

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
- § 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 —Fair Credit Reporting Act
- § 2:38 —Rent stabilized tenancies
- § 2:39 Tenant Screening and the "Tenant Blacklist"

II. PERIOD OF OCCUPANCY

- § 2:40 Late fees
- § 2:41 Notices between landlords and tenants
- § 2:42 Disclosure of social security number
- § 2:43 Restrictions on occupancy of family members or roommates may be unlawful
- § 2:44 Restrictions on occupancy/roommates may be unlawful—Protections apply to proprietary lessees in co-ops
- § 2:45 —Roommate can only be charged proportionate share of rent for rent stabilized apartments
- § 2:46 —No restriction on charges to roommates in rent controlled apartments
- § 2:47 —Number of occupants permitted
- § 2:48 —Effect of other laws regulating occupancy
- § 2:49 —Cause of action for violation of "roommate law"
- § 2:50 Subletting and assignment, in general
- § 2:51 —Governing authority
- § 2:52 —Subletting
- § 2:53 — —Noncomplying sublet may be substantial breach of tenancy
- § 2:54 — —Written notice to landlord required
- § 2:55 — —Landlord's response—Permission may not be unreasonably withheld
- § 2:56 — — — —Landlord must respond within 30 days
- § 2:57 — — — —Tenant's options when landlord refuses to consent
- § 2:58 — —Limits on rent charged subtenant—Term of sublease—Tenant limited to 10% surcharge where apartment furnished
- § 2:59 — — — —Violation entitles subtenant to treble damages
- § 2:60 — —Landlord may get vacancy increase
- § 2:61 — —Term of sublease limited to two years
- § 2:62 —Assignment
- § 2:63 Short term rental of apartments or rooms by tenants or owners
- § 2:64 Landlord's duty to provide written receipt for rent received
- § 2:65 —Receipt for rent check upon tenant's request
- § 2:66 —Additional statutory requirement for receipt

RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

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

TABLE OF CONTENTS

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

III. TERMINATING RELATIONSHIP BEFORE EXPIRATION OF TERM

- § 2:126 Terminating lease
- § 2:127 — Constructive eviction
- § 2:128 — Abandonment of premises by tenant
- § 2:129 — — Factors considered
- § 2:130 — — Fact of abandonment not always clear
- § 2:131 — — — Burden to show abandonment on landlord
- § 2:132 — — Landlord's right upon abandonment
- § 2:133 — Special lease termination provisions for senior citizens
- § 2:134 — — Notice to landlord required
- § 2:135 — Special lease termination provisions for victims of domestic violence
- § 2:136 — Special termination rules for active duty military personnel
- § 2:137 — Death of tenant
- § 2:138 Duty to mitigate damages when tenant vacates before expiration of lease
- § 2:139 Expiration of lease required for action for rent
- § 2:140 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

- 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 TMCIs
§ 4:139	— — —Reasonable cost schedule
§ 4:140	— — —Threshold requirements for TMCIs—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 TMCIs
§ 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	— — —Collectibility/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 to notify tenant of right to renew lease
- § 4:190 — —“Window period” in New York City
- § 4:191 — —“Window period” outside New York City
- § 4:192 —Time to respond to offer of renewal lease

TABLE OF CONTENTS

§ 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
§ 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	— — —Permanent vacating
§ 4:224	— —“Primary residence” and succession rights
§ 4:225	— — —Standard for primary residence
§ 4:226	— — —Improprieties of departed household member immaterial
§ 4:227	— — —Dual primary residences
§ 4:228	— — —Children
§ 4:229	—Retroactive application of succession rights protections
§ 4:230	—Successor tenant does not assume previous rent debts
§ 4:231	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

- § 4:232 Tenant remedies for violation of RSL and RSC, in general
- § 4:233 Administrative process and right to a hearing
- § 4:234 —DHCR Rules of Practice
- § 4:235 Choice of forum
- § 4:236 —Factors to consider in choosing a forum
- § 4:237 — —Speed of prosecuting claim
- § 4:238 — —Expense of prosecuting claim
- § 4:239 — —Types of proof one can offer
- § 4:240 — —Predictability of determination
- § 4:241 — —Scope of review on appeal
- § 4:242 —Expediting agency determination
- § 4:243 —Withdrawal of administrative complaint to pursue in court proceeding
- § 4:244 —Factors considered by courts asked to hear case
- § 4:245 — —New York City Housing Court
- § 4:246 — — —Tenant chooses forum in overcharge cases
- § 4:247 — —Supreme Court
- § 4:248 — —NYC Civil Court
- § 4:249 —Stay of court proceedings
- § 4:250 — —Discretion not to stay proceedings
- § 4:251 — —Agency can expedite proceeding
- § 4:252 — — —Effect of DHCR ruling on court judgment when no stay
- § 4:253 — —No collateral attack on administrative determination
- § 4:254 —Article 7A administrators: No DHCR jurisdiction
- § 4:255 —Certificates of eviction/authorization to evict
- § 4:256 Rent overcharges, in general
- § 4:257 Challenge to initial rent: Fair market rent appeal (“FMRA”)
- § 4:258 —Burden of proof
- § 4:259 —Two methods for establishing fair market rents upon appeal
- § 4:260 — —Special guidelines method
- § 4:261 — —“Comparability standard” method
- § 4:262 — —Must be filed within 90 days of certified mailing; exceptions exist
- § 4:263 —FMRA may be filed by subsequent tenant in some circumstances
- § 4:264 —Insubstantial defects may be corrected
- § 4:265 —If landlord fails to file initial registration
- § 4:266 —Exemption for previously Rent Controlled tenants
- § 4:267 Overcharge complaints not concerning initial rent
- § 4:268 —Time to bring complaint
- § 4:269 —Six-year limit does not apply to determining whether rent is legal or whether unit is subject to rent stabilization
- § 4:270 —Six year limit does not apply to units covered by the Rent Control or Loft Laws

TABLE OF CONTENTS

§ 4:271	—Six-year limit does not apply after overcharge finding
§ 4:272	—Six-year rule does not apply when rent reduction orders that pre-date base date remain in effect
§ 4:273	—Production and retention of records
§ 4:274	—Production of records—“Default formula” where rent history is incomplete or rent setting was fraudulent or illegal
§ 4:275	—Treble damages if overcharge is “willful”; burden on landlord
§ 4:276	—Treble damages if overcharge is “willful”; burden on landlord—Treble damages available for six years
§ 4:277	—Penalty where overcharge not “willful”
§ 4:278	Recovering a rent overcharge/excess rent
§ 4:279	—Tenant can recoup overcharge from new owner
§ 4:280	—New owner liability for excess rent after FMRA
§ 4:281	— —Building transferred by judicial sale
§ 4:282	—Recovering a tenant undercharge
§ 4:283	Failure to maintain required services and rent reductions
§ 4:284	Procedures for reduction of services complaints
§ 4:285	—Only tenants actually affected receive rent reduction
§ 4:286	—Owner penalty: reduction, no increase absent service restoration
§ 4:287	— —Offset for rent abatement
§ 4:288	— —Penalty applied in all cases
§ 4:289	— —DHCR treatment of “minor conditions”
§ 4:290	— —Rent increases limited while reduction order in effect
§ 4:291	—DHCR inspection
§ 4:292	—Annual certification to DHCR by owners—Failure bars increase
§ 4:293	— — —Penalties for false certification
§ 4:294	Appeal of DHCR determinations, in general
§ 4:295	Petitions for administrative review (“PAR”)
§ 4:296	—Time to file PAR
§ 4:297	—Form of PAR
§ 4:298	— —PAR by Representative tenants
§ 4:299	—Service of PAR
§ 4:300	—Time to answer
§ 4:301	—Amendment of PAR
§ 4:302	—Processing of PAR by Commissioner
§ 4:303	— —Due process requires notice but no hearing
§ 4:304	— —No new facts at PAR level; determination
§ 4:305	— —Stay of order on filing PAR
§ 4:306	—Modification or revocation by DHCR during pendency
§ 4:307	Article 78 proceeding for review of DHCR decision
§ 4:308	—Abbreviated statute of limitations
§ 4:309	—“Deemed denial” where agency does not decide within 90 days
§ 4:310	—Exhaustion of administrative remedies and preservation of issues generally required
§ 4:311	—Attorney’s fees

- § 4:312 Article 78 proceeding for review of DHCR decision—Tenants’ association must be represented by attorney

VIII. SENIOR CITIZEN AND DISABILITY RENT INCREASE EXEMPTIONS

- § 4:313 Senior Citizen Rent Increase Exemption (“SCRIE”), in general
§ 4:314 Disability Rent Increase Exemption (DRIE) Program
§ 4:315 Senior Citizen Rent Increase Exemption (“SCRIE”) and Disability Rent Increase Exemption (“DRIE”), in general—Types of housing covered by SCRIE and DRIE Program
§ 4:316 Senior Citizen Rent Increase Exemption (“SCRIE”), in general—Minimum age for SCRIE eligibility
§ 4:317 Senior Citizen Rent Increase Exemption (“SCRIE”) and Disability Rent Increase Exemption (“DRIE”), in general—Annual income limitation for SCRIE and DRIE eligibility
§ 4:318 Senior Citizen Rent Increase Exemption (“SCRIE”) and Disability Rent Increase Exemption (“DRIE”), in general—Calculating the SCRIE and DRIE
§ 4:319 — —Eligibility date
§ 4:320 — —Most rent increases covered
§ 4:321 — —Mistake as to SCRIE and DRIE eligibility
§ 4:322 —Portability of the SCRIE and DRIE exemption
§ 4:323 —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 —Tenants 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 — —Full disclosure to prospective purchasers required
- § 6:61 —Eviction and noneviction plans
- § 6:62 — —Persons protected from eviction prior to repeal of eviction plan option

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

IV. RESIDENTIAL LOFTS

- § 6:79 Residential lofts in New York City, in general
- § 6:80 Loft Law
- § 6:81 —Purpose
- § 6:82 —Loft Law constitutional
- § 6:83 —Loft Board
- § 6:84 — —Composition
- § 6:85 — —Duties
- § 6:86 — —Concurrent jurisdiction with courts
- § 6:87 — —Loft Board regulations
- § 6:88 —Loft Law coverage—IMDs
- § 6:89 — — —Accreted units
- § 6:90 — — —1987 amendments to Loft Law
- § 6:91 — — —1992 amendments to Loft Law
- § 6:92 — — —1996 Extensions of Loft Law
- § 6:93 — —2010 amendments to Loft Law
- § 6:94 — —IMDs—Coverage [of Loft Law] should be broadly construed
- § 6:95 — — —Unit must have indicia of independent family living
- § 6:96 — — — —Applicants for IMD status have burden
- § 6:97 Loft Law—Ongoing right to apply for Loft Law coverage
- § 6:98 Loft Law—Loft Law coverage—Coverage can be lost if unit is abandoned
- § 6:99 —Sale of fixtures or improvements
- § 6:100 — —Owner's purchase can take unit out of Rent Stabilization coverage
- § 6:101 — — —Harassment of tenants terminates use of provision
- § 6:102 — —Where landlord elects not to buy fixtures; assignment of lease

TABLE OF CONTENTS

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

V. COMMUNITY RESIDENCES AND ADULT CARE FACILITIES

§ 6:122	Community residences for mentally ill persons
§ 6:123	Adult care facilities
§ 6:124	—Protection from eviction without court process
§ 6:125	— —No landlord-tenant relationship under Social Services Law
§ 6:126	— —Warranty of habitability for adult home residents
§ 6:127	—Grounds for termination
§ 6:128	—Notice of termination
§ 6:129	—No right to jury trial
§ 6:130	—Stays of warrant of eviction

VI. MANUFACTURED HOME PARKS

§ 6:131	Manufactured home parks, in general
§ 6:132	Real Property Law § 233
§ 6:133	—Tenant must be offered lease for at least one-year term
§ 6:134	— —Timing of written offer of lease
§ 6:135	— —Exception to renewal requirement: change of use of park
§ 6:136	— —Penalties for failure to comply
§ 6:137	—Park owner must file annual registration statement with DHCR
§ 6:138	—Tenant must be given park rules and regulations
§ 6:139	—Park owner must disclose charges, which must be reasonable
§ 6:140	— —Security deposits
§ 6:141	—Rent increases are limited

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

VII. HOUSING FOR PEOPLE WITH AIDS AND HIV

- § 6:158 Special assistance for persons with AIDS/HIV
- § 6:159 —Federal programs
- § 6:160 — —Ryan White CARE Act
- § 6:161 — —HOPWA
- § 6:162 —State “Rent Enhancement” program
- § 6:163 —New York City’s HIV/AIDS Service Administration
- § 6:164 — —Scattered-site subsidized apartments
- § 6:165 — — —Termination of residency
- § 6:166 — — —Remaining household members
- § 6:167 —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
- § 7:7 —New York City Illegal Eviction Law targets particular activities
- § 7:8 — —Law applies even if tenant remains in occupancy

TABLE OF CONTENTS

- § 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
- § 7:20 — —Dealing with police
- § 7:21 — —Verbal report to police legally sufficient
- § 7:22 — — —Documentation helpful
- § 7:23 — —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 — —Reversioner or remainderman
- § 7:78 —Purchaser after default
- § 7:79 —Person forcibly put out or kept out
- § 7:80 —Sharecropper
- § 7:81 —Person entitled to possession
- § 7:82 —Person authorized under the RPAPL to end illegal use
- § 7:83 —Receiver
- § 7:84 —Lessee of the premises entitled to possession
- § 7:85 —Certain managers of NYC-owned buildings
- § 7:86 Persons who may not bring summary eviction proceedings
- § 7:87 Persons who may not maintain proceeding—Nonexistent or unauthorized foreign corporations

TABLE OF CONTENTS

§ 7:88	Persons who may not bring summary eviction proceedings—General exception
§ 7:89	Cotenant may not maintain summary eviction proceeding against another cotenant
§ 7:90	Right of successor-in-interest to bring summary proceeding
§ 7:91	—Requirements for substitution
§ 7:92	— —Must be new owner and have valid assignment of rents
§ 7:93	Right of estates to maintain summary eviction proceedings
§ 7:94	—Role of Surrogate’s Court
§ 7:95	Naming proper respondents in summary proceeding
§ 7:96	Naming proper respondents in summary proceedings—Persons who are not named in the proceeding may not be removed from the premises
§ 7:97	Naming proper respondents in summary proceeding—Persons with no independent possessory rights
§ 7:98	—Family members may have independent possessory rights
§ 7:99	—Other persons with independent rights must be named if their eviction is sought
§ 7:100	— —Co-tenants
§ 7:101	— —Subtenants must be named for purposes of eviction warrant
§ 7:102	— — —Additional steps required if subtenant not named
§ 7:103	— — —Unnamed subtenant may participate
§ 7:104	Summary eviction proceeding where tenant is deceased
§ 7:105	—Estate of deceased tenant is necessary party where lease has not expired
§ 7:106	—Lease becomes personal property of estate
§ 7:107	—Landlord’s recourse where no representative
§ 7:108	—Sanctions for taking default if tenant known to be deceased
§ 7:109	Use of pseudonym to name respondent
§ 7:110	—Pseudonyms sometimes authorized by CPLR
§ 7:111	— —No “bright-line” rule
§ 7:112	— —Cases where dismissal warranted
§ 7:113	—Respondents must be adequately described
§ 7:114	— —Dismissal unwarranted where description gives notice
§ 7:115	— —Attorney not liable if failure not cause of default
§ 7:116	—Due process considerations
§ 7:117	Guardian for person adjudicated as incompetent must be made party to proceeding and leave of court required to commence
§ 7:118	Appointment of guardians ad litem
§ 7:119	—Appointments from official list
§ 7:120	—Powers of guardian ad litem
§ 7:121	—Guardian’s acts and omissions may not prejudice ward
§ 7:122	—Hearing may be needed
§ 7:123	—Appointment of guardian for tenant with legal counsel
§ 7:124	—Housing Court judges’ authority to appoint

- § 7:125 —Affidavit to be filed under CPLR 1202(c)
- § 7:126 Right to counsel for low-income tenants facing eviction in NYC
- § 7:127 Assignment of counsel for persons serving in the military and their dependents

IV. PLEADINGS IN SUMMARY EVICTION PROCEEDINGS

- § 7:128 Pleadings in summary eviction proceedings, generally
- § 7:129 Notice of petition
- § 7:130 —Who may issue
- § 7:131 —Order to show cause
- § 7:132 Petition; generally
- § 7:133 —Verification
- § 7:134 — —Attorney’s signature is required
- § 7:135 — —Challenge to verification
- § 7:136 Contents of petition: RPAPL § 741 requirements
- § 7:137 —Adequacy of allegations to give notice
- § 7:138 — —No inconsistent theories permitted
- § 7:139 — —Facts upon which proceeding is based
- § 7:140 — —Statements in predicate notices; holdover proceedings
- § 7:141 — —Multiple dwelling registration
- § 7:142 — — —Registration must be alleged
- § 7:143 — —Rent regulatory status
- § 7:144 — — —Rent Control or Rent Stabilization
- § 7:145 — — —Other federal or state regulation
- § 7:146 VAWA notice must be provided to tenants with eviction petition
- § 7:147 What petition may seek
- § 7:148 —Petition must seek possession
- § 7:149 —Petition may seek money judgment
- § 7:150 — —“Rent” versus “use and occupancy”
- § 7:151 — — —Jurisdictional implications

V. PERSONAL JURISDICTION

- § 7:152 Commencement of proceeding
- § 7:153 —Return date of notice of petition and petition
- § 7:154 — —Variation in NYC nonpayment proceedings
- § 7:155 — —Service “complete” upon filing
- § 7:156 — — —Jurisdictional consequences
- § 7:157 Proper service of process required for jurisdiction
- § 7:158 Who may serve process
- § 7:159 —Statutory definitions of process server and objectives of regulation
- § 7:160 — —Purpose of regulation
- § 7:161 — —Record-keeping required
- § 7:162 — —In New York City

TABLE OF CONTENTS

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

VI. FORMS

- § 7:194 Notice of Nonpayment Petition, New York City (22 NYCRR 208.42, effective October 1, 2019)
- § 7:195 Notice of Holdover Petition, New York City (22 NYCRR 208.42, effective October, 2019)
- § 7:196 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

- § 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

- § 12:106 —Lack of heat and hot water
- § 12:107 —Water leakage
- § 12:108 —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

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 PROCEED AS POOR PERSON

- § 13:12 Poor person's relief
- § 13:13 —Relief may be available without motion
- § 13:14 —Assignment of counsel
- § 13:15 — —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 to 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
- § 14:4 —Statutory authority for appointment of interpreter
- § 14:5 — —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
- § 14:10 —Rent deposit may be ordered on written motion upon tenant's second request or 60 days after first appearance (NYC)
- § 14:11 — —Calculating the 60 days
- § 14:12 — —Adjournment to seek counsel does not count
- § 14:13 — —Court can order deposit of rent that accrues subsequent to date of order
- § 14:14 — —Exceptions to deposit requirement
- § 14:15 — —Amount of deposit
- § 14:16 — —How deposit made
- § 14:17 — —Consequences for failure to deposit
- § 14:18 —Requests by petitioner for adjournments
- § 14:19 Amendments to petition
- § 14:20 —Certain defects not curable by amendment
- § 14:21 —Technical defects of petition amendable
- § 14:22 —Amendment to include accruing rents
- § 14:23 —Procedure to amend petition
- § 14:24 Traverse hearings
- § 14:25 —Admissibility of affidavits of service
- § 14:26 —Production of records
- § 14:27 —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

- § 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 —Poor persons' exemption
- § 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 of notice of eviction
- § 15:54 — — 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 poor person status 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
- § 16:74 — — —When sanctions are unwarranted

TABLE OF CONTENTS

- § 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
- § 18:8 —Denial of vacatur of stipulation appealable

TABLE OF CONTENTS

- § 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
- § 19:11 —Cases where landlord was denied injunctive relief

TABLE OF CONTENTS

- § 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
- § 19:90 — —Civil contempt
- § 19:91 — — —Service must be on accused

TABLE OF CONTENTS

§ 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
§ 20:21	—unregulated tenancies with leases of less than three years
§ 20:22	No eviction by mortgagee in possession

RESIDENTIAL LANDLORD AND TENANT IN NEW YORK

- § 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