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New York's Housing Stability and Tenant Protection Act of 2019: What Lawyers Must Know

Gerald Lebovits

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The Tech Challenge

Defensible Data Disposal:
Once a Risk Mitigation
Strategy, Now a Compliance
Requirement

By Gail Gottehrer

Patching Horror Stories

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Protection Act of 2019

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**LAW PRACTICE
MANAGEMENT:**

DIGITAL MARKETING
FOR SOLO AND
SMALL FIRMS

8 Defensible Data Disposal: Once a Risk Mitigation Strategy, Now a Compliance Requirement

By Gail Gottehrer

In this issue:

- 12** Patching Horror Stories
by Chris Owens and Nina Lukina
- 14** Supreme Court, New York County:
The Technology-Outfitted Place to Be
by Hon. Saliann Scarpulla
- 18** New York Takes the Lead on Online Document
Providers
by Ronald C. Minkoff
- 22** ComFed's 2019 *Social Media Ethics Guidelines*
by Mark A. Berman
- 26** Cybersecurity Hygiene Checklist
- 28** NYSBA Collaborates With Law Schools on
Technology and the Law Class
- 29** A 'Lawyers Caravan' Brings Legal Services to Upstate
Immigrant Communities
by Camille J. Mackler
- 35** The Housing Stability and Tenant Protection Act of
2019
by Gerald Lebovits, John S. Lansden,
and Damon P. Howard
- 46** Endowment or Inducement? The Legal Distinction
Between College Donations and Bribes
by Elizabeth Vulaj
- 49** Using the Free LaTeX Typesetting System in Your
Small to Midsized Practice
by Peter J. Wasilko

Departments:

- 5** President's Message
- 55** **State Bar News** in the *Journal*
- 59** Law Practice Management:
Digital Marketing for Solo and Small Firms
by Deborah E. Kaminetzky
- 62** Attorney Professionalism Forum
by Vincent J. Syracuse
Carl F. Regelman
Jean-Claude Mazzola
Richard E. Lerner
- 67** Marketplace
- 69** 2018–2019 Officers
- 70** The Legal Writer
by Gerald Lebovits

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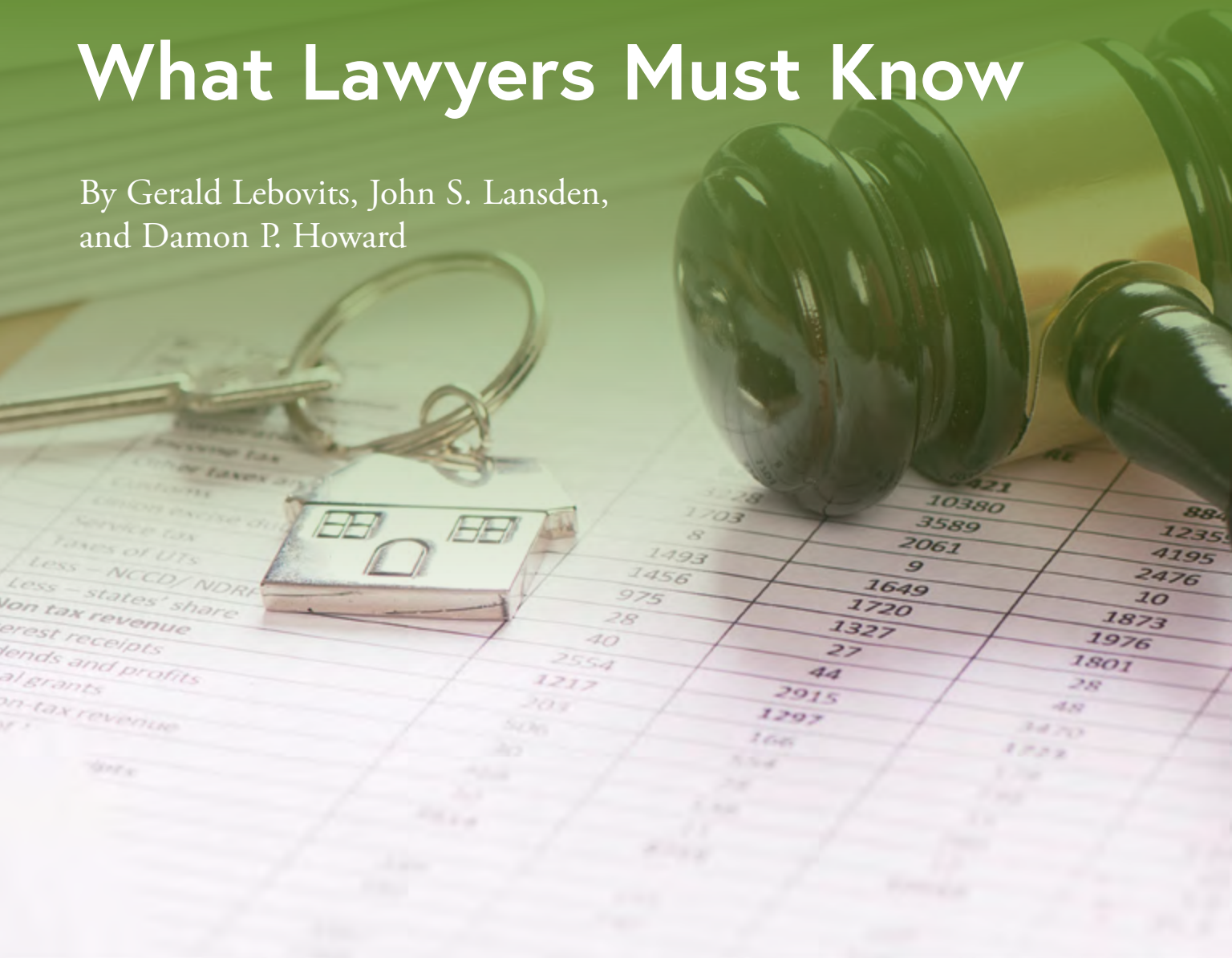


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New York's Housing Stability and Tenant Protection Act of 2019:

What Lawyers Must Know

By Gerald Lebovits, John S. Lansden,
and Damon P. Howard



On June 14, 2019, in response to a housing shortage that has spanned more than half a century, New York's Housing Stability and Tenant Protection Act of 2019 (HSTPA) became law. HSTPA will bring about broad and sweeping changes to the laws governing many forms of housing across New York. HSTPA's proponents argue that it is, among many other things, a long-overdue strengthening of tenant protections following years of landlord abuse. HSTPA's detractors argue that it will, among many other things, have a chilling effect on real-estate development, curtail residential property owners' incentives to improve their buildings, impoverish small landlords, and exacerbate New York's housing shortage.

We take no position on HSTPA's economic, moral, or political attributes or virtues, but instead discuss

HSTPA's substantive and procedural provisions and how the new legislation will affect landlord-tenant litigation statewide.

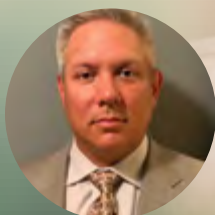
Here, we provide a chart comparing and summarizing the old law and the current law. Future articles will analyze HSTPA and its impact on landlord-tenant litigation, explain the practical effects it might have on landlords and tenants, note interpretations from the courts and attorneys for both landlords and tenants in their attempt to navigate this new sea of law, and anticipate what landlords and tenants will do in light of HSTPA.

CHANGES TO RENT REGULATION

Area of Law	Old Law	2019 Law
Expiration Provisions	Rent regulation expired every 4 to 8 years to allow State legislature to determine whether a housing emergency (vacancy 5% or less) continued to exist.	<ul style="list-style-type: none"> • Rent-control and rent-stabilization sunset provisions eliminated. • Effective 6/14/19.
Luxury Deregulation NYC Admin. Code §§ 26-504.2 & 26-504.3	<p>High-Rent Vacancy Deregulation: permitted deregulation of a regulated apartment vacated with a legal rent at or above a certain threshold, most recently \$2,774.76. Once deregulated, market rent could be charged.</p> <p>High Income-High Rent Deregulation: permitted high-income deregulation by DHCR order if the apartment was occupied by persons having a total income in excess of \$200,000 for the two preceding years and the rent was \$2,774.76 or higher.</p>	<ul style="list-style-type: none"> • Luxury deregulation (both high-rent and high-income & high-rent) now abolished. • Clean-up bill clarifies that any unit lawfully deregulated before 6/14/19 shall remain deregulated; also provides that 421-a buildings are governed by the law in effect before 6/14/19 and remain deregulated. • Ensures that all units regulated as of 6/14/19 will remain regulated. • Effective 6/14/19.



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Justice Lebovits and Mr. Howard have co-authored all 11 editions of the State Bar's text *Residential Landlord-Tenant Law and Procedure*. For their contributions, the authors thank Housing Court Judge Michael L. Weisberg and Sarah J. Konnerth, Justice Lebovits's judicial extern and a student at Fordham University School of Law.

<p>Rent Increases for Building Improvements</p> <p>NYC Admin. Code §§ 26-511(13) & 26-511.1, 26-511(6), 26-405.1</p>	<p>Individual Apartment Improvements (IAIs): permanent monthly rent increases equal to 1/40th of the cost of apartment improvements in buildings with 35 or fewer apartments and 1/60th in buildings with 36 or more apartments; DHCR approval was not necessary; tenant consent required only if the apartment was occupied.</p>	<ul style="list-style-type: none"> • Increase revised to 1/168th (≤ 35 units) and 1/180th (> 35 units). • IAIs now temporary will be removed 30 years from date increase became effective. • DHCR must notify owners and occupants that IAI increase will expire. • Only 3 IAIs over 15 years permitted, for total aggregate cost of \$15,000. • The most a landlord may increase the rent with IAIs is \$89 for buildings with fewer than 35 units and \$83 for buildings with more than 35 units. • DHCR to promulgate guidelines and create a centralized IAI documentation electronic database. • For IAIs in occupied units, tenant must give informed consent on a DHCR form. The form must be in one of the six primary languages (other than English), as determined by the U.S. Census Bureau. • To charge for IAIs, landlord must remove from apartment all hazardous ("B") or immediately hazardous ("C") violations. • Clean-up bill clarifies that 15-year period and \$15,000 cap on 3 IAIs start with first IAI after 6/14/19. • Costs must be "reasonable and verifiable modification or increase in dwelling space, furniture, furnishings or equipment." • Increase in rent is aggregate over 15 years. • Work performed by an independent contractor who is licensed; no relationship with landlord. • Photographs to be taken before and after work is done; photos/records must be kept permanently. • Effective 6/14/19.
	<p>Major Capital Improvements (MCIs): permanent rent increases based on actual cost of building improvements, apportioned among building's tenants on a per-room basis and amortized over 8 years for buildings with 35 or fewer apartments and 9 years for 36 or more apartments; annual rent increases were capped at 6% in NYC and 15% in the rest of the state; owners had to apply for DHCR approval; there was a temporary retroactive component for application processing time.</p>	<ul style="list-style-type: none"> • Annual cap decreased from 6% to 2%. • Amortization period extended to 12 years if ≤ 35 units and to 12 ½ years if > 35 units. • Retroactive component: MCIs approved 6/16/12–6/16/19 may not exceed 2% cap starting 9/1/19 for any tenant in occupancy on the date of the MCI order. • MCI increase now temporary, will be removed 30 years after effective date. • DHCR required to set a schedule of "reasonable costs." • DHCR must send notice to landlord and all tenants 60 days before end of temporary MCI. Notice shall include the initial approved improvement increase and the total amount to be removed. • MCIs are work essential for preservation, energy efficiency, functionality, or infrastructure of the entire building. • Amount of MCI must be reduced by the amount of any government grant given to help pay for improvements and by any insurance payments that compensate for improvement costs. • Collection of MCI starts on the first day of the month at least 60 days after notice to tenant of the increase. • MCIs not permitted in buildings with 35% or fewer regulated units. • Application requires additional and more detailed documentation; DHCR to audit 25% of MCIs. • No MCI if there are outstanding hazardous or immediately hazardous violations. • Eliminates retroactive portion of MCI. • Independent contractors must perform work. • Effective 6/14/19.

<p>Rent Increases During Vacancies</p> <p>NYC Admin. Code § 26-510(j)</p>	<p>Vacancy Increase: increase of 20% for a 2-year vacancy lease, and 20% minus the difference between applicable 2-year and 1-year renewal lease guidelines for a 1-year vacancy lease.</p> <p>Longevity Bonus: additional vacancy increase equal to 0.6% for each year since the last vacancy increase if more than 8 years had passed since the last vacancy increase.</p> <p>These increases were in addition to any NYC Rent Guidelines Board (RGB)-approved increase.</p>	<ul style="list-style-type: none"> • Vacancy increases repealed. • Longevity bonus repealed. • RGB may not adopt vacancy or rent adjustment without legislature's approval. • RGB may not establish rent adjustment or allow any increase that does not apply to all regulated apartments equally. All rent increases are the same regardless whether for a renewal or a vacancy lease. • Effective 6/14/19.
<p>Rent Stabilization Coverage</p>	<p>Rent stabilization was in effect in NYC; parts of Nassau, Rockland, and Westchester Counties; and Buffalo and other upstate cities.</p>	<ul style="list-style-type: none"> • Rent stabilization available statewide to any municipality with less than 5% vacancy and a population of less than a million where local legislature determines that a housing emergency exists. Same criteria for coverage as within NYC. • DHCR to reconstitute an RGB outside NYC. • Effective 6/14/19.
<p>Rent Overcharge Claims, Treble Damages, Records Requirements, Choice of Forum</p> <p>NYC Admin. Code § 26-516(a), CPLR 213-a</p>	<p>Overcharge claims limited to 4-year period before filing of claim; subject to exceptions like fraud; determination of legal rent limited to 4-year lookback period; landlord required to maintain rent records for 4 years; treble damages imposable for 2-year period before filing of claim if overcharge was willful, but not based solely on failure to file rent registrations; and safe-harbor exception, which allowed the landlord to refund any overcharge, plus interest, and reduce the rent before time to answer complaint expired.</p> <p>Permitted late registrations to avoid overcharge liability.</p>	<ul style="list-style-type: none"> • 6-year statute of limitations on overcharge claims; but CPLR amended to permit filing of claim at any time; applicable to any proceeding/application pending as of 6/14/19. • Overcharge penalties limited to 6 years preceding the complaint. • No limitation on lookback period to determine legal rent; all available rent history may be examined if “reasonably necessary”; unexplained rental increases can make registrations “unreliable”; base rent is last “reliable” registration filed 6 years or more prior to complaint; certain common law exceptions to the statute of limitations set by Rent Stabilization Code written into law. • Treble-damages period extended to 6 years; no longer defense that overcharge was based on untimely registration. • No safe harbor; treble damages may be imposed even if owner refunds overcharge. • Attorney fees and costs must be imposed if landlord is found to have overcharged a tenant (discretionary under prior law). • Record-keeping obligation extended to 6 years, but no limitation on look-back period to determine legal rent. • Evidence of improvements should not be discarded; new law mentions useful life provisions, which can be as many as 25 years. Failure to maintain records permits DHCR or court to consider evidence of overcharge beyond 6 years. • Although DHCR and the courts shared concurrent jurisdiction under the prior law, the new law gives the tenant the choice of forum.
<p>Preferential Rents</p> <p>NYC Admin. Code § 26-511(14)</p>	<p>Landlords could charge a “preferential” rent that was less than the legal rent; landlord could rescind preferential rent during renewal unless lease provided otherwise.</p>	<ul style="list-style-type: none"> • Owners may charge only the preferential rent, subject to applicable RGB rates and any other applicable rent increase; when the tenant vacates, the preferential rent can be rescinded if warranty of habitability issues did not cause the vacancy. • Subject to limited exception for buildings subject to a regulatory agreement (i.e., federal housing projects). Effective 6/14/19, but it applies to any tenant subject to a lease on or after the effective date or that is entitled to receive a renewal or vacancy lease on or after that date. • Effective 6/14/19.

Recovery of Regulated Apartments for Owner's Use NYC Admin. Code §§ 26-511(b), 26-408(1)	Rent-regulated apartment(s) could be recovered if the owner or owner's immediate family intended in good-faith to occupy apartment(s) as their primary residence.	<ul style="list-style-type: none"> • Only one apartment may be recovered. • Landlord must have "immediate and compelling necessity" to recover apartment. • Owner or immediate family must occupy apartment for 3 years after recovery. • New cause of action is created for damages and declaratory and injunctive relief based on owner's fraudulent statement regarding proposed use of apartment; clean-up bill clarifies that this exists only when tenant was required to surrender the premises under owner's own-use provision. • Unless owner can provide an equivalent or superior housing accommodation at same or lower stabilized rent in an area closely proximate to subject unit, owner is precluded from recovering a unit when any member of the household lawfully occupying unit has 15 or more years' (previously 20 years) tenancy; is 62 years old or older; or has a permanent anatomical, physiological, or psychological condition that prevents "substantial gainful employment." • Effective 6/14/19. Applies to any tenant in occupancy on this date.
Non-Profit Exemption from Rent Stabilization	Non-profits operated for charitable or educational purposes exempt from rent stabilization.	<ul style="list-style-type: none"> • Non-profits operating programs for those who are or were homeless or at risk of homelessness no longer exempt from rent stabilization. • Existing occupants are deemed tenants, and the legal rent is set at the next renewal to the legal rent of the prior tenant, plus applicable RGB increases. • Clean-up bill excludes from the exemption premises owned or operated by a hospital or other charitable organization operated on an exclusive not-for-profit basis. • Effective 6/14/19.
Rent Increases for Rent Controlled Tenants NYC Admin. Code §§ 26-405(a)(5), 26-407.1	Maximum collectible rent for rent-controlled tenants could not be increased by more than 7.5%/year; separate fuel cost adjustment was available based on changes in heating fuel cost.	<ul style="list-style-type: none"> • Annual increases lesser of 7.5% and average of the last 5 years of RGB 1-year renewal increases. • Fuel cost pass-along eliminated. • Effective 6/14/19.

CHANGES TO THE REAL PROPERTY LAW

Area of Law	Old Law	2019 Law
Notice Prior to Expiration of Lease and of Rent Increase RPL §§ 226-c, 232-a, 232-b	Month-to-month tenancies could be terminated with service of 30-day notice; no notice requirement at expiration of ordinary lease or if renewal conditioned on increase in rent.	<ul style="list-style-type: none"> • Landlords must notify tenants if the lease will not be renewed <i>or</i> if rent will be increased by 5% or more. • Amount of notice depends on length of occupancy or lease term: <ul style="list-style-type: none"> • Occupancy <1 year or lease term ≤1 year → 30 days' notice. • Occupancy >1 year <2 years, lease term ≥1 year <2 years → 60 days' notice. • Occupancy >2 years or lease term ≥2 years → 90 days' notice. • Notice must specify vacate date. • Applies statewide to non-regulated residences; applies to all tenancies, even one-family homes; inapplicable to non-leasing license relationships. • If notice not given, tenancy continues on same terms until notice is given and required time passes. • In NYC, termination notice requires RPAPL 735 service; outside NYC, or for commercial tenant, landlord's service method is unclear: RPAPL 735 service is not referenced. • Under prior and current law, tenant need not give notice before vacating. • RPL § 232-b amended to provide that monthly or month-to-month tenancies outside NYC may be terminated by either commercial landlord or any tenant on 30 days' notice. • Effective 10/12/19.

Duty to Mitigate Damages by Renting Apartment RPL § 227-e	Landlords were not obligated to mitigate damages. The apartment could have been left vacant, and tenant would have been liable for rent through end of term.	<ul style="list-style-type: none"> • Landlord must in good faith, according to landlord's resources and abilities, take "reasonable and customary" steps to rent the apartment; residential only; commercial leases and licenses not affected. • Overrules <i>Holy Props Ltd, L.P. v. Kenneth Cole Productions, Inc.</i>, 87 N.Y.2d 130 (1995). • Lease provisions to the contrary are void as contrary to public policy. • The person seeking damages has the burden of proof. • Effective 6/14/19.
Notice to Tenant of Failure to Pay Rent and Rent Receipts RPL § 235-e	Other than statutory 3-day rent demand, nothing required landlord to notify tenant that rent was not received.	<ul style="list-style-type: none"> • Residential and possibly commercial tenants must be notified by certified mail within 5 days that rent was not received on the due date. • Tenant may raise as an affirmative defense to a nonpayment proceeding the failure to provide this notice. • Landlords must maintain records of cash receipts for at least 3 years; rent receipts must be provided upon tenant's request or if rent is paid by cash or any form other than personal check. If payment made in person, receipt to be given immediately. If payment not made in person, receipt must be provided within 15 days. • Effective 6/14/19.
Attorney Fees, other Non-Rent Fees, Rental Application Fees RPL §§ 234, 238-a	If a residential lease provided for landlord's right to recover attorney fees, a reciprocal right was implied at law in tenant's favor. DHCR has discretion to award attorney fees.	<ul style="list-style-type: none"> • Attorney fees may not be recovered on a default judgment. (<i>See also</i>, the new limitation on attorney fees in RPAPL 702, discussed below.) • Limits non-rent fees for rental application to lesser of actual cost of background checks and credit checks or \$20 (whichever is less). • To collect the fees for credit or background checks, landlord must provide the potential tenant a copy of the credit or background check and a receipt from the entity conducting the check. • The fee is waived if tenant provides a copy of a credit or background check conducted within the past 30 days. • Landlord is entitled to a late fee of the lesser of \$50 or 5% of the monthly rent. • Tenant has a minimum 5-day grace period to pay rent. • Effective 6/14/19.
Retaliatory Eviction RPL § 223-b	Landlords were prohibited from taking action to bring holdover proceeding to evict tenant in retaliation for tenant complaint of violation of health or safety law to enforcement agency, tenant taking action to enforce rights under the lease or at law, or tenant's participation in tenant organization. Rebuttable presumption that eviction was retaliatory if within 6 months of protected tenant actions.	<ul style="list-style-type: none"> • Protected tenant actions that create presumption of retaliation now includes complaint of breach of habitability to landlord or agent or to prohibit changes to the terms of tenancy. • Rebuttable presumption extended to 1 year of a good-faith complaint. • Presumption now applies to nonpayment proceedings, not merely holdovers. • Potential retaliatory action now includes offering a new lease with an "unreasonable" rent increase. • Landlord may be required to offer a new lease or lease renewal for a term of up to 1 year. • Tenant entitled to attorney fees in civil action for retaliatory eviction. • Effective 6/14/19.
Tenant Blacklists RPL § 227-f, Judiciary Law § 212	Public (including court) records were used to compile "blacklists" of tenants who have had court proceedings against them. Landlords used these records to screen rental applications, regardless whether there was a legitimate basis for the proceeding.	<ul style="list-style-type: none"> • A rental application may not be refused on the basis of a past or present landlord-tenant action or summary proceeding under RPAPL Art. 7. • A rebuttable presumption is created against a landlord that denies rental after having requested information from a tenant screening bureau or otherwise inspected court records. • Landlord has the burden to provide an alternate reason that tenancy was rejected. • Attorney General has enforcement power; no private cause of action. • Civil penalties between \$500 and \$1,000 for each violation. • The Unified Court System may not sell residential-tenancy or eviction data. • Effective 6/14/19..

CHANGES TO THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW

Area of Law	Old Law	2019 Law
Nonpayment Proceedings RPAPL 711(2), RPAPL 732(1), 732(3)	Landlord had to make demand to pay rent 3 days before starting nonpayment proceeding. Oral demands were permitted, but if written, demand must have been served. Tenants had 5 days to answer.	<ul style="list-style-type: none"> • Oral rent demands no longer permitted. • 14-day written rent demand required; must be served under RPAPL 735. • Landlords may not seek arrears from a surviving spouse, surviving issue, or distributee. Landlord's remedy is solely against estate of the decedent; only possessory (not money) judgment may be obtained against the estate. • RPAPL 711: "No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding." • Tenants have 10 days to answer or will be in default in a nonpayment proceeding. • Court has discretion to grant up to a 5-day stay of the issuance of a warrant post-trial, subject to discretionary stay of up to 1 year under RPAPL 753, discussed below. • Expands rights of occupants who might be in possession after tenant's death; warrant of eviction against the estate of decedent due to nonpayment of rent will not permit landlord to evict occupant in possession; in this case, landlord must commence separate holdover proceeding to evict occupant and regain possession of apartment. • Residential under RPAPL 711(2); residential and commercial under RPAPL 732(1), (2), and (3). • RPAPL 711(2) effective 6/14/19. RPAPL 732 effective 7/14/19.
Timing in Nonpayment Proceedings RPAPL 732(1), 732(3)	Tenants had 5 days to answer.	<ul style="list-style-type: none"> • Tenants have 10 days to answer or be in default in a nonpayment proceeding. • Court has discretion to grant up to a 5-day stay of the issuance of a warrant post-trial or post-answer default, subject to discretionary stay of up to 1 year under RPAPL 753, discussed below. • Effective 7/14/19.
Right to Pay Prior to Hearing RPAPL 731(4)	Law not codified.	<ul style="list-style-type: none"> • If full amount of rent is paid before hearing on the petition, landlord must accept payment, and the proceeding must be dismissed. • Applies to residential and probably commercial tenancies. • Effective 6/14/19.
Rent Defined to Exclude Fees RPAPL 702	A residential lease could include provisions for "added" or "additional" rents, such as late and legal fees. A petitioner was able to seek such rent in a summary nonpayment or holdover proceeding. A rent-regulated tenant was subject to a money judgment but not a possessory judgment for not paying additional rent. A non-regulated tenant was liable for both a money and possessory judgment for such rent.	<ul style="list-style-type: none"> • Residential rent defined narrowly to include only amount charged in consideration for the "use and occupation" of the space. • "No fees, charges or penalties other than rent may be sought in a summary proceeding." • Applies to residential but not commercial proceedings. • Effective 6/14/19.
Timing of Holdover Proceedings RPAPL 733(1), 743	Service of a holdover petition must have been made at least 5 and not more than 12 days before the first court appearance. If petition was served at least 8 days before initial return date, tenant had 3 days to answer.	<ul style="list-style-type: none"> • Service of a holdover petition must be made at least 10 and not more than 17 days before the first court appearance. • Tenant must answer the petition orally or writing at the first court appearance. RPAPL 743 is amended to eliminate the requirement that an answer be made at least 3 days before the petition returnable/to be heard. • Applies to residential and commercial proceedings. • RPAPL 733 effective 6/14/19. RPAPL 743 effective 7/14/19.

<p>Rent Deposits and Motions for Use and Occupancy During Pendency of Summary Proceedings RPAPL 745</p>	<p>After two adjournments by tenant, or 30 days</p> <p>day after the first court appearance, upon landlord's application, court could direct tenant to deposit any rent or use and occupancy accrued since the petition was served, subject to limited defenses that could be raised at an immediate hearing. If tenant failed to pay, court could dismiss tenant's defenses and counterclaims and grant judgment for landlord. Standard for adjournment was a maximum of 10 days.</p>	<ul style="list-style-type: none"> • Rent-deposit orders are now discretionary. • Application cannot be made until 60 days after the parties' first court appearance or 2 adjournment requests solely by tenant; only days attributable to respondent's adjournment requests are counted. • Oral applications for a rent deposit no longer sufficient. • When 2 adjournments or 60 days are attributable to respondent, and petitioner files a written motion for rent deposit or use and occupancy, court may order a deposit of rent or use and occupancy, but only for sums of rent or use and occupancy that accrued after the date of the order. • Unrepresented tenant's first request to obtain counsel does not count as an adjournment or as part of the 60 days in determining if application for rent deposit timely. • Hearing now "as soon as practicable"; minimum 14-day adjournment for trial given to either party unless both sides and court agree to shorter adjournment; court has the sole discretion to grant a second or subsequent request for adjournment. • Tenant can defend against a rent-deposit order by establishing one of the following: (a) the petitioner is not a proper party to the suit; (b) actual, partial, or constructive eviction, and respondent has vacated; (c) defense based on Social Services Law § 143b; (d) defense of existing hazardous or immediately hazardous violations of the Housing Maintenance Code in respondent's unit or building common area; (e) colorable defense of overcharge; (f) lack of personal jurisdiction; and (g) unit violates building's certificate of occupancy or is illegal under Multiple Dwelling Law. • Failure to pay use and occupancy or deposit rent may not result in dismissing any of respondent's defenses or counterclaims. • Only penalty for failure to comply with a rent deposit order is that, at the court's discretion, an immediate trial may be ordered, but the tenant's time to deposit may be extended for good cause. • Effective 7/14/19.
<p>Judgments; stays RPAPL 747-a</p>	<p>"In the city of New York, in any non-payment summary proceeding in which the respondent has appeared and the petitioner has obtained a judgment pursuant to section seven hundred forty-seven of this article and more than five days has elapsed, the court shall not grant a stay of the issuance or execution of any warrant of eviction nor stay the re-letting of the premises unless the respondent shall have either established to the satisfaction of the court by a sworn statement and documentary proof that the judgment amount was paid to the petitioner prior to the execution of the warrant or the respondent has deposited the full amount of such judgment with the clerk of the court."</p>	<ul style="list-style-type: none"> • Repealed.

<p>The Warrant of Eviction and the Marshal's Notice RPAPL 749(1), 749(2)</p>	<p>Upon issuance of a final judgment of possession, court would issue a warrant of eviction, but court did not specify timing of execution. Marshal had to give at least 72 hours' notice before the eviction.</p> <p>Issuance of warrant canceled the lease and annulled the landlord-tenant relationship, depriving court of the power to vacate the warrant for good cause.</p>	<ul style="list-style-type: none"> • Warrant of eviction must state the earliest date the eviction can occur. • The marshal must give at least 14 days' notice prior to eviction; warrant may be executed only on a business day from Monday through Friday. • Issuance of warrant no longer cancels landlord-tenant relationship. • If tenant tenders or deposits all the rent due any time before warrant of eviction is expected, warrant in a nonpayment case is vacated unless landlord can establish that tenant withheld the rent in bad faith. • Court may, for good cause, stay or vacate a warrant, stay re-letting or renovation of premises for a reasonable period of time, and restore tenant to possession; nothing may deprive court from power to stay, vacate, or restore tenant to possession of premises after execution of warrant. • Warrant may remove only "persons named in the proceeding." • Applies to commercial and residential proceedings. • Effective 6/14/19.
<p>Post-Trial Stay RPAPL 753(1), 753(3)</p>	<p>In NYC holdover proceedings, courts could stay issuance and execution of warrant for up to 6 months, except if landlord intended to demolish the building.</p> <p>In holdover proceedings based on a lease violation, tenants were given automatic 10-day stay to cure breach.</p>	<ul style="list-style-type: none"> • In both nonpayment and holdover proceedings, courts statewide have discretion to grant an occupant a stay of up to 1 year; the demolition exception is abolished; there is an exception to court's discretion if the proceeding is based on objectionable conduct or if landlord can establish that occupant is objectionable. • Factors court may consider when granting a stay, or deciding the length of a stay, to determine whether an eviction would cause extreme hardship if stay was not granted: (a) serious ill health; (b) significant exacerbation of ongoing condition; (c) child's enrollment in local school; and (d) any other extenuating life circumstances affecting ability of applicant or family to relocate and maintain quality of life. • Court shall consider any substantial hardship on landlord in determining whether to grant the stay and in setting the stay's length and other terms. • Automatic cure period under RPAPL 753(4) for breach-of-lease provision extended from 10 to 30 days. • If lessee (tenant) is removed from the leased premises after a foreclosure or tax foreclosure, proceeding must be sealed, and all records of the proceedings must be kept confidential. RPAPL 757. • To effect these changes, RPAPL 751(4), which limited stays outside NYC, is repealed. • Effective 6/14/19.
<p>Unlawful Eviction RPAPL 768</p>	<p>Illegal, except by court proceeding, to evict residential occupant who had occupied space for at least 30 days or entered into a lease.</p>	<ul style="list-style-type: none"> • Unlawful evictions are punishable as a Class A misdemeanor carrying civil penalties from \$1,000–\$10,000 per violation. • Definition of conduct constituting unlawful eviction is expanded to (a) using or threatening force; (b) interfering or intended to interfere with ability to use dwelling; (c) engaging or threatening to engage in any conduct that prevents or is intended to prevent occupant from lawful occupancy or to induce lawful occupant's vacatur. • Owner required to restore person unlawfully removed. • Applies statewide. • Effective 6/14/19.

CHANGES TO THE GENERAL OBLIGATIONS LAW: SECURITY DEPOSITS

Area of Law	Old Law	2019 Law
Limits on Security Deposits and Pre-Paid Rent GOL § 7-108(1-a)	Rent-stabilized tenants were not required to deposit or advance more than 1 month's rent as security deposit; no limits on security deposits or pre-paid rent for market tenants.	<ul style="list-style-type: none"> • Tenants in rent-stabilized and unregulated units may not be required to deposit more than 1 month's rent as security deposit. • Abolishes pre-paid rent advances. No more first and last month's rent accepted or required at beginning of tenancy.
Inspection of Premises, Return of Security Deposit GOL § 7-108 (1-a)(c)–(e)	A security deposit had to be returned within a “reasonable time.” Law did not specify time.	<ul style="list-style-type: none"> • After lease is signed but before occupancy begins, landlord must offer tenant an opportunity to inspect apartment (with landlord present). After the inspection, the parties must enter into a written agreement attesting to the condition of the apartment and noting any defect or damage. The agreement is admissible as evidence of the condition of the premises at the beginning of the occupancy only in actions related to returning the security deposit and not for warranty of habitability. • Upon tenant's notice of intent to vacate, landlord must conduct exit walk-thru no more than 2 weeks and no less than one week before the surrender. Landlord must give 48 hours' written notice of inspection. Tenant may be present. After inspection, landlord must give itemized statement specifying repairs and cleaning that shall be the basis of any security-deposit deduction. Tenant may cure any condition before tenancy ends. • Landlord has 14 days from tenant's vacatur to return security and an itemized statement if any portion of the deposit is retained for nonpayment of rent, nonpayment of utility charges, damage caused by tenant beyond wear and tear and moving, or storage of tenant's belongings. • If landlord fails to provide itemization or deposit within 14 days, landlord forfeits right to retain any portion of security deposit. • The security deposit cannot be withheld based on not a claim of wear and tear, attorneys' fees, late fees, additional rent, or other miscellaneous charges. • The itemized statement must specify any repairs or cleaning that shall be the basis of any deduction from the security deposit. Tenant may cure any condition before tenancy ends. • In an action disputing the amount of any security deposit retained, landlord has burden to justify retaining any portion of the deposit. • Willful violation subject to punitive damages up to twice the amount of the deposit. • Effective 6/14/19.

CHANGES TO THE GENERAL BUSINESS LAW: CO-OP AND CONDO CONVERSIONS

Area of Law	Old Law	2019 Law
Conversion to Cooperative and Condominium Ownership GBL § 352-eeee	Although seldomly used, the law permitted conversion based on an eviction plan. In a non-eviction plan, at least 15% of tenants in residence must have agreed to buy before the conversion was effective.	<ul style="list-style-type: none"> • The eviction option is eliminated. • For a non-eviction conversion to be effective, at least 51% of tenants in residence must agree to purchase. • Tenants in occupancy have 90-day exclusive right to purchase and 6-month right of first refusal. • Holders of unsold shares and unsold units may lose ability to seek MCIs for capital improvements. To qualify for an MCI, building must be 35% rent regulated. • Eligible senior citizens or disabled persons who do not purchase may not be subject to unreasonable rent increases or evicted during their occupancy except for nonpayment of rent, illegal use or occupancy of the premises, failure to provide reasonable access, or a similar tenant breach of obligations to dwelling-unit owner. • Eligible senior citizens/disabled persons who reside in units subject to government regulation remain subject thereto. • Rights granted to eligible senior citizens/disabled persons under the plan may not be abrogated or reduced. • Coop plan offeror has 30 days from receipt of the form from occupant claiming to be a senior citizen or disabled to challenge the claim. Dispute brought before the Attorney General, who has 30 days to make a determination. The determination is subject to CPLR Art. 78 review if filed within 30 days of Attorney General's determination. Absent fraud, this is the sole method to resolve. • NYC only. • Effective 6/14/19.
Manufactured Homes		<ul style="list-style-type: none"> • Regulates rent-to-own contracts, including changes in use to the underlying land, and provides for tenant protections, including a bill of rights. Caps rent increases at 3% unless landlord can show hardship; then the cap is 6%. • Applies only to one housing community in NYC, on Staten Island. • Effective 7/14/19.

NYSBA's recent CLE program on the Housing Stability and Tenant Protection of 2019 is available to stream online at your convenience. For access to this program, please visit www.nysba.org/store/detail.aspx?id=VGK41. For more information on other Real Property Law CLE programs, visit www.nysba.org/realpropertycurriculum.