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# Landlord/Tenant Training

**Wednesday, October 7, 2015**

New York State Bar Association  
Great Hall  
Albany, NY 12207



# **Landlord/Tenant Training**

## **October 7, 2015**

Materials compiled by: Albany County Bar Association

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Albany County Bar Association

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Albany, NY 12202

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## LANDLORD/TENANT TRAINING

October 7, 2015

### AGENDA

- |             |  |                         |
|-------------|--|-------------------------|
| 4:00 - 4:05 | Introductory Remarks   | Hon. Thomas Keefe       |
| 4:05 - 4:55 | RPAPL Summary Eviction Proceedings<br>CLE: .5 Skills Practice & .5 Professional Practice<br><br>- Non-payment Proceedings<br>- Holdover Proceedings  | Bruce Rosenthal, Esq.   |
| 4:55 - 5:45 | Defenses & Mortgage Foreclosures<br>CLE: .5 Skills & .5 Professional Practice<br><br>- Procedural Defenses<br>- Defenses to a Non-Payment Proceeding<br>- Defenses to a Holdover Proceeding<br>- Warrant of Habitability<br>- Retaliatory Eviction<br>- Military Service Members<br>- Security Deposit<br>- Attorney's Fees<br>- How Foreclosures Impact Evictions | Douglas Shartrand, Esq. |
| 5:45-6:35   | A Practical View<br>CLE: 1.0 Professional Practice<br><br>-Attorney for the Day<br>-Scenarios  | Lianne Pinchuk, Esq.    |
| 6:35- 7:00  | Financial Assistance Resources<br>CLE: .5 Professional Practice  | Robert Romaker, Esq.    |



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# **Section One**

RPAPL Summary Eviction Proceedings

CLE: 0.5 Skills & 0.5 Professional Practice

Bruce Rosenthal, Esq.





# Types of Landlord/Tenant Summary Proceedings

## A. Non-Payment Summary Proceeding

1. **Three-Day Notice - RPAPL 711(2)** requires petitioner to make a demand for rent prior to commencement of the eviction proceeding. The demand can be oral or written. If written, it must provide respondent with 3 days to pay the rent. The 3 day Notice must be served on the respondent and filed with the Court. The 3-day notice must state the amount of rent due and the period of time covered by that amount, together with a demand that the total amount be paid within 3 business days after service of the notice or tenant must give up possession. The date of service is excluded, as are Saturdays, Sundays and holidays.
2. **Petition must seek rent and not other charges** - While petitioner can seek attorney's fees (if agreed to in the lease) and Court costs, generally, respondent cannot be evicted for the failure to pay these costs, especially in a rent-regulated situation.
3. **Late Charges** - Late charges may be sought. However, the charge must be reasonable and non-punitive and must bear some reasonable relationship to the amount of rent. The agreement must provide for the payment of late charges and must specifically provide that the late charge is collectable as "additional rent". Courts examine late fees closely (5% late fee and \$50 late fee has been struck down, while \$20 - \$25 late fees have been found to be non-excessive).
4. **Rent vs Attorney's Fees and "other charges"**- Petitioner must seek "rent" in a non-payment proceeding, and not other charges. While attorney's fees, alone, cannot be the basis to maintain a summary eviction proceeding, they can be recovered if allowed for in the lease. The attorney for the party seeking these fees must provide the lease provision for the Court's review and explain the work the attorney has completed in the proceeding. Petitioner may also seek "other charges" if the lease provides that they are to be treated as "rent".
5. **Statutory Prerequisites for Maintaining Non-Payment Proceeding**
  - a. **Petitioner must be specifically authorized under RPAPL § 711(2) to bring a proceeding (landlord generally = owner)**

- b. **Must be a landlord/tenant relationship between the parties (must be pled in the petition)**
- c. **Respondent must have defaulted in the payment of rent.**  
The amount of rent due must be pled in the petition, and it must state how petitioner arrived at that amount.
- d. **Respondent must be in possession of the premises** (tenant's vacancy of the premises during the pendency of the proceedings does not deprive the Court of jurisdiction).
- e. **Petitioner must make demand for rent** [RPAPL § 711(2)]  
See "Three Day Notice" above. Petition must allege the form of the demand for rent and, if written, the manner of service of the written notice [*Beach v McGovern*, 41 AD 381, 58 NYS 493 (2d Dept 1899)]. Some Courts require respondent to raise a "faulty demand for rent" claim or it is considered waived; others require it as part of petitioner's prima facie case.

**B. Holdover Summary Proceeding** - generally used to refer to any summary proceeding brought to evict on some basis other than for non-payment.

1. **Expiration or Termination of Lease** - RPAPL §711(1) provides the fundamental authority for a holdover proceeding, and authorizes the maintenance of a summary eviction proceeding against a tenant who "continues in possession ... after the expiration of his term without the permission of the landlord". This applies to the tenant whose lease has expired by operation of law or because the lease has been terminated by operation of a conditional limitation in the lease. The terms of the lease control. The lease cannot be terminated for reasons other than those allowed under the lease (ie. No termination for "objectionable conduct" unless there is a provision in the lease authorizing such termination. *See Perrotta*, 98 AD2d 1, 469 NYS2d 504; *Levesque*, 106 Misc2d 432, 430 NYS2d 482).
2. **Rent / Use and Occupancy** - Petitioner may seek rent for a period prior to the end of the tenancy and U&O for the period respondent "holds over". The amount of U&O is set by the Court, but is generally set at the amount of the rent.
3. **Predicate Notices required in Holdover Proceedings** - Prior to commencing a holdover proceeding, petitioner must, in most

instances, serve certain notices. As a general rule, a predicate notice dies when the holdover proceeding based on it is dismissed (However, some Courts allow a second proceeding based upon the same notice where the second proceeding is commenced before the first proceeding is dismissed).

- a. **Notice to Terminate** - The purpose is to terminate the tenancy and notify tenant of the consequences of failure to vacate the premises. The Notice can be required by lease, statute or regulation. This Notice is required to terminate a tenancy at a time other than at the end of a definite rental term (with Section 8 or regulated housing, a Notice to Terminate is always required). The summary proceeding cannot be commenced until after the date set forth in the Notice for the termination of the tenancy. The timing for the Notice is governed by lease and/or statute. For tenancies with a lease, the lease must authorize early termination. Notice requirements are then governed by the lease. In a month-to-month tenancy, tenant is entitled to one month's notice (as opposed to 30 days in NYC) (*See RPAPL §232-b*). Therefore, in order to terminate a month-to month tenancy on May 31<sup>st</sup>, the Notice must be served by April 30<sup>th</sup>.

The **manner of service** of the Notice is governed by lease or by statute. RPAPL § 232-b governs month-to-month termination notices outside of NYC and does not require that the Notice be in writing, nor does it specify the manner in which the Notice is to be served.

**The Notice must contain** sufficient facts to establish grounds for the landlord to recover possession. For example, if termination is based upon an alleged breach of a lease, the Notice must set forth the specific lease provision involved. It must set forth **specific facts** and not simply legal conclusions. It must advise the tenant of the **date of termination** of the tenancy; it must be **signed by the landlord** (or an agent known by tenant or included in the lease); it must **notify tenant** that if tenant fails to vacate by the termination date, an **eviction proceeding will be commenced**; it must be **unequivocal** and **unambiguous** as well as **sufficiently detailed**; it cannot seek an increase in the rent and terminate the tenancy; it cannot give tenant both an opportunity to cure and terminate the tenancy.

- b. **Notice to Quit** - a notice to an occupant of a dwelling unit that the occupant must leave or a summary eviction proceeding will be commenced by the owner, seeking a judgment of possession to remove the occupant. This notice is used where no landlord/tenant relationship exists (RPAPL § 713; ie., squatter or licensee).

This Notice must be served at least 10 days prior to commencement of the proceeding, and must be served in “the manner prescribed in section 735” (RPAPL § 713); same service as for a notice of petition and petition. The **Notice must state the facts** upon which the proceeding is based, including whether the occupant is a squatter or a licensee, if known (*See 349 East 49<sup>th</sup> Street Equities v Vought*, 5/27/82 NYLJ 5, col.4 [App Term 1<sup>st</sup> Dept]).

- c. **Notice to Cure** - This is a notice to tenant that tenant is in default of some obligation arising out of the lease and that tenant’s obligation must be met or a summary eviction proceeding will be commenced.

This Notice must afford tenant a 10-day period to cure the condition alleged in order to constitute a default of an obligation of the tenancy. This Notice can be served personally or by mail (However, add five days from date of mailing where service is by mail). The Notice must be specific and must advise that tenant has a specific time period to cure the alleged breach. It must be sufficiently specific to apprise tenant of the condition that landlord alleges is a default of the tenant’s obligations. The Notice must also clearly advise tenant of what must be done to cure the breach, and it must inform tenant of the consequences of failing to “cure” the condition alleged to be the breach.

**Yellowstone Injunction** - A tenant may be able to obtain an injunction against expiration of the cure period in Supreme Court, where the “condition” to be cured cannot be cured before the period of time allowed in the Notice elapses. Such relief is not available in City Court (lack of jurisdiction to grant this injunctive relief).

# **Section Two**

Defenses and Mortgage Foreclosures

CLE: 0.5 Skills & 0.5 Professional Practice

Douglas Shartrand. Esq.



## Summary Proceeding Defenses

**Asserted in Answer, verbal or written, or in a motion. See RPAPL Section 743: answer due 3 days prior to return date if petition served at least 8 days prior and so demands.**

### A. PROCEDURAL DEFENSES

**1. IMPROPER SERVICE** must be made at first appearance or a traverse hearing is waived. Unless the Affidavit of Service is deficient upon its face, the Respondent has the burden of proof to show improper service. Matter of Shaune TT, 251 AD 2d 758 (3<sup>rd</sup> Dept., 1998). Once specific allegations of improper service are raised, a traverse hearing is required. (See CPLR Section 3212).

a. **TIME OF SERVICE** - Service must be completed 5-12 prior to the Court date (RPAPL Section 733) *When is service complete?* Service is complete at time of personal service if that method used. {RPAPL Section 735(2)(a)}. But if substituted service is used, it is complete upon filing the Affidavit of Service with the court. {RPAPL Section 735(2)(b)}. Case law in NYC is divided upon whether the late filing of an Affidavit of Service is jurisdictional or a “mere procedural irregularity”. Contrast: Riverside Syndicate, Inc. v. Saltzman, 49AD3d 402 (1<sup>st</sup> Dept 2008) and Lanz v. Lifrieri, 104 AD2d 400 (2<sup>nd</sup> Dept 1984). In the 3<sup>rd</sup> Department, strict compliance is required in determining jurisdiction in a summary proceeding case (Calvi v. Knutson, 195 Ad 2d 828 (3<sup>rd</sup> Dept 1993).

b. **MANNER OF SERVICE**- RPAPL Section 735

1) Personal Service

2) Person of suitable age and discretion who resides there

3) Nail and Mail

4) Methods 2 & 3 also: regular & certified mail w/in one day after delivery; look for correct address on mailing; check to see if the tenant gave the landlord notice of a new address.



5) Were there reasonable attempts to serve personally?

- c. **SERVICE BY AN IMPROPER PERSON**-service of papers cannot be made by a party and the server must be at least 18 years of age. CPLR Section 2103(a)

1) Does not apply to 3 Day/30 Day Notice.

## **2. IMPROPER COURT (Lack of Subject Matter jurisdiction)**

The proceeding must be brought in a Court that has jurisdiction over the municipality where the residence is located (i.e., Albany City Court has jurisdiction over residences located within the City of Albany) UCCA Section 204; RPAPL Section 701

## **3. IMPROPER PETITIONER - RPAPL SECTION 721**

Only those persons listed in the statute have standing to maintain a summary proceeding. These include a landlord or lessor. Usually, these are the same as the owner. However, they do not have to be the owner. Generally the owner of the property, and never the agent acting in the agents own name, or an attorney-in-fact, acting on behalf of the owner, as petitioner, must be the petitioner. See Gilman v. Kipp, 136 Misc.2d 860 (Syracuse City Court, 1987).

## **4. DEFECTIVE VERIFICATION**

RPAPL Section 741 requires that a petition in a summary proceeding must be verified. It does not require that it otherwise be signed. CPLR Section 3020 sets forth what a verification must state.

- a. RPAPL Section 741 allows verification by attorney but some courts require a showing by affidavit the reason why not signed by Petitioner.
- b. The RPAPL section is more liberal than CPLR Section 3020(d) (verification by attorney when client is not in the county where the attorney has his office.)

## **5. FAILURE TO ALLEGE ALL REQUIREMENTS OF RPAPL SECTION 741 IN THE PETITION**

Petition must state: (i) petitioner's interest in the property; (ii) respondent's interest in the property and his/her relationship to the petitioner; (iii) the property description; (iv) the fact upon which the proceeding is based; and (v) the relief sought.

## **B. DEFENSES TO A NON-PAYMENT PROCEEDING**

### **1. PAYMENT**

Proceeding will be dismissed where: (1) tenant paid the rent prior to service of the papers; (2) tenant tendered the payment, which landlord refused (tenant must still pay the rent); or (3) tenant pays the rent and court costs prior to issuance of the warrant of eviction. (RPAPL Section 751) RPL Section 235-e requires landlord to give a receipt for all payments except those by personal check (unless requested in writing).

### **2. NO DEMAND FOR RENT (3 DAY NOTICE)**

- a. Where the petitioner fails to either plead or prove a demand for rent, or a 3 Day Notice to pay or quit, the petition must be dismissed (demand can be made orally or in writing). If the lease requires longer than a three day notice, then you must comply with the lease terms.

Query: Who signed the demand for rent? Attorneys/debt collectors must comply with FDCPA (which allows 30 days to dispute debt); Eina Realty v. Calixte, 178 Misc 2d 80 (1998) 1<sup>st</sup> Dept. but see Deario v. Hunter, 183 Misc 2d 336 (2000). FDCPA does not compel dismissal of summary proceeding because of poor debt collection practices by attorney.

- b. Service must comply with the terms of RPAPL Section 735. See Kleinfeld v. Woodbury Road Cleaners, Inc., 38 Misc.3d 1228 (2013).

### **3. EXTRA CHARGES**

A non-payment proceeding must be brought for the non-payment of “rent” only. RPAPL Section 711(2) A lease may list additional items as “added rent”, such as charges for utilities, and recovery for the costs of such items denominated as added rent may be sought in a non-payment proceeding. Nonpayment of the security deposit is not an allowable basis for bringing a non-payment proceeding RPAPL Section 711(2).

## **C. DEFENSES TO A HOLDOVER PROCEEDING**

### **1. FAILURE TO PROVIDE PROPER TERMINATION NOTICE (RPL Section 232-b)**

A month-to-month tenancy outside of NYC may be terminated by either landlord or tenant by providing notice at least one month (not 30 days) prior to the expiration of the term. Siks v. Dellavale, 9AD 3d 561 (3<sup>rd</sup> Dept 2004) No termination notice is required to terminate a tenancy for a definite term (i.e., a one year lease). Termination Notice must be clear and unambiguous. A notice which demands payment or terminates the lease is insufficient. The Notice must specifically state the last day of the tenancy.

### **2. TERM NOT EXPIRED**

A holdover proceeding will be dismissed when the lease term has not expired or been properly terminated ( ie: look at time periods set forth in the lease). A landlord can evict for a violation of an obligation of the lease, but only if the lease contains a clause allowing termination, by exercising the right to terminate and by providing tenant with the proper Notice to Cure and/or Notice to Terminate.

### **3. ACCEPTANCE OF RENT**

Landlord’s acceptance of rent after termination of the tenancy and before commencement of the holdover proceeding waives the termination notice and creates a new tenancy. Thus the petition would be dismissed. Acceptance of rent after bringing a summary holdover proceeding does not terminate the proceeding. RPAPL Section 711(1)

#### 4. “OBJECTIONABLE TENANCY” HOLDOVER

A holdover proceeding based upon objectionable tenancy pursuant to RPAPL Section 711(1) must be based upon the termination of the lease *pursuant to a lease provision authorizing the termination of the lease on that basis*. Where there is no lease, or there is no lease provision permitting termination of the tenancy on this basis, an objectionable tenancy proceeding cannot be maintained.

- a. If no lease: send 30 Day Notice.
- b. If illegal trade or business, then evict under RPAPL Section 711(5)
- c. Must prove by “competent evidence, “unreasonable or unlawful conduct to the annoyance, inconvenience, discomfort or damage of others.”
- d. Activity must be “in, around or near the subject property” St. Owner, LP v. Novog, 31 Misc3d 680 (2011)

#### D. WARRANTY OF HABITABILITY

1. **RPL Section 235-b:** “In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection with therewith in common with other tenants or residents are (1) fit for human habitation and (2) for the uses reasonably intended by the parties and (3) that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety.” (Numbers added)
2. **Case Law Standards:** Premises must be free from conditions dangerous to life, health or safety. If there are three or more units, then Multiple Residence Law Section 174 applies: Premises must be in “good repair and free from vermin, rodents, dirt, filth, garbage or other matter dangerous to health.”
  - a. First Prong: The Court of Appeals has determined that if MRL Section 174 is violated, it provides a “bright line rule” that the first prong of the Warranty of Habitability has been breached.

Park West Management v. Mitchell, 47 NY2d 316 (1979). In Newkirk v. Scala, 90 AD3d 1257 (3<sup>rd</sup> Dept 2011), the Appellate Division found that tap water with a sickening, offensive odor violated this prong of the warranty.

- b. Second Prong: The warranty of habitability is “an objective standard for essential functions”, but not as a “guarantor of every amenity customarily rendered in the landlord tenant relationship”. The second prong of the warranty “protects against conditions that, while they do not render an apartment unsafe or uninhabitable, constitute deficiencies that prevent the premises from serving their intended function of residential occupation “Solow v. Wellner, 86 NY 2d 582 (1995).

- 1) But not if condition caused by tenant.

- 2) Must plead with specificity; Use code violations.

- 3) Third Prong:

- 3. Procedure**: Like all other defenses, the Warranty of Habitability can be raised either orally or in writing. This defense may be raised in a non-payment proceeding or for the purpose of contesting rent owed in a holdover proceeding.

- a. It can also be raised as a counterclaim and it is advised to raise it as both so that if petition dismissed, the counterclaim survives.

- b. Continued payment of rent held not to be a waiver of a counterclaim on Warrant of Habitability.

- 4. Rent abated**: If the Court finds a breach of the Warranty of Habitability, it will determine what percentage of the value of the rental was lost. The tenant will be entitled to an abatement of rent equal to that percentage times the amount of the monthly rent payable by the Tenant.

## 5. WITHHOLDING RENT

Here, a tenant is alleging that landlord has failed to make repairs to the premises. When a tenant withholds rent for this reason, the money

should be set aside and not spent on other needs. The Judge will be making a determination at trial as to what rent is still owed by the tenant. If tenant owes rent, the Judge will direct the tenant to pay this sum within a short period of time or a warrant of eviction will be issued to landlord.

- a. It can also be raised as a counterclaim and it is advised to raise it as both as a defense and a counterclaim so that if the petition dismissed, the counterclaim survives.
- b. Continued payment of rent held not to be a waiver of a counterclaim on Warrant of Habitability.
- c. Social Services Law Section 143-b allows public welfare officials to withhold rent to landlords of public assistance recipients where there are outstanding violations of law which are dangerous, hazardous or detrimental to life or health. It further states that, if the violations are reported to the appropriate welfare department, it shall be “a valid defense in any action or summary proceeding against a welfare recipient for non-payment of rent to show existing violations in the building wherein such welfare recipient resides which relate to conditions which are dangerous, hazardous or detrimental to life or health as the basis of non-payment.” Further, the landlord “shall not be entitled to an order or judgment awarding possession or a money judgment.
  - 1) No private right to assert this defense if the agency does not withhold rent. Notre Dame Leasing v. Rosario, 2 NY3d 459 (2004)
- d. See: Albany City Code Section 231-131 (“No owner . . . shall collect rents during any period of noncompliance with (Residential Occupancy Permit Provisions) which would otherwise be due and owing for the rental of the premises . . . until he or she shall have complied with the provisions herein.”)
- e. The tenant must allow the landlord access to the property to make repairs.

## **6. RENT ABATEMENT**

A tenant can also bring a counterclaim for prior rent paid under a theory of a violation of the warrant of habitability. In this case tenant tries to work out the repair issues while continuing to pay the rent. Tenant would then sue landlord for the diminution of rental value cause by the lack of repairs. The Landlord must have notice of the condition.

## **7. CONSTRUCTIVE EVICTION**

Where tenant is forced to vacate the premises since they have become totally uninhabitable due to a lack of services or a failure of landlord to make repairs, tenant is totally excused from the obligation to pay rent. Vacating the premises is a necessary prerequisite to pleading this defense or asserting this claim. Contrast this to a warranty of habitability defense where the tenant is not required to leave the apartment in order to be eligible for a reduction in the rent. See also RPL Section 227 which allows a tenant, absent a lease provision to the contrary, to surrender the premises if it is destroyed or so injured as to be unfit for occupancy.

### **E. RETALIATORY EVICTION: RPL Section 223-b**

1. Retaliation for either: (1) good faith complaint to a governmental agency of a health or safety violation; (2) action taken to enforce rights under a lease; or (3) participation in a tenant's organization.
2. There is a rebuttable presumption of retaliation if an eviction is brought within six months of any of the first two above actions unless the condition was caused by the tenant.
3. Does not apply to: (i) a non-payment proceeding; (ii) proceeding based upon a violation of a lease term; (iii) if the tenant caused the problem; or (iv) to owner occupied two or three family residences.

### **F. MILITARY SERVICE MEMBERS: Military Law Section 309**

“No eviction . . . shall be made during the period of military service in respect of any premises occupied chiefly for dwelling purposes by a person in military service or the spouse, children or other dependents of a person in military service, except upon leave of the court . . .”

## Related Topics

### A. SECURITY DEPOSIT

Security Deposits provide landlord with protection against damages caused to an apartment. Under the General Obligations Law, the security deposit remains the property of tenant and must be returned to tenant shortly after vacating the premises if there are no damages or outstanding rent. A non-payment proceeding may not be based upon an unpaid security deposit, and a tenant may not demand the return of the security deposit in such a proceeding unless tenant has already moved out. Generally, tenant must bring a small claims action against landlord for return of the security deposit if landlord improperly fails to return it.

### B. ATTORNEY'S FEES

1. Real Property Law Section 234 provides that “(w)henever a lease of residential property shall provide that in any action or summary proceeding the landlord may recover attorney’s fees . . . incurred as a result of the failure of the tenant to perform any covenant or agreement contained in such lease, . . . there shall be implied in such lease a covenant by the landlord to pay to the tenant the reasonable attorneys’ fees and/or expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement on its part to be performed under the lease . . .”. See Graham Ct. Owners Corp v. Taylor, 24 N.Y.3d 742.
2. But not if the tenant is not required to pay for their legal services. Maplewood Management, Inc. v. Best, 133 Misc 2d 769.

## Mortgage Foreclosure and Eviction

### A. REQUIRED NOTICES DURING THE FORECLOSURE PROCESS:

1. **NOTICES AT START OF ACTION:** RPAPL Section 1303. The statute provides for notices to both Homeowners and Tenants, if any.
  - a. 1303(4): The Tenant’s Notice must be served within 10 days of service of the Summons and Complaint in the foreclosure action. The section further details the form of the notice and how it is to be served.



1) Less than 5 units: certified mail and regular mail; 5 or more units : posting

- b. 1303(5) Sets forth the contents of the notice.
- c. Failure to comply with the statute can result in dismissal of the foreclosure action. However, it has been held that, if the notice is served, but not in the proper type size, the defendant is not substantially prejudiced so as to warrant dismissal. Citibank, N.A. v Wood, et al, 2014 NY Slip Op 31729(U) (Supreme Court, Suffolk County). A violation of these provisions does not deprive a court of subject matter jurisdiction over the proceeding. Pritchard v. Curtis, 101 AD 3d 1502 (3<sup>rd</sup> Dept., 2012)

**2. CO-OP LOAN FORECLOSURE NOTICE:** UCC Section 9-611(f)

**3. TENANT SPECIFIC NOTICE:** RPAPL Section 1305: The statute grants rights to tenants which did not exist prior to this time. (effective 1/14/2010)

- a. 1305(2) The Notice states that the Tenant may stay in possession of the unit for the greater of (a) 90 days from service of the Notice; or (b) the lease term

1) Exception: Only 90 days if the bank's successor in interest intends to reside in the unit as his/her personal residence.

- b. Query: The statute is written such that this protection may only cover those tenants who were served with the notice required by Section 1303. Tenants who entered into possession after the 1303 Notice was required to be served may not be covered by this section.

**B. DUTY TO MAINTAIN FORECLOSED PROPERTY:** RPAPL Section 1307

For the time period set forth in the statute, a duty is imposed on a plaintiff in a mortgage residential real property foreclosure action, where the property is abandoned by the mortgagor, but is occupied by a tenant, to maintain the foreclosed property, "in a safe and habitable condition". Section 1307(5).

See Department of Housing Preservation and Development v. Deutsche Bank National Trust Co., 2013 NY Slip Op 51554.

### **C. EVICTION AND FORECLOSURE**

- 1. WRIT OF ASSISTANCE:** RPAPL Section 221: Where all occupants are named parties in the foreclosure, the court can order delivery of the property to the plaintiff and require the Sheriff to put the plaintiff in possession.
  - a. Courts have held that you cannot evict a tenant, who is not named as a party in the foreclosure, pursuant to this section.
  
- 2. SUMMARY PROCEEDING:** RPAPL Section 713(5): Grounds for eviction where no landlord tenant relationship exists.
  - a. Need to deliver a ten (10) day notice to quit and must “exhibit” a certified copy of the new deed to the occupants of the premises. This section is subject to the rights and obligations of Section 1305.
  - b. Courts have required strict compliance with the requirements of Section 1305 and the “exhibition” requirement of this section in order to support an eviction. The “exhibit” requirement requires personal service; nail and mail is insufficient
  
- 3. STANDING:** In order for a receiver, appointed by the Court to collect rents during the course of a mortgage foreclosure, to be able to bring a summary proceeding, the court order must specifically grant such power. Any eviction brought without such authority is subject to dismissal. (RPAPL Section 721 (9)) Dulberg v. Evenhart, 68 AD2d 323 (1<sup>st</sup> Dept. 1979). If granted, the receiver’s authority to bring a summary proceeding terminates upon completion of the foreclosure sale.



# **Section Three**

A Practical View

CLE: 1.0 Professional Practice

Lianne Pinchuk, Esq.



# **A Practical View**

Lianne S. Pinchuk

## **Basic Things to Know About Albany City Court:**

- 2<sup>nd</sup> floor of Albany City Hall
- Calendar starts at 9:00am, with a second call an hour later
- Generally, attorney for the day is in front of Judge Keefe
- A representative from United Tenants is usually there, and United Tenants is a great resource
- Department of buildings (for code violation issues) is currently located on the top floor of Albany City hall

## A Day in the Life of an Attorney for the Day

### Scenario 1 – The Case of the Missing Documents.

Tenant: I have Court today. I'm being evicted.

*Lawyer: Let me see if I can help you. My name is Bob McLaw.*

Tenant: I got something in the mail. It says to be here or they can throw me out.  
[Hyper] Can they do that?

*Lawyer: Come over here, let's sit down, show me what you got.*

Tenant: [pulls mass of crumpled papers from pocket and hands to lawyer]. This. I got this.

*Lawyer: This is an eviction petition. It says you haven't paid rent for 2 months. It says you have a lease. Do you?*

Tenant: I signed one.

*Lawyer: Do you have it?*

Tenant: At home.

*Lawyer: The landlord says you owe 2 months rent, plus late fees of \$50/month plus attorneys' fees for filing this petition. Do you remember what your lease said?*

Tenant: No. I just signed it so I'd have a place to live.

*Lawyer: Do you want to stay there?*

Tenant: Yah, man, it's the best place I've lived in years.

*Lawyer: Do you have any money to pay the rent? What about making your rent payments going forward?*

Tenant: Yes. I really want to stay but I hit some bad luck and now I'm doing better. I have one months rent and I can also pay this month now.

*Lawyer: Ok, let's go talk to the landlord.*

Tenant: He's over there.

*Lawyer: Are you the landlord?*

Landlord: Yes.

*Lawyer: Do you have a lawyer here.*

Landlord: No. I did the petition.

*Lawyer: [handing landlord the crumpled petition] This?*

Landlord: Yes.

*Lawyer: Can we talk for a few minutes before the judge calls us?*

Landlord: Yes.

*Lawyer: Do you have a copy of the lease?*

Landlord: Not with me.

## **What Would You Do?**

1. With no lease, Lawyer can argue that there is nothing (right now) showing entitlement to fees/costs. Landlord can decide to set it down for trial, but may want to be done with the proceeding.
2. Lawyer can offer to settle with payment of whatever tenant has now plus payment plan for remainder of arrears. This would save the client the costs of late fees and landlord's attorneys' fees and allow the tenant to stay in the unit.
3. Settlement would be put on the record with the payment amount and terms, and likely a warrant stayed pending the payments of arrears.

What is a warrant stayed pending payment? How to explain that to a client?



## Scenario 2 – The Over-Sharer

*Lawyer:* Hi. I got your intake from student. He says you are looking for help. There is a problem in your apartment? I'm Bob McLaw, let's see if I can help.

Tenant: [Hurriedly] Oh thank goodness. I do need help. You see in 2002 I moved into this apartment and took pictures and called codes right away. There were no smoke detectors. Then the landlord put smoke detectors. Then in 2003 I complained that the railing for the steps was shaky, and then the landlord fixed that. Then in 2004 there was a problem with the door being not straight and it was drafty . . . then . . .

*Lawyer:* Ok, and this is the same apartment?

Tenant: Yes, but in 2005 there was an issue . . .

*Lawyer:* What brought you here today?

Tenant: I was telling you. In 2005 there was . . .

*Lawyer:* [Nicely, but trying to move it along] No, what is happening now?

Tenant: I'm getting there. Here is the binder of paperwork for the apartment. You can see what's going on.

*Lawyer:* Why don't you tell me? What brought you here today?

Tenant: Well, I fell off a ladder in 2014 and that started it. Then my husband left and it was just me and I got a new job and switched banks and then there were mice in the apartment. And roaches.

*Lawyer:* Ok. Are there still mice and roaches?

Tenant: Yes! That's what I'm saying! You asked what brought me here. I just told you. [yelling] – MICE and ROACHES.

*Lawyer:* Have you called codes?

Tenant: Yes. In 2003, for the first time. And then in 2004.

*Lawyer:* Okay, let's focus on current problems. Have you called codes recently?

Tenant: Yes. As soon as this problem started.

*Lawyer: Tell me about the roaches and mice.*

Tenant: I can't set a coffee cup down without a mouse coming and sniffing around it. They are everywhere and they are fearless. The roaches come through every crack in the walls and floor. It's gross. I can't have friends over anymore because I'm embarrassed. I have pictures – want to see? [showing cell phone in lawyer's face] – ooh, that's my brother, just a second, ok – here – this is the crack when you first walk into the apartment, and see the roaches. And then the next picture is about 1 foot beyond that and then you will see I have 400 pictures, all of the cracks and nooks and crannies with roaches. Look at them.

*Lawyer: So what is happening with the landlord?*

Tenant: He said I have to pay all my rent before he does anything about it.

*Lawyer: Do you have your rent?*

Tenant: [waving money around] Yes. What do you take me for? Why would I spend my rent money?

*Lawyer: Let's go talk to the landlord.*

## **WHAT CAN YOU DO?**

1. Get any documents from codes (preferably before talking to the landlord). Codes is currently located upstairs from City Court and will provide you with a printout of violations.
2. Meet with landlord/landlord's attorney, explain gravity of the situation and discuss warranty of habitability issues.
3. Attempt to work out a settlement with a rent abatement.

A wrench in the plan:

What happens when you are standing in front of the judge and then the client discloses that in fact they only have ½ the amount of money they told you they had?

### **Scenario 3 - The case of “I spent my money”**

Tenant – I need help. I’m being evicted.

*Lawyer (looking at intake sheet) – I’m Bob McLaw. What’s going on?*

Tenant – I live in a small building. My landlord always comes over at 9:00am on the first Friday of the month and picks up the rent, in cash.

*Lawyer – How much is your rent?*

Tenant - \$600.

*Lawyer – do you have a lease?*

Tenant – nope.

*Lawyer – how long have you lived there?*

Tenant – 3 months.

*Lawyer – ok, so your landlord usually picks up the money.*

Tenant – Yah. And he didn’t come last month. And now he’s trying to throw me out like it’s my fault he didn’t come.

*Lawyer – well, if he didn’t come, you still have the \$600, right?*

Tenant – Hell, no. I took my girlfriend away for the weekend. I mean, it’s his fault he didn’t come get it, so I spent it.

*Lawyer – do you have any money to put towards this rent?*

Tenant - a bit.

*Lawyer – do you want to stay in the apartment?*

Tenant – Absolutely.

*Lawyer – I’m not sure what we can do, but we can talk to your landlord together.*

### **WHAT CAN YOU DO?**

Probably not much, but try to work out a payment plan for the month’s rent. Sometimes, the landlord likes the tenant and wants to work with them.

# **Section Four**

Financial Assistance Resources

CLE: 0.5 Professional Practice

Robert Romaker, Esq.



## Financial Resources in Albany County

### **A. Resources from the Albany County Department of Social Services (162 Washington Avenue)**

The most significant resource for low-income people facing a housing crisis is the Albany County Department of Social Services ("ACDSS"). ACDSS may be able to assist clients with the following:

- Rental Arrears
- Relocation Assistance (Security deposit, moving expenses, first month's rent)
- Emergency Shelter for the Homeless
- Utility Arrears and Winter Heating Assistance (HEAP)
- Ongoing Temporary Assistance (Monthly Grant)
- Food Stamps
- Medicaid
- Child Care Subsidies
- Diversion Payments (occasionally)
- Furniture, Clothing, Appliance Repair

1. **Rental Arrears and Relocation Assistance from ACDSS.** There are three funding streams that can provide emergency assistance to low income people in the form of rental arrears or relocation assistance (security deposits, moving expenses, sometimes first month's rent)

#### **a Emergency Assistance to Families: 18 NYCRR 372.2**

- i. Must have a child in the household under 19 and in high school or under 18 yrs.
- ii. Income at or below 200% FPIG (see attached federal poverty guidelines)

- iii. Must have an emergency
- iv. Emergency must not have been foreseeable.
- v. No right to any particular housing option (more cost effective to relocate?)
- vi. All liquid resources must be applied to emergency
- vii. **Apartment must be affordable**
- viii. Overpayment possible if family receives ongoing Temporary Assistance at 5-10% a month.

Note: Clients who are on temporary assistance sanctions will have complications and may be ineligible for assistance. Sanctioned persons should be referred to Legal Aid (LASNNY) for assistance.

**b Emergency Safety Net Assistance: 18 NYCRR 370.3**

- i. May assist the following clients:
  - a. Single individuals
  - b. Families where EAF criteria not met (esp. foreseen circumstances).
- ii. Household income must be at or below 125% FPIG, unless fire flood or catastrophe (not an eviction).
- iii. Not on Temporary Assistance sanction.
- iv. Must sign a repayment agreement- repaid within 12 months. Ineligible for another grant of ESN for that type of assistance (housing or utilities) unless making all required payments or paid off.
- v. No right to any particular housing option (more cost effective to relocate?)
- vi. All liquid resources must be applied to emergency
- vii. Apartment must be affordable

Note: Clients who are on temporary assistance sanctions will have

complications and may be ineligible for assistance. Sanctioned persons should be referred to LASNNY for assistance.

**c Emergency Assistance to Adults: 18 NYCRR 397.4**

- i.** Individuals eligible for SSI
- ii.** Emergency needs that cannot be met by other means.
- iii.** Can only cover rent incurred in four month period prior to the month of application.
- iv.** No right to any particular housing option (more cost effective to relocate? Special needs require housing?)
- v.** All liquid resources must be applied to emergency
- vi.** Apartment must be affordable

**2. Emergency Shelter:**

- a** Intake is through HATAS emergency team at ACDSS, 162 Washington Avenue. 24/7 hotline: 463-2124. May be “diverted to family” in lieu of emergency shelter.
- b** Sanctioned persons ineligible for shelter. Sanctioned single men may go to the City Mission on South Pearl Street. Sanctioned families may still be sheltered but with complications. Sanctioned persons in need of emergency shelter should be referred to LASNNY.
- c** Households with income must pay
- d** All households will have to develop and follow an independent living plan
- e** LASNNY case managers visit families placed in motels weekly to assist with needs and housing location.

**3. Ongoing Temporary Assistance**

- a** Extremely low income but employed may be eligible without realizing it because of earned income disregards. Especially with larger families, may be eligible for small



grant or several hundred dollars. Can apply at DSS or call LASNNY for advice. (See Statewide Standard of Need Chart)

**4. Supplemental Nutrition Assistance Program (Food Stamps).**

- a** Many working people are eligible but unaware.
- b** LASNNY Nutrition Outreach Program can screen, advise and assist with application process.
- c** Can free up significant income to pay rent or rental arrears.

**5. HEAP and Utility Emergencies:**

- One HEAP grant as of right for all persons with a SNAP case or income eligible and applying for the aid.
- Emergency HEAP during heating season (usually Nov-March)
- EAF, ESN, EAA payments outside of HEAP season. Public Service Law §131-s

**6. Diversion Payments:**

- a** Seldom used, not widely publicized. Payments that can be made for other expenses necessary to divert people from having to go on public assistance. For example, a car repair needed to maintain employment, or paying off money owed to a childcare provider so a client can return to work.
- b** Clients interested in diversion payments should contact LASNNY as these are not often applied for and workers may not be familiar with the program.

**7. Childcare subsidies, Medicaid, furniture, appliance repair, etc. All resources that may help a household meet basic needs, free up income for rental obligations, etc.**

## **Practical Tips for Helping Clients Work with DSS:**

- Send client to apply at 162 Washington Avenue immediately. Applications have some turnaround time.
- Make sure client can clearly articulate their emergency needs. Give your client the following documents to hand in with their application: Cover letter from you explaining emergency needs, with your business card; copies of court documents (proof of emergency); proof of income so financial eligibility can be determined.
- Emergency applications are supposed to be decided on the day of application, but there are often delays. Certain kinds of assistance, such as relocation, cannot practically be processed the same day. If possible, get at a minimum stay of warrant and judgment of at least one week to advocate on your client's behalf, preferably longer (10 days to two weeks). Inform DSS of stipulation time frames (include copy of court file).
- See if landlord is willing to lower the rent to an affordable level, or compromise on arrears. Sometimes lowering the rent slightly makes a person eligible for back rent when they would not otherwise qualify. ACDSS can opt to relocate a household if it is more cost effective than paying off rental arrears, so compromising on amounts can help if the landlord wishes to retain the tenant and not take a total loss on the arrears.
- ACDSS can only pay pure rent. ACDSS cannot pay late fees, filing fees, attorney's fees, maintenance fees, water bills etc., even if deemed "additional rent" by the lease. The agency does not recognize this legal fiction. This is normally determined by an information sheet submitted by the landlord to the agency. Be mindful that these sums will either have to be paid, waived, or not tied to a warrant because ACDSS will not to authorize the balance of back rent if the client can be evicted over these other sums. If permissible and appropriate, you should try to negotiate for a money judgment only (or landlord waiver) for sums that cannot be paid by ACDSS.
- If seeking ACDSS assistance for back rent, and staying a warrant on this assistance, clarify that the warrant is staying pending a promise to pay, not actual payment. The actual check may be several weeks in coming after the money is authorized and is beyond the client's control. Landlords may always call the ACDSS accounting department to check on a check or voucher.
- All workers have supervisors who can be called if the client is not getting a response or for questions.

Supervisors are supervised by the Assistant Director, Director, and then the Commissioner.

- Clients denied assistance can request expedited fair hearings by mail, fax or online. See <http://otda.ny.gov/oah/FHReg.asp>. In Albany, they may be requested in person across the street from ACDSS at 99 Washington Avenue Office of Temporary and Disability Assistance, Office of Administrative Hearings, 99 Washington Avenue, 12th Floor, Albany, New York 12260
- Clients should always request written decisions, especially for denials of assistance.

### **OTHER FINANCIAL RESOURCES (rent and utilities):**

1. United Tenants of Albany: Provides grants of \$200-\$300 for rental arrears or security deposits if relocation is necessary. Also cannot pay late fees, attorney fees etc., only pure rent. Must have been denied by ACDSS. Call United Tenants for more info on availability of funds and eligibility criteria. Money is not always available – call in advance.  
United Tenants of Albany  
33 Clinton Avenue  
Albany NY 12207  
(518) 436-8997
2. Catholic Charities: can assist residents of Albany County with utility arrears up to \$200 if denied by DSS. Money is not always available.  
Call in advance.  
  
Catholic Charities  
40 North Main Avenue  
Albany, NY 12203  
(518) 453-6650

Note: Persons with special situations such as HIV/AIDS, mental health, or transitioning from foster care may have emergency funds available through other case management programs.

## **HOW TO REACH LEGAL AID**

**B.** ATFD clients may call LASNNY intake for advice or assistance on Emergency Assistance and other public benefits matters. Due to lack of resources, we cannot guarantee representation of all ATFD clients. Clients seeking legal assistance on public benefits issues must call 462-6765 or 1-800-462-2922 for an intake during business hours.

## **ATTACHMENTS:**

2015 federal poverty guidelines charts 125% & 200%

Statewide Standard of Need chart

## **C. LEGAL AUTHORITIES:**

1. New York Law and Practice of Real Property, by Joseph Rasch
2. New York Pattern Jury Instructions by Thomson/West
3. Rasch’s Landlord & Tenant including Summary Proceedings, by Hon. Robert F. Dolan
4. Residential Landlord-Tenant Law in New York, Thomson/West Practice Guide by Andrew Scherer, Esq.

DSS Related Guidance: New York State Office of Temporary and Disability Assistance website  
<http://otda.ny.gov/>



# Financial Charts



**STATEWIDE STANDARD OF NEED**

**Effective 10/1/2012 and Thereafter**

**BASIC NEEDS**

	One	Two	Three	Four	Five	Six	Each Add'l
Basic Monthly Grant	158.00	252.00	336.00	433.00	534.00	617.00	85.00
Home Energy Allowance	14.10	22.50	30.00	38.70	47.70	55.20	7.50
Supp. Home Energy Allowance	11.00	17.00	23.00	30.00	37.00	42.00	5.00
<b>Total</b>	<b>183.10</b>	<b>291.50</b>	<b>389.00</b>	<b>501.70</b>	<b>618.70</b>	<b>714.20</b>	<b>97.50</b>

**RENTAL ALLOWANCES**

<b>Shelter Allowance for Households With Children</b>								
	One	Two	Three	Four	Five	Six	Seven	Eight +
Albany	214	219	309	348	386	404	421	421
Columbia	201	221	290	326	363	379	396	396
Fulton	189	193	272	307	341	357	372	372
Greene	197	229	281	317	352	368	384	384
Montgomery	196	200	283	319	354	370	386	386
Rensselaer	205	210	296	334	371	388	405	405
Saratoga	219	224	316	356	396	414	431	431
Schenectady	216	226	311	351	390	408	425	425
Schoharie	199	231	286	322	358	374	390	390
Warren	215	250	299	337	375	392	408	408
Washington	205	231	295	332	370	387	403	403
<b>Shelter Allowance for Households Without Children</b>								
Albany	184	213	245	267	289	299	311	341
Columbia	191	221	254	277	300	310	323	353
Fulton	159	184	212	231	250	259	269	295
Greene	197	229	263	287	310	321	334	366
Montgomery	158	184	211	230	249	257	268	293
Rensselaer	153	179	193	210	228	235	245	268
Saratoga	185	215	247	269	291	301	314	343
Schenectady	195	226	260	283	307	317	330	361
Schoharie	199	231	265	289	313	323	337	368
Warren	215	250	287	313	339	350	364	399
Washington	199	231	265	289	313	323	337	368

**HEATING ALLOWANCES**

<b>Albany, Greene, Schenectady</b>								
Oil	69	69	69	72	75	81	87	92
Gas	58	58	58	60	63	68	72	77
Electric	120	120	120	125	131	140	150	160
<b>Columbia</b>								
Oil	69	69	69	72	75	81	87	92
Gas	54	54	54	56	58	63	67	71
Electric	107	107	107	111	117	125	134	142
<b>Fulton, Montgomery, Rensselaer, Saratoga, Schoharie, Warren, Washington</b>								
Oil	72	72	72	75	78	84	90	96
Gas	58	58	58	60	63	68	72	77
Electric	122	122	122	127	133	142	152	162



**Legal Aid Society of Northeastern New York  
Financial Eligibility Guidelines**

**125% of Poverty - 2015**

Family Size	Annual Income	Weekly	Bi-Weekly	Semi-Monthly	Monthly
1	\$ 14,713	\$ 283	\$ 566	\$ 613	\$ 1,226
2	\$ 19,913	\$ 383	\$ 766	\$ 830	\$ 1,659
3	\$ 25,113	\$ 483	\$ 966	\$ 1,046	\$ 2,093
4	\$ 30,313	\$ 583	\$ 1,166	\$ 1,263	\$ 2,526
5	\$ 35,513	\$ 683	\$ 1,366	\$ 1,480	\$ 2,959
6	\$ 40,713	\$ 783	\$ 1,566	\$ 1,696	\$ 3,393
7	\$ 45,913	\$ 883	\$ 1,766	\$ 1,913	\$ 3,826
8	\$ 51,113	\$ 983	\$ 1,966	\$ 2,130	\$ 4,259
Add'l	\$ 5,200	\$ 100	\$ 200	\$ 217	\$ 433

**200% of Poverty - 2015**

Family Size	Annual Income	Weekly	Bi-Weekly	Semi-Monthly	Monthly
1	\$ 23,540	\$ 453	\$ 905	\$ 981	\$ 1,962
2	\$ 31,860	\$ 613	\$ 1,225	\$ 1,328	\$ 2,655
3	\$ 40,180	\$ 773	\$ 1,545	\$ 1,674	\$ 3,348
4	\$ 48,500	\$ 933	\$ 1,865	\$ 2,021	\$ 4,042
5	\$ 56,820	\$ 1,093	\$ 2,185	\$ 2,368	\$ 4,735
6	\$ 65,140	\$ 1,253	\$ 2,505	\$ 2,714	\$ 5,428
7	\$ 73,460	\$ 1,413	\$ 2,825	\$ 3,061	\$ 6,122
8	\$ 81,780	\$ 1,573	\$ 3,145	\$ 3,408	\$ 6,815
Add'l	\$ 8,320	\$ 160	\$ 320	\$ 347	\$ 693

**Asset Guidelines - 2015**

Family Size	
1	\$ 14,850.00
2	\$ 21,750.00
3	\$ 25,013.00
4	\$ 28,275.00
5	\$ 31,538.00
6	\$ 34,800.00
7	\$ 38,063.00
8	\$ 41,325.00
9	\$ 44,588.00
10	\$ 47,850.00
Addl.	\$ 3,263.00

# Sample Petitions



STATE OF NEW YORK  
CITY/DISTRICT/TOWN/VILLAGE COURT (1) \_\_\_\_\_  
COUNTY OF (2) \_\_\_\_\_

(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Petitioner(s)/Landlord(s)

(3) Index/Docket No. \_\_\_\_\_

-against-

**NON-PAYMENT PETITION TO RECOVER  
POSSESSION OF REAL PROPERTY**

(5) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Respondent(s)/Tenant(s)

THE PETITION OF (6) \_\_\_\_\_ owner and landlord of the premises alleges that:

1. The undersigned is the owner/landlord of the premises claimed herein and the petitioner in this action.
2. Respondent(s) (7) \_\_\_\_\_ is/are the tenant(s) of said premises who entered into possession thereof under (8) \_\_\_\_\_ rental agreement made on or about (9) \_\_\_\_\_ between respondent(s) and the landlord (landlord's predecessor), wherein respondent(s) promised to pay to landlord as rent (10) \$ \_\_\_\_\_ each month in advance on the (11) \_\_\_\_\_ day of each month.
3. Respondents are now in possession of said premises.
4. The premises from which removal is sought are described as follows: (12) \_\_\_\_\_ which is situated within the territorial jurisdiction of this court.

5. Pursuant to said agreement there was due to landlord from respondent tenant(s) rent as follows:

(13) (Month) _____, 20____	(Amount) \$ _____,	(Month) _____, 20____	(Amount) \$ _____,
(Month) _____, 20____	(Amount) \$ _____,	(Month) _____, 20____	(Amount) \$ _____,
(Month) _____, 20____	(Amount) \$ _____,	(Month) _____, 20____	(Amount) \$ _____,
(Month) _____, 20____	(Amount) \$ _____,	(Month) _____, 20____	(Amount) \$ _____,

Respondent/Tenant(s) have defaulted in the payments thereof, and the total rent in arrears is (14) \$ \_\_\_\_\_.

6. Said rent having been duly demanded from the respondent(s) since same became due:

(15)

- Personally by the landlord/owner.
- By the service of a written three(3)-day demand for rent on the respondent(s).

{Page 2} NON-PAYMENT PETITION TO RECOVER POSSESSION OF REAL PROPERTY

7. Respondent(s) hold over and continue in possession of premises without landlord's permission after said default. (16)

- The landlord is in full compliance with the Emergency Tenant(s) Protection Act of 1974 (ETPA), as amended, and the rent demanded is not greater than the maximum rent permitted by law.
- The premises are subject to rent control and the rent demanded herein does not exceed the maximum rent prescribed by the New York State Division of Housing and Community Renewal (DHCR).
- The premises are presently subject to ETPA, as amended, because: \_\_\_\_\_

\_\_\_\_\_ and the owner of the premises: has registered rents and services with the DHCR pursuant to ETPA and the tenant(s) Protection Regulations promulgated hereunder; is in compliance with ETPA; and the rent demanded herein does not exceed the legal regulated rent permitted the owner under said Law, Regulations, and appropriate Rent Guidelines Board Orders.

The apartment is not subject to rent control by reason of:

- The premises are located in a community which has not adopted ETPA.
- The building in which the premises are located was constructed after December 31, 1973.
- The building in which the premises are located has less than 6 units.

Petitioner requests final judgment: awarding possession of the premises to the petitioner/landlord; issuance of a warrant to remove respondent(s) from possession thereof; judgment for rent in arrears against respondent Tenant(s) for (17) \$ \_\_\_\_\_; interest from (18) \_\_\_\_\_, 20 \_\_\_\_\_; costs and disbursements herein.

(19) Dated: \_\_\_\_\_

(20) Petitioner \_\_\_\_\_ / \_\_\_\_\_  
Signature Type or Print Name

STATE OF NEW YORK, COUNTY OF (21) \_\_\_\_\_ ss: The undersigned

(22)

- Petitioner
- Attorney for petitioner (petitioner is not within the county in which deponent's office is located)
- Agent for petitioner

Being duly sworn states: That deponent has read/heard the petition, and the contents of the petition are true to deponent's own knowledge except as to those matters which are alleged on information and belief, and as to them deponent believes them to be true.

(23) \_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

(24) Sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

# Biographies



## **Biographies**

### **Lianne Pinchuk, Esq.**

Lianne S. Pinchuk, Esq., is an attorney with the Albany County Bar Association. In that capacity, Ms. Pinchuk trains and supervises law students seeking to do pro bono work at Albany County Family Court and through other Albany County Bar Association Pro Bono programs. Ms. Pinchuk provides representation to pro bono clients in landlord-tenant matters, small claims matters, unemployment appeals and infant name changes, among others. She is a board member of the Capital District Women's Bar Association, where she chairs the Mentoring Committee. Prior to her position with the Albany County Bar Association, Ms. Pinchuk was of counsel in the litigation department of a local firm. Before moving to the Capital District in 2008, Ms. Pinchuk worked at the New York City office of a large national firm, where she specialized in products liability and mass torts. In that capacity, she published articles in the National Law Journal (Are Fast Food Lawsuits Likely to be the Next 'Big Tobacco?'), Metropolitan Corporate Counsel and various Product Liability publications. She currently writes for the Albany County Bar Association newsletter's pro bono corner. Ms. Pinchuk serves as a judge for Albany Law School's Dominick L. Gabrielli National Family Law Moot Court Competition and for the Albany County High School Mock Trial Competition. She is a 2000 graduate of Columbia Law School, where she was a member of the editorial board of the Journal of Law and Social Problems and was the Director of the Moot Court Program.

### **Douglas A. Shartrand, Esq.**

A lifelong resident of the Capital District, Douglas A. Shartrand has been practicing law for more than 20 years. He graduated from Albany Law School in 1984 and Magna Cum Laude from The State University of New York at Albany, where he was also inducted into the Phi Beta Kappa honor society, in 1981. He is a member of the New York State and the Albany County Bar Associations.

He was the recipient of the 2011 Pro Bono Award from the Albany County Bar Association and was also recognized by the Legal Aid Society of Northeastern New York for his work in the "Attorney for the Day" program, which assisted low-income individuals facing eviction from their apartments. He has also served as a lecturer on summary proceedings for the Albany County Bar Association's seminars on landlord and tenant laws.

### **Robert R. Romaker, Esq.**

Robert R. Romaker is a Managing Attorney at the Legal Aid Society in the Albany office. He graduated with a B.A. from The Ohio State University in 1987, majoring in Political Science and minoring in Spanish. He obtained my J.D. from the University of Toledo College of Law in 1990. He has been a legal aid attorney for his entire career. Mr. Romaker was a staff attorney for Southeastern Ohio Legal Services (SEOLS) from 1990 to 1997, and became a managing attorney at SEOLS in 1997, and continued in that position until 2009, when he moved to New York. He started with LASNNY as a staff attorney in the Amsterdam office in 2009. He became a supervising attorney with LASNNY in April 2012, supervising several foreclosure attorneys and



a housing/consumer attorney in Albany, while continuing as a staff attorney in Amsterdam. Mr. Romaker became a Managing Attorney in the Albany office on December 3, 2012. He supervises the housing and foreclosure attorneys in the Albany office. He lives in Loudonville with his wife, Jane Ann, and our 5 children, Sean, Ian, David, Matthew and Emma.

### **Bruce Rosenthal, Esq**

A 1987 graduate of Albany Law School (Union University), Mr. Rosenthal was also awarded an MBA from Union College. He is admitted to practice in New York State and Federal Courts. Mr. Rosenthal began practicing law in the areas of mortgage banking and insurance defense. Over time, his practice evolved to areas involving real estate, and landlord/tenant. Currently, Mr. Rosenthal maintains a practice in Saratoga Springs, New York, concentrating primarily in landlord representation and real estate matters.