

# Table of Contents

## CHAPTER 1. OVERVIEW OF HOUSING CASE

### I. SOURCES OF RESIDENTIAL LANDLORD-TENANT LAW

- § 1:1 Legal conflicts between landlords and tenants
- § 1:2 —Conflict manifested in particular issues
- § 1:3 —Essential tasks for the attorney
- § 1:4 Sources of substantive landlord-tenant law
- § 1:5 —Real Property Law
- § 1:6 —Laws against housing discrimination
- § 1:7 ——Federal housing statutes
- § 1:8 ——State housing statutes
- § 1:9 —Rent regulation
- § 1:10 —Federal, state, and local housing programs
- § 1:11 ——Federally subsidized public housing
- § 1:12 ——The federal Section 8 Program
- § 1:13 ——The New York State Mitchell-Lama Program
- § 1:14 ——The New York City In Rem Housing Program
- § 1:15 Authority and sources of procedural law for summary proceedings
- § 1:16 —Summary eviction proceedings are “special proceedings”
- § 1:17 —Real Property Actions and Proceedings Law
- § 1:18 —Civil Practice Law and Rules
- § 1:19 —Court acts and rules
- § 1:20 —Self-help eviction not permitted
- § 1:21 ——Unlawful eviction is a misdemeanor
- § 1:22 —Bases for summary eviction proceedings
- § 1:23 ——Nonpayment and holdover proceedings distinguished
- § 1:24 ——When “good cause” required for holdover eviction proceeding

### II. SUMMARY EVICTION PROCEEDING

- § 1:25 Course of typical summary eviction proceeding
- § 1:26 —Precommencement notices
- § 1:27 —Commencing proceeding
- § 1:28 —Responsive pleadings
- § 1:29 ——Time to answer petition
- § 1:30 ——Counterclaims
- § 1:31 —Discovery
- § 1:32 —Trial
- § 1:33 —Judgments and settlements
- § 1:34 ——Default judgment

- § 1:35 ——Stipulations
- § 1:36 ——Warrants of eviction
- § 1:37 ——Notice of eviction
- § 1:38 —Orders to show cause
- § 1:39 Forum for summary eviction proceedings
- § 1:40 —Jurisdiction generally exercised by lesser trial courts

## CHAPTER 2. RESIDENTIAL LANDLORD-TENANT RELATIONSHIP

### I. ENTERING INTO LANDLORD-TENANT RELATIONSHIP

- § 2:1 Landlord-tenant relationship, generally
- § 2:2 Leases, in general
- § 2:3 Rights and responsibilities during tenancy under lease
- § 2:4 Delivery of leasehold possession
- § 2:5 —Remedies where possession not delivered; rescission or suit in Supreme Court
- § 2:6 Oral agreements, Statute of Frauds, and Parol Evidence Rule
- § 2:7 —Statute of Frauds—Leases of one year or more require writing
- § 2:8 ——Exception for “substantial part performance”
- § 2:9 —Parol Evidence Rule
- § 2:10 ——Evidence of certain oral discussions admissible
- § 2:11 ——Parol evidence to explain ambiguous lease terms admissible
- § 2:12 Tenancy by estoppel
- § 2:13 Right to have spouse (opposite or same-sex) added to lease
- § 2:14 Plain language requirement for leases
- § 2:15 —Renewal leases for Rent Stabilized units
- § 2:16 —Effect of violation on parties’ rights minimal
- § 2:17 Guarantors
- § 2:18 Agreement in lease to be bound by rent levels set by Rent Stabilization Law
- § 2:19 Duration of Lease and Notice to Terminate
- § 2:20 “Duration of lease—Automatic lease renewal”
- § 2:21 Unconscionable lease provisions
- § 2:22 —“Unconscionable” defined by lack of choice and unbalanced terms
- § 2:23 ——Factors considered by courts in specific cases vary widely
- § 2:24 “Fine print” invalidates provision under CPLR
- § 2:25 Deceptive acts or practices claims
- § 2:26 Security deposits
- § 2:27 Security deposit is not “rent” and cannot be collected in summary eviction proceeding
- § 2:28 Security deposits—Requirements under General Obligations Law
- § 2:29 ——Landlord entitled to “administrative fee”
- § 2:30 ——Landlord cannot co-mingle funds

## TABLE OF CONTENTS

- § 2:31 ——Tenant must receive interest annually
- § 2:32 ——Security deposits transferred upon conveyance
- § 2:33 ——Additional requirements under certain rent regulation statutes
- § 2:34 —Real Property Law protections for manufactured home parks tenants
- § 2:35 —Rent Stabilization Code provisions
- § 2:36 Broker's fees and application fees
- § 2:37 —New York City FARE Act
- § 2:38 —Fair Credit Reporting Act
- § 2:39 —Rent stabilized tenancies
- § 2:40 Tenant Screening and the "Tenant Blacklist"

## II. PERIOD OF OCCUPANCY

- § 2:41 Late fees
- § 2:42 Notices between landlords and tenants
- § 2:43 Disclosure of social security number
- § 2:44 Restrictions on occupancy of family members or roommates may be unlawful
- § 2:45 Restrictions on occupancy/roommates may be unlawful—Protections apply to proprietary lessees in co-ops
- § 2:46 —Roommate can only be charged proportionate share of rent for rent stabilized apartments
- § 2:47 —No restriction on charges to roommates in rent controlled apartments
- § 2:48 —Number of occupants permitted
- § 2:49 —Effect of other laws regulating occupancy
- § 2:50 —Cause of action for violation of "roommate law"
- § 2:51 Subletting and assignment, in general
- § 2:52 —Governing authority
- § 2:53 —Subletting
- § 2:54 ——Noncomplying sublet may be substantial breach of tenancy
- § 2:55 ——Written notice to landlord required
- § 2:56 ——Landlord's response—Permission may not be unreasonably withheld
- § 2:57 ——Landlord must respond within 30 days
- § 2:58 ——Tenant's options when landlord refuses to consent
- § 2:59 ——Limits on rent charged subtenant—Term of sublease—Tenant limited to 10% surcharge where apartment furnished
- § 2:60 ——Violation entitles subtenant to treble damages
- § 2:61 ——Landlord may get vacancy increase
- § 2:62 ——Term of sublease limited to two years
- § 2:63 —Assignment
- § 2:64 Short term rental of apartments or rooms by tenants or owners
- § 2:65 Landlord's duty to provide written receipt for rent received
- § 2:66 —Receipt for rent check upon tenant's request

RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

- § 2:67 —Additional statutory requirement for receipt
- § 2:68 —Effect of failure to provide receipt
- § 2:69 ——Injunctive relief possible
- § 2:70 Landlord's duty to provide written notice of failure to receive rent
- § 2:71 Habitability, in general
- § 2:72 —Warranty of habitability under Real Property Law § 235-b
- § 2:73 ——Tenant-caused conditions exempt
- § 2:74 ——Labor disputes exempt
- § 2:75 ——Repair and deduct
- § 2:76 Statutory provisions governing housing standards
- § 2:77 —Multiple Dwelling Law
- § 2:78 —Multiple Residence Law
- § 2:79 —Housing Maintenance Code
- § 2:80 Housing standards
- § 2:81 —Heat
- § 2:82 —Hot water
- § 2:83 —Owner responsible for electricity in common areas
- § 2:84 —Safety and security measures
  - § 2:85 ——Building entrance doors and intercoms
  - § 2:86 ——Apartment door locks; landlord's right to key
  - § 2:87 ——Lobby attendant services
  - § 2:88 ——Elevator mirrors
  - § 2:89 ——Peepholes
  - § 2:90 ——Fire protection: smoke detectors and fire escapes
  - § 2:91 ——Carbon Monoxide Alarms Required in New York City
  - § 2:92 ——Radiator covers
- § 2:93 Housing Standards—Safety and security measures—Card key system for access to common areas
- § 2:94 Housing standards—Landlord harassment
- § 2:95 —Painting
- § 2:96 —Repair, vermin extermination, and cleaning
- § 2:97 ——Tenant's responsibilities
- § 2:98 —Standards for number of occupants
- § 2:99 —Window guards
- § 2:100 ——Criminal sanctions
- § 2:101 Housing standard—Noise violations
- § 2:102 Housing standards—Lead paint abatement
- § 2:103 ——Effects of lead poisoning
- § 2:104 ——HPD and Health Department empowered to regulate lead paint hazards
- § 2:105 ——Statutory framework: NYC Local Law 1 of 2004
- § 2:106 ——Presumption that lead is present
- § 2:107 ——“Class C” violation
- § 2:108 ——HPD to register, enforce removal of lead paint violations
- § 2:109 ——HPD and Health Department regulatory schemes

## TABLE OF CONTENTS

- § 2:110 ——Rebutting the presumption of lead paint condition
- § 2:111 ——Developments in lead paint litigation
- § 2:112 ——Liability of landlords significantly broadened
- § 2:113 ——Local Law 1 held not to apply where residence is not a multiple dwelling
- § 2:114 ——Nonpayment proceeding may be stayed where lead paint not abated
- § 2:115 ——Tenant can be awarded rent abatement where lead is present
- § 2:116 ——Lead paint class actions
- § 2:117 ——Tort liability for violation of lead paint laws
- § 2:118 ——Liability of government entities
- § 2:119 Vacate orders and right to restoration
- § 2:120 Vacate orders and right to relocation assistance
- § 2:121 Cable television and satellite dishes
- § 2:122 Landlord's right of access to apartment
- § 2:123 —“Reasonable notice” and accommodation required
- § 2:124 —Tenant cannot refuse if right reasonably exercised
- § 2:125 Tenants' right to organize
- § 2:126 —Rent strikes

## III. TERMINATING RELATIONSHIP BEFORE EXPIRATION OF TERM

- § 2:127 Terminating lease
- § 2:128 —Constructive eviction
- § 2:129 —Abandonment of premises by tenant
- § 2:130 ——Factors considered
- § 2:131 ——Fact of abandonment not always clear
- § 2:132 ——Burden to show abandonment on landlord
- § 2:133 ——Landlord's right upon abandonment
- § 2:134 —Special lease termination provisions for senior citizens
- § 2:135 ——Notice to landlord required
- § 2:136 —Special lease termination provisions for victims of domestic violence
- § 2:137 —Special termination rules for active duty military personnel
- § 2:138 —Death of tenant
- § 2:139 Duty to mitigate damages when tenant vacates before expiration of lease
- § 2:140 Expiration of lease required for action for rent
- § 2:141 Surrender of premises required for termination

## CHAPTER 3. PROTECTIONS AGAINST HOUSING DISCRIMINATION

### I. SOURCES OF PROTECTION FROM HOUSING DISCRIMINATION

- § 3:1 Protections from housing discrimination, generally

- § 3:2 —Stay of eviction proceedings
- § 3:3 Sources of protection
- § 3:4 —Constitutional provisions
- § 3:5 ——United States Constitution
- § 3:6 ——New York State Constitution
- § 3:7 —Federal statutes
- § 3:8 ——Title VIII of Civil Rights Act of 1968
- § 3:9 ——Civil Rights Act of 1866
- § 3:10 ——Title VI of the Civil Rights Act of 1964
- § 3:11 ——Americans With Disabilities Act
- § 3:12 ——Rehabilitation Act of 1973
- § 3:13 ——Age Discrimination Act of 1975
- § 3:14 —New York State statutes
- § 3:15 ——New York State Human Rights Law
- § 3:16 ——New York State Civil Rights Law
- § 3:17 ——Real Property Law § 236
- § 3:18 ——Real Property Law § 237
- § 3:19 ——General Obligations Law
- § 3:20 —New York City Human Rights Law

## II. PROTECTED CATEGORIES

- § 3:21 Protected categories, generally
- § 3:22 —Additional protections in New York City
- § 3:23 Protection against housing discrimination on the basis of race
- § 3:24 Protection against housing discrimination on basis of actual or perceived sexual orientation
- § 3:25 Protection against housing discrimination on basis of sex or gender
- § 3:26 Protection against sexual harassment in housing
- § 3:27 —Showings required to establish sexual harassment
- § 3:28 —Showings required to establish “hostile environment”
- § 3:29 Protection for victims of domestic violence
- § 3:30 —Right to terminate lease for victims of domestic violence
- § 3:31 Housing discrimination protection for persons with disabilities
- § 3:32 —Definition of “disability” under federal, state, and local law
- § 3:33 ——People with AIDS or HIV
- § 3:34 ——Alcoholism and drug addiction
- § 3:35 —Construction standards
- § 3:36 —“Reasonable accommodations”
- § 3:37 ——Pets and “reasonable accommodations”
- § 3:38 —Reasonable accommodations in clutter cases
- § 3:39 —“Reasonable accommodations”—Landlord may consider whether mentally disabled tenant presents threat
- § 3:40 Housing discrimination protections for persons with disabilities—  
Government obligations

## TABLE OF CONTENTS

- § 3:41 Familial status protection
- § 3:42 —Federal Fair Housing Act
- § 3:43 —New York City Charter and Code
- § 3:44 Senior citizen housing exempt
- § 3:45 —Exemption from familial status protections under federal law
- § 3:46 ——Housing provided under federal or state programs
- § 3:47 ——Housing for persons 62 or over
- § 3:48 ——Housing for persons 55 or over
- § 3:49 —No violation of due process
- § 3:50 —Exemption from familial status protections under NYS law
- § 3:51 —Exemption from familial status protections under NYC law
- § 3:52 Protection against housing discrimination on the basis of marital and partnership status
- § 3:53 Protections against housing discrimination based on source of income
- § 3:54 Protections against housing discrimination based on religion
- § 3:55 Protections against housing discrimination based on alienage or citizenship
- § 3:56 Protections against exclusionary zoning
- § 3:57 —Local zoning power cannot support exclusionary practice
- § 3:58 ——No balance requirement within each zone or project

## III. REMEDIES FOR HOUSING DISCRIMINATION

- § 3:59 Remedies for discrimination
- § 3:60 —Under federal law
- § 3:61 ——Statute of limitations
- § 3:62 —Under New York State law
- § 3:63 ——Statute of limitations
- § 3:64 —Under New York City law
- § 3:65 ——Civil court jurisdiction
- § 3:66 Recovery of damages

## CHAPTER 4. RENT CONTROL AND RENT STABILIZATION

### I. OVERVIEW OF RENT REGULATORY SYSTEM

- § 4:1 Four systems of rent regulation
- § 4:2 —Historical foundation
- § 4:3 ——Permissible use of police power
- § 4:4 —World War II rent controls
- § 4:5 ——Controls continued in New York State
- § 4:6 —Modern-day rent regulation
- § 4:7 ——Localities empowered
- § 4:8 ——Authority delegated

## RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

- § 4:9 ——Vacancy decontrol and the Urstadt Law
- § 4:10 ——Emergency Tenant Protection Act
- § 4:11 ——Additional housing under Rent Stabilization
- § 4:12 ——Vacancy rate cannot exceed 5%
- § 4:13 ——ETPA amended to cover Class “B” multiple dwellings
- § 4:14 ——Administration transferred to state
- § 4:15 Four systems modified under 1993, 1997, 2003, 2011, 2015 and 2019  
Acts
- § 4:16 —Deregulation of vacant apartments between 1993 and 2019
- § 4:17 —Deregulation of occupied apartments between 1993 and 2019
- § 4:18 New York City statutes
- § 4:19 —NYC Rent Control Law
- § 4:20 —NYC Rent Stabilization Law
- § 4:21 —Rent Stabilization amendment extends coverage
- § 4:22 Administration of rent regulation system
- § 4:23 —Regulations
- § 4:24 —Promulgated by DHCR

## II. STATE AND LOCAL RENT CONTROL COVERAGE

- § 4:25 Jurisdictions with Rent Control
- § 4:26 Housing covered, generally
- § 4:27 —Coverage may extend to other units also
- § 4:28 Vacancy decontrol

## III. STATE AND LOCAL RENT STABILIZATION COVERAGE

- § 4:29 Rent Stabilization coverage/applicability, generally
- § 4:30 Outside New York City
- § 4:31 In New York City
- § 4:32 What constitutes “completed” prior to January 1, 1974
- § 4:33 What constitutes “six units,” minimum for coverage
- § 4:34 —Horizontal multiple dwellings
- § 4:35 ——“Garden-type maisonettes” (garden apartments)
- § 4:36 ——Effect of conversions to other types of housing
- § 4:37 —Change in number of units
- § 4:38 ——Where number of units decreased to fewer than six
- § 4:39 ——Where number of units increased to six or more
- § 4:40 ——Number of units on certificate of occupancy controls
- § 4:41 What constitutes a “residential unit”
- § 4:42 —Courts look to primary purpose
- § 4:43 —Residential with some commercial use
- § 4:44 ——Primary purpose professional/commercial
- § 4:45 ——Business use can be separate basis for eviction
- § 4:46 Primary residence requirement

TABLE OF CONTENTS

- § 4:47 —Corporations as tenants; Illusory prime tenants
- § 4:48 Hotels and single-room-occupancy buildings
- § 4:49 —Hotels receiving tax breaks also made Rent Stabilized
- § 4:50 —“Permanent tenants”
- § 4:51 ——Request for lease
- § 4:52 Lofts
- § 4:53 Buildings receiving tax benefits can be covered
- § 4:54 —N.Y. Real Prop. Tax Law § 421
- § 4:55 —N.Y. Real Prop. Tax Law § 423
- § 4:56 —New York City Administrative Code “J-51”
- § 4:57 State-assisted units
  - § 4:58 —Article 8 Rehabilitation Loans
  - § 4:59 —Article 8A Rehabilitation Loans
  - § 4:60 —Article 15 Participation Loan Program
  - § 4:61 —Article 18 Low Income Housing Trust Fund Program
  - § 4:62 —Article 12 Housing New York Program
  - § 4:63 —Article 14 New York City Rehabilitation Mortgage Insurance Corp
  - § 4:64 —Article 13 Federal Rehabilitation Loans
  - § 4:65 —State of New York Mortgage Agency Insured Loans
  - § 4:66 Presumptively covered units that are exempt from Rent Stabilization
  - § 4:67 —Units owned or operated by government
  - § 4:68 —Units owned or operated by most nonprofit institutions
  - § 4:69 —Units owned or operated by nonprofit institutions—Language of provisions
    - § 4:70 —Indicia of nonprofit status
    - § 4:71 —Units owned or operated by most non-profit institutions—Caselaw exceptions to exemption
    - § 4:72 —Tenancy in units owned as cooperatives or condominiums—“Converted” buildings
      - § 4:73 ——Noneviction plans
      - § 4:74 ——Eviction plans
      - § 4:75 ——Exemption from eviction for seniors and disabled tenants
      - § 4:76 ——Rent Stabilized status restored after cooperative foreclosure
      - § 4:77 —Mitchell-Lama and other units regulated under the Private Housing Finance Law
      - § 4:78 —Limited exemption for units assisted under National Housing Act
      - § 4:79 —Buildings substantially rehabilitated on or after January 1, 1974
      - § 4:80 ——Exemption applies to ETPA units, not RSL units
      - § 4:81 ——What constitutes “substantial rehabilitation”
      - § 4:82 ——Landlord must have done rehabilitation
      - § 4:83 —High rent units of high income renters that were deregulated between 1993 and 2019
      - § 4:84 ——Income and rent thresholds
      - § 4:85 —High rent units of high income renters that were deregulated

## RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

between 1993 and 2019 Income and rent thresholds—DHCR Operational Bulletins

§ 4:86 —High rent units of high income renters that were deregulated between 1993 and 2019—Income and rent thresholds—Areas of conflict

§ 4:87 ——No exemption for certain units

§ 4:88 ——Procedure for deregulation

§ 4:89 ——Tenant default or delay in providing information

§ 4:90 ——Decision subject to administrative and judicial review

§ 4:91 ——Offer of market rent

§ 4:92 —High rent units that were deregulated upon vacancy between 1993 and 2019

§ 4:93 ——Not applicable to units vacated due to harassment

§ 4:94 Presumptively covered units that are exempt from Rent Stabilization—  
High rent units that were deregulated upon vacancy between 1993 and 2019—ETPA or NYS Rent Controlled units outside NYC

## **IV. REGISTRATION REQUIREMENTS**

§ 4:95 Rent and building registration requirements, in general

§ 4:96 —Initial registration

§ 4:97 —Annual registration

§ 4:98 —Penalties for failure to register

## **V. RENT SETTING**

§ 4:99 Rent setting for Rent Stabilized apartments, in general

§ 4:100 “Initial legal registered rents” for Rent Stabilized tenants

§ 4:101 —Units which have been extensively altered

§ 4:102 —Units already Rent Stabilized

§ 4:103 —Formerly Rent Controlled units

§ 4:104 —Units that were Rent Controlled as penalty

§ 4:105 —Initial legal registered rent for lofts

§ 4:106 —Units assisted under Private Housing Finance Law and Public Authorities Law

§ 4:107 —Units assisted with tax benefits under N.Y. Real Prop. Tax Law § 421-a or N.Y. Real Prop. Tax Law § J-51

§ 4:108 —Units that become Rent Stabilized upon expiration of exemption

§ 4:109 Initial legal regulated rents for foreclosed or deconverted cooperatives or condominiums

§ 4:110 Rent Guidelines Board rent increases

§ 4:111 —RGB vacancy and other allowances prior to June 14, 2019

§ 4:112 —Special Guidelines

§ 4:113 —Fuel adjustment

§ 4:114 —Lease must reflect legal rent

§ 4:115 Statutory vacancy allowances prior to June 14, 2019

TABLE OF CONTENTS

§ 4:116	Preferential rents/rent concessions; binding as of June 14, 2019
§ 4:117	—Preferential rents did not generally bind landlord to lower rent upon renewal between 2003 and 2019
§ 4:118	Rent reduction orders
§ 4:119	—Rent reduction order prevents collection of other rent increases
§ 4:120	Regular rent increases for Rent Controlled tenancies
§ 4:121	—Order of Eligibility
§ 4:122	— ——Grounds on which DHCR denies Order of Eligibility
§ 4:123	— — —No entitlement to hearing
§ 4:124	—Consideration of equities required
§ 4:125	Special rent increases, in general
§ 4:126	—Equitable considerations in special rent increases
§ 4:127	—Landlord hardship, in general
§ 4:128	— — “Comparative hardship” formula
§ 4:129	— — “Alternative hardship” formula
§ 4:130	— — Limitations on hardship increases
§ 4:131	— — —Six percent annual cap
§ 4:132	— — —Statutory cap
§ 4:133	— — —Thirty-six month limitation
§ 4:134	— — —Landlord challenge to certain charges will bar eligibility
§ 4:135	— — —Immediately hazardous violations must be corrected
§ 4:136	— — Option to cancel lease
§ 4:137	—Temporary major capital improvement (TMCI) rent increases
§ 4:138	— — Threshold requirements for TMCI
§ 4:139	— — Reasonable cost schedule
§ 4:140	— — Threshold requirements for TMCI—Improvement must be building-wide
§ 4:141	— — Landlord has the burden of proving increase justified
§ 4:142	— — Additional increase for necessary work but not for operational costs or cosmetic improvements
§ 4:143	— — Work required by law
§ 4:144	— — Work must be done properly
§ 4:145	— — Improvements made with consent of tenants
§ 4:146	— — Work must be part of a unified plan or a consecutively timed project
§ 4:147	— — Owner may obtain prior opinion from DHCR
§ 4:148	— — —Tenants may respond to application for prior opinion
§ 4:149	— — —Tenants may challenge prior opinion in PAR
§ 4:150	— — Calculation of the increase
§ 4:151	— — Two percent cap on collectability of all TMCI
§ 4:152	— — —Fifteen percent cap for certain groups replaced in 2019
§ 4:153	— — —Rent increase is temporary
§ 4:154	— — —SCRIE and DRIE apply
§ 4:155	— — —Collectability/effective date of increase
§ 4:156	— — —No collection of increase if rent reduction order in effect

RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

- § 4:157 ——Lease clause permitting increase required
- § 4:158 ——Landlord must apply within two years of completion of work
- § 4:159 ——Source of funds used to pay for TMCI affects eligibility
- § 4:160 ——Low-interest loans are not “grants” and can be basis
- § 4:161 ——Hazardous and immediately hazardous violations must be corrected
- § 4:162 Individual apartment rent increases where dwelling improved
- § 4:163 —Rate of increase
- § 4:164 —Tenant in occupancy must provide informed consent in writing
- § 4:165 ——Landlord has burden of proving that tenant consented
- § 4:166 —When increase can be collected
- § 4:167 —No DHCR approval required as of 1993
- § 4:168 ——Courts divided on pre-1993 cases
- § 4:169 —Landlord has burden of proving expenses
- § 4:170 —Tenant may be entitled to discovery
- § 4:171 —No increase for “repairs”
- § 4:172 ——No increase for work funded from insurance proceeds
- § 4:173 —Mere improvements to unit do not result in “first rent”
- § 4:174 Surcharges for appliances and landlord-provided utilities

## VI. TERMS AND CONDITIONS OF TENANCY, RENEWALS, AND SUCCESSION RIGHTS

- § 4:175 Waiver of Rent Stabilization benefit void
- § 4:176 Waiver of rent control status also void
- § 4:177 Lease agreements—Agreement providing rent stabilization-type rights is binding on successors
- § 4:178 Right to continuation of services in Rent Stabilized apartments
- § 4:179 —Base dates for units subject to RSL on June 30, 1974
- § 4:180 —Base dates for units subject to RSL on June 30, 1971, but vacated before 1974
- § 4:181 —Reduction in required services entitles tenants to rent reduction
- § 4:182 Right to continuation of services in Rent Controlled units
- § 4:183 —“Base dates” for establishing essential services
- § 4:184 Renewal leases for Rent Stabilized tenants—Must be on same terms and conditions
- § 4:185 —Renewal leases not required if landlord granted permission to demolish
- § 4:186 —Landlord must attach rider to vacancy and renewal leases
- § 4:187 ——Failure to attach rider precludes rent increases
- § 4:188 —Clause permitting rent increase upon DHCR order allowed
- § 4:189 —Time and manner of notification to tenant of right to renewal lease
- § 4:190 —Time to notify tenant of right to renew lease—“Window period” in New York City
- § 4:191 ——“Window period” outside New York City

TABLE OF CONTENTS

§ 4:192	—Time to respond to offer of renewal lease
§ 4:193	—Names of occupants
§ 4:194	Landlord's refusal to renew lease
§ 4:195	—Time to notify tenant of right and landlord's intent not to renew
§ 4:196	—Failure to offer renewal lease/late offer of renewal
§ 4:197	—When late offer ultimately made
§ 4:198	—Tenant retains rights if landlord fails to renew lease
§ 4:199	—Tenant remedy when landlord refuses to renew
§ 4:200	—Consequence of late renewal offer
§ 4:201	—Estate of deceased tenant
§ 4:202	—Statutory tenancy for Rent Controlled apartments
§ 4:203	Harassment
§ 4:204	—Hearing usually held
§ 4:205	—Criminal penalties for harassment of rent regulated tenant
§ 4:206	Succession rights to regulated housing
§ 4:207	—Vacancy allowance permitted for each second succession between 1997 and 2019
§ 4:208	—Succession rights provisions constitutional
§ 4:209	—Effect of fraud or omission
§ 4:210	—Concept of "family" extended for purposes of succession
§ 4:211	—Traditional family member
§ 4:212	—Nontraditional family member
§ 4:213	—Effect of marriage
§ 4:214	—Evidence of sexual relationship may not be considered
§ 4:215	——"Holding out" as family
§ 4:216	—Importance of financial interdependence
§ 4:217	—Insufficient evidence of family status
§ 4:218	—Primary residency and durational requirements for remaining household members
§ 4:219	—Two-year minimum
§ 4:220	—When the two-year minimum primary residence runs
§ 4:221	—Primary residency and durational requirements for remaining household members—Two-year minimum—One year for senior citizens and disabled persons
§ 4:222	—Interruption of time period
§ 4:223	——"Primary residence" and succession rights
§ 4:224	—Standard for primary residence
§ 4:225	—Improprieties of departed household member immaterial
§ 4:226	—Dual primary residences
§ 4:227	—Children
§ 4:228	—Retroactive application of succession rights protections
§ 4:229	—Successor tenant does not assume previous rent debts
§ 4:230	Succession rights to rent regulated housing—Prior to HSTPA, rights did not apply to seniors or disabled in co-op or condo eviction plan conversions

## VII. REMEDIES FOR VIOLATION OF RENT REGULATION REQUIREMENTS

- § 4:231 Tenant remedies for violation of RSL and RSC, in general
- § 4:232 Administrative process and right to a hearing
  - § 4:233 —DHCR Rules of Practice
  - § 4:234 Choice of forum belongs to the tenant
  - § 4:235 Choice of forum—Factors to consider in choosing a forum
    - § 4:236 ——Speed of prosecuting claim
    - § 4:237 ——Expense of prosecuting claim
    - § 4:238 ——Types of proof one can offer
    - § 4:239 ——Predictability of determination
    - § 4:240 ——Scope of review on appeal
    - § 4:241 —Expediting agency determination
  - § 4:242 —Withdrawal of administrative complaint to pursue in court proceeding
    - § 4:243 —Factors considered by courts asked to hear case
    - § 4:244 ——New York City Housing Court
    - § 4:245 ——Tenant chooses forum in overcharge cases
    - § 4:246 ——Supreme Court
    - § 4:247 ——NYC Civil Court
    - § 4:248 —Stay of court proceedings
    - § 4:249 ——Discretion not to stay proceedings
    - § 4:250 ——Agency can expedite proceeding
    - § 4:251 ——Effect of DHCR ruling on court judgment when no stay
    - § 4:252 ——No collateral attack on administrative determination
    - § 4:253 —Article 7A administrators: No DHCR jurisdiction
    - § 4:254 —Certificates of eviction/authorization to evict
    - § 4:255 Rent overcharges, in general
    - § 4:256 Challenge to initial rent: Fair market rent appeal (“FMRA”)
    - § 4:257 —Burden of proof
    - § 4:258 —Two methods for establishing fair market rents upon appeal
    - § 4:259 ——Special guidelines method
    - § 4:260 ——“Comparability standard” method
    - § 4:261 ——Must be filed within 90 days of certified mailing; exceptions exist
    - § 4:262 —FMRA may be filed by subsequent tenant in some circumstances
    - § 4:263 —Insubstantial defects may be corrected
    - § 4:264 —If landlord fails to file initial registration
    - § 4:265 —Exemption for previously Rent Controlled tenants
    - § 4:266 Overcharge complaints not concerning initial rent
    - § 4:267 —Time to bring complaint
    - § 4:268 —Six-year limit does not apply to determining whether rent is legal or whether unit is subject to rent stabilization
    - § 4:269 —Six year limit does not apply to units covered by the Rent Control or Loft Laws

TABLE OF CONTENTS

§ 4:270	—Six-year limit does not apply after overcharge finding
§ 4:271	—Six-year rule does not apply when rent reduction orders that pre-date base date remain in effect
§ 4:272	—Production and retention of records
§ 4:273	—Production of records—“Default formula” where rent history is incomplete or rent setting was fraudulent or illegal
§ 4:274	—Treble damages if overcharge is “willful”; burden on landlord
§ 4:275	—Treble damages if overcharge is “willful”; burden on landlord— Treble damages available for six years
§ 4:276	—Penalty where overcharge not “willful”
§ 4:277	Recovering a rent overcharge/excess rent
§ 4:278	—Tenant can recoup overcharge from new owner
§ 4:279	—New owner liability for excess rent after FMRA
§ 4:280	—Building transferred by judicial sale
§ 4:281	—Recovering a tenant undercharge
§ 4:282	Failure to maintain required services and rent reductions
§ 4:283	Procedures for reduction of services complaints
§ 4:284	—Only tenants actually affected receive rent reduction
§ 4:285	—Owner penalty: reduction, no increase absent service restoration
§ 4:286	—Offset for rent abatement
§ 4:287	—Penalty applied in all cases
§ 4:288	—DHCR treatment of “minor conditions”
§ 4:289	—Rent increases limited while reduction order in effect
§ 4:290	—DHCR inspection
§ 4:291	—Annual certification to DHCR by owners—Failure bars increase
§ 4:292	—Penalties for false certification
§ 4:293	Appeal of DHCR determinations, in general
§ 4:294	Petitions for administrative review (“PAR”)
§ 4:295	—Time to file PAR
§ 4:296	—Form of PAR
§ 4:297	—PAR by Representative tenants
§ 4:298	—Service of PAR
§ 4:299	—Time to answer
§ 4:300	—Amendment of PAR
§ 4:301	—Processing of PAR by Commissioner
§ 4:302	—Due process requires notice but no hearing
§ 4:303	—No new facts at PAR level; determination
§ 4:304	—Stay of order on filing PAR
§ 4:305	—Modification or revocation by DHCR during pendency
§ 4:306	Article 78 proceeding for review of DHCR decision
§ 4:307	—Abbreviated statute of limitations
§ 4:308	—“Deemed denial” where agency does not decide within 90 days
§ 4:309	—Exhaustion of administrative remedies and preservation of issues generally required
§ 4:310	—Attorney’s fees

## RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

§ 4:311 Article 78 proceeding for review of DHCR decision—Tenants' association must be represented by attorney

### **VIII. SENIOR CITIZEN AND DISABILITY RENT INCREASE EXEMPTIONS**

- § 4:312 Senior Citizen Rent Increase Exemption (“SCRIE”), in general
- § 4:313 Disability Rent Increase Exemption (DRIE) Program
- § 4:314 Senior Citizen Rent Increase Exemption (“SCRIE”) and Disability Rent Increase Exemption (“DRIE”), in general—Types of housing covered by SCRIE and DRIE Program
- § 4:315 Senior Citizen Rent Increase Exemption (“SCRIE”), in general—Minimum age for SCRIE eligibility
- § 4:316 Senior Citizen Rent Increase Exemption (“SCRIE”) and Disability Rent Increase Exemption (“DRIE”), in general—Annual income limitation for SCRIE and DRIE eligibility
- § 4:317 Senior Citizen Rent Increase Exemption (“SCRIE”) and Disability Rent Increase Exemption (“DRIE”), in general—Calculating the SCRIE and DRIE
  - § 4:318 ——Eligibility date
  - § 4:319 ——Most rent increases covered
  - § 4:320 ——Mistake as to SCRIE and DRIE eligibility
  - § 4:321 ——Portability of the SCRIE and DRIE exemption
  - § 4:322 ——Penalties for violation of SCRIE and DRIE provisions

## **CHAPTER 5. FEDERALLY SUBSIDIZED HOUSING PROGRAMS**

### **I. GOVERNMENT INVOLVEMENT IN HOUSING**

§ 5:1 Tenants are entitled to due process where actions have substantial impact on their rights

### **II. OVERVIEW OF PUBLIC HOUSING PROGRAM**

- § 5:2 Description of Public Housing Program
- § 5:3 —Subject to federal, state, and local law
- § 5:4 —Land acquired through eminent domain
- § 5:5 —New York City Housing Authority
- § 5:6 Eligibility for Public Housing
  - § 5:7 —Income
  - § 5:8 ——Applicants with no income are eligible
  - § 5:9 ——No requirement to pursue other resources
  - § 5:10 —Household composition: families and single persons
  - § 5:11 ——“Family” under federal regulations
  - § 5:12 ——“Family” under the *NYCHA Management Manual*

## TABLE OF CONTENTS

- § 5:13 —“*Non-citizens*” who are not lawfully in country disallowed
- § 5:14 ——Annual recertification necessary
- § 5:15 ——“Mixed families”
- § 5:16 ——Hearing on denial; grace period

## III. ADMISSION INTO PUBLIC HOUSING PROGRAM

- § 5:17 Public Housing admission process, in general
- § 5:18 Admission priorities for Public Housing
- § 5:19 —Federal priorities for admission; informal conference after denial
- § 5:20 —NYCHA priorities
- § 5:21 ——NYCHA local preferences
- § 5:22 ——Federal preferences
- § 5:23 ——Priority codes, local preferences, and federal preferences
- § 5:24 ——Emergency transfers between developments in New York City
- § 5:25 Tenant selection procedures, generally
- § 5:26 —Rejected applicants entitled to notice of findings
- § 5:27 —In New York City, rejected applicants get hearing
- § 5:28 HUD tenant selection regulations
- § 5:29 —Mitigation of unfavorable personal history
- § 5:30 Waiting list for Public Housing
- § 5:31 Provision of Social Security numbers required

## IV. OCCUPANCY IN PUBLIC HOUSING UNIT

- § 5:32 Unit size guidelines
- § 5:33 How rents are set
- § 5:34 —“Total tenant payment” includes utilities
- § 5:35 —Failure to pay “miscellaneous charges” cannot be basis for eviction proceeding
- § 5:36 Tenants must have annual income requalification
- § 5:37 —What is included in “annual income”
- § 5:38 —What is deducted from annual income
- § 5:39 —What is excluded from family income
- § 5:40 Redetermination of rent
- § 5:41 —Mid-year increases in income must be reported
- § 5:42 What leases must contain
- § 5:43 —Obligations of housing authority
- § 5:44 —Obligations of tenant
- § 5:45 —NYCHA Community Service Requirement
- § 5:46 Exceptions to prohibition of pets
- § 5:47 Lead-based paint poisoning prevention
- § 5:48 Anti-Drug Abuse Act of 1988
- § 5:49 Grievance procedures
- § 5:50 —NYCHA grievance procedure

- § 5:51 Changes in household composition
- § 5:52 —Changes in household composition in NYCHA housing
- § 5:53 —Where permission is required
- § 5:54 ——Family tie needed
- § 5:55 ——Temporary residency requests
- § 5:56 ——Foster children and home care attendants
- § 5:57 Succession rights of remaining household family members
- § 5:58 —Definition of “family” by local jurisdiction controls
- § 5:59 ——Federal regulations: grievance hearing
- § 5:60 —Minor child can have independent succession right
- § 5:61 Succession rights of remaining household members—Determination in summary eviction proceedings
- § 5:62 Succession rights of remaining household family members—NYCHA definitions and procedures
- § 5:63 —Remaining family members entitled to notice of termination of tenancy proceedings
- § 5:64 —“Otherwise eligible” requirement
- § 5:65 ——NYCHA tenants’ rights
- § 5:66 ——Occupants without family member claims
- § 5:67 ——NYCHA grievance process
- § 5:68 ——Hearing procedure

## **V. TERMINATION OF TENANCY IN PUBLIC HOUSING**

- § 5:69 Termination of tenancy in Public Housing
- § 5:70 Specific grounds for termination of tenancy in Public Housing
- § 5:71 —Nondesirability
- § 5:72 —Breach of rules
- § 5:73 ——Chronic rent delinquency
- § 5:74 ——Unauthorized occupants
- § 5:75 ——Harboring of pets
- § 5:76 ——Failure to report changes in household income
- § 5:77 Tenant responsibility for actions of others
- § 5:78 New York cases and *Rucker*—Authority’s burden to prove nondesirable’s residency
- § 5:79 Termination of tenancy procedures
- § 5:80 —Notice to terminate or notice of charges
- § 5:81 —Tenant has right to conference
- § 5:82 —Termination hearing
- § 5:83 —Grievance hearing outside New York City
- § 5:84 ——Waived for certain acts
- § 5:85 —Tenants’ rights in New York City
- § 5:86 ——NYCHA’s forum restricted in New York City
- § 5:87 ——Warrant of eviction still required
- § 5:88 ——RPAPL 753(4) Right to Cure Not Available to New York City Housing Authority Tenants

## TABLE OF CONTENTS

§ 5:89	— — Procedure in New York City
§ 5:90	— Permanent exclusion of offending household member
§ 5:91	Special parts in New York City Housing Court
§ 5:92	Article 78 proceedings
§ 5:93	— Statute of limitations
§ 5:94	— — Statute tolling to reopen
§ 5:95	Termination of tenancy may be disproportionate punishment
§ 5:96	— Where offending household member gone
§ 5:97	Summary eviction proceedings for nonpayment of rent
§ 5:98	— Procedure same as in other nonpayment cases
§ 5:99	— — Federal requirement of rent arrears notice
§ 5:100	— Defenses same as in other nonpayment cases
§ 5:101	— Counterclaims in summary eviction proceedings

## VI. OVERVIEW OF SECTION 8 PROGRAM

§ 5:102	Section 8 Program, in general
§ 5:103	Benefits can be tenant-based or project-based
§ 5:104	Section 8 Existing Housing Program
§ 5:105	— Revisions combined and simplified Certificate and Voucher rules
§ 5:106	— — Section 8 Certificate Program
§ 5:107	— — Section 8 Voucher Program
§ 5:108	— PHA must perform annual recertification
§ 5:109	— Effect of late recertification—Eviction does not always mean loss of subsidy
§ 5:110	— Housing Assistance Payments contract
§ 5:111	Other Section 8 programs
§ 5:112	— Substantial Rehabilitation and New Construction programs
§ 5:113	— Moderate Rehabilitation Program
§ 5:114	— Set-aside Program
§ 5:115	— Section 8 Housing Through State Housing Agencies Program
§ 5:116	— Section 8 for Disposition of Previously HUD-owned Projects Program
§ 5:117	Due process in Section 8 Program—Grievance procedures
§ 5:118	— — Hearing—Review of HA determination
§ 5:119	— — — Prehearing discovery
§ 5:120	— — — Family may have lawyer
§ 5:121	— — — Hearing officer
§ 5:122	— — — Evidence
§ 5:123	— — — Written decision; judicial review

## VII. ADMISSION INTO SECTION 8 PROGRAM

§ 5:124	Application and admission into Section 8 Existing Housing Program
§ 5:125	— Grounds for denial of application
§ 5:126	— — Applicant must have opportunity for informal review of denial

- § 5:127 —Time limits on finding dwelling unit
- § 5:128 —PHA may give prospective landlord information about tenant
- § 5:129 —Discrimination against tenants based on “source of income,” including Section 8 vouchers, prohibited
- § 5:130 —Statutory prohibition of discrimination against Section 8 participants in New York City

## **VIII. OCCUPANCY UNDER SECTION 8 PROGRAM**

- § 5:131 Rent setting in Section 8 Existing Housing Program
- § 5:132 —Tenant’s share of the rent
- § 5:133 ——Tenant not responsible for HA portion
- § 5:134 —Redetermination of tenant’s share of rent
- § 5:135 —Revised regulation allows collection of security deposits from new participants
- § 5:136 Rent regulation and Existing Housing Program
- § 5:137 —Rent regulation provisions applicable to Section 8 units
- § 5:138 ——Section 8 provisions control in event of conflict
- § 5:139 Rent setting in project based section 8
- § 5:140 Maintenance of Housing Quality Standards
- § 5:141 —HA must make annual inspection of each dwelling unit
- § 5:142 —Failure to maintain the unit in accordance with HQS
- § 5:143 ——Penalties for owner’s failure to maintain unit
- § 5:144 ——Challenges to penalties for owner’s failure to maintain unit
- § 5:145 ——Penalties for tenant’s failure to maintain unit
- § 5:146 Lease requirements for Section 8 housing
- § 5:147 —Certain lease provisions prohibited
- § 5:148 —Certain lease provisions required
- § 5:149 Remaining family members—Succession rights
- § 5:150 ——Nonfamily household members
- § 5:151 ——Entitlement to administrative hearing
- § 5:152 ——Transfer of Section 8 subsidy to another apartment

## **IX. TERMINATION OF SECTION 8 TENANCY AND/OR OF SUBSIDY**

- § 5:153 Termination of subsidy versus termination of tenancy, generally
- § 5:154 Termination of Section 8 Program subsidy
- § 5:155 —HUD Handbook notice requirements for recertification
- § 5:156 —Grounds for termination expanded under revised regulations
- § 5:157 —Tenant’s liability for acts of guests
- § 5:158 —Tenants entitled to notice of grounds; right to hearing
- § 5:159 —*Williams* consent decree governs procedures for terminating Section 8 subsidies
- § 5:160 Termination of subsidy must not be a disproportionate response to the offense

TABLE OF CONTENTS

- § 5:161 Termination of subsidy—New agreement necessary for landlord to recover Section 8 portion of the rent following termination of subsidy
- § 5:162 Termination of tenancy in Existing Housing and Voucher programs
- § 5:163 —“Good cause” to terminate tenancy
- § 5:164 —Termination or renewal at the end of the lease term
- § 5:165 —Tenant entitled to written termination notice
- § 5:166 —PHA certification requirements for evictions in NYC, generally
- § 5:167 ——NYCHA may accept or reject eviction grounds
- § 5:168 ——Certification required in all nonpayments and some holdovers
- § 5:169 ——Certification procedures in NYC
- § 5:170 ——Tenant has 10 days to notify NYCHA
- § 5:171 ——NYCHA must respond within 20 days
- § 5:172 ——Landlord may commence proceeding after NYCHA response or 25 days
- § 5:173 —Grounds for objection to certification in NYC
- § 5:174 —Unpaid Section 8 subsidy cannot be sole basis for eviction
- § 5:175 —Petition in summary proceeding must allege regulatory status and proper notice
- § 5:176 Termination of tenancy in other Section 8 Programs
- § 5:177 —Section 8 New Construction, Substantial Rehabilitation, and Housing Through State Housing Agencies
  - § 5:178 —Termination notices
  - § 5:179 —Section 8 Moderate Rehabilitation
  - § 5:180 ——Termination notices
  - § 5:181 Termination of HAP contract
  - § 5:182 —Automatic termination of HAP contract
  - § 5:183 —Landlords’ obligation to renew contract for rent stabilized tenants
  - § 5:184 —Termination as result of landlord “opting out” of contract—Ninety-day notice no longer required
  - § 5:185 ——Tenants entitled to Section 8 vouchers
  - § 5:186 ——Emergency Section 8 transfers

**X. OTHER FEDERAL HOUSING PROGRAMS**

- § 5:187 Other federal housing programs, in general
- § 5:188 —Section 235 mortgage assistance payments
- § 5:189 —Section 236 mortgage assistance payments
- § 5:190 —Section 221(d)(3) and (4) Below Market Interest Rate Program
- § 5:191 ——No automatic exemption from local rent laws
- § 5:192 ——HUD must approve rent increases
- § 5:193 —Section 202 Housing for Elderly and Handicapped
- § 5:194 Termination of tenancy in other federal programs, generally
- § 5:195 —Grounds for termination of tenancy in subsidized projects
  - § 5:196 ——Material noncompliance with rental agreement
  - § 5:197 ——Substantial violation of rental agreement

- § 5:198 ——Repeated minor violations of rental agreement
- § 5:199 ——Failure to supply information
- § 5:200 ——Nonpayment of rent after expiration of grace period
- § 5:201 ——Material failure to fulfill obligations under state landlord-tenant legislation
- § 5:202 ——“Other good cause”
- § 5:203 —Termination notices in subsidized projects
- § 5:204 —Requirements for termination notice
- § 5:205 ——Time periods vary with ground
- § 5:206 ——Manner of service
- § 5:207 ——Under state law, failure to object to termination notice is not waiver

## CHAPTER 6. PARTICULAR STATE- AND CITY-REGULATED HOUSING

### I. PROGRAMS UNDER PRIVATE HOUSING FINANCE LAW

- § 6:1 Mitchell-Lama housing
- § 6:2 —All aspects government-supervised
- § 6:3 Tenant selection in Mitchell-Lama housing
- § 6:4 Rents in Mitchell-Lama housing
- § 6:5 —Rent increases
- § 6:6 ——City rent increases must be at least two years apart
- § 6:7 ——Tenants must be served notice of rent increase
- § 6:8 —Application of Senior Citizen Rent Increase Exemption
- § 6:9 Termination of tenancy procedures in Mitchell-Lama housing
- § 6:10 —Grounds for eviction, state- and city-supervised housing
- § 6:11 —State-supervised Mitchell-Lama eviction procedures
- § 6:12 —City-supervised Mitchell-Lama eviction procedures
- § 6:13 —Issuance of certificate of eviction cannot be collaterally attacked in Housing Court
- § 6:14 Dissolution of nonprofit companies for Mitchell-Lama projects
- § 6:15 —Restrictive covenants may prevent dissolution
- § 6:16 —Upon dissolution, premises may become Rent Stabilized
- § 6:17 ——Initial Rent Stabilized rents
- § 6:18 Remaining household members—Succession rights in Mitchell-Lama housing
- § 6:19 —State-supervised projects
- § 6:20 ——Remaining family member on income affidavit
- § 6:21 ——Bequest of co-op shares
- § 6:22 ——Residents entitled to administrative hearing
- § 6:23 —City-supervised projects
- § 6:24 ——Mitchell-Lama succession rules
- § 6:25 ——Residents entitled to administrative hearing

## TABLE OF CONTENTS

- § 6:26 Private Housing Finance Law low income loan programs
- § 6:27 —Article 8A Loan Program
- § 6:28 ——Adjustment of rents
- § 6:29 ——Tenants must get notice and opportunity to comment
- § 6:30 —Article 15 Participation Loan Program
- § 6:31 —Other low and moderate income housing programs
- § 6:32 ——Multi-tier rent orders
- § 6:33 Dissolution of housing companies organized under PHFL Article 4

## II. HOMELESS SHELTERS

- § 6:34 Homeless shelters, in general
- § 6:35 —Emergency shelter for men in New York City
- § 6:36 ——Obligation extended to women and families
- § 6:37 Codification of requirement to provide shelter
- § 6:38 —Regulations promulgated
- § 6:39 Types of temporary emergency shelter
- § 6:40 —Single-sex shelters
- § 6:41 —Shelter for families
- § 6:42 ——New York City Administrative Code requirements
- § 6:43 ——Hotels/motels only where no other facilities available
- § 6:44 ——Restaurant allowance
- § 6:45 Physical standards for shelters
- § 6:46 —Waiver possible
- § 6:47 Admission to shelters may be denied
- § 6:48 Discharge/transfer from shelters: administrative process
- § 6:49 —Eviction from homeless shelters: court process
- § 6:50 ——In NYC: court process necessary
- § 6:51 ——Outside NYC: court process sometimes held necessary
- § 6:52 ——Hotel/motel residents
- § 6:53 ——Homeless shelter residents
- § 6:54 Siting of homeless shelters
- § 6:55 —SEQRA challenges usually fail
- § 6:56 —ULURP challenges have mixed results
- § 6:57 —Fair Share Rules challenge

## III. COOPERATIVES, CONDOMINIUMS, AND MUTUAL HOUSING ASSOCIATIONS

- § 6:58 Cooperatives
- § 6:59 —Statutory and regulatory scheme governing cooperatives
- § 6:60 —Housing Development Fund Corporations
- § 6:61 —Statutory and regulatory scheme governing cooperatives—Full disclosure to prospective purchasers required
- § 6:62 —Eviction and non eviction plans

- § 6:63 ——Persons protected from eviction prior to repeal of eviction plan option
- § 6:64 —Noneviction plans
- § 6:65 —Board of directors
- § 6:66 —Proprietary lease and by-laws
- § 6:67 —Maintenance
- § 6:68 —Responsibilities of the cooperative corporation
- § 6:69 ——Warranty of habitability applies
- § 6:70 —Cooperative corporation eviction of a shareholder/proprietary lessee
- § 6:71 —Financial considerations of cooperative owners
- § 6:72 Condominiums
- § 6:73 —Statutory and regulatory scheme governing condominiums
- § 6:74 —Board of managers
- § 6:75 —Deeds and bylaws
- § 6:76 —Common charges
- § 6:77 —Financial considerations of condominium owners
- § 6:78 —Warranty of habitability not applicable
- § 6:79 Mutual housing association

#### **IV. RESIDENTIAL LOFTS**

- § 6:80 Residential lofts in New York City, in general
- § 6:81 Loft Law
- § 6:82 —Purpose
- § 6:83 —Loft Law constitutional
- § 6:84 —Loft Board
- § 6:85 ——Composition
- § 6:86 ——Duties
- § 6:87 ——Concurrent jurisdiction with courts
- § 6:88 ——Loft Board regulations
- § 6:89 —Loft Law coverage—IMDs
- § 6:90 ——Accreted units
- § 6:91 ——1987 amendments to Loft Law
- § 6:92 ——1992 amendments to Loft Law
- § 6:93 ——1996 Extensions of Loft Law
- § 6:94 ——2010 amendments to Loft Law
- § 6:95 ——IMDs—Coverage [of Loft Law] should be broadly construed
- § 6:96 ——Unit must have indicia of independent family living
- § 6:97 ——Applicants for IMD status have burden
- § 6:98 Loft Law—Ongoing right to apply for Loft Law coverage
- § 6:99 Loft Law—Loft Law coverage—Coverage can be lost if unit is abandoned
- § 6:100 —Sale of fixtures or improvements
- § 6:101 ——Owner's purchase can take unit out of Rent Stabilization coverage

## TABLE OF CONTENTS

- § 6:102 ——Harassment of tenants terminates use of provision
- § 6:103 ——Where landlord elects not to buy fixtures; assignment of lease
- § 6:104 ——Silence deemed waiver
- § 6:105 ——“Constructive purchase” of fixtures
- § 6:106 —Registration requirements
- § 6:107 —Legalization requirements
- § 6:108 ——Hardship exemption requires recorded covenant
- § 6:109 ——No rent collections if noncompliance found
- § 6:110 ——Owner can pass on costs of complying to tenants
- § 6:111 —Rent Stabilization coverage
- § 6:112 —Eviction proceedings
- § 6:113 ——Specific showings required of petitioner
- § 6:114 ——Implications if showing not made
- § 6:115 ——Issue of fact
- § 6:116 ——Notice requirements
- § 6:117 ——Certificate of occupancy prerequisite to personal use eviction
- § 6:118 —Warranty of habitability applies
- § 6:119 —Remaining household members; succession rights in lofts
- § 6:120 —Harassment claim
- § 6:121 ——Landlord must have intent to cause tenants to vacate
- § 6:122 ——Remedies for harassment

## **V. COMMUNITY RESIDENCES AND ADULT CARE FACILITIES**

- § 6:123 Community residences for mentally ill persons
- § 6:124 Adult care facilities
- § 6:125 —Protection from eviction without court process
- § 6:126 ——No landlord-tenant relationship under Social Services Law
- § 6:127 ——Warranty of habitability for adult home residents
- § 6:128 —Grounds for termination
- § 6:129 —Notice of termination
- § 6:130 —No right to jury trial
- § 6:131 —Stays of warrant of eviction

## **VI. MANUFACTURED HOME PARKS**

- § 6:132 Manufactured home parks, in general
- § 6:133 Real Property Law § 233
- § 6:134 —Tenant must be offered lease for at least one-year term
- § 6:135 ——Timing of written offer of lease
- § 6:136 ——Exception to renewal requirement: change of use of park
- § 6:137 ——Penalties for failure to comply
- § 6:138 —Park owner must file annual registration statement with DHCR
- § 6:139 —Tenant must be given park rules and regulations
- § 6:140 —Park owner must disclose charges, which must be reasonable

- § 6:141 ——Security deposits
- § 6:142 —Rent increases are limited
- § 6:143 —Tenants are protected by warranty of habitability
- § 6:144 —Tenants have right to organize
- § 6:145 —Tenants are protected from retaliation
- § 6:146 —Subletting and assignment in manufactured home parks
- § 6:147 ——“Roommate law” in manufactured home parks
- § 6:148 —Right to sell manufactured home within manufactured home park
- § 6:149 ——Park owner may reserve right to approve buyer for remainder of term
- § 6:150 —Right to recover attorney’s fees
- § 6:151 Real Property Law provisions mainly enforced by DHCR
- § 6:152 Specific grounds for eviction under Real Property Law
- § 6:153 Right of first refusal when manufactured home park is offered for sale
- § 6:154 Antidiscrimination laws in manufactured home parks
- § 6:155 —Discrimination on basis of presence in protected category
- § 6:156 —Discrimination on basis of presence of children
- § 6:157 ——Real Property Law §§ 236, 237
- § 6:158 ——Federal Fair Housing Act

## **VII. HOUSING FOR PEOPLE WITH AIDS AND HIV**

- § 6:159 Special assistance for persons with AIDS/HIV
- § 6:160 —Federal programs
- § 6:161 ——Ryan White CARE Act
- § 6:162 ——HOPWA
- § 6:163 —State “Rent Enhancement” program
- § 6:164 —New York City’s HIV/AIDS Service Administration
- § 6:165 ——Scattered-site subsidized apartments
- § 6:166 ——Termination of residency
- § 6:167 ——Remaining household members
- § 6:168 —Homeless people with AIDS or HIV

## **CHAPTER 7. JURISDICTION, VENUE, AND FORUM IN SUMMARY PROCEEDINGS**

### **I. ORIGINS OF SUMMARY PROCEEDINGS AND NEED FOR JUDICIAL PROCESS**

- § 7:1 Origin of summary eviction proceedings
- § 7:2 —Ejectment actions
- § 7:3 —First summary eviction proceedings
- § 7:4 —End of “self-help”
- § 7:5 Statutory remedy for restoration and damages after “self help” eviction
- § 7:6 “Self-help” illegal in New York

## TABLE OF CONTENTS

- § 7:7 —New York City Illegal Eviction Law targets particular activities
- § 7:8 ——Law applies even if tenant remains in occupancy
- § 7:9 ——Additional violation if tenant not restored to occupancy
- § 7:10 —New York City Illegal Eviction Law protects occupants as well as tenants
- § 7:11 ——Occupant with lease
- § 7:12 ——Occupant for at least 30 days
- § 7:13 ——Licensees
- § 7:14 ——Squatters' status unclear
- § 7:15 ——Hotel or rooming house residents
- § 7:16 ——Subtenants
- § 7:17 ——Dwelling unit
- § 7:18 —Who can be held responsible for violations of New York City Illegal Eviction Law
- § 7:19 —Role of police and courts in restoration under New York City Illegal Eviction Law
  - Dealing with police
  - Verbal report to police legally sufficient
  - Documentation helpful
  - Police response
- § 7:24 Ejectment actions in New York State
- § 7:25 —Used when summary eviction proceedings unavailable
- § 7:26 ——Statutory basis for actions in ejectment
- § 7:27 Modern summary eviction proceedings
- § 7:28 —Statutory basis
- § 7:29 ——New York City
- § 7:30 ——Nassau and Suffolk counties
- § 7:31 ——City courts outside New York City
- § 7:32 ——Towns and villages
- § 7:33 —Primary purpose of summary eviction proceedings—Tenant Safe Harbor Act
- § 7:34 —“Nonpayments” versus “holdovers”
- § 7:35 —“Petitioner” and “respondent”
- § 7:36 Subject matter jurisdiction
- § 7:37 —Court’s power and authority
- § 7:38 —Petitioner must have taken steps to invoke jurisdiction
- § 7:39 —Possession necessary for jurisdiction
- § 7:40 —Other limitations

## II. VENUE AND FORUM IN SUMMARY PROCEEDINGS

- § 7:41 Venue
- § 7:42 —Local court acts
- § 7:43 Forum
- § 7:44 —Supreme Court usually declines jurisdiction

- § 7:45 —Surrogate's Court jurisdiction
- § 7:46 —Local court jurisdiction outside New York City
- § 7:47 ——Local courts' expanded jurisdiction
- § 7:48 —New York City Housing Court
- § 7:49 ——Housing Court Act
- § 7:50 ——NYC Civil Court Act § 110(a)
- § 7:51 ——NYC Civil Court Act § 110(c)
- § 7:52 ——“Housing maintenance standards”
- § 7:53 ——Jurisdiction over ancillary matters
- § 7:54 ——Limitations on Housing Court jurisdiction
- § 7:55 ——Concurrent jurisdiction with certain agencies
- § 7:56 Forum—New York City Housing Court—Help Center attorneys
- § 7:57 Forum—New York City Housing Court—No monetary limits
- § 7:58 ——Exception: damages for wrongful eviction
- § 7:59 —New York City Housing Court Judges—Appointment and Status
- § 7:60 —New York City Housing Court—Housing Court Advisory Council
- § 7:61 ——Nonjury trials
- § 7:62 ——Administrative apparatus; administrative directives
- § 7:63 Strict compliance standard for summary eviction proceedings
- § 7:64 —Statutory requirements
- § 7:65 —Cases in which petition held insufficient
- § 7:66 Grounds for proceeding

### **III. PARTIES IN SUMMARY EVICTION PROCEEDINGS**

- § 7:67 Parties, generally
- § 7:68 —Corporations as parties
- § 7:69 ——A corporation must appear by an attorney
- § 7:70 General standing requirements under the RPAPL
- § 7:71 —Petition must state facts that show standing
- § 7:72 Persons who may maintain proceeding
- § 7:73 —Landlord or lessor
- § 7:74 ——Privity is required
- § 7:75 ——Conveyance of title cuts off right
- § 7:76 ——Cooperative corporation
- § 7:77 ——Requirements for Limited Liability Companies
- § 7:78 ——Reversioner or remainderman
- § 7:79 —Purchaser after default
- § 7:80 —Person forcibly put out or kept out
- § 7:81 —Sharecropper
- § 7:82 —Person entitled to possession
- § 7:83 —Person authorized under the RPAPL to end illegal use
- § 7:84 —Receiver
- § 7:85 —Lessee of the premises entitled to possession
- § 7:86 —Certain managers of NYC-owned buildings

TABLE OF CONTENTS

§ 7:87	Persons who may not bring summary eviction proceedings
§ 7:88	Persons who may not maintain proceeding—Nonexistent or unauthorized foreign corporations
§ 7:89	Persons who may not bring summary eviction proceedings—General exception
§ 7:90	Cotenant may not maintain summary eviction proceeding against another cotenant
§ 7:91	Right of successor-in-interest to bring summary proceeding
§ 7:92	—Requirements for substitution
§ 7:93	—Must be new owner and have valid assignment of rents
§ 7:94	Right of estates to maintain summary eviction proceedings
§ 7:95	—Role of Surrogate's Court
§ 7:96	Naming proper respondents in summary proceeding
§ 7:97	Naming proper respondents in summary proceedings—Persons who are not named in the proceeding may not be removed from the premises
§ 7:98	Naming proper respondents in summary proceeding—Persons with no independent possessory rights
§ 7:99	—Family members may have independent possessory rights
§ 7:100	—Other persons with independent rights must be named if their eviction is sought
§ 7:101	—Co-tenants
§ 7:102	—Subtenants must be named for purposes of eviction warrant
§ 7:103	—Additional steps required if subtenant not named
§ 7:104	—Unnamed subtenant may participate
§ 7:105	Summary eviction proceeding where tenant is deceased
§ 7:106	—Estate of deceased tenant is necessary party where lease has not expired
§ 7:107	—Lease becomes personal property of estate
§ 7:108	—Landlord's recourse where no representative
§ 7:109	—Sanctions for taking default if tenant known to be deceased
§ 7:110	Use of pseudonym to name respondent
§ 7:111	—Pseudonyms sometimes authorized by CPLR
§ 7:112	—No “bright-line” rule
§ 7:113	—Cases where dismissal warranted
§ 7:114	—Respondents must be adequately described
§ 7:115	—Dismissal unwarranted where description gives notice
§ 7:116	—Attorney not liable if failure not cause of default
§ 7:117	—Due process considerations
§ 7:118	Guardian for person adjudicated as incompetent must be made party to proceeding and leave of court required to commence
§ 7:119	Appointment of guardians ad litem
§ 7:120	—Appointments from official list
§ 7:121	—Powers of guardian ad litem
§ 7:122	—Guardian's acts and omissions may not prejudice ward

- § 7:123 —Hearing may be needed
- § 7:124 —Appointment of guardian for tenant with legal counsel
- § 7:125 —Housing Court judges' authority to appoint
- § 7:126 —Affidavit to be filed under CPLR 1202(c)
- § 7:127 Right to counsel for low-income tenants facing eviction in NYC
- § 7:128 Assignment of counsel for persons serving in the military and their dependents

#### **IV. NOTICE OF PETITION AND PETITION IN SUMMARY EVICTION PROCEEDINGS**

- § 7:129 Pleadings in summary eviction proceedings, generally
- § 7:130 Notice of petition
- § 7:131 —Who may issue
- § 7:132 —Order to show cause
- § 7:133 Petition; generally
- § 7:134 —Verification
- § 7:135 ——Attorney's signature is required
- § 7:136 ——Challenge to verification
- § 7:137 Contents of petition: RPAPL § 741 requirements
- § 7:138 —Adequacy of allegations to give notice
- § 7:139 ——No inconsistent theories permitted
- § 7:140 ——Facts upon which proceeding is based
- § 7:141 ——Statements in predicate notices; holdover proceedings
- § 7:142 ——Multiple dwelling registration
- § 7:143 ——Registration must be alleged
- § 7:144 ——Rent regulatory status
- § 7:145 ——Rent Control or Rent Stabilization
- § 7:146 ——Other federal or state regulation
- § 7:147 VAWA notice must be provided to tenants with eviction petition
- § 7:148 What petition may seek
- § 7:149 —Petition must seek possession
- § 7:150 —Petition may seek money judgment
- § 7:151 ——“Rent” versus “use and occupancy”
- § 7:152 ——Jurisdictional implications

#### **V. PERSONAL JURISDICTION**

- § 7:153 Commencement of proceeding
- § 7:154 —Return date of notice of petition and petition
- § 7:155 ——Variation in NYC nonpayment proceedings
- § 7:156 ——Service “complete” upon filing
- § 7:157 ——Jurisdictional consequences
- § 7:158 Proper service of process required for jurisdiction
- § 7:159 Who may serve process

TABLE OF CONTENTS

- § 7:160 —Statutory definitions of process server and objectives of regulation
- § 7:161 ——Purpose of regulation
- § 7:162 ——Record-keeping required
- § 7:163 ——In New York City
- § 7:164 ——Service not invalidated
- § 7:165 Who must be served
- § 7:166 —Each respondent
- § 7:167 —Each lease signatory
- § 7:168 —Each occupant where more than one dwelling unit
- § 7:169 Statutory service requirements under RPAPL § 735
- § 7:170 —Must use “reasonable application” to make personal or substituted service
  - § 7:171 —Server must make more than one attempt
  - § 7:172 ——Attempts solely during working hours generally inadequate
  - § 7:173 ——Landlord must give process server available information
  - § 7:174 —Personal service
  - § 7:175 ——Tenant in nursing home
  - § 7:176 ——Tenant incarcerated
  - § 7:177 ——Place of business if no residence information
  - § 7:178 ——“Substituted service” on person living/working at premises, generally
    - § 7:179 ——“Suitable age and discretion”
    - § 7:180 ——“Suitable age”
    - § 7:181 ——“Suitable discretion”: relationship to respondent is key
    - § 7:182 ——Service invalid where conflict of interest
    - § 7:183 ——Difficulty in determining residence of recipient
    - § 7:184 —“Conspicuous place” if personal/substituted service fails
    - § 7:185 ——Must be affixed at correct property
    - § 7:186 ——Rules for affixing papers
    - § 7:187 ——Petitioner need not guarantee receipt
    - § 7:188 —Additional mailing for substituted/conspicuous place service
    - § 7:189 —Filing
    - § 7:190 ——Permission for late filing
    - § 7:191 ——Additional time in NYC and District courts
    - § 7:192 ——Discretionary in non-NYC City and Justice courts
    - § 7:193 ——Failure to seek permission requires dismissal
    - § 7:194 —Federally subsidized housing: HUD rules apply

**VI. FORMS**

- § 7:195 Notice of Nonpayment Petition, New York City (22 NYCRR 208.42, effective October 1, 2019)
- § 7:196 Notice of Holdover Petition, New York City (22 NYCRR 208.42, effective October, 2019)
- § 7:197 Default postcard (holdover, New York City)

## CHAPTER 8. HOLDOVER PROCEEDINGS: GROUNDS AND REQUIREMENTS

### I. HOLDOVER PROCEEDINGS, GENERALLY

- § 8:1 Use of term “holdover”
- § 8:2 Proceeding available in many contexts
- § 8:3 —Persons who may maintain proceeding
- § 8:4 Use and occupancy
- § 8:5 —Must be demanded in petition
- § 8:6 —Amount of use and occupancy
- § 8:7 —Use and occupancy not always appropriate

### II. RPAPL EVICTIONS WHERE NO LANDLORD-TENANT RELATIONSHIP EXISTS

- § 8:8 Kinds of proceedings against occupants
- § 8:9 Squatter proceedings
- § 8:10 —Who may maintain a squatter proceeding
- § 8:11 —Notice to quit necessary
- § 8:12 ——Manner in which to serve notice
- § 8:13 —No permission to be on premises
- § 8:14 ——Revoked permission not a basis
- § 8:15 —Violation of occupancy agreement not basis
- § 8:16 Licensee proceedings
- § 8:17 —Who may maintain
- § 8:18 —Notice to quit required
- § 8:19 ——Manner in which to serve notice
- § 8:20 —Licensee proceedings against any remaining household members
- § 8:21 ——No proceeding against remaining spouse
- § 8:22 ——Exception where unit allocated to tenant of record
- § 8:23 ——No proceeding against “co-habitant”
- § 8:24 Superintendent/employee proceedings
- § 8:25 —No notice to quit required
- § 8:26 —Direct employment relationship required
- § 8:27 ——Where both “employee” and “tenant”
- § 8:28 ——Dual status tied to apartment
- § 8:29 —Legality of employment termination
- § 8:30 ——Proper circumstances must be alleged
- § 8:31 ——Stay for pending labor or employment proceeding
- § 8:32 Eviction proceedings after foreclosure
- § 8:33 —Who may maintain proceeding
- § 8:34 —Certain tenants are protected
- § 8:35 —Notice to quit necessary
- § 8:36 ——Manner in which to serve notice

## TABLE OF CONTENTS

- § 8:37 ——Deed or certified copy must be exhibit to tenant
- § 8:38 ——Failure to exhibit deed or certified copy
- § 8:39 —Effect of attornment

## III. RPAPL EVICTIONS WHERE LANDLORD-TENANT RELATIONSHIP EXISTS

- § 8:40 Kinds of proceedings against tenants
- § 8:41 —Definition of “tenant”
- § 8:42 Unregulated/unsubsidized private housing
- § 8:43 —No reason for eviction required upon lease expiration
- § 8:44 ——Developing law on wholly private evictions
- § 8:45 Expiration or termination of lease
- § 8:46 —Objectionable tenant
- § 8:47 —Conditional limitations and conditions subsequent
- § 8:48 ——No application in rent regulated housing
- § 8:49 —Nonpayment of rent
- § 8:50 —Nonpayment of taxes
- § 8:51 —Bankruptcy
- § 8:52 —Illegal use
- § 8:53 —Removal of smoke detector (large cities)

## IV. BREACH OF LEASE AND OBJECTIONABLE CONDUCT

- § 8:54 Breach of lease or tenant obligation, generally
- § 8:55 Opportunity to cure, generally
- § 8:56 —Ten-day pre-proceeding opportunity to cure
- § 8:57 —Statutory postjudgment opportunity to cure
- § 8:58 —Statutory postjudgment opportunity to cure (NYC)—RPAPL 753(4)  
applicable to failure to renew lease cases
- § 8:59 ——Can apply to nuisance proceeding
- § 8:60 ——When objectionable household member moves out
- § 8:61 ——RPAPL 753(4) available in Supreme Court ejectment actions
- § 8:62 ——Breach cases where RPAPL § 753(4) stay granted
- § 8:63 ——Breach cases where RPAPL § 753(4) stay denied
- § 8:64 —If breach not curable within statutory time period
- § 8:65 Specific types of violations
- § 8:66 —Installation of appliances without consent
- § 8:67 ——Landlord’s collection of surcharge is waiver
- § 8:68 ——Right protected if lease is silent
- § 8:69 ——Installation of satellite dishes and television antennae without  
consent
- § 8:70 —Other types of lease violations
- § 8:71 —Harboring a pet in violation of no-pet clause
- § 8:72 ——“Pet laws” provide some protection as do “reasonable  
accommodation” obligations

- § 8:73 ——Landlord's acquiescence is defense
- § 8:74 —Business use of dwelling unit
- § 8:75 ——Must materially affect character of building
- § 8:76 ——In-home family day care
- § 8:77 ——Impact of residential use
- § 8:78 —Residential use of commercial unit
- § 8:79 —Commission of waste/ unauthorized alterations
- § 8:80 —Commission of waste—Nonstructural alterations not "waste"
- § 8:81 —Overcrowding
- § 8:82 Specific types of violations—Chronic rent delinquency
- § 8:83 Specific types of violations—Chronic rent delinquency—Effect on Rent Stabilized tenancies
- § 8:84 Specific types of violations—Chronic rent delinquency—Number and frequency of nonpayment proceedings not dispositive
- § 8:85 Specific types of violations—Chronic rent delinquency—Mitigating circumstances
- § 8:86 Specific types of violations—Refusal to supply duplicate key
- § 8:87 —Refusal to provide access to make repairs
- § 8:88 —Unauthorized occupants
- § 8:89 Objectionable conduct, or nuisance, generally
- § 8:90 —When conduct is result of disability
- § 8:91 Nature of objectionable conduct
- § 8:92 —Conduct must be recurring, frequent, continuous, or extremely dangerous
- § 8:93 —Mere "eccentric" behavior not enough
- § 8:94 —"Mere annoyance" insufficient
- § 8:95 —Danger must be imminent
- § 8:96 —Particular case: practice of musical instruments
- § 8:97 —Clutter, a.k.a. "Collyers" or "hoarding"
- § 8:98 —Smoking in apartment

## **V. ILLEGAL ACTIVITY AS BASIS FOR EVICTION**

- § 8:99 Illegal activity as basis for eviction, generally
- § 8:100 Civil forfeiture
- § 8:101 —Federal civil forfeiture law
- § 8:102 ——Narcotics can be basis; opportunity to be heard necessary
- § 8:103 —New York State civil forfeiture law
- § 8:104 Illegal activity voids lease under Real Property Law
- § 8:105 Eviction possible under RPAPL for illegal activity
- § 8:106 —Double jeopardy argument has not succeeded
- § 8:107 —Self-incrimination privilege
- § 8:108 Lease voided—No notice required
- § 8:109 ——Notice under certain other statutes/codes
- § 8:110 ——Notice under lease provision

TABLE OF CONTENTS

§ 8:111	RPAPL § 711(5)
§ 8:112	Eviction by law enforcement and neighbors—RPAPL § 715
§ 8:113	—Directed to drug activity
§ 8:114	—Who may maintain proceeding
§ 8:115	—Powers of enforcement agency
§ 8:116	—Initial notice to landlord required
§ 8:117	—Name landlord and person in possession
§ 8:118	Closure under New York City Nuisance Abatement Law
§ 8:119	Eviction from federally subsidized housing
§ 8:120	—1989 HUD notice
§ 8:121	—RPAPL § 715 governs eviction proceeding
§ 8:122	—Conflict with <i>Escalera</i> resolved
§ 8:123	Provisions authorizing eviction of rent regulated tenants
§ 8:124	—Rent and Eviction Regulations
§ 8:125	—Rent Stabilization Code
§ 8:126	Allegation and proof requirements under RPAPL
§ 8:127	—Standard of proof under RPAPL § 715
§ 8:128	—Illegal trade or manufacture ground: drugs
§ 8:129	—Must allege that “premises” used
§ 8:130	—Must involve ongoing activity
§ 8:131	—Same standard under Rent Stabilization Code
§ 8:132	—Cessation of illegal activity
§ 8:133	—Tenant’s eviction for another’s action
§ 8:134	—Quantity of drugs considered
§ 8:135	Allegations and proof requirements under RPAPL—Criminal records and papers sealed under CPL § 160.50
§ 8:136	Special practice considerations
§ 8:137	—Possibility of criminal prosecution
§ 8:138	—Evidence: search and seizure
§ 8:139	—Evidence—Search and seizure—May rely on apparent authority
§ 8:140	—Exclusionary Rule, generally
§ 8:141	—Cases in which courts failed to apply Exclusionary Rule
§ 8:142	—Must prove presence of drugs
§ 8:143	—Concurrent nonpayment and drug holdover proceedings

**VI. GROUNDS FOR EVICTION SPECIFIC TO RENT REGULATION LAWS**

§ 8:144	Eviction of rent regulated tenants
§ 8:145	—Statutory and regulatory authority
§ 8:146	—Grounds determine where proceeding is brought
§ 8:147	—Rent Control: “certificate of eviction”
§ 8:148	—Rent Stabilization—Permission not to renew
§ 8:149	—Application stays obligation to renew
§ 8:150	—No rent increases

RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

- § 8:151 ——Moving and relocation expenses
- § 8:152 —Merits of claim are *res judicata*
- § 8:153 —No choice of forum for some grounds
- § 8:154 —Review of agency determination
- § 8:155 Particular grounds for eviction
- § 8:156 —Harassment is a ground for eviction
- § 8:157 —Illegal occupancy
- § 8:158 ——No agency approval necessary
- § 8:159 ——If possible, landlord must cure illegal condition
- § 8:160 —Refusal to renew Rent Stabilized lease
- § 8:161 ——No agency approval necessary
- § 8:162 ——Failure to renew on time subject to 30-day opportunity to cure
- § 8:163 ——No application to Rent Controlled or permanent hotel residents
- § 8:164 —Illegal subletting
- § 8:165 ——No agency approval necessary
- § 8:166 Particular grounds for eviction—Illegal subletting—Overcharge of tenant may be grounds for eviction, but may be too harsh a penalty
- § 8:167 Particular grounds for eviction—Illegal subletting—Prime tenant must maintain unit as primary residence
- § 8:168 ——Illusory prime tenancy
- § 8:169 ——“Illusory prime tenant” not tenant at all
- § 8:170 —Charging roommate more than proportionate share of rent violates code, but is not grounds for eviction
- § 8:171 —Excessive rent charge to roommate not a basis for eviction from housing covered by Rent Control or Loft Law
- § 8:172 —Recovery of premises for use by not-for-profit institution
- § 8:173 Particular Grounds for Eviction—Recovery of premises for use by not-for-profit institution—Predicate Notices
- § 8:174 Particular grounds for eviction—Recovery of premises for use by not-for-profit institution—No agency approval necessary
- § 8:175 ——Charitable or educational purpose required
- § 8:176 ——If owner seeks unit for residential use
- § 8:177 ——Tenant’s remedy if not used for stated purpose
- § 8:178 ——Statute of limitations
- § 8:179 —Refusal of access
- § 8:180 ——No agency approval necessary
- § 8:181 —Rehabilitation of hotel tenant’s room
- § 8:182 ——No agency approval necessary
- § 8:183 ——Showing landlord must make
- § 8:184 —Owner’s personal use, in general
- § 8:185 —Owner’s personal use must comply with other laws and regulations
- § 8:186 —Owner’s use—Similarities between Rent Stabilization and Rent Control
- § 8:187 ——Exemption—Seniors, disabled persons and long-term residents

TABLE OF CONTENTS

§ 8:188	— — — Seniors, disabled persons and long-term tenants— Protection applies to both traditional and non-traditional families
§ 8:189	— — — “Senior citizen”
§ 8:190	— — — “Disabled person”
§ 8:191	— — Similarities between rent stabilization and rent control— Exemption—Long-term tenants
§ 8:192	— — Differences between Rent Stabilization and Rent Control—When agency approval necessary
§ 8:193	— — Rent Stabilized tenancy—Basis for refusal to renew lease
§ 8:194	— — Similarities between Rent Stabilization and Rent Control— “Immediate and compelling necessity”
§ 8:195	— — Only one individual owner may bring a proceeding for only one unit
§ 8:196	— — Rent Stabilized tenancy—Co-op and condo conversions
§ 8:197	— — Differences between Rent Stabilization and Rent Control—Rent Stabilized tenancy—Penalties
§ 8:198	— Nonprimary residence
§ 8:199	— Forum
§ 8:200	— — May be heard in court of competent jurisdiction—Basis for refusal to renew a lease (Rent Stabilization)
§ 8:201	— — Declaratory judgment available
§ 8:202	— — What landlord must show
§ 8:203	— — Criteria may vary from case to case
§ 8:204	— — Nonprimary residence cannot be “cured”
§ 8:205	— — Predicate notice required
§ 8:206	— — Filing of predicate notice rent controlled tenancies
§ 8:207	— — Owner’s substantial alteration/remodeling (Rent Control)
§ 8:208	— — Agency approval required
§ 8:209	— — Showing landlord must make
§ 8:210	— — Landlord pays for relocation
§ 8:211	— — Demolition of housing accommodation
§ 8:212	— — Agency approval required
§ 8:213	— — Showing landlord must make
§ 8:214	— — — Rent Control requirements
§ 8:215	— — — Rent Stabilization requirements
§ 8:216	— — Withdrawal of units from the rental market
§ 8:217	— — Agency approval necessary
§ 8:218	— — Showing landlord must make
§ 8:219	— — — Nonprofit landlord under Rent Control
§ 8:220	— — — Business necessity required under Rent Stabilization
§ 8:221	— — Landlord must pay for relocation
§ 8:222	— — “Other grounds” (Rent Stabilization Code)
§ 8:223	— — Agency approval necessary
§ 8:224	— — Showing landlord must make

## VII. PREDICATE NOTICES REQUIRED IN HOLDOVER PROCEEDINGS

- § 8:225 Required predicate notices, in general
- § 8:226 Notice to quit
- § 8:227 —When it is required
- § 8:228 —When it must be served
- § 8:229 —How it must be served
- § 8:230 —What it must contain
- § 8:231 —Specific facts supporting proceeding
- § 8:232 ——Must be unequivocal
- § 8:233 Notice to cure
- § 8:234 —When it is required
- § 8:235 ——Not needed if recent “substantial injury”
- § 8:236 —When it must be served
- § 8:237 —How it must be served
- § 8:238 —What it must contain
- § 8:239 ——Must be specific
- § 8:240 ——Must advise of time period to cure
- § 8:241 —*Yellowstone* injunction
- § 8:242 Notice of termination
- § 8:243 —Jurisdictional consequences if required
- § 8:244 —When required
- § 8:245 ——Tenants in regulated and unregulated housing
- § 8:246 ——Section 8 tenants
- § 8:247 —Timing of notice
- § 8:248 ——Tenants with leases
- § 8:249 ——Nonregulated tenants
- § 8:250 ——Month-to-month NYC tenants
- § 8:251 ——Month-to-month tenants outside NYC
- § 8:252 ——Rent regulated tenants, generally
- § 8:253 ——Rent Stabilized tenancies
- § 8:254 ——Rent Controlled tenancies
- § 8:255 —How notice must be served
- § 8:256 ——Tenants with leases
- § 8:257 ——Month-to-month NYC tenants
- § 8:258 ——Month-to-month tenants outside NYC
- § 8:259 —Effect of dismissal on termination notice
- § 8:260 —What the termination notice must contain
- § 8:261 ——Facts supporting ground for termination needed in all cases
- § 8:262 ——Meaning of “sufficient detail” unclear
- § 8:263 ——Regulated and nonregulated tenancies
- § 8:264 ——Date of termination
- § 8:265 ——Consequence of failing to vacate
- § 8:266 ——Rent regulated tenancies

## TABLE OF CONTENTS

§ 8:267	— — — Basis for termination
§ 8:268	— — Federal Section 8 tenancies
§ 8:269	— — Must be unequivocal and unambiguous
§ 8:270	— Defects cannot be cured
§ 8:271	— Who may issue notice of termination
§ 8:272	Notice of intent not to renew lease (Rent Stabilized)
§ 8:273	— Must notify during “window period”
§ 8:274	— — Timing of <i>Golub</i> notice crucial
§ 8:275	— — Timing of <i>Golub</i> notice by mail
§ 8:276	— — Any renewal offer vitiates <i>Golub</i> notice
§ 8:277	— — Grounds and facts must be stated
§ 8:278	— — — Personal and institutional use
§ 8:279	— — — Nonprimary residence notices
§ 8:280	— Lease renewal offer not subject to revocation during 60-day acceptance period
§ 8:281	— Service of notice of intent not to renew
§ 8:282	— — Notice of intent to commence proceeding with nonrenewal notice

## **VIII. GOOD CAUSE REQUIREMENT FOR EVICTION IN CERTAIN RENTAL UNITS**

§ 8:283	Good cause requirement for eviction requirement generally
§ 8:284	Good causes that permit eviction under the GCEL
§ 8:285	Housing units that are subject to or exempt from the GCEL
§ 8:286	Definition of “small landlord” under the GCEL
§ 8:287	Rent increase protections for covered units under the GCEL
§ 8:288	Notice to tenant of applicability or inapplicability of the New York State Good Cause Eviction Law
§ 8:289	Rent demand for tenants in units covered by the GCEL
§ 8:290	Opt-in provisions to GCEL for jurisdictions outside New York City
§ 8:291	Tenants rights under the GCEL cannot be waived

## **CHAPTER 9. NONPAYMENT PROCEEDINGS: GROUNDS AND REQUIREMENTS**

### **I. BASES AND STATUTORY AUTHORITY FOR NONPAYMENT PROCEEDINGS**

§ 9:1	Nonpayment proceedings, generally
§ 9:2	Statutory framework
§ 9:3	Petitioner must seek rent
§ 9:4	— May not seek fees, charges or penalties
§ 9:5	— “Additional charges” may not be sought as rent
§ 9:6	— — “Rent” must be authorized for rent-regulated tenants
§ 9:7	— — Late charges

§ 9:8 ——Late charges in manufactured home parks

## II. PREREQUISITES FOR MAINTAINING NONPAYMENT PROCEEDINGS

- § 9:9 Statutory prerequisites for maintaining nonpayment proceedings
- § 9:10 ——Agreement for payment of rent required
- § 9:11 ——Landlord-tenant relationship must be pleaded
- § 9:12 ——Statutory exceptions
- § 9:13 —Default in payment of rent
- § 9:14 —Respondent must be in possession of unit
- § 9:15 —Demand for rent
- § 9:16 —Notice of nonpayment of rent
- § 9:17 —Petitioner must make demand for rent—Form of demand
- § 9:18 ——When demand is made
- § 9:19 ——Who must make demand
- § 9:20 ——Fair Debt Collection Practices Acts
- § 9:21 ——Fair Debt Collection Practices Act—Violation of FDCPA as defense in summary nonpayment proceeding
- § 9:22 ——Nonpayment petition can be an initial communication under the FDCPA
- § 9:23 ——Courts split on whether typewritten “signature” is sufficient
- § 9:24 ——How demand is served
- § 9:25 —What demand must state
- § 9:26 ——Must specify period and amount—Earmarked payments must be applied to intended period
- § 9:27 ——Demand limited to rent due
- § 9:28 ——Specificity of demand
- § 9:29 ——Terms of lease control
- § 9:30 —On whom demand must be made
- § 9:31 —Demand must be alleged in petition
- § 9:32 —Burden of proof on petitioner
- § 9:33 ——Respondent’s burden to raise as defense
- § 9:34 —Stale demand
- § 9:35 —Demand may support second nonpayment proceeding
- § 9:36 —Attorney’s signature is required

## III. SPECIFIC PLEADING REQUIREMENTS IN NONPAYMENT PROCEEDINGS

- § 9:37 Specific pleading requirements
- § 9:38 —Amount of rent due
- § 9:39 —Rent regulatory status and registration; amendment possible
- § 9:40 —Multiple Dwelling registration
- § 9:41 ——Effect of registration on prior period

TABLE OF CONTENTS

- § 9:42 ——No tenant rebate for period not registered
- § 9:43 —Whether unit is subject to federal regulations
- § 9:44 —Death of tenant
- § 9:45 —Assignment of rents to new owner

## CHAPTER 10. CORE DEFENSES TO SUMMARY PROCEEDINGS

### I. HOW DEFENSES ARE ASSERTED

- § 10:1 Asserting defenses, generally
- § 10:2 Answer
- § 10:3 —Who may answer
- § 10:4 —Answer may be oral or written
- § 10:5 —Verification
- § 10:6 —When to answer—Extension
- § 10:7 ——Holdovers and non-NYC nonpayments
- § 10:8 ——Adjournments
- § 10:9 ——NYC nonpayments
- § 10:10 ——Extension of time to answer
- § 10:11 Content of answer
- § 10:12 —Answer may be amended
- § 10:13 Jury trials
- § 10:14 —Jury demand necessary—Jury waiver possible
- § 10:15 ——Time to make jury demand
- § 10:16 ——Holdovers and non-NYC nonpayments
- § 10:17 ——Court can permit late filing
- § 10:18 ——Effect of extension of time to answer
- § 10:19 —Jury demand fee
- § 10:20 ——Time to pay fee
- § 10:21 ——Late payment sometimes permitted
- § 10:22 —Motion to strike jury demand
- § 10:23 —Jury trial waivers
- § 10:24 ——Waiver must be knowing and voluntary
- § 10:25 ——Print of clause must be large and legible
- § 10:26 ——Party asserting waiver has burden
- § 10:27 ——Party seeking jury may be entitled to hearing
- § 10:28 ——Effect of expiration of lease on waiver
- § 10:29 ——Landlord must show third party adopted waiver
- § 10:30 ——Effect of rent regulation on waiver
- § 10:31 ——Rent Controlled tenant
- § 10:32 ——Rent Stabilized tenant
- § 10:33 ——Effect of federal regulations on waiver
- § 10:34 ——Waiver void for personal injury counterclaim

- § 10:35 ——Jury waiver ineffective for causes of action that did not exist at time of agreement
- § 10:36 —Equitable counterclaims, but not equitable affirmative defenses, may cause jury trial waiver

## II. PARTICULAR DEFENSES AND COUNTERCLAIMS

- § 10:37 Improper service of process/lack of personal jurisdiction
- § 10:38 —Defense waived if not timely raised
- § 10:39 —Defense must be adequately pleaded
- § 10:40 —Defense can be waived by raising “unrelated counterclaims”
- § 10:41 —Improper service requires dismissal
- § 10:42 —Raising of defense requires hearing
- § 10:43 ——“Traverse” defined
- § 10:44 ——Affidavit places pleading burden on respondent
- § 10:45 ——Affidavit of respondent, not attorney, needed
- § 10:46 ——Where affidavit of service inadequate
- § 10:47 —Untimely service of the notice of petition
- § 10:48 ——Substitute or conspicuous place service
- § 10:49 General jurisdictional defenses
- § 10:50 —Lack of subject matter jurisdiction
- § 10:51 ——Petitioner must fulfill statutory requirements
- § 10:52 ——Tenant does not waive by appearing
- § 10:53 ——Defense can be raised for first time on appeal
- § 10:54 —Tenant must be in possession
- § 10:55 ——Claim to possession enough
- § 10:56 —Improper verification of petition
- § 10:57 ——Respondent must give notice
- § 10:58 —Tenant files for bankruptcy
- § 10:59 ——Filing stays summary proceeding
- § 10:60 ——Landlord may seek to lift stay
- § 10:61 ——Tenant may assume/reject “unexpired” lease; state law governs definitions
- § 10:62 ——If lease not terminated, stay remains
- § 10:63 ——If lease terminated, stay lifted
- § 10:64 ——Tenant-debtor can propose plan
- § 10:65 Counterclaims
- § 10:66 —No jurisdictional limit on amount
- § 10:67 —Court’s discretion to entertain or sever
- § 10:68 —“Inextricably intertwined” with proceeding
- § 10:69 ——Related counterclaims not stricken
- § 10:70 —Waiver enforceable unless claims “inextricably intertwined”
- § 10:71 ——Warranty of habitability counterclaim survives
- § 10:72 ——Effect of lease expiration on waiver in regulated housing
- § 10:73 ——Print of clause must be large

TABLE OF CONTENTS

- § 10:74 —Settlement of suit vitiates counterclaims
- § 10:75 —Stay while pursuing counterclaim in plenary action
- § 10:76 —Counterclaims based on breach of warranty of habitability
- § 10:77 —Continued rent not waiver
- § 10:78 —Warranty of habitability claims in holdovers
- § 10:79 —Six-year statute of limitations
- § 10:80 —Period not limited to time rent withheld
- § 10:81 —Counterclaims for orders to correct
- § 10:82 —Conditions dangerous to life, health, safety
- § 10:83 —Separate “HP” action bars counterclaims
- § 10:84 —Counterclaims based on rent overcharge
- § 10:85 —Concurrent jurisdiction with DHCR
- § 10:86 —Courts may consider administrative remedy
- § 10:87 —Negligence and other tort liability
- § 10:88 —Breach of security
- § 10:89 —Special or consequential damages
- § 10:90 Cross claims

## **CHAPTER 11. HOLDOVER PROCEEDINGS: DEFENSES AND COUNTERCLAIMS**

### **I. JURISDICTIONAL DEFENSES**

- § 11:1 Failure to serve and file predicate notices
- § 11:2 —Petitioner’s burden to prove service and filing

### **II. DEFENSES BASED ON LANDLORD’S WAIVER**

- § 11:3 Defense of landlord’s waiver of right to proceed, generally
- § 11:4 Acceptance of rent as waiver
- § 11:5 —What constitutes “acceptance of rent”
- § 11:6 —Retention of check may be “acceptance”
- § 11:7 —Cashing check generally constitutes “acceptance”
- § 11:8 —Acceptance of rent with knowledge of breach
- § 11:9 —Landlord’s intent controls
- § 11:10 —“No-waiver” clause
- § 11:11 —Prompt notification of error
- § 11:12 —Acceptance of rent after service of notice of termination
- § 11:13 —No waiver once holdover commenced
- § 11:14 —Public housing, effect of administrative determination
- § 11:15 Subsequent initiation of nonpayment proceeding
- § 11:16 —No exception if stay in effect
- § 11:17 —Amendment of existing nonpayment not necessarily waiver
- § 11:18 Offer of renewal lease as waiver
- § 11:19 —Rule not uniformly applied

### III. STATUTORY DEFENSES

- § 11:20 Retaliatory eviction
- § 11:21 —Premises covered by the statute
- § 11:22 —Protected conduct
- § 11:23 —Rebuttable presumption
- § 11:24 ——Rebuttable presumption applies to eviction proceedings based on nonpayment of rent and violation of lease
- § 11:25 ——Nonretaliatory motive can rebut presumption
- § 11:26 —Relief available to tenants
- § 11:27 ——Tenant must still pay rent
- § 11:28 Antidiscrimination statutes
- § 11:29 —Usually raised in context of disabilities
- § 11:30 —Statutory authority
- § 11:31 ——Americans With Disabilities Act
- § 11:32 ——Rehabilitation Act of 1973
- § 11:33 ——Fair Housing Amendments Act
- § 11:34 ——Guide dog statutes
- § 11:35 ——No extra fee for presence of dog
- § 11:36 ——Interference can result in prosecution
- § 11:37 ——Dog must perform guide dog services
- § 11:38 ——Other laws may protect pets of disabled persons
- § 11:39 —Relief available to tenant
- § 11:40 ——Landlord's response to defense
- § 11:41 —Disabilities affecting behavior or living conditions
- § 11:42 ——Landlord's duty to make "reasonable accommodations"
- § 11:43 ——Various contexts
- § 11:44 ——Where conduct poses danger, landlord can evict
- § 11:45 ——Courts can take creative approach regarding tenant's conduct
- § 11:46 Defenses to pet holdover proceedings
- § 11:47 —"Pet laws" require timely landlord action (NYC, Westchester)
- § 11:48 ——Statutes envision open and notorious harboring of pet
- § 11:49 ——Knowledge of pet by on-site employees constitutes waiver
- § 11:50 ——NYCHA buildings exempt
- § 11:51 ——Cooperatives and condominiums
- § 11:52 ——Landlord has three months to commence proceeding
- § 11:53 ——Calculating three months
- § 11:54 —Six-year statute of limitations
- § 11:55 —Prestatute cases and jurisdictions without pet law
- § 11:56 ——Waiver may still be defense
- § 11:57 ——Guide dogs
- § 11:58 Tenant protections in personal use proceedings
- § 11:59 —Advanced age of tenant
- § 11:60 —Long duration of tenancy
- § 11:61 —Disability of tenant

## TABLE OF CONTENTS

- § 11:62 ——Definition of “disabled”
- § 11:63 —Relocation option
- § 11:64 Primary residence cases—Tenants in nursing homes and other institutions
- § 11:65 ——Intent of tenant controls
- § 11:66 Statutory protection for victims of domestic abuse

## CHAPTER 12. NONPAYMENT PROCEEDINGS: DEFENSES AND COUNTERCLAIMS

### I. INTERPOSING ANSWER IN NONPAYMENT PROCEEDING

- § 12:1 Interposing the answer, generally
- § 12:2 —When answer is due
- § 12:3 ——Local rules may alter time periods
- § 12:4 ——New York City
- § 12:5 —What answer may contain
- § 12:6 —Service and filing of the answer

### II. PARTICULAR RENT-RELATED DEFENSES

- § 12:7 Landlord’s failure to make proper rent demand
- § 12:8 —Tenant cannot waive right to rent demand in lease
- § 12:9 Defense of payment of rent
- § 12:10 —Additional difficulties for recipients of public assistance
- § 12:11 —Landlord must provide written receipt
- § 12:12 —Month-to-month tenants
- § 12:13 —Defense of tender and refusal
- § 12:14 ——Tenant still has obligation to pay rent
- § 12:15 ——Tender of rent precludes judgment and warrant
- § 12:16 ——Landlord obliged to accept tender prior to hearing and proceeding and proceeding rendered moot
- § 12:17 Defense of improper rental amount
- § 12:18 —Landlord’s burden to prove rental amount
- § 12:19 ——Rent increases
- § 12:20 ——Landlord’s remedy
- § 12:21 ——Tenant can pay rent “without prejudice”
- § 12:22 Defense of rent overcharge
- § 12:23 —Landlord must prove legal rent
- § 12:24 —Tenant can raise overcharge as defense or counterclaim
- § 12:25 —Tenant has choice of forum
- § 12:26 Defense of laches
- § 12:27 —Cases considered on individual basis
- § 12:28 —Burden of proof
- § 12:29 —Elements of defense

- § 12:30 ——Petitioner must have valid claim
- § 12:31 ——Petitioner must have delayed asserting claim
- § 12:32 ——There must be lack of notice to respondent
- § 12:33 ——Respondent must be prejudiced
- § 12:34 —Excuse for delay
- § 12:35 ——Nonpossessory judgment still possible
- § 12:36 Defense against possessory judgment—Tenant Safe Harbor Act

### **III. REGISTRATION—AND CERTIFICATION-RELATED DEFENSES**

- § 12:37 Failure to register building as multiple dwelling (cities of one million)
- § 12:38 —“Multiple dwelling” defined
- § 12:39 ——Case-by-case determination
- § 12:40 —NYC registration requirements
- § 12:41 ——New registration statement filed every three years
- § 12:42 —Petition must allege multiple dwelling status, registration
- § 12:43 ——Failure to plead and prove compliance requires dismissal
- § 12:44 ——Landlord can collect upon compliance
- § 12:45 ——Tenant cannot recoup rents paid where noncompliance
- § 12:46 —Illegal third unit
- § 12:47 ——Vacant third unit
- § 12:48 ——Building no longer used as multiple dwelling
- § 12:49 —Applicability to holdover proceedings
- § 12:50 —Ejectment action available
- § 12:51 Failure to obtain certificate of occupancy
- § 12:52 —Some older buildings exempted from Certificate of Occupancy requirement
- § 12:53 ——Subsequent conversion/alteration ends exemption
- § 12:54 —No new certificate of occupancy necessary for combined apartments
- § 12:55 —Penalty provisions of Multiple Dwelling Law § 302
- § 12:56 ——No rent for unit in multiple dwelling without Certificate of Occupancy
- § 12:57 —Applicability to holdover proceedings
- § 12:58 ——Prospective rent collection only upon compliance
- § 12:59 ——Exception when new tenant aware of lack of Certificate of Occupancy
- § 12:60 ——Tenant cannot recoup rents paid
- § 12:61 ——Exceptions to rent collection bar
- § 12:62 —Interim multiple dwellings under Loft Law
- § 12:63 Defense of failure to register rents with DHCR
- § 12:64 Failure to pay Rent Stabilization fee in New York City
- § 12:65 —DHCR grace period
- § 12:66 —Effect of failure to pay fee

TABLE OF CONTENTS

**IV. HABITABILITY-RELATED DEFENSES AND COUNTERCLAIMS**

§ 12:67	Breach of warranty of habitability
§ 12:68	—Statutory authority
§ 12:69	—Similar right established in prestatute case law
§ 12:70	—Statute applies to prestatute tenancies
§ 12:71	—Statute constitutional
§ 12:72	—Statute's protection nonwaivable
§ 12:73	—Applies to both patent and latent defects
§ 12:74	—Three components of warranty of habitability
§ 12:75	—Free from conditions dangerous to life, health, or safety
§ 12:76	—“Bright-line standard”
§ 12:77	—Maintained in habitable and usable fashion
§ 12:78	—Uses reasonably intended by parties
§ 12:79	—Who can assert claim
§ 12:80	—Person obligated to pay rent
§ 12:81	—Tenant association in its own name lacks standing
§ 12:82	—Tenant-shareholders in cooperative
§ 12:83	—Tenant asserting claim need not be in occupancy
§ 12:84	—Against whom claim can be asserted
§ 12:85	—Receiver in mortgage foreclosure
§ 12:86	Breach of Warranty of Habitability—Against whom claim can be asserted—New York City Housing Authority or New York City as landlord
§ 12:87	Breach of warranty of habitability—Against whom claim can be asserted—Cooperative shareholder
§ 12:88	—No claim against condominium board
§ 12:89	—Generally no claim against Article 7A administrator
§ 12:90	—Remedy for breach
§ 12:91	—Damages measured as percentage
§ 12:92	—Abatement offset by rent reduction orders under rent regulation
§ 12:93	—Consequential damages
§ 12:94	—Rent abatement for full time that condition existed
§ 12:95	—Damages for emotional distress
§ 12:96	—Punitive damages
§ 12:97	—Can be raised as defense, counterclaim, or claim in plenary action
§ 12:98	—Allegations of breach must be pleaded with specificity
§ 12:99	—Rent deposit in court not necessary
§ 12:100	—Counterclaim for damages in excess of rent
§ 12:101	—Six-year statute of limitations for rent abatement
§ 12:102	—Landlord must have notice
§ 12:103	—Tenant must provide access
§ 12:104	—Landlord good faith no defense
§ 12:105	Judicial interpretation and application of warranty of habitability

RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

- § 12:106 —Lack of heat and hot water
- § 12:107 Water Leakage and Mold
- § 12:108 Judicial interpretation and application of warranty of habitability—
  - Construction and noise that disturbs tenants
- § 12:109 —Other particular conditions
- § 12:110 —Aggregated abatements for multiple problems
- § 12:111 —Lesser problems: inconvenience and annoyance
- § 12:112 —Landlord's failure to maintain security
- § 12:113 —Responsibility for third-party acts under warranty of habitability
- § 12:114 ——Landlord may have claim against third party
- § 12:115 —Problems of proving breach of warranty of habitability
- § 12:116 —Damages and set-offs
- § 12:117 ——Limitations on awards where tenants culpable
- § 12:118 —Punitive damages
- § 12:119 “Repair and deduct” remedy
- § 12:120 —Applicable circumstances, generally
- § 12:121 —Failure to provide fuel
- § 12:122 ——No need to notify landlord if key information is not posted
- § 12:123 ——Written statement from supplier necessary
- § 12:124 ——Tenants may set off payments against rent
- § 12:125 ——Statement is admissible as presumptive evidence
- § 12:126 ——Tenants may also be entitled to abatement
- § 12:127 —Failure to provide utilities
- § 12:128 ——Compensatory and punitive damages also available
- § 12:129 ——Public utility must notify before terminating
- § 12:130 ——Tenant may set off against rent
- § 12:131 ——Tenant may get stay of eviction proceeding
- § 12:132 Spiegel Law defense
- § 12:133 —Complete defense
- § 12:134 ——Violations in building sufficient
- § 12:135 Rent deposit order as defense
- § 12:136 —Tenants may apply for release of funds to make repairs
- § 12:137 —Vacating tenant might recoup funds
- § 12:138 Constructive eviction
- § 12:139 Partial actual eviction
- § 12:140 Rent-impairing violations
- § 12:141 —What tenant must do to raise defense
- § 12:142 ——Tenant must plead and prove six months of violations
- § 12:143 ——Tenant must deposit rent
- § 12:144 ——Alternate rent arrangements may satisfy requirement
- § 12:145 —Tenant cannot recover rent voluntarily paid
- § 12:146 —Circumstances where tenant cannot assert defense
- § 12:147 List of all violations classified as rent impairing

TABLE OF CONTENTS

## CHAPTER 13. PRETRIAL MOTIONS AND DISCOVERY

### I. MOTIONS THAT DISPOSE OF PROCEEDING

- § 13:1 Pretrial motion practice, generally
- § 13:2 When motions are to be made
- § 13:3 Motions to dismiss
  - § 13:4 —When grounds for dismissal must be raised
  - § 13:5 —Time to answer when motion to dismiss is denied
  - § 13:6 —Dismissal with or without prejudice
  - § 13:7 Motion to Dismiss—Dismissal for failure to prosecute
  - § 13:8 Motions for summary judgment
  - § 13:9 —Frequently used in succession rights cases
  - § 13:10 ——Proof in succession rights cases
  - § 13:11 —Other uses for summary judgment motions

### II. MOTIONS TO WAIVE COSTS, FEES, AND EXPENSES

- § 13:12 Waiver of costs, fees, and expenses
- § 13:13 —Relief may be available without motion
- § 13:14 Waiver of costs, fees and expenses—Assignment of counsel
- § 13:15 —Assignment of Counsel—Standard

### III. MOTIONS TO ADD PARTIES TO SUMMARY PROCEEDING

- § 13:16 Intervention and joinder, in general
  - § 13:17 —Joining Department of Social Services
  - § 13:18 —Joining other public agencies of local government
  - § 13:19 ——Federal agencies not covered
  - § 13:20 ——Cannot be used to grant Article 78 relief

### IV. MOTIONS TO CONSOLIDATE AND FOR CHANGE OF VENUE

- § 13:21 Motions to consolidate, generally
  - § 13:22 —Courts favor consolidation where appropriate
  - § 13:23 ——Consolidation may be denied
  - § 13:24 —Types of cases that can be consolidated
  - § 13:25 —Consolidation of multiple summary eviction proceedings
  - § 13:26 ——Housing Court Act authorizes consolidation of actions
  - § 13:27 ——Alternative of joint trials
  - § 13:28 —Motion for removal and consolidation in Supreme Court
  - § 13:29 Motion for change of venue
  - § 13:30 Removal to federal court

### V. MOTIONS TO DISCONTINUE PROCEEDING

- § 13:31 Motion to discontinue

§ 13:32 —Joinder of issue cuts off landlord's unilateral right to discontinue

## VI. MOTIONS TO STAY AND RESTORE PROCEEDINGS

- § 13:33 Motion for stay pending resolution of another matter
- § 13:34 —Stay pending resolution of administrative proceeding
- § 13:35 Motion to restore to the calendar
- § 13:36 —What is required in motion
- § 13:37 —Motion must be promptly made

## VII. DEVICES TO OBTAIN INFORMATION; DISCOVERY

- § 13:38 Obtaining information in summary eviction proceedings, in general
- § 13:39 Bill of particulars
- § 13:40 —Procedural requirements
- § 13:41 —Stay of proceedings
- § 13:42 —Response must be clear
- § 13:43 —Bill cannot cure insufficient pleading
- § 13:44 —Preclusion order in favor of party serving demand
- § 13:45 Discovery
  - § 13:46 —No discovery as of right
  - § 13:47 —Exception—Notice to admit available as of right
  - § 13:48 —Time of service and response to notice
  - § 13:49 —What notice may not demand
  - § 13:50 —Penalty for false denials
  - § 13:51 —Basis for grant of permission to conduct discovery
  - § 13:52 —How "ample need" for discovery is shown
  - § 13:53 —More freely granted in holdovers than in nonpayments
  - § 13:54 —Nonprimary residence cases
  - § 13:55 —Illegal use evictions
  - § 13:56 —Owners Use Proceedings
  - § 13:57 —Nonpayment proceedings
  - § 13:58 —Housing Part actions for repairs
  - § 13:59 —Nonpayment proceedings—Court may supervise discovery
  - § 13:60 —Section 8 housing
  - § 13:61 Consequences of failure to comply with court-ordered discovery
  - § 13:62 Freedom of Information Law
  - § 13:63 —What records are available under FOIL
  - § 13:64 —"Records" under FOIL
  - § 13:65 —How FOIL request is made
  - § 13:66 —Statutory exemptions
  - § 13:67 —Burden on agency to show material exempt
  - § 13:68 —Remedy for agency failure to comply with FOIL
  - § 13:69 —Attorney's fees are available

## VIII. FORMS

§ 13:70 Notice to Admit (Fact)

## TABLE OF CONTENTS

§ 13:71 Notice to Admit (Document)  
§ 13:72 Notice to Admit (Photograph)

## **CHAPTER 14. TRIAL AND STIPULATIONS OF SETTLEMENT**

## I. CONDUCT OF SUMMARY EVICTION TRIAL, GENERALLY

- § 14:1 Right to trial
- § 14:2 Trial by Jury
- § 14:3 Right to interpreter
  - Statutory authority for appointment of interpreter
  - Interpreter for deaf for administrative proceedings
- § 14:6 Due process entitlement to interpreter
- § 14:7 Digital recordings in New York City Housing Court
- § 14:8 Burdens of proof
- § 14:9 Adjournments
  - Rent deposit may be ordered on written motion upon tenant's second request or 60 days after first appearance (NYC)
  - Calculating the 60 days
  - Adjournment to seek counsel does not count
  - Court can order deposit of rent that accrues subsequent to date of order
  - Exceptions to deposit requirement
  - Amount of deposit
  - How deposit made
  - Consequences for failure to deposit
  - Requests by petitioner for adjournments
  - Amendments to petition
    - Certain defects not curable by amendment
    - Technical defects of petition amendable
    - Amendment to include accruing rents
    - Procedure to amend petition
  - Traverse hearings
    - Admissibility of affidavits of service
    - Production of records
    - Process server's log

## II. SUBPOENAS IN SUMMARY EVICTION PROCEEDINGS

- § 14:28 Subpoenas, in general
- § 14:29 Judicial subpoenas and subpoenas without court order
- § 14:30 —Judicial subpoenas—When required
- § 14:31 ——Procedural aspects
- § 14:32 ——Where to make motion for document in governmental custody

## RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

- § 14:33 — — —Where to make motion for subpoena to produce prisoner
- § 14:34 Compliance with subpoena duces tecum
- § 14:35 Methods of service
- § 14:36 Payment of fees
- § 14:37 —Persons unable to pay
- § 14:38 Consequences of disobeying a subpoena
- § 14:39 —Sanctions if no response
- § 14:40 — —Where appearance but no compliance
- § 14:41 — —Where administrative proceeding involved

### **III. EVIDENCE IN SUMMARY EVICTION PROCEEDINGS**

- § 14:42 Evidence, in general
- § 14:43 Certified records
- § 14:44 Computer records
- § 14:45 Computer records maintained by HPD—May be rebutted
- § 14:46 Proof of payment
- § 14:47 —Procedure
- § 14:48 Weather conditions

### **IV. STIPULATIONS IN SUMMARY EVICTION PROCEEDINGS**

- § 14:49 Stipulations of settlement, in general
- § 14:50 Ethical guidelines for settlement negotiation; allocution requirements
- § 14:51 Stipulation must be in signed writing or in order
- § 14:52 —Having stipulation “so ordered”
- § 14:53 What stipulation can and cannot contain, generally
- § 14:54 Stipulating to rent stabilization protections
- § 14:55 Right to appeal may be waived
- § 14:56 Agreement to pay future rents void
- § 14:57 —Warrant of eviction for failure to pay future rents void
- § 14:58 —Effect on right to later judgment for additional rent
- § 14:59 Accord and satisfaction
- § 14:60 —What parties must specify
- § 14:61 Conversion to holdover—Option to pay and save tenancy eliminated
- § 14:62 — —Courts reluctant to sanction practice
- § 14:63 — — —Vacatur of stipulation
- § 14:64 Waiver of rights prohibited for Rent Stabilized tenants
- § 14:65 No collateral estoppel effect on unlitigated overcharge claim
- § 14:66 Excusable defaults

### **V. FORMS**

- § 14:67 Affidavit of Translation
- § 14:68 Subpoena
- § 14:69 Judicial Subpoena

## TABLE OF CONTENTS

- § 14:70 Subpoena Duces Tecum
- § 14:71 Judicial Subpoena Duces Tecum

# CHAPTER 15. JUDGMENTS, WARRANTS, AND STAYS OF EVICTION

## I. JUDGMENT IN SUMMARY EVICTION PROCEEDING

- § 15:1 Judgments, in general
- § 15:2 —Judgments in nonpayment proceedings
- § 15:3 —Judgments in holdover proceedings
- § 15:4 —Conclusiveness of final judgment
- § 15:5 —Petitioner cannot have conveyed property
- § 15:6 Satisfaction of judgment in nonpayment cases
- § 15:7 Postjudgment agreement to renewal lease can reinstate tenancy
- § 15:8 Default judgments
- § 15:9 —Two types of default
- § 15:10 —Default judgment must be requested
- § 15:11 —Nonpayment petition must allege demand for rent
- § 15:12 —Limitation on money judgments upon default (nonpayments)
- § 15:13 ——No money judgment under “reasonable application” standard
- § 15:14 —Postcard notice of default in New York City
- § 15:15 ——What postcard must contain
- § 15:16 —Inquests
- § 15:17 ——Need for inquests to prevent fraud
- § 15:18 —NYC: Stay of issuance of eviction warrant upon default
- § 15:19 —Nonmilitary affidavits for default judgments
- § 15:20 ——Content and timing of affidavit of nonmilitary service
- § 15:21 ——Waiver of non-military affidavit
- § 15:22 ——Servicemembers’ Civil Relief Act (SCRA)
- § 15:23 ——State Soldiers’ and Sailors’ Relief Act
- § 15:24 ——Stay of proceeding
- § 15:25 ——Dependent status
- § 15:26 ——Assignment of Counsel for Servicemembers
- § 15:27 —Requirement that judgment be supported by statement of one with personal knowledge

## II. WARRANTS OF EVICTION AND STAYS

- § 15:28 Warrant of eviction, generally
- § 15:29 —Warrant must accurately describe premises
- § 15:30 —Warrant under RPAPL § 715
- § 15:31 —Issuance does not sever landlord-tenant relationship
- § 15:32 ——Acceptance of rent
- § 15:33 ——Offer of renewal lease

## RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

- § 15:34 ——Court may not issue new judgment for rent post-execution
- § 15:35 Stay of issuance of warrant after judgment in nonpayments (NYC)
- § 15:36 Stay upon payment of rent or undertaking into court in nonpayment proceedings
- § 15:37 Stay based on existence of hazardous conditions in nonpayments
- § 15:38 Stay based on respondent's bankruptcy or insolvency
- § 15:39 Stay based on utility shut-offs in multiple dwellings
- § 15:40 Statutory stay up to one year when occupant cannot find alternative housing or would experience extreme hardship
- § 15:41 —Stay available outside New York City
- § 15:42 —No waiver of stay
- § 15:43 —Grant of stay discretionary with court
- § 15:44 —Stipulation of parties may lengthen stay
- § 15:45 —Inherent power to stay execution of warrant beyond statutory mandates
- § 15:46 Stay and opportunity to cure after judgment in breach of lease holdover
- § 15:47 —Nonprimary residence cases excepted
- § 15:48 Stays granted by Supreme Court
- § 15:49 Stay pending administrative determination by DHCR
- § 15:50 Stay based on change of attorneys

### **III. PHYSICAL EVICTION**

- § 15:51 Notice of eviction
- § 15:52 —*Marshals' Handbook* (NYC)
- § 15:53 —Service and Filing of Notice of Eviction
- § 15:54 —Service of notice of eviction—Defect in service does not affect judgment
- § 15:55 —Calculating the notice period
- § 15:56 —Content of notice of eviction (NYC)
- § 15:57 ——Effect of erroneous information on warrant
- § 15:58 —Order to show cause—Further notice of eviction (NYC)
- § 15:59 ——Stale notice of eviction
- § 15:60 Execution of warrant—Actual eviction
- § 15:61 ——Legal and practical significance
- § 15:62 ——Landlord is bailee when legal possession performed
- § 15:63 ——Public storage of property required only in New York City
- § 15:64 ——Use of private warehouse
- § 15:65 ——Inventory of property must be prepared
- § 15:66 ——Packaging and identifying property
- § 15:67 ——Handling contraband
- § 15:68 ——Removal of property
- § 15:69 ——Retrieving property

### **IV. FORMS**

- § 15:70 Postcard Notice (New York City)

TABLE OF CONTENTS

- § 15:71 Sample notice of eviction (New York City)
- § 15:72 Directive DRP-160
- § 15:73 Directive DRP-160-1

## CHAPTER 16. ATTORNEY'S FEES, COSTS, AND SANCTIONS

### I. ATTORNEY'S FEES IN SUMMARY PROCEEDINGS

- § 16:1 Attorney's fees, in general
- § 16:2 —Attorney's fees in landlord-tenant context
- § 16:3 Attorney's fees provisions in leases, in general
- § 16:4 —Cannot be provision for penalty or forfeiture
- § 16:5 Attorney's fees cannot be basis for eviction
- § 16:6 —No possessory judgment for fees in holdover proceedings
- § 16:7 —No possessory judgment for fees in nonregulated tenancies
- § 16:8 —No possessory judgment for fees in nonpayment proceeding for regulated tenant
- § 16:9 Reciprocal right of tenant to fees—Real Property Law § 234
- § 16:10 —Statutory language
- § 16:11 ——Reciprocal right to attorney's fees nonwaivable
- § 16:12 ——Prospective application of statute
- § 16:13 ——Statutory tenancies with preexisting clauses also covered
- § 16:14 ——Assignee or successor to rights of leaseholder can rely on lease provision
- § 16:15 ——Nonsignatories to lease generally cannot recover fees
- § 16:16 ——No fees from landlord who is passive codefendant
- § 16:17 ——Party need not actually pay attorney to be entitled to fees
- § 16:18 ——Tenants who use free legal services can recover fees
- § 16:19 Existence of valid lease and fees provision essential
- § 16:20 —Admission in court papers may prove existence of fees provision
- § 16:21 Carrying attorney's fees provisions beyond lease term
- § 16:22 —Renewal leases
- § 16:23 ——Attorney's fees provision where renewal not signed
- § 16:24 —Nonregulated housing
- § 16:25 Validity of attorney's fees provisions in leases
- § 16:26 —Court discretion to deny fees for bad faith, unfairness
- § 16:27 —Possible exception for low income tenants
- § 16:28 —Language of lease provision generally controls
- § 16:29 ——Standard lease clause for fees as “additional rent” unenforceable
- § 16:30 ——Dispute must “arise out of lease”
- § 16:31 ——Rights under rent stabilization
- § 16:32 Attorney's fees in particular types of matters
- § 16:33 —Nonprimary residence cases
- § 16:34 —Owner occupancy cases

- § 16:35 —Article 7A proceedings
- § 16:36 —Declaratory judgment actions and administrative proceedings
- § 16:37 ——No fees where rights arise under statute and not lease
- § 16:38 —Rent overcharges and fair market rent appeals
- § 16:39 —HP proceedings
- § 16:40 Fees awarded to “prevailing party”
- § 16:41 —Partial recoveries
- § 16:42 ——Courts may apportion award between causes of action won and lost
- § 16:43 —Real Property Law § 234 to be strictly construed
- § 16:44 Fees available only upon “ultimate outcome”
- § 16:45 —Where petition dismissed, unclear if “ultimate outcome” reached
- § 16:46 —No attorney’s fees if not provided for in stipulation of settlement
- § 16:47 Fees on fees
- § 16:48 Procedure for recovery of fees
- § 16:49 —Petitioner must seek within summary proceeding
- § 16:50 —Respondent may pursue in proceeding or in separate action
- § 16:51 —Effect of res judicata on claim for fees
- § 16:52 Calculation of attorney’s fees award
- § 16:53 —Attorney’s fees hearing
- § 16:54 ——Attorney testifies to justify fee
- § 16:55 ——Fee on fee
- § 16:56 Additional authority for attorney’s fees in landlord-tenant litigation
- § 16:57 —Right to sublet
- § 16:58 —Class actions
- § 16:59 ——Fees available
- § 16:60 —Rent overcharge proceedings
- § 16:61 —Contempt proceedings
- § 16:62 —Attorney’s fees as sanctions for frivolous conduct
- § 16:63 —Calculation of attorney’s fees award—Lodestar method
- § 16:64 —Actions against New York state

## II. RIGHT TO COSTS AND SANCTIONS IN SUMMARY PROCEEDING

- § 16:65 Statutory costs
- § 16:66 —Effect of waiver of costs, fees, and expenses under CPLR Article 11 unclear
- § 16:67 Sanctions for frivolous litigation
- § 16:68 —Authority for award of costs and sanctions: Rule 130-1
- § 16:69 ——Contents and application
- § 16:70 ——Procedure for having costs and sanctions imposed
- § 16:71 ——Can be sought for both conduct, claims
- § 16:72 ——Considerations for court
- § 16:73 ——When sanctions are warranted

## TABLE OF CONTENTS

- § 16:74 ——When sanctions are unwarranted
- § 16:75 ——Measure of recovery
- § 16:76 ——Other theories of recovery for frivolous litigation
- § 16:77 ——Intentional infliction of emotional distress
- § 16:78 ——Pattern of conduct generally required
- § 16:79 ——Claim against party's law firm
- § 16:80 ——Punitive damages possible
- § 16:81 ——Malicious prosecution
- § 16:82 ——Abuse of process
- § 16:83 ——SLAPP lawsuits

# CHAPTER 17. POSTJUDGMENT MOTIONS

## I. MOTIONS TO VACATE JUDGMENTS

- § 17:1 Orders to show cause, in general
- § 17:2 —Advisory Notice regarding vacating stays
- § 17:3 —No rent deposit required by statute
- § 17:4 Motion to vacate summary eviction judgment, generally
- § 17:5 —Court can vacate judgment for good cause
- § 17:6 —Court can entertain motion to vacate at any time
- § 17:7 ——Inherent power to relieve effects of decision
- § 17:8 Motion to vacate default judgment
- § 17:9 —Grounds for vacatur, generally
- § 17:10 ——Additional ground: Interests of justice
- § 17:11 —Lack of subject matter jurisdiction
- § 17:12 —Lack of personal jurisdiction
- § 17:13 ——Jurisdiction presumed upon proper affidavit of service
- § 17:14 ——Postjudgment motion challenging service
- § 17:15 ——Traverse hearing
- § 17:16 —Excusable default and meritorious defense
- § 17:17 ——Excuse for default
- § 17:18 ——Meritorious defense
- § 17:19 —Fraud in obtaining default judgment
- § 17:20 Motion to vacate judgment after trial: CPLR 5015(a) grounds
- § 17:21 —Rent deposit as condition for stay
- § 17:22 ——Court cannot deny motion for failure to deposit rent

## II. MOTIONS TO VACATE STIPULATIONS

- § 17:23 Motion to vacate stipulation, generally
- § 17:24 Grounds on which stipulations vacated
- § 17:25 —Unrepresented tenant unaware of defenses or meritless case
- § 17:26 —Tenant does not understand terms of stipulation
- § 17:27 ——No vacatur where facts indicate knowledge

- § 17:28 —Harsh and unjust stipulation
- § 17:29 —General equitable considerations
- § 17:30 ——Equitable factors can favor landlord
- § 17:31 —Mistake
- § 17:32 —Overreaching
- § 17:33 —Counsel unauthorized to enter stipulation
- § 17:34 ——What court will consider
- § 17:35 ——Evidentiary hearing may be necessary

### **III. MOTIONS TO VACATE OR STAY WARRANTS OF EVICTION**

- § 17:36 Motion to vacate or stay warrant of eviction
- § 17:37 —Effect of vacatur of warrant of eviction
- § 17:38 —Effect of tender of rent
- § 17:39 ——Tender of rent prior to issuance of warrant
- § 17:40 ——Tender of rent after issuance of warrant
- § 17:41 —Effect of tender of rent after issuance of warrant under prior provision
- § 17:42 —Effect of tender of rent—Tender of rent after issuance of warrant—Circumstances that warranted denial of motion to vacate under prior provision
- § 17:43 Restoration to premises after eviction
- § 17:44 —Stays pending determination of appeal
- § 17:45 —Wrongful eviction
- § 17:46 —Right of restoration if new tenant already in possession
- § 17:47 ——Due process rights of new tenant
- § 17:48 ——Balancing equities between old and new tenants
- § 17:49 ——Factors considered, generally
- § 17:50 ——Ousted tenant delay as factor
- § 17:51 ——Length of tenancy as factor
- § 17:52 ——Hardship on new and ousted tenants as factor
- § 17:53 Monetary damages
- § 17:54 —One-year statute of limitations

## **CHAPTER 18. APPEALS**

### **I. STATUTES AND RULES GOVERNING APPEAL**

- § 18:1 Statutes and court rules governing appeals
- § 18:2 —Statutes
- § 18:3 —Court rules and regulations
- § 18:4 Where to appeal
- § 18:5 Appealable orders
- § 18:6 —Default judgment not appealable
- § 18:7 ——Appeal from order denying vacatur of default

## TABLE OF CONTENTS

- § 18:8 —Denial of vacatur of stipulation appealable
- § 18:9 —Pretrial orders
- § 18:10 Denial of motion to reargue is not appealable
- § 18:11 —Waiver of right to appeal
- § 18:12 Sua sponte orders not appealable as a right

## II. NOTICE OF APPEAL

- § 18:13 Undertaking appeals
- § 18:14 —Serving and filing timely notice of appeal essential
- § 18:15 Time to take appeal
- § 18:16 —Appeals as of right
- § 18:17 —Appeals by permission
- § 18:18 —Cross-appeals
- § 18:19 —Extension of time for appeal
- § 18:20 ——Disability of attorney
- § 18:21 Service and filing of notice of appeal
- § 18:22 —Language of notice of appeal
- § 18:23 —Other papers that must be filed with notice of appeal

## III. STAYS PENDING APPEAL

- § 18:24 Stays pending appeal
- § 18:25 —Motion for stay
- § 18:26 —Amount of undertaking
- § 18:27 —Stay as of right
- § 18:28 ——Undertaking mandatory for stay
- § 18:29 —Stay by deposit of rent (nonpayment proceeding)
- § 18:30 —Governmental defendants' stay as of right
- § 18:31 —Motion to vacate automatic stay
- § 18:32 —Stays of ex parte orders of lower courts: CPLR 5704
- § 18:33 —Seeking stay from appellate court

## IV. PERFECTING APPEALS

- § 18:34 Perfecting appeals
- § 18:35 —Appellate Term, First Department
- § 18:36 —Appellate Term, Second Department
- § 18:37 —Appellate Division, First Department
- § 18:38 —Appellate Division, Second Department
- § 18:39 —Appellate Division, Third Department
- § 18:40 —Appellate Division, Fourth Department
- § 18:41 —Court of Appeals
- § 18:42 Methods of perfecting appeals
- § 18:43 —Statement in lieu of record on appeal
- § 18:44 —Appendix method in Court of Appeals and Appellate Divisions

- § 18:45 ——Presenting the record
- § 18:46 —Full record
- § 18:47 ——Transcript
- § 18:48 ——Settlement of transcript
- § 18:49 ——Statement in lieu of transcript
- § 18:50 ——Record
- § 18:51 —Clerk's return in Appellate Terms
- § 18:52 Brief
- § 18:53 Filing appeal and placing it on calendar
- § 18:54 —Appellate Term, First Department
- § 18:55 —Appellate Term, Second Department
- § 18:56 —Appellate Division, First Department
- § 18:57 —Appellate Division, Second Department
- § 18:58 —Appellate Division, Third Department
- § 18:59 —Appellate Division, Fourth Department
- § 18:60 —Court of Appeals

## **V. ARGUING APPEAL**

- § 18:61 Oral argument
- § 18:62 —Appellate Term, First Department
- § 18:63 —Appellate Term, Second Department
- § 18:64 —Appellate Division, First Department
- § 18:65 —Appellate Division, Second Department
- § 18:66 —Appellate Division, Third Department
- § 18:67 —Appellate Division, Fourth Department
- § 18:68 —Court of Appeals

## **VI. MOTION PRACTICE IN APPELLATE COURTS**

- § 18:69 Motion practice

# **CHAPTER 19. OBTAINING REPAIRS AND SERVICES**

## **I. RENT STRIKES**

- § 19:1 Rent strikes, in general
- § 19:2 —Rent strikes in New York City
- § 19:3 —No regulation of rent strikes
- § 19:4 —Other ways tenants can obtain building repairs
- § 19:5 Right to organize under Real Property Law § 230
- § 19:6 —Landlords cannot diminish tenants' rights
- § 19:7 —Tenants may meet in common areas of building
- § 19:8 —Right protected by first amendment
- § 19:9 ——Infringement of first amendment rights as defense
- § 19:10 Injunctions related to rent strikes

## TABLE OF CONTENTS

- § 19:11 —Cases where landlord was denied injunctive relief
- § 19:12 —Cases where landlord was granted injunctive relief
- § 19:13 —Attempt by landlord to obtain injunction in federal court
- § 19:14 —Courts have ordered tenants to account for withheld rents
- § 19:15 Ethical considerations for attorneys in rent strikes
- § 19:16 —Negotiations concerning attorney's fees
- § 19:17 —Landlord's RICO claims concerning location of withheld rents
- § 19:18 Consolidation of cases in rent strikes
- § 19:19 —CPLR 602: Common questions of law or fact
- § 19:20 —NYC Civil Court Act § 110(b): Actions concerning one building

## II. Article 7A PROCEEDINGS

- § 19:21 Appointment of temporary administrator, in general
- § 19:22 —When Article 7A proceeding appropriate
- § 19:23 —Constitutional use of police power
- § 19:24 —Waiver by tenant of Article 7A provisions void
- § 19:25 Pleadings in the Article 7A proceeding
- § 19:26 —Proper petitioners
  - § 19:27 ——At least one-third of the tenants of the building
  - § 19:28 ——HPD
- § 19:29 —Necessary and proper respondents
- § 19:30 ——City of New York when it owns building after foreclosure
- § 19:31 ——Lienors of record
- § 19:32 ——Nonpetitioning tenants need not be named but must be notified
- § 19:33 ——Receiver in foreclosure
- § 19:34 —Requirements for service of notice of petition and petition
- § 19:35 ——Service requirements differ as to party served
- § 19:36 ——Owner or managing agent in owner's stead
- § 19:37 ——Mortgagees and lienors
- § 19:38 ——City of New York
- § 19:39 ——Corporations
- § 19:40 —Notice of pendency
- § 19:41 Trial of the Article 7A proceeding
- § 19:42 —Default by respondents
- § 19:43 —Defenses
- § 19:44 Judgment in Article 7A proceeding
- § 19:45 —Posttrial motion by owner
- § 19:46 Article 7A administrator
- § 19:47 —Powers and duties of administrator
- § 19:48 —Presentation of accounts
- § 19:49 —Removal of administrator
- § 19:50 —Administrator's authority superior to a receiver's
- § 19:51 —Warranty of habitability generally not available against Article 7A administrators

§ 19:52 —DHCR cannot regulate Article 7A administrators

### III. TENANT-INITIATED ACTIONS

- § 19:53 Tenant-initiated actions throughout New York State and “Housing Part” actions in New York City
- § 19:54 Broad jurisdiction to establish and maintain housing standards
- § 19:55 —Duty of landlord not to harass tenants
- § 19:56 —Proper petitioners
- § 19:57 —Tenants in Public and city-owned housing
- § 19:58 —Proper respondents
- § 19:59 ——HPD must be named
- § 19:60 —Pleadings: use of affidavit in lieu of petition
- § 19:61 —Commencing proceeding
- § 19:62 —Tenants’ *prima facie* case
- § 19:63 ——Respondent’s ownership or control
- § 19:64 ——Tenants’ standing
- § 19:65 ——Existence of violations
- § 19:66 —Defenses
- § 19:67 ——Economic infeasibility
- § 19:68 ——Where economic infeasibility not available
- § 19:69 ——Arbitration clause unenforceable in HP Proceeding
- § 19:70 —If tenants prevail: Order to correct
- § 19:71 ——Contents: Time to correct
- § 19:72 ——Civil penalties
- § 19:73 ——Tenant relocation and costs
- § 19:74 ——Rent to HPD, not landlord, to pay fines
- § 19:75 ——Hearing or inquest required before fines imposed
- § 19:76 Seeking relief under emergency repair program
- § 19:77 —Allocation of resources to ERP discretionary with HPD
- § 19:78 —Steps required to obtain ERP assistance

### IV. CONTEMPT

- § 19:79 Contempt of court
- § 19:80 —Civil contempt
- § 19:81 ——Penalties
- § 19:82 —Criminal contempt
- § 19:83 ——Penalties
- § 19:84 ——Additional civil penalties
- § 19:85 —Who can be held in contempt
- § 19:86 ——Party subject to court’s order
- § 19:87 ——Governmental entity
- § 19:88 ——Party having actual knowledge of court order
- § 19:89 —Notice requirements

## TABLE OF CONTENTS

- § 19:90 ——Civil contempt
- § 19:91 ——Service must be on accused
- § 19:92 ——Amount of notice required
- § 19:93 ——Notice of motion must contain warnings
- § 19:94 ——Waiver possible
- § 19:95 ——Criminal contempt
- § 19:96 ——Elements and burdens of proof
- § 19:97 ——Civil contempt
- § 19:98 ——Criminal contempt
- § 19:99 ——Defenses
- § 19:100 ——Motion practice within contempt proceeding
- § 19:101 ——Trial
- § 19:102 ——Order of imprisonment
- § 19:103 ——Content of order
- § 19:104 ——Procedure for imprisonment
- § 19:105 ——Attorney's fees

## CHAPTER 20. OWNERS FORECLOSURES AND BANKRUPTCIES

### I. LANDLORD FILES FOR BANKRUPTCY

- § 20:1 Bankruptcy, in general
- § 20:2 —Chapter 11 reorganization
- § 20:3 —Chapter 7 liquidation
- § 20:4 Automatic stay
- § 20:5 —Actions commenced by government not stayed
- § 20:6 —Relief from automatic stay
- § 20:7 Appointment of trustee to manage property
- § 20:8 —Trustee must meet all legal requirements
- § 20:9 ——Counterclaims against trustee
- § 20:10 —Trustee may not oust tenants by rejecting leases
- § 20:11 —Tenants can assert defenses against trustee suing in state court
- § 20:12 Turnover of property

### II. FORECLOSURE ON LANDLORD'S MORTGAGE

- § 20:13 Mortgage foreclosure, in general
- § 20:14 Statutory basis and brief summary of mortgage foreclosure process
- § 20:15 Eviction under writ of assistance
- § 20:16 —Service of notice to vacate required
- § 20:17 —Effect of rent regulation on right to evict
- § 20:18 ——Protection does not apply to former owner
- § 20:19 ——Protection may extend to proprietary lessee in cooperative
- § 20:20 —Effect of federal rent subsidy on right to evict

RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

- § 20:21 —unregulated tenancies with leases of less than three years
- § 20:22 No eviction by mortgagee in possession
- § 20:23 Receiver
- § 20:24 —Receiver's obligation to make repairs
- § 20:25 ——Foreclosing party may be held liable for repairs
- § 20:26 —Eviction proceedings by receiver
- § 20:27 —Permission to sue the receiver
- § 20:28 ——No permission needed for habitability counterclaim
- § 20:29 —Article 7A proceedings
- § 20:30 —Attornment
- § 20:31 Eviction by purchaser in foreclosure through summary proceeding
- § 20:32 —Foreclosure of cooperative corporation
- § 20:33 Purchaser in foreclosure not liable for rent overcharges of former owner unless collusion or relationship between new owner and prior owner
- § 20:34 Purchaser in foreclosure not liable for security deposit without actual notice
- § 20:35 Effect of Foreclosure on Preexisting Tenancy—Provision of Notice and Right to Continuing Occupancy Under Protecting Tenants at Foreclosure Act of 2009
- § 20:36 —Right of Tenant Without Lease or With Lease Terminable at Will to Continued Occupancy Under Protecting Tenants at Foreclosure Act of 2009
- § 20:37 Effect of Foreclosure on Section 8 Tenancy—Provision of Notice and Right to Continued Occupancy Under Protecting Tenants at Foreclosure Act of 2009
- § 20:38 Protecting Tenants at Foreclosure Act of 2009—Sunset Clause
- § 20:39 Requirement that foreclosing party provide tenants with notice of information and assistance about foreclosure process

**Table of Laws and Rules**

**Table of Cases**

**Index**