — —Tenant relocation and stipends
§ 11:496	— — —Under rent stabilization

- § 11:497 ——Additional requirements within New York City
- § 11:498 —Subdivision, alteration, or remodeling of underutilized rent-controlled unit
- § 11:499 —Prerequisites may be waived when three or fewer occupied units

## IX. DHCR PUBLICATIONS

- § 11:500 Availability of publications
- § 11:501 DHCR Operational Bulletins
- § 11:502 DHCR Policy Statements
- § 11:503 DHCR Opinion Letters
- § 11:504 DHCR Advisory Opinions
- § 11:505 DHCR Fact Sheets
- § 11:506 —New York City Fact Sheets
- § 11:507 Regional, Borough, and District rent office locations
- § 11:508 —DHCR forms

APPENDIX 11-1. Vacancy Allowance For Lease In Tenant's Brother's Name

APPENDIX 11-2. Interpreting DHCR's Docket Numbers

APPENDIX 11-3. Rent Guidelines Board Apartment Orders #1 through #57 (1969 to 2026)

APPENDIX 11-4. 2009 Apartment & Loft Order #41

APPENDIX 11-5. 2010 Apartment & Loft Order #42

APPENDIX 11-6. 2011 Apartment & Loft Order #43

APPENDIX 11-7. 2012 Apartment & Loft Order #44

APPENDIX 11-8. 2013 Apartment & Loft Order #45

APPENDIX 11-9. 2014 Apartment & Loft Order #46

APPENDIX 11-10. 2015 Apartment & Loft Order #47

APPENDIX 11-11. 2016 Apartment & Loft Order #48

APPENDIX 11-12. 2017 Apartment & Loft Order #49

APPENDIX 11-13. 2018 Apartment & Loft Order #50

APPENDIX 11-14. 2019 Apartment & Loft Order #51

APPENDIX 11-15. 2020 Apartment & Loft Order #52

APPENDIX 11-16. 2020 Apartment & Loft Order #53

APPENDIX 11-17. 2022 Apartment & Loft Order #54

APPENDIX 11-18. 2023 Apartment & Loft Order #55

APPENDIX 11-19. 2024 Apartment & Loft Order #56

APPENDIX 11-20. 2025 Apartment & Loft Order #57

## TABLE OF CONTENTS

- APPENDIX 11-21. Demolition Stipend Chart
- APPENDIX 11-22. DHCR Operation Bulletin 2014-1
- APPENDIX 11-23. DHCR Operation Bulletin 2016-1
- APPENDIX 11-24. DHCR Operational Bulletin 2024-2:  
Individual Apartment Improvements  
(Replaces Operational Bulletin 2016-1)
- APPENDIX 11-25. DHCR Operational Bulletin 2017-1: Major Capital Improvements—Confirmation of Costs/Payments
- APPENDIX 11-26. DHCR Operational Bulletin 2018-1: The Effect of Defective Work on the Disposition of an Owner's Application for a Major Capital Improvement (MCI) Rent Increase
- APPENDIX 11-27. Operational Bulletin 2021-1: Major Capital Improvement Reasonable Cost Schedule
- APPENDIX 11-28. DHCR Good Cause Eviction Law Notice

## CHAPTER 12. PREMISES LIABILITY

### I. NEGLIGENCE LIABILITY

- § 12:1 Generally

### II. ORDINARY NEGLIGENCE

- § 12:2 Defined
- § 12:3 —Duty must exist for liability to attach
- § 12:4 —Ordinary care
- § 12:5 ——Status distinctions are not determinative of duty owed
- § 12:6 ——Compare: party's status may affect foreseeability
- § 12:7 ——No duty owed to general public
- § 12:8 —Landlord's duty of care
- § 12:9 ——Basis of landlord's duty
- § 12:10 ——Ownership, occupancy, and control determine liability
- § 12:11 —Specific considerations and duties relative to the landlord-tenant relationship
- § 12:12 ——No duty to warn of obvious conditions
- § 12:13 ——Exception: when foreseeable injuries may result
- § 12:14 ——No duty to remedy natural, open conditions

- § 12:15 ——No duty to warn of conditions over which landlord lacks control
- § 12:16 ——Landlord's duty to inspect and repair
- § 12:17 ——Duty to inspect based on statute or contract
- § 12:18 ——Statutory duty to inspect for design or structural defect
- § 12:19 ——Contractual right to reenter and make repairs may create liability for design or structural defects
- § 12:20 ——Landlord's duty based on acts of third parties
- § 12:21 ——Landlord's duty to provide security against crime
- § 12:22 ——Basis of landlord's liability, generally
- § 12:23 ——“Foreseeable risk of harm” must exist
- § 12:24 ——Known criminal activity may establish foreseeable risk of harm
- § 12:25 ——Past identical incidents not necessary
- § 12:26 ——Establishing landlord as “cause” of criminal activity
- § 12:27 ——Failure to provide outer-doors locks
- § 12:28 ——Proof of perpetrator's means of access to building
- § 12:29 ——“Special relationship” may impose duty on landlord for injuries by intruders
- § 12:30 ——Public entities' liability for criminal acts
- § 12:31 ——Liability for tenant's misconduct
- § 12:32 ——Grounds for eviction
- § 12:33 ——Isolated instances of misconduct may be insufficient
- § 12:34 ——Lessor's liability for tenant's misconduct
- § 12:35 ——Landlord may evict tenant engaging in criminal conduct
- § 12:36 ——Duty to repair sidewalk when directed by New York City
- § 12:37 ——“Special Use”
- § 12:38 ——Landlord's assumption of duty of care
- § 12:39 ——Breach of duty of care
- § 12:40 ——Foreseeability
- § 12:41 ——“Notice”
- § 12:42 ——Actual notice
- § 12:43 ——Constructive notice
- § 12:44 ——“Foreseeability,” defined
- § 12:45 ——Invitees or licensees
- § 12:46 ——Trespassers
- § 12:47 ——Duty to prevent foreseeable acts is nondelegable
- § 12:48 ——Examples: injuries foreseeable

TABLE OF CONTENTS

- § 12:49 — — —Examples: injuries not foreseeable
- § 12:50 —Causation, generally
- § 12:51 — — “Proximate cause,” defined
- § 12:52 — — Establishing proximate cause
- § 12:53 — — —Examples: proximate cause found

**III. LIABILITY BASED ON STATUTE OR REGULATION**

- § 12:54 Statutory liability
- § 12:55 —Compliance requirements
- § 12:56 —Multiple Dwelling Law (“MDL”)
- § 12:57 — — “Reasonably safe condition,” defined
- § 12:58 — — Nondelegable nature of duty
- § 12:59 — — Notice required
- § 12:60 — — “Owner,” defined
- § 12:61 — — Examples: MDL requirements
- § 12:62 — — —Interior lighting
- § 12:63 — — —Exterior lighting
- § 12:64 — — —Door locks
- § 12:65 — — —Intercom systems
- § 12:66 — — —Smoke detectors
- § 12:67 — — —Sidewalk maintenance
- § 12:68 — — —Common-law duty survives regardless of compliance with MDL
- § 12:69 —Warranty of habitability: N.Y. Real Prop. Law § 235-b, generally
- § 12:70 — — —Property-damage recovery under N.Y. Real Prop. Law § 235-b, generally
- § 12:71 — — —Common-law indemnification
- § 12:72 Lead-poisoning hazards
- § 12:73 —Federal law
- § 12:74 — — Drinking water
- § 12:75 — — —“Lead-based paint”
- § 12:76 —Disclosures relating to lead-based paint
- § 12:77 — — —“Target housing,” defined
- § 12:78 — — —“Lead Warning Statement”
- § 12:79 — — —Content of the “Lead Warning Statement”
- § 12:80 — — Violation of disclosure statute
- § 12:81 —Scope of federal law
- § 12:82 — — State law
- § 12:83 — — —“Conditions conducive to lead poisoning,” defined
- § 12:84 — — —“Lead paint,” defined
- § 12:85 — — —“Lead pipes,” defined

- § 12:86 — — —Penalties for failing to abate “conditions conducive to lead poisoning”
- § 12:87 —New York City Childhood Lead Poisoning Prevention Act of 2003
- § 12:88 — — “Lead-based paint,” defined
- § 12:89 — — “Lead-based paint hazard,” defined
- § 12:90 — — —Owner’s duty to correct
- § 12:91 — — —Waiver of statutory benefit is void
- § 12:92 Asbestos
- § 12:93 — “Asbestos containing material,” defined
- § 12:94 — “Friable,” defined
- § 12:95 —Federal law
- § 12:96 —State law
- § 12:97 —City Law: Local Law 76
- § 12:98 — — —Standard lease provisions may be unenforceable
- § 12:99 —Penalties
- § 12:100 Snow removal required by statute
- § 12:101 —Snow-removal requirements: New York City
- § 12:102 —Counties must remove snow from public roads
- § 12:103 —Snow removal on property abutting state highway

#### **IV. STRICT LIABILITY**

- § 12:104 Generally
- § 12:105 —Leakage of petroleum products
- § 12:106 — — —Example: leakage from underground gasoline-storage tanks
- § 12:107 —Fire-related protections
- § 12:108 — — —Fire-safety notices: New York City
- § 12:109 —Labor Law §§ 240, 241
- § 12:110 — — —Exception: single and two-family homes
- § 12:111 — — —Exception inapplicable to investor/landlords
- § 12:112 —Window guards: New York City
- § 12:113 — — —Child must be resident of apartment unit
- § 12:114 — — —Annual notice must be given to tenants; tenant cooperation is required
- § 12:115 — — —Penalties for violation: New York State

#### **V. CONTRACTUAL LIABILITY**

- § 12:116 Liability based on lease or contract, generally
- § 12:117 —Landlord agrees to make repairs or maintain premises
- § 12:118 —Right of reentry may not impose liability to repair or maintain

TABLE OF CONTENTS

- § 12:119 —Lack of privity does not foreclose liability
- § 12:120 —Exculpatory agreements and clauses, generally
- § 12:121 Exception: exculpatory clauses are enforceable in “arm’s-length” transactions
- § 12:122 Liability based on lease or contract, generally—
  - General Obligations Law (“GOL”) precludes waiver of liability
- § 12:123 ——Rule applies only to leases
- § 12:124 ——Liability limitations must be clear and unambiguous
- § 12:125 ——Exculpatory clauses construed narrowly
- § 12:126 ——Ambiguities construed against drafter

**VI. ENVIRONMENTAL LIABILITY**

- § 12:127 Liability for environmental hazards
- § 12:128 —Federal legislation
- § 12:129 ——Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”)
  - § 12:130 ——Applicability of CERCLA
  - § 12:131 ——Strict liability under CERCLA
  - § 12:132 ——Owner and tenant jointly liable
  - § 12:133 ——Former owners may retain liability
  - § 12:134 ——Penalties
  - § 12:135 ——Solid Waste Disposal Act
  - § 12:136 ——“Hazardous substances,” defined
  - § 12:137 ——Strict liability
  - § 12:138 ——Subsequent owners may be liable
  - § 12:139 ——Air Pollution Prevention and Control Act (“Clean Air Act”)
    - § 12:140 ——“Hazardous air pollutants”
    - § 12:141 ——Strict liability under Clean Air Act
    - § 12:142 ——Water Pollution Control Act (“Clean Water Act”)
    - § 12:143 ——“Discharge of pollutant,” defined
    - § 12:144 ——Liability under Clean Water Act, generally
    - § 12:145 ——Strict liability
    - § 12:146 ——Penalties
    - § 12:147 —State legislation
    - § 12:148 ——Navigation Law § 181
    - § 12:149 ——Strict liability
    - § 12:150 ——Retroactive application
    - § 12:151 ——Parties liable
      - § 12:152 ——Example: tenant liable
      - § 12:153 ——Example: oil broker may be liable

- § 12:154 — — — Example: owner of delivery truck liable
- § 12:155 — — Environmental Conservation Law
- § 12:156 — — — Issues regulated
- § 12:157 — — — Penalties for violation of statute
- § 12:158 — — Legislation affecting cities and specific regions
- § 12:159 — — Theories of private recovery for environmental contamination
- § 12:160 — — Nuisance
- § 12:161 — — Trespass
- § 12:162 — — — Distinction between nuisance and trespass
- § 12:163 — — — Nuisance and trespass actions maintainable by occupant
- § 12:164 — — — Parties liable for trespass and nuisance
- § 12:165 — — — Three-year statute of limitations
- § 12:166 — — Waste
- § 12:167 — — Negligence *per se*
- § 12:168 — — “Fraudulent concealment”
- § 12:169 — — — Duty to disclose environmental hazards
- § 12:170 — — — Dangerousness of condition is question of fact
- § 12:171 — — — Chain of title irrelevant
- § 12:172 — — — Statute of limitations for recovery from prior owner for environmental contamination
- § 12:173 — — — “*Caveat Emptor*”

## VII. TERMINATING LIABILITY

- § 12:174 Conveyance of title
- § 12:175 — Disclosure law governs properties with four dwellings or less
- § 12:176 — Duration of liability
- § 12:177 — — “Reasonable time,” defined
- § 12:178 — — Exception: failure to disclose unreasonable risks
- § 12:179 — — Exception: environmental liability
- § 12:180 — — Transfer of possession
- § 12:181 — — — Residential and commercial premises distinguished
- § 12:182 — — Federal law also requires property condition disclosures
- § 12:183 — — ILSFDA’s applicability
- § 12:184 — — ILSFDA’s requirements and prohibitions
- § 12:185 — — ILSFDA liability
- § 12:186 — — Establishing an ILSFDA violation
- § 12:187 — — Carbon-monoxide detectors

TABLE OF CONTENTS

**VIII. IMMUNITIES**

- § 12:188      Immunity from liability
- § 12:189      —Government immunity
- § 12:190      ——State's immunity waived by statute
- § 12:191      ——Immunity waived by "special relationship"
- § 12:192      ——State's liability for "dangerous condition"
- § 12:193      Recreational-use immunity; N.Y. Gen. Oblig. Law § 9-103
  - Standard of care
  - No obligation to inspect
  - No duty to warn
  - Property suited for particular recreational activity
  - Activities encompassed
- § 12:199      ——Actual or constructive notice of dangerous condition
- § 12:200      ——Risks inherent in certain activities
- § 12:201      ——Injured party's status irrelevant
- § 12:202      ——"Gross negligence" excluded
- § 12:203      —Police and firefighters: the "fireman's rule"
- § 12:204      ——Application
- § 12:205      ——Statutory exceptions
- § 12:206      ——Chapter 703 abolished the "fireman's rule"
- § 12:207      ——Expansion of the strict liability statutory causes of action
- § 12:208      —Statutory immunity for failure to disclose that owner or former occupant infected with AIDS virus
- § 12:209      —Statutory immunity for failure to disclose that property was location of homicide, suicide, death, or any crime constituting a felony

- APPENDIX 12-1.    EPA Lead Hazard Information Pamphlet
- APPENDIX 12-2.    Lead-Based Paint Hazard Lease Rider
- APPENDIX 12-3.    Lead-Based Disclosure Form
- APPENDIX 12-4.    Fire Safety Plan
- APPENDIX 12-5.    Guard Lease Rider
- APPENDIX 12-6.    Property Condition Disclosure Statement
- APPENDIX 12-7.    Electronic Lease Offer
- APPENDIX 12-8.    Renewal Lease Form
- APPENDIX 12-9.    Lease/Commencement of Occupancy Notice for Indoor Allergen Hazards
- APPENDIX 12-10.   Flood History and Risk Lease Rider/Notice to Residential Tenants

LANDLORD AND TENANT PRACTICE IN NEW YORK

- APPENDIX 12-11. Procedure for Tenants Regarding  
Suspected Gas Leaks
- APPENDIX 12-12. Notice Disclosing Tenants' Rights to  
Reasonable Accommodations for Persons  
With Disabilities