

# **PROPERTY MANAGEMENT TRAINING**

## *THE EVICTION PROCESS A TO Z*

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# **PROPERTY MANAGEMENT TRAINING**

## *THE EVICTION PROCESS A TO Z WITH UPDATES*

1. General Review of NYS Eviction Law
2. Good Cause
3. Article 7D Actions
4. Squatters
5. Unlawful Evictions
6. Changes to Mobile Home Park Laws



# **Types of Evictions**

**Generally two main types of evictions under NY Real Property Law (RPL) and NY Real Property and Proceedings Law (RPAPL)**

## **1. Non-Payment Evictions**

- Based on non-payment of rent

## **2. Holdover Evictions**

- Based on tenant “holding over” or staying in the premises after tenancy has been terminated in some manner.



## The Process – Generally

1. Predicate Notices
2. Service of the Notice of Petition and Petition
3. Appearances
4. Trial/Evidentiary Hearing
5. Judgment and Warrant of Eviction



# NONPAYMENT CASES

	Non Payment	
	Notice to Pay or Quit (14 Days)	Notice provides 14 Days to Pay Rent Due or Quit the Premises – But tenants do not have to leave.
	Notice of Petition and Petition	Must be served 10-17 days before Court.
	Court	
	(Adjournment)	
	Hearing/Trial	
	Warrant served. (14 Days)	
	Execution of Warrant	



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	Execution of Warrant	Marshal from Sheriff's Office returns and tenants must vacate the premises.



# NONPAYMENT CASES: HSTPA CHANGES (2019)

	Non Payment	Former Timelines	HSTPA (now)
	Notice to Pay or Quit (14 Days)	3 Days	14 Days
	Notice of Petition and Petition	5 to 12 Days	10 to 17 Days
	Court		
	(Adjournment)	Not Mandatory.	Mandatory when triable issue exists when requested. 14 Days.
	Hearing/Trial		
	Warrant (14 Days)	72 Hours Notice	14 Days
	Execution of Warrant		

# TYPES OF EVICTIONS: HOLDOVER

Holdover		
Termination of a Month-to-Month Tenancy	Termination at the end of a Lease	Termination for Violation of the Lease
Notice of Termination (30/60/90)	Notice of Non-Renewal (30/60/90)	Notice of Termination (Possible Notice to Cure)
Notice of Petition and Petition (Served 10-17 days before Ct.)	Notice of Petition and Petition (10-17 days before Court)	Notice of Petition and Petition (10-17 days before Court)



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Notice of Petition and Petition	Notice of Petition and Petition	Notice of Petition and Petition
Court	Court	Court
(Adjournment) 14 Days - if “issue is joined.” RPAPL 745	(Adjournment)	(Adjournment)
Hearing/Trial	Hearing/Trial	Hearing/Trial
Warrant (14 Days) Warrant Executed.	Warrant (14 Days) Warrant Executed.	Warrant (14 Days) (30 Day stay possible.)

# NOTICE PERIOD REQUIRED TO TERMINATE A MONTH-TO-MONTH TENANCY AND NON-RENEW A LEASE (RPL 226-C)

- A Landlord must provide written notice if they intend to raise rent by 5% or more, if they intend not to renew a tenancy or if they are terminating a month-to-month tenancy:
  - 30 Days Notice - When a tenant has occupied the rental property for less than one year.
  - 60 Days Notice - When a tenant has occupied the rental property for one year or more, but less than 2 years, OR has a one-year lease.
  - 90 Days Notice - When a tenant had occupied the rental property for more than two years.



# NOTICE PERIOD REQUIRED TO TERMINATE A MONTH-TO-MONTH TENANCY AND NON-RENEW A LEASE

- The 30/60/90 rule does NOT apply to:
  - Non-Payment Cases
  - Violation Cases
- A tenant may terminate a month-to-month tenancy by giving at least one month's notice.

# HOLDOVER: VIOLATION OF LEASE

## Termination for Violation of the Lease

Notice of Termination (Possible Notice to Cure)	A “Notice to Cure” is not required in private tenancies, but may be in subsidized housing. Instead, Notice of Termination may state “You have violated your lease, you must vacate by a specified date.”



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Notice of Petition and Petition	The Petition alleges the facts that constitute the violation and the lease term violated.

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Notice of Petition and Petition	The Petition alleges the facts that constitute the violation and the lease term violated.
Court	Judge reviews Petition & decides preliminary matters.
(Adjournment)	Must be requested. Granted when there is a triable issue of fact or law.
Hearing/Trial	Judge hears testimony. Evidence is presented. The Judge generally makes a decision on that date.
Warrant (14 Days)	Issued by the Court, served by the County Sheriff. (30 Day stay possible.)
Warrant Executed.	Marshal from Sheriff’s Office returns and tenants must vacate the premises.



## **RPAPL § 753(4) PROVIDES A 30 DAY STAY**

- In a holdover eviction proceeding based on a lease violation:
- The warrant of eviction shall be stayed for 30 days to allow the tenant to cure the violation;
- Based on the wording: “that a warrant of eviction shall be stayed” this stay could only be provided after a hearing and judge’s decision that there was in fact a violation;
- Should be requested because it is not likely to be automatically granted.



# SERVICE

After the Notice of Petition and Petition have been filed, copies of the filed documents must be served on the Respondent. Pursuant to RPAPL 735.

The options are:

## 1. Personal service

on the respondent. (MUST be attempted first) OR

## 2. Substituted Service.

1. Service upon a person of suitable age and discretion who resides or is employed at the property sought to be recovered, OR
2. Service “by affixing a copy of the notice and petition upon a conspicuous part of the property sought to be recovered or placing a copy under the entrance door of such premises,” PLUS
3. “within one day after such delivering . . . by mailing to the respondent both by registered or certified mail AND by regular first class mail”



# SERVICE TIMING

“The notice of petition and petition shall be served at least ten and not more than seventeen days before the time at which the petition is noticed to be heard.”

N.Y. Real Prop. Acts. Law § 733 (McKinney).

Under RPAPL 735, personal service is complete at the time of service; substitute service is deemed complete **upon the filing of the affidavit of service with the Court.**

# ANSWERING THE PETITION

- A Respondent may answer, orally or in writing, at the time the matter is scheduled to be heard.

(RPAPL § 743 )

- If the Answer is oral, the Respondent's Answer must be recorded on the record. This can be done in court when it is scheduled to be heard. A verbal motion to dismiss may be raised in lieu of an answer.
- The Answer may contain any legal or equitable defense, or counterclaim. The court may render affirmative judgment for the amount found due on the counterclaim.



# REMEDIES

## WARRANT OF EVICTION

- When a Warrant of Eviction has been issued by the Court it must:
  - Go to the law enforcement agency (sheriff or marshal) that has jurisdiction.
  - Law enforcement must serve it on the tenant.
    - It CANNOT be served by anyone other than law enforcement.
  - Law enforcement must serve in accordance with RPAPL § 735.
    - Personal service attempts are required,
    - Alternative service is only an option after personal service could not be done.
  - Must state the earliest date upon which execution can occur.
  - May only be enforced against persons named in the proceeding.
- Tenant will have at least 14 days to vacate.
  - Can only be served on business days between the hours of sunrise and sunset – not on holidays or weekends.



# REMEDIES

## JUDGMENT

- RPAPL § 749(3) – amended to say:
  - Issuance of the warrant no longer severs the relationship of landlord and tenant.
  - The court has the discretion to issue a stay prior to the execution of the warrant or restore possession to a tenant after the execution of the warrant.
- **RIGHT TO REDEEM/CURE NONPAYMENT**
- In a nonpayment case, the Court shall vacate the warrant upon the tender or deposit with the Court of the full rent due at any time prior to execution of the warrant.
  - Not applicable if landlord can show the rent was withheld in bad faith.
  - Landlord can recover amount in the judgment, fees, and fair use and occupancy from the commencement of the Petition.



# REMEDIES JUDGMENT

- A court has concurrent jurisdiction to issue a money judgment in a summary eviction proceeding, but there are limitations to that jurisdiction.
- Judgments must be limited to rent owed (as rent is defined in the lease and statutes), no fees or charges. Attorney's fees are only collectible if the lease specifies that they are (and never in the event of a default).



# NEGOTIATING SETTLEMENTS

- It is standard practice in most courts for the judge to begin the hearing by asking whether the parties have discussed settlement and offering them a chance to step aside and do so prior to proceeding. Settlements sometimes present the best outcome for both parties, and it may be wise to consider this option.
  - The first consideration in commencing settlement discussions in these cases is whether the parties want to continue the tenancy or if there is an opportunity to agree to a mutually acceptable move out date.
  - Another consideration is whether the parties are more concerned with possession of the premises or the value of a money judgment for unpaid rent.



# NEGOTIATING SETTLEMENTS

- At times, a tenant may be able to request a dismissal based on procedural defects, but it may be in both parties' interests to resolve the matter by agreement, rather than risk the matter being dismissed, requiring the inconvenience or cost of additional court appearances. An agreement can be fashioned that results in a warrant issuing if certain conditions aren't met, but without further court appearances.
- An agreement that results in a warrant of eviction, or on the other hand one that delays eviction, may allow a tenant access social services that can cover rental arrears, depending on what programs may be available to the tenant.

# NEW YORK STATE GOOD CAUSE EVICTION LAW





# GOOD CAUSE

New York State has passed a “Good Cause Law” in 2025.

HOWEVER, it is not in effect unless a municipality specifically OPTS IN.

Applies to: NYC and Opt-in for municipalities

- Albany and Rochester
- At the same time, in all areas, regardless of whether there has been an opt-in, the good cause notices are required to be served.



# GOOD CAUSE NOTICES

Pursuant to Real Property Law (RPL) 231-c a landlord must include a multi-page Notice entitled:

“NOTICE TO TENANT OF APPLICABILITY OR INAPPLICABILITY OF THE NEW YORK STATE GOOD CAUSE EVICTION LAW”

With any:

- Initial lease or renewal lease,
- Nonpayment Notice (Written Demand For Rent)
- Termination Notice
- Petition for Eviction
- **Failure to do so may result in a dismissal of the case.**





# GOOD CAUSE

- Some Exceptions to Good Cause:
  - Small landlords, as defined in the local law
  - Owner occupied buildings with fewer than 10 units
  - Built after 2009 for 30 years
  - High rent exception, as defined in the local law



# GOOD CAUSE

- MORE Exceptions to Good Cause:
  - Sublets
  - Job related tenancies
  - Already rent-regulated, incl HUD, LIHTC, PHAs
  - Coops and Condos
  - Short term rentals/vacation rentals
  - Hospital housing incl adult care, retirement and assisted living
  - Mobile home tenancies
  - Hotel rooms and transient housing
  - Dorms and college housing
  - Religious institution housing





# "GOOD CAUSE" REASONS FOR EVICTION

- Non-payment of rent, unless the rent is “unreasonable”;
- Violation of a substantial obligation of the tenancy;
- Nuisance;
- Malicious or grossly negligent substantial damage to the premises or building;
- Occupancy is in violation of law and an order to vacate has been issued, unless the condition is created by the landlord, through neglect or otherwise;
- Illegal use of the premises;
- Unreasonable refusal of access for necessary repairs;
- Owner occupancy as principal residence;
- Demolition;
- Withdrawal from the rental housing market; and
- Failure to agree to reasonable changes to a lease.



# Good Cause

## Limits on Rent Increases are included in the Good Cause Law

- Rebuttable presumption that rent increases above  $\text{CPI} + 5\%$  with a cap of 10% is unreasonable.
- Courts must consider:
  - Property tax increases
  - Significant repairs
  - Replacement or substantial modification of structural, m electrical, plumbing, or mechanical systems or abatement of hazardous materials.
  - Significant changes in fuel, utility, insurance, and/or maintenance costs.





## Real Property Actions and Proceedings Law (RPAPL) Article 7-D

A Tenant's lawsuit requesting Order from a Court directing repairs of conditions issues.

- Special Proceeding by Tenants in residential real property matters for the Court to order repairs and other relief for violations of applicable local or state housing standards or Real Property Law §235-b (Warranty of Habitability)
  - Legislative purpose: To create a simplified Summary Proceeding for Tenants to bring actions against landlords for habitability and housing code violations



# Article 7-D - GROUNDS – CONTENTS OF THE PETITION

- RPAPL §797-f, the following must be included in the petition:
- State the facts which the special proceeding is based, including the conditions in violation of applicable state or local housing standards or warranty of habitability (RPL §235-b)
- State the relief sought, options: order to repair, monetary judgment for diminished value of real property, and an order reducing further rent until violations cured.
- STANDARD OF PROOF OF WOH
- Demonstrate by preponderance of the evidence that the landlord knew or should have known, of the existence of conditions affecting a tenant's health and safety.
- OR of a deficiency depriving the tenant of reasonable use and habitation.



# Article 7-D - GROUNDS – CONTENTS OF THE PETITION

- Judgment in favor of the Petitioner (Tenant) may include:
  - Order for the Landlord to repair conditions
  - No monetary limit in the statute
  - Any other relief that the court may deem just (catch-all)
- POST JUDGMENT
- What if they don't follow the Court order?
- Currently nothing in Article 7-D for enforcement.
- Likely a contempt proceeding or motion would be required for violating the court's order



# CHANGES IN LAW RELATING TO SQUATTERS

- Changes to RPAPL 711 defining tenants, and lawful occupants, now includes a definition of squatters, effective as of April 20, 2024:
  - The law used to only define tenants and lawful occupants:
  - A **tenant** shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel **who has been in possession for thirty consecutive days or longer.** No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding.



# CHANGES IN LAW RELATING TO SQUATTERS

- Changes to RPAPL 711 defining tenants, lawful occupants, now also includes this reference to RPAPL 713(3):
  - In the event of a conflict between the provisions regarding squatters of **this section** and the provisions of 713 (3) of this article, the provisions of 713 of this article shall be controlling.





# CHANGES IN LAW RELATING TO SQUATTERS

**Real Property and Proceedings Law (RPAPL) 713(3) states:**

A special proceeding may be maintained under this article after a ten-day notice to quit has been served upon the respondent in the manner prescribed in [section 735](#), upon the following grounds:

(3). He or the person to whom he has succeeded has intruded into or squatted upon the property **without the permission** of the person entitled to possession **AND** the occupancy has **continued** without permission or permission has been revoked and notice of the revocation given to the person to be removed. (Emphasis added)



# CHANGES IN LAW RELATING TO SQUATTERS

**Landlords who wrongfully allege that a lawful occupant is a squatter and successfully remove them (without a court order) may:**

1. Run afoul of the Unlawful Eviction law (RPAPL 768) passed in 2019, which includes criminal and civil penalties against landlords, and/or
2. Risk being subject to triple damages for unlawful eviction pursuant to RPAPL 853.





# Housing Security and Tenant Protection Act of 2019 (HSTPA)

## RPAPL § 768 UNLAWFUL LOCKOUTS

In 2019 the Unlawful Eviction law made it a crime for a landlord to unlawfully lock out or interfere with a legal occupant.

- ▶ The CONSEQUENCES to Landlord or agent of an unlawful eviction:
  - ▶ Class A misdemeanor
  - ▶ Civil penalties of between \$1,000 to \$10,000 per violation
  - ▶ Each violation is a separate and distinct offense
  - ▶ Failure to restore an occupant shall subject an offender to a civil penalty of not more than \$100/day
- ▶ Applies to removing alleged squatters if they are proven to have had permission/rights



# **WHAT DEFINES UNLAWFUL LOCKOUTS?**

- Using or threatening force to induce an occupant to leave,
- Interfering with the occupant, or interrupting or discontinuing essential services (power, water)
- Removing the occupant's possessions,
- Changing the locks,
- Failing to take all reasonable and necessary action to restore an occupant unlawfully locked out



**The NYS Attorney General issued a letter to all NYS Law Enforcement providing guidance on how the new unlawful lockout laws should be applied.**

In responding to a call about an unlawful eviction, law enforcement officers should determine:

1. Is the complainant a person entitled to protections under the law?
2. Who can be arrested for unlawful eviction?
3. Is the dwelling covered by the law?
4. Is the complained-of act one that violates the law?





## Mobile Home Park Law – Important Changes



# Mobile Home Park Law - Generally



- Warrants of eviction in Mobile Home Parks for Mobile Home Owners:
  - 90 Days for a holdover eviction or violation case
  - 30 Days if Petitioner can prove that there is an “imminent threat to the health, safety, or welfare of the other manufactured home tenants...”
  - 30 Days for a nonpayment case
  - 72 Hours (technically) if the tenant rents the home as well as the lot. But this is most likely a legislative mistake – and 14 Day notice is likely to be ordered, consistent with other warrant periods.





## Mobile Home Park Law - Generally

- A new lease must be offered annually to mobile home park tenants in good standing.
- Good standing is generally defined as not having received a proper notice of violation of lease terms or nonpayment of rent.





# Mobile Home Park Law – Changes

A manufactured home park owner or operator may not evict a manufactured home tenant other than for the following reasons (this no longer includes a no-cause termination):

- 1. Deleted by [L.2019, c. 36, pt. O, § 3, eff. July 14, 2019.](#)
- 2. The manufactured home tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a demand of the rent with at least thirty days notice in writing has been served...
- 3. The premises, or any part thereof, are used or occupied as a bawdy-house, or house or place of assignation for lewd purposes or for purposes of prostitution, or for any illegal trade or business.
- 4. The manufactured home tenant is in violation of some federal, state or local law or ordinance which may be deemed detrimental to the safety and welfare of the other persons residing in the manufactured home park.
- 5. The manufactured home tenant or anyone occupying the manufactured home is in violation of any lease term or rule or regulation...
- 6. Change in land use of the park.