Queens
BAR BULLETIN

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LANDLORD & TENANT UPDATE 2019

BY: HON. GEORGE M. HEYMANN

INTRODUCTION

"In rent stabilized apartments, the landlord must [ ] comply with a bevy of [ ] regulations, such as establishing the first legal rent for new tenants, subsequent renewal leases and rental increases, filing such information with DHCR annually, etc. While such leases are, in effect, adhesion contracts, which means that a tenant cannot alter it in any way, except by [written] agreement [not voidable as against public policy] with the landlord, they must be accepted or rejected in whole, period. However, such leases, and concomitant laws and regulations, also contain numerous safety nets and built-in defenses for the tenant such as the type of notices that must be given to the tenant [ ] and the manner of giving such notices; defenses such as breach of the warranty of habitability; and a right to recover legal fees if successful in challenging a lawsuit brought by the landlord, if the landlord was entitled to same, just to name a few.

A lease is a contract and when breached by either party, there are consequences. If landlords do not provide housing in accordance with the provisions of the lease, they can be issued violations and required to pay fines that can be quite substantial if conditions that need to be corrected go unabated, or be issued a rent reduction order by DHCR or be penalized by a rent abatement in favor of the tenant after a hearing or trial. In drastic situations, owners may be required to turn their buildings over to receivers until everything is satisfactorily resolved. When tenants fail to live up to their end of the bargain the landlord's only recourse is to commence a proceeding in Housing Court, as self-help is illegal." (Heymann, Housing Court: Landlords' Court or Tenants' Court, Queens Tribune, March 3-9, 2016, Op Ed p.6)

On June 14, 2019, there was a sea-change of laws that will result in a radical transformation of NY's Landlord-Tenant (L&T) relationships for years to come. The following is a synopsis of the significant changes to the previously existing sections of those laws.

OVERVIEW OF THE HOUSING STABILITY AND PROTECTION ACT OF 2019 [HSTPA]

Except for a two-year hiatus (2009-2010), Republicans have controlled the NYS Senate for nearly a quarter century. The election last year of a Democratic majority in the upper house resulted in the entire NYS Legislature becoming Democratic, a seismic political change in the state. With most of the newly elected Senators and Assembly members having run on a "progressive", "pro-tenant" platform, major changes to the rent regulations that have been in place for over four decades were inevitable. In years past, changes to Rent Stabilization and Rent Control Laws were incremental. The statutes would sunset every four to eight years, requiring the Legislature re-examine them and make a determination as to whether to declare the existence of a housing emergency in order for the regulations already in place to continue, subject to any new amendments.

APPLICABILITY

The HSTPA of 2019 was anything but incremental in its approach to NYC's housing laws. It was a tsunami, revamping a substantial amount of the housing laws in one felled swoop and making rent regulations permanent by eliminating all sunset provisions and expiration dates, thereby depriving landlords the automatic opportunity to revisit the issue on a periodic basis. As a result, whether a real housing "emergency" exists or not, it will continue on in perpetuity by Legislative fiat. Moreover, the provisions are now in effect statewide.

Unless otherwise stated therein, all of the new or amended statutes became effective on June 14, 2019. The HSTPA not only affected all cases from that date forward, it includ-

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QUEENS COUNTY BAR ASSOCIATION
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Editor's Note

Lessons From the Archives: A Tribute to Justice Lonschein

For the past 42 years, I have saved all of my old case files. We are only required to save the past seven years of files, but I always thought that as I approached my senior years, I wanted to review my old files and share the lessons learned with all of you, my loyal readers all this time.

Our highly respected Justice Arthur W. Lonschein recently passed away. Around the Courthouse at Sutphin Blvd, we affectionately called him "King Arthur".

Following is a 31-year-old story about a case where King Arthur earned his nickname.

I represented a lawyer-investor, who we shall call Jones. Jones was a savvy investor. He purchased a property with an unrecorded mortgage. The XYZ Bank somehow let this matter slip through the cracks. They had a substantial mortgage which was not recorded.

Jones knew all about this, purchased the property at a reduced price and quickly flipped it at a substantial profit. Jones was on solid legal ground in declining to pay this mortgage. New York Real Property Law Section 291 states that:

"A conveyance of Real Property, within the State … may be recorded in the Office of the Clerk of the County where such real property is situated … Every such conveyance not so recorded is void as against any person who subsequently purchases or acquires by exchange … the same real property."

New York Real Property Law Section 290 defines "conveyance" as including mortgages.

The unrecorded mortgage was worth approximately $200,000.

Naturally, when the XYZ Bank figured out what happened, they sued Jones, the new Purchaser, the Title Company, and all of the attorneys involved in the transaction.

Jones was representing himself Pro Se. He thought he was on solid legal ground because of Real Property Law Sections 290 and 291.

Then Jones was hit with numerous Motions for Summary Judgment returnable before King Arthur. At this point in the case, Jones retained Your Editor to represent him.

At oral argument, we all stated our respective positions. I thought we were on solid ground because of Real Property Law Sections 290 and 291.

King Arthur listened to everybody for a while and then said to me: "You tell Mr. Jones I am directing him to pay off this $200,000 unrecorded mortgage forthwith. Now you go out in the hallway and telephone Mr. Jones right now."

This was King Arthur at his finest. I called Mr. Jones and explained to him that King Arthur did not like this situation one bit. He did not care one wit about Real Property Law Sections 290 and 291 when a lawyer was involved in seeking to get out of payment on an unrecorded mortgage.

At the time, Mr. Jones was seeking to move to the Great State of Mississippi. Failure to pay off this unrecorded mortgage was probably going to doom Jones' chances of being admitted to the Bar of the Great State of Mississippi.

After our King Arthur mandated telephone call, the case was settled.

Soon thereafter, I received a telephone call from "Bucky". Bucky stated that he was the Director of Admissions of the Mississippi State Bar and he did not know if Mr. Jones was "mo-ral" enough to join the State Bar of Mississippi in light of what went on in the above-named case before King Arthur. Having located my 31-year-old file, I will share with you the letter Mr. Jones sent to "Bucky". Bucky's last name was Davis as in Jefferson Davis, one of his ancestors.

"Dear Mr. Davis:
I am writing to inform you that I have settled the case brought against me by the XYZ Bank in the Queens County Supreme Court before Justice Arthur W. Lonschein.
While I realize that I may have had strong legal arguments in that case, because of an improperly unrecorded mortgage, upon reflection, I do believe that the morally correct thing to do was to pay that mortgage. Accordingly, I have made arrangements to do so.
Enclosed please find a copy of my check for $200,000 to the XYZ Bank showing that I have paid this mortgage in full.
While every investor has the opportunity to maximize his profits, I understand that an attorney-at-law has special obligations to appear in the most moral possible way before the general public. I have always strived to meet this high standard as a member of the Bar of the State of New York. Should I be granted the opportunity to become a member of the Bar of the State of Mississippi, I will make every effort to continue to uphold the high moral standard expected of every Member of the Bar in every State.

Best regards.
Sincerely, Mr. Jones"

Re-reading my 31-year-old file brings back to mind how "Bucky" pronounced moral as "mo-ral". That is why the words "morally correct" appear in Mr. Jones' letter to "Bucky".

I am happy to report that my file reveals that "Bucky" did in fact admit Mr. Jones to the Bar of the State of Mississippi and continued Mr. Jones' successful legal career.

I will never forget what I thought when I was speaking with "Bucky". The State of Mississippi took up arms against the United States during the Civil War of 1861 to 1865. Its treatment of its African-American Citizens was and continues to be a disgrace. How could "Bucky" criticize Mr. Jones' morality with this sordid history? However, I held my tongue. When speaking with "Bucky", I had to continually remind myself that I was representing Mr. Jones, and I was not to get into any extraneous arguments with "Bucky" about Mississippi's past and questionable present.

In studying this 31-year-old case, a valuable lesson is apparent. Statutes do not always mean what they say. The literal reading of a Statute is only the first step. The Statute must be examined in light of numerous other Statutes, cases, customs, practices, and judicial traditions in order to arrive at justice. In this case, the standard "avoid the appearance of impropriety" spoke louder than the literal words of the Statutes in question, Real Property Law Sections 290 and 291.

These lessons must always be in kept in mind in approaching every case.

The "Mo-ral" of this 31-year-old case is as follows: No matter what the law says, in this case Real Property Law Sections 290 and 291, lawyers must live up to a higher standard than everybody else. This is a source of great pride, and should not be thought of as a disadvantage whatsoever. Mr. Jones has passed away. King Arthur has passed away. However, upon reflection I think both of them would have been very happy to read this article.

(Note – There was only one King Arthur. However, all the other names, places and dates in this article have been changed. The description of the events in this case is based on a fictionalized account of the public record. Thus no individual or institution is unnecessarily inconvenienced.)

BY PAUL E. KERSON
EDITOR

President's Message

Greetings Dear Members,

One year has passed since I began serving as the President of the Queens County Bar Association. During this time, part of my work as President has been to encourage and facilitate the attorneys of Queens County to come together as a community.

This month we will come together as a community at the upcoming annual Holiday Party to be held on Thursday December 12, 2019 at Douglaston Manor from 5:30 to 9:30 p.m. Sponsored by the Queens County Bar Association, the Brandeis Association, the Hellenic Lawyers Association, the Latino Lawyers of Queens County, the Macon B. Allen Black Bar Association, the South Asian Indo-Caribbean Bar Association of Queens County and the Queens County Women's Bar Association, the event is one of the most significant events of the year. Everyone is welcome and encouraged to attend. The Holiday Party is a great time to take a break, to celebrate, to socialize, to network, and to exchange ideas with your friends and colleagues. Thank you to all of the affinity bar associations for co-sponsoring this event. Also, a special thanks to our members George E. Nicholas and Peter S. Thomas for providing financial assistance to young lawyers and law students to make it possible for them to attend the Holiday Party; thank you both for your commitment to supporting young lawyers and law students.

During this past year that has rapidly flown by, there have been good developments at the Bar Association. The Association has expanded our outreach and work with young lawyers and law students, we have continued to develop and foster relationships with the affinity bars of Queens, and we have continued to provide outstanding programs and seminars. Developing and presenting programs at the Association requires that we all come together as a community because so many people work together to make them happen. Thank you to all of the Committee Chairs, Vice-Chairs and committee members for taking the time to put together the programs. Thank you to all of our sponsors who fund the programs; without your financial support they would not be possible. Thank you to the affinity bar associations who have not only co-sponsored programs with us, but who have also invited us to co-sponsor and participate in programs organized by them. Thank you to all of judges and attorneys who have taken the time to present at programs; thank you for sharing your wisdom, insight and knowledge. Thank you to everyone who has attended. Thank you to the Dean of the Academy of Law Gary Miret for overseeing the CLE accreditation process. Thank you to our Board of Managers for your commitment to the Association. And thank you to our Executive Director Arthur Terranova, and to Janice Ruiz and Sasha Khan for your tireless work on behalf of the Association.

Please remember that the Association is committed to serving the interests of you, our dear members, to support you in your pursuit of excellence of the law. I encourage you all to use the Bar Association as a resource, and I welcome any suggestions and ideas that would help better serve the membership

Wishing you all a Beautiful Holiday Season in this month of December. May you make time to spend with your loved ones and those that are important to you in your life.

SINCERELY YOURS,
MARIE-ELEANA FIRST | PRESIDENT

The Docket

Being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th Street, Jamaica, NY. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

CLE Seminar & Event listings

DECEMBER 2019
Thursday, December 12
Holiday Party
– Douglaston Manor
Wednesday, December 25
Christmas Day
– Office Closed

JANUARY 2020
Wednesday, January 1
New Year's Day
– Office Closed
Monday, January 20
Martin Luther King Jr. Day
– Office Closed

FEBRUARY 2020
Wednesday, February 12
Lincoln's Birthday
– Office Closed
Monday, February 17
President's Day
– Office Closed

MARCH 2020
Tuesday, March 31
Judiciary, Past President's & Golden Jubilarian Night

APRIL 2020
Thursday, April 2
CLE: LGBTQ+ & Immigration/Naturalization Committees
Friday, April 10
Good Friday
– Office Closed
Wednesday, April 22
Equitable Distribution Update

MAY 2020
Thursday, May 7
Annual Dinner & Installation of Officers
Monday, May 25
Memorial Day
- Office Closed

UPCOMING SEMINARS
CPLR & Evidence Update 2020
Ethics Update 2020

New Members

Giselle Ayala
Darmin T. Bachu
Lauren Block
Paul F. Bugoni
Allie Cabibbo
Sagar Chadha
John A. Colonna
Doreen Dufficy
Michael J. Freed
Mina Hanna
Patricia A. Harold
Jack Jaskaran
Alexandra Lopez
Diane M. Mantaring
Paul G. Mederos
Ashana K. Nandram
Cari E. Pepkin
Meredith Poole-Humphreys
Tali B. Sehati
Dennis Tejada
Abigail Ziegler

Necrology

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Lawyers Assistance Committee

The Queens County Bar Association (QCBA) provides free confidential assistance to attorneys, judges, law students and their families struggling with alcohol and substance abuse, depression, stress, burnout, career concerns and other issues that affect quality of life, personally and/or professionally.

QCBA Lawyers Assistance Committee (LAC) offers consultation, assessment, counseling, intervention, education, referral and peer support.

All communication with QCBA LAC staff and volunteers are completely confidential. Confidentiality is privileged and assured under Section 499 of the Judiciary law as amended by the Chapter 327 of the laws of 1993.

If you or someone you know is having a problem, we can help. To learn more, contact QCBA LAC for a confidential conversation.

LAWYERS ASSISTANCE COMMITTEE
CONFIDENTIAL HELPLINE
718-307-7828

Fairness for High Skilled Immigrants Act of 2019

Allen E. Kaye

Joseph DeFelice

H.R. 1044, the Fairness for High-Skilled Immigrants Act of 2019 passed the House of Representatives by a vote of 365 to 65.

S. 386 the Fairness for High-Skilled Immigrants Act of 2019 is currently being considered in the Senate.

Both bills would have a strong impact on the current green card backlog, as well as on future wait times for both employment based and family sponsored immigrant visas.

H.R. 1044, the Fairness for High-Skilled Immigrants Act of 2019

On July 10, 2019, the U.S. House of Representatives passed the Fairness for High-Skilled Immigrants Act of 2019 (H.R. 1044) by a vote of 365 to 65, garnering support from 224 Democrats and 140 Republicans. If enacted, the bill would eliminate the per-country limit for all employment-based immigrants and increase the per-country limit for all family-sponsored immigrants from 7 percent to 15 percent.

For employment-based visa applicants, the bill establishes a three-year transition period to ease the elimination of the per country cap, as follows:

• FY2020: 15% of all EB-2, EB-3, and EB-5 visas shall be allotted to immigrants who are natives of a foreign country that is not one of the two countries with the largest aggregate numbers of natives who are beneficiaries of approved immigrant visa petitions under such employment-based preference categories.

• FY2021 & FY2022: 10% of all EB-2, EB-3, and EB-5 visas shall be allotted to immigrants who are natives of a foreign country that is not one of the two countries with the largest aggregate numbers of natives who are beneficiaries of approved immigrant visa petitions under such employment-based preference categories.

During the transition period, no more than 85% of visas shall be allotted to immigrants from any single country.

H.R. 1044 would also eliminate a provision in the Chinese Student Protection Act of 1992 which requires that the annual immigrant visa limit for China be reduced by 1,000 visas annually to offset status adjustments under such Act.1.

One main feature of H.R. 1044 that differentiates it from previous version is the inclusion of a "do no harm" provision, which provides that beneficiaries of an employment-based immigrant visa petition approved before the bill's enactment shall receive a visa no later than they otherwise would have received such visa

had this bill not been enacted. The "do no harm" provision does not apply to pending employment-based petitions or any family-sponsored petitions.

With H.R. 1044's passage in the House, the bill has moved to the Senate, where a companion bill (S. 386) has yet to be voted out of committee. If enacted, this bill would take effect as if enacted on September 30, 2019 and would apply to each subsequent fiscal year beginning with FY2020.

S. 386 of the Fairness for High-Skilled Immigrants Act of 2019

On February 7, 2019, Senators Mike Lee (R-UT), Kamala Harris (D-CA) and 13 bipartisan members introduced a companion bill in the Senate, the Fairness for High Skilled Immigrants Act of 2019 (S. 386). One main difference between the House and Senate version of the Fairness for High-Skilled Immigrants Act is the three-year transition period for employment-based visa applicants. While the House version provides a three-year transition period for the EB-2, EB-3, and EB-5 visa categories, the Senate version only provides a three-year transition period for the EB-2 and EB-3 visa categories, and does not offer a three-year transition period for EB-5 visa applicants. Like the House version, however, the Senate version includes a "do no harm provision," which would protect all employment-based visa applicants already in the immigrant visa queue, including EB-5 visa applicants, provided that the applicant is the beneficiary of an employment-based immigrant visa petition approved before the bill's enactment.

Another key difference between the House and Senate version of the bill is that the Senate version was recently amended to include provisions relating to the H-1B visa program. On July 9, 2019, Senator Chuck Grassley (R-IA) filed an amendment to S. 386 in order to address longstanding concerns that the Senator has with the H-1B program.4 The amendment filed by Senator Grassley adds the following H-1B related provisions to S. 386, among others:

• Internet Posting: Employers filing petitions on behalf of workers who have not already been counted against the H-1B cap will be required to post information about the job for which an H-1B worker is sought on a newly established searchable DOL website for at least 30 days before submitting an LCA.

• LCA Fee: Requires an administrative fee to be paid at the time of filing an LCA to cover the average paperwork processing costs and other administrative costs

• W-2 Reporting: Provides DOL with the authority to obtain an employer's W-2 wage and tax statements with respect to the H-1B workers it employs

• Eliminates B-1 in lieu of H-1

• Whistleblower Protections: Strengthens whistleblower protections for employees who report violations of the LCA process by employers

• Information Sharing: Increases information sharing between USCIS and DOL regarding employer H-1B non-compliance

• LCA Review: Expands DOL authority to review LCAs to include scrutiny of clear indicators of fraud or misrepresentation of material facts

• Audits and investigations: Permits DOL to conduct annual compliance audits of H-1B employers, but if no willful failure is found, no further annual compliance audit shall be conducted for a period of at least 4 years

• Increases the penalties for LCA violations

• Expands DOL's investigative authority for LCA violations

While S. 386 enjoys bipartisan support in the Senate with more than 34 Senators cosponsoring the bill (15 Democrats and 19 Republicans), the future of the bill remains highly uncertain as several Senators on both. sides of the aisle have placed holds on the bill. On June 27, 2019, Senator Lee (R-UT), the primary sponsor

of the bill, attempted to get the bill passed on the Senate floor by unanimous consent. Senator Rand Paul (R-KY), however, objected to moving the bill forward based on his desire to amend the legislation to include a provision for immigrant nurses, ultimately preventing the bill from advancing by unanimous

consent. With active opposition in the Senate to the bill as currently drafted, it is uncertain whether this bill will ever receive a vote.

Presenting further obstacles to the passage of S. 386 in the Senate, on July 11, 2019, Senator Paul introduced his own immigration bill, the Backlog Elimination, Legal Immigration, and Employment Visa Enhancement (BELIEVE) Act, S. 2091, which would not only eliminate the per-country numerical limitation for employment-based immigrants, but would also increase the number of employment-based green cards available each year, exempt certain health care workers and certain spouses and children from counting against the worldwide limitation on the number of employment-based visas, and allow spouses and children of E, H, and L visa holders to pursue employment. While S. 2091 has not garnered any cosponsors since its introduction, it has the potential to detract momentum from S. 386 and expand the focus of the debate in the Senate beyond the narrow scope of S. 386.

While passage of S. 386 remains uncertain, in the event it was to pass in its current form in the Senate, a conference committee would need to be convened to reconcile the House and Senate bills, which could present further challenges to the passage of this legislation. In addition, even if a version of this bill were

to pass the House and the Senate, it will still need to be signed into law by the President, which could present further challenges to the bill's passage.

BY ALLEN E. KAYE AND JOSEPH DEFELICE

Allen E. Kaye and Joseph DeFelice are Co-Chairs of the Immigration and Naturalization Committee of the Queens County Bar Association.

LANDLORD & TENANT UPDATE 2019

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ed all matters pending at that time and the issue of its retroactivity is already in litigation.

Current litigation, commenced by a group of landlords in Federal Court (Community Housing Improvement Program v. City of New York, 19-cv-04087, District Court, Eastern District) is seeking to have the HSTPA declared unconstitutional. Will the plaintiffs be successful? In a recent article, "Can New Rent Laws Pass Constitutional Muster, NYLJ, October 2, 2019, the author, Massimo F. D'Angelo, concludes "a finding that the HSTPA is unconstitutional by the Judiciary would be quite remarkable".

"SUMMARY PROCEEDINGS"?

It should be pointed out that the so-called "summary proceedings" in NYC [which, in theory, were supposed to provide a quick method for the disposition of cases and the ability of landlords to recover possession of their premises] invariably could last for at least six months to a year. Under the new statutes and amendments, the speedy resolution of such proceedings is all but obliterated, as virtually all the time frames have been extended favorable to the tenant. As a direct result, the processes by which a landlord can commence a proceeding, and, if successful, begin collecting the rent due and owing or obtain physical possession of his or her property can be greatly prolonged. I often joked that proceedings in Housing Court should be called "Summery Proceedings" because, in many instances, cases that commenced in the summer of one year continued into the summer of the following year. Now, with the expanded timelines for demands of rent, notices to commence proceedings, notices of termination, service of process, adjournments, etc., not to mention the court's authority to grant a stay of the issuance of a warrant, in its discretion, for up to a year, my "joke" has become a reality. (See, RPAPL 753[1], [3] and commentary below)

LUXURY DEREGULATION / MCIs AND IAIs

Tenants and/or their advocates and members of the newly constituted Legislature had two major goals for this year's Legislative session.

The first was to completely eliminate luxury deregulation of rent regulated apartments based on the tenant's rent when it reached a pre-established monetary amount [$2774.76] and/or if the income of the tenant[s] reached or exceeded $200,000. As to this goal, the Legislature successfully eliminated it in its entirety. (NYC Admin. Code 26-504.2 & 26-504.3; see, Heymann, Deregulation of Rent Regulated Apartments, NYLJ, 11/14/18)

The second was the elimination of payments for Major Capital Improvements (MCI) and Individual Apartment Improvements (IAI).

Previously, if the MCI application was granted in whole, or in part, DHCR would then determine the amount of additional rent each tenant would be required to pay. This became a permanent increase that was factored into each subsequent lease renewal for stabilized tenants. The amount is determined by the number of rooms in each apartment, excluding bathrooms, hallways, closets and outdoor patios. The costs were amortized over a period of 8 years for buildings with 35 or fewer apartments or 9 years for those with 36 or more.

For rent stabilized tenants, the amount of the increase of collectible rent per year could not exceed 6% of the tenant's rent at the time the application was filed and could be both temporarily retroactive (from the effective date and the issue date of the DHCR order granting the MCI) and permanently prospective becoming part of the legal regulated rent. There was no retroactive payment for rent controlled tenants and they could not be charged more than 15% per year from date the order was issued. Now, the annual cap is reduced from 6% to 2% and the amortization periods are extended to 12 years for building with 35 or fewer units and 12 ½ years for those with 36 or more units. The increase in amortization periods means that landlords will have to wait several years longer before they can make claims for new repairs or replacement of various equipment. No longer permanent, MCIs will expire in 30 years from their effective date and are prospective only. DHCR will now have to update its "schedule" of amortization in order to conform with the new rules. To ensure that landlords maintain their properties, no MCIs will be allowed if there are any outstanding hazardous or immediately hazardous violations pending. (NYC Admin. Code 26-405-1)

Like the MCIs, IAIs will no longer be permanent and will also expire in 30 years. Only 3 IAIs will be permitted over a 15-year period and the total costs cannot exceed $15,000 starting with the first IAI after June 14, 2019.

As to both MCIs and IAIs, DHCR is required to give the landlord and tenant notification as to when they expire.

PREFERENTIAL RENTS

A major concern of those tenants with a "preferential rent" was whether they were merely temporary or became permanent, affecting future increases at the time of lease renewals in rent stabilized apartments. Much has been written and discussed on this topic.

Formerly, many landlords realized that the increases in the legal regulated rent for newly vacated apartments, (after factoring in the allowable MCIs, IAIs and Rent Guidelines Board [RGB] increases, in addition to the automatic 20% vacancy increase and, in some instances, longevity bonuses [see below]), resulted in rents that might be too high for the potential tenants in the area. Thus, they offered prospective tenants a "preferential (discounted) rent" as an incentive to take the apartment and sign a one or two-year lease. "Under the previous law, at the end of the lease term the landlord was required to offer a lease renewal but was not obligated to offer another preferential rent. As a result, if the tenant was not be able to afford the new legally regulated rent he or she was forced to vacate. When this happened, the landlord could then [once again] add all the allowable increases, thereby increasing the legal rent even more. Tenant advocates viewed this a blatant attempt of gentrification in low income areas. To prevent this from happening, the new rent regulations provide for a permanent preferential rent that will endure through an entire tenancy, increased only in accordance with the percentages established each year by the RGB. Upon termination of the tenancy, the landlord can adjust the rent based on the legally regulated rent." (Heymann, New Rent Regulations for 2019, Queens Daily Eagle, August 2019 [Emphasis added]; NYC Admin. Code 26-511[14])

VACANCY INCREASES

The 20% vacancy allowance for a new 2-year lease [less if a1-year lease] and the longevity increase, if more than eight years had passed since the last vacancy, have both been repealed. (NYC Admin. Code 26-510[j])

OVERCHARGE CLAIMS

Overcharge claims by tenants has been a substantial part of litigation in Housing Court. Prior to the implementation of the 4-year look-back rule there was no limitation as to how far back DHCR would have to search its records to determine the last registered/regulated rent to resolve disputes, resulting in extreme delays. Thus, the 4-year limit was instituted, unless there was evidence of fraud by the landlord and the overcharges, if any, were limited to the 4 years immediately prior to the commencement of the proceeding. This period has now been extended to 6 years but tenants can file claims at any time (see, CPLR 213-a) and regardless as to whether there is any "indicia of fraud" there is no limitation on how far back DHCR can research their records to determine the legal rent. Penalties are limited to the 6 years immediately preceding the complaint. A key change favorable to the tenant is that a landlord may still liable for treble damages even if the entire overcharge amount is refunded and legal fees must be imposed if the Court finds that the landlord did, in fact, overcharge the tenant. (NYC Admin. Code 26-516[a])

OWNER USE AND OCCUPANCY

There are only two allowable reasons for a landlord/owner to refuse to renew a rent stabilized lease: owner use occupancy and non-primary residence. (See, RSC2524.4[a] & [c]) Property owners suffered a major blow with the new provisions that severely curtail their ability to recover apartments in their buildings for personal use. Owner use holdovers have always been subject to strict requirements regarding the timing and the content of the (Golub) notice of non-renewal and the proof necessary to demonstrate that the subject apartment was actually going to be used by the owner and his or her family or other family members (i.e., good faith basis to occupy the apartment as a primary residence). Often times, inter alia, the testimony didn't bear out that which was set forth in the pleadings and dismissal of the case meant that the owner/landlord would be required to renew the lease and wait until the expiration of the new lease ("window period" [1 or 2 years at the tenant's option]) before the proceeding could be re-commenced. If successful, however, the landlord would take back possession of the premises. There was no prohibition for the owner to commence multiple proceedings as against other tenants in the same building for the purposes of owner use. Presently, the standard of proof has been enhanced in that the owner must now prove an "immediate and compelling necessity" [as yet, to be defined by future case law] to recover the subject apartment and must remain therein for a period of no less than 3 years after gaining possession. Most importantly, the provision having the greatest impact on the landlord is that he or she can only recover 1 apartment.

In the case of senior residents [62 or older] who resided in their apartments for 20 years or more, or residents with disabilities, the owner could not maintain such proceedings unless it offered to provide equivalent or superior housing at the same or lower regulated rent in an area of close proximity. Although that provision remains, the seniors, henceforth, need only reside in their premises for 15 years to be exempt.

Query: Can a non-senior resident marry a senior citizen, even after the commencement of the holdover proceeding commenced, in order to take advantage of this provision? In Zunce v. Rodriguez, 22 Misc3d 265 (Civ Ct, 2008, Heymann, J.) the court answered this question in the affirmative. However, in that case the tenant sought the exemption based on her "common law" marriage which the court denied as being in violation of the law.

REAL PROPERTY LAW (RPL)

The RPL contains the basic substantive statutes that govern the relationships between landlords and tenants. [Unless indicated as "NEW" all other changes are amendments to existing statutes]

Except for squatters or licensees, for which there is no landlord-tenant relationship, occupants of rent stabilized apartments fall into one of two categories: month to month tenants or leaseholders for one or two years. Changes to the RPL pursuant to the HSTPA not only expand many of the existing rights and protections of the tenants but add several new ones as well.

223-b RETALIATORY EVICTION:

No longer applies to just holdover proceedings but non-

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payment proceedings as well; the rebuttable presumption that the landlord was instituting a proceeding against the tenant for making a good faith complaint to a government authority regarding health or safety conditions now includes the warranty of habitability and is extended from 6 months to 1 year.

226-c (NEW) NOTICES OF NON-RENEWAL or INCREASES OF RENT OVER 5%: (supersedes 30-day notice set forth in 232-a)

In contrast to the former 30-day notice set forth in RPL 232-a regarding month to month tenancies, the time frames for notices are now determined by the cumulative period of the tenant's occupancy:

• Less than a year and does not have a lease term of at least 1 year = 30 days

• More than a year but less than 2 years or has at lease term of at least one year but less than two years = 60 days

• More than two years or has a lease term of at least two years = 90 days

NOTE: Service of the above notices is pursuant to RPAPL 735. Failure to give the proper notification results in the continuation of the tenancy on the same terms and conditions until the expiration date after service of a proper notice. Notices of non-renewal must contain the specific vacancy date to avoid any ambiguity on that issue. Now applies to all tenancies statewide.*

*(For notices of non-renewal for rent stabilized tenants, see, Rent Stabilization Code [RSC] 2524.2)

227-e (NEW) DUTY TO MITIGATE DAMAGES:

If the tenant vacates the premises prior to the agreed upon term of occupancy, the landlord must now make a good faith effort to mitigate damages by re-renting the apartment at either fair market rent or the rent agreed upon during the term of the tenancy, whichever is lower, and once a new lease is in effect the tenant is no longer financially responsible to the landlord. Any provision in the rental agreement to the contrary is void as against public policy.

227-f (NEW) PROHIBITION OF DENYING A LEASE BASES ON APPLICANT'S PRIOR COURT PROCEEDINGS:

Landlords that check an applicant's past and /or current history of proceedings in Housing Court and uses that as a basis for denial of a new lease can be subject to civil penalties of between $500 and $1,000 for each violation. There is a rebuttable presumption that this was the basis for the denial if the landlord requested such records from any agency prior to the denial.

234 LEGAL FEES:

This section provides that if a tenant is successful in defending a proceeding brought by the landlord there is an implied covenant that the landlord would pay the tenant. This section has been amended to prohibit landlords from collecting legal fees on a default judgment. (See, 238-a; RPAPL 702 below)

235-e DUTY OF LANDLORD TO PROVIDE WRITTEN RECEIPT:

This section always provided that the landlord was required to provide a receipt if rent was paid in any form other than a personal check. The receipt was required to contain the date; amount; identity of the premises and the period for which paid and the signature and title of the person receiving payment. Receipts for payment by check was by request only, in writing, and had to be renewed each time the tenant wanted such receipt.

(NEW)

- Landlord must now keep a record of cash receipts for 3 years.

- If rent is paid directly to landlord or authorized representative, receipt must be given immediately otherwise within 15 days of receipt.

- If the rent is not received within 5 days of the date due in the lease, a notice must be sent to the tenant by certified mail stating the rent is past due. Mailing of this notice becomes a predicate for any subsequent demand for rent prior to the commencement of a non-payment proceeding. Failure to do so may be raised as an affirmative defense to such proceeding. (See, 238-a below)

238-a LIMITATION ON FEES

Landlord cannot charge fee for lease applications and fees on background checks cannot exceed the actual cost or $20 whichever is less. If the tenant provides a credit or background check that was done within the prior 30 days, the fee is waived. (See, 234 above; RPAPL 702 below)

Unless the rent is more than 5 days late, no fee can be demanded and cannot exceed $50 or 5% of the monthly rent, whichever is less. (See, 235-4 above)

Landlords can no longer sue for late fees in summary proceedings! (See, RPAPL 702 below)

REAL PROPRTY ACTIONS AND PROCEEDING LAW (RPAPL)

Article 7 of the RPAPL is the prime statute pertaining to the procedures governing landlord-tenant relationships. It sets forth the requirements for the prosecution and defense of eviction proceedings. [Unless indicated as "NEW" all other changes are amendments to existing statutes]

702 (NEW) RENT IN RESIDENTIAL DWELLING

Notwithstanding any provision in a lease or rental agreement to the contrary, landlords cannot seek anything but rent in a summary proceeding i.e., no fees, charges or penalties. (See, RPL 234 & 238-a above)

711 GROUNDS WHERE LANDLORD-TENANT RELATIONSHIP EXISTS

Opening paragraph now states unequivocally that "No tenant or lawful occupant of a dwelling or housing accommodation will be removed from possession except in a special proceeding".

711(2) As a [second*] predicate to the commencement of a non-payment proceeding the landlord must serve a written demand, pursuant to RPAPL 735, of not less than 14 days for the payment of rent or possession of the premises. This provision extends the original 3-day written demand and eliminates oral demands.

* The written demand for rent can only be served after the landlord served the 5-day notice of default by certified mail. (See, RPL 235-e above)

In the event the tenant dies during the term of the lease, the landlord cannot seek to collect arears from the surviving spouse, issue or distributee(s). A proceeding for possession only must be commenced against the estate. The proceeding can name the occupants but execution of the warrant is limited to the estate. Thereafter, the occupants can be removed only if a warrant is issued and executed in a licensee proceeding.

731 COMMENCEMENT; NOTICE OF PETITION

731(4) (NEW) If at any time up to the hearing on the petition for non-payment of rent the tenant tenders the full amount of rent due the landlord is mandated to accept it and the proceeding is dismissed.

732 SPECIAL PROVISIONS APPLICABLE IN NON-PAYMENT PROCEEDING IF THE RULES SO PROVIDE

732(1) Tenant must answer notice of petition within 10 days after service to avoid default. Extends prior time by 5 days.

732(2) If the determination is in favor of the petitioner, the Court now has discretion to stay issuance of the warrant beyond the previous 5-day limitation. (See, RPAPL 753 below)

732(3) If the tenant fails to answer (defaults) the Court shall render a judgment in favor of the petitioner and may stay issuance of the warrant for a period not to exceed 10 days. The Court now has the discretion to further stay the issuance of the warrant as per RPAPL 753. (See, 753 below)

733 TIME OF SERVICE; ORDER TO SHOW CAUSE

733(1) In holdover proceedings "the notice of petition and petition shall be served at least 10 and not more than 17 days before the time at which the petition is noticed to be heard". This extends the time frame at both ends of the period for service by 5 days. (Formerly, 5 – 12 days)

743 ANSWER

In holdover proceedings, the tenant is no longer required to provide an answer (oral or written) 3 days before the time the petition is noticed to be heard.

745 TRIAL

745(1) Trial is by the court unless at the time the petition is noticed to be heard a party demands a jury trial; either party may request an adjournment of not less than 14 days (formerly 10) except by consent of all parties.

745(2) In the city of New York:

" (a) In a summary proceeding upon the second of two adjournments granted solely at the request of the respondent, or, upon the sixtieth day after the first appearance of the parties in court less any days that the proceeding has been adjourned upon the request of the petitioner, counting only days attributable to adjournment requests made solely at the request of the respondent and not counting an initial adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel, whichever occurs sooner, the court may, upon consideration of the equities, direct that the respondent, upon a motion on notice made by the petitioner, deposit with the court sums of rent or use and occupancy that shall accrue subsequent to the date of the court's order…". (Emphasis added)

NOTE: Rent deposits are no longer mandated and can only be requested in writing by motion of the petitioner. The 2 adjournments shall not include the 1st adjournment by an unrepresented respondent to secure counsel.

Further, the court shall not order a deposit or use and occupancy if the respondent can establish any of the enumerated defenses in this section which include, inter alia, that the respondent was not the proper party; was actually, partially or constructively evicted; the premises have hazardous or immediately hazardous conditions; the court lacks jurisdiction over the respondent.

745(2)(d)(i) Failure of the respondent to comply with the court's rent deposit order will result in an immediate trial upon petitioner's application.

745(2)(d)(ii) Notwithstanding the immediately preceding subsection, the court may extend any time provided for above for deposit for "good cause shown".

745(f) "Under no circumstances shall the respondent's failure or inability to pay use and occupancy as ordered by the court constitute a basis to dismiss any of the respondent's defenses or counterclaims, with or without prejudice to their assertion in another forum."

747-a JUDGMENT; STAYS is repealed [Previously, in a non-payment proceeding where a judgment was entered and more than 5 days elapsed the court could not stay the issuance or execution of a warrant or stay re-letting unless judgment amount was paid to petitioner or deposited with the clerk of the court]

749 WARRANTS

749(1) Warrant must state the earliest date an eviction on the warrant can occur.

749(2)(a) "The officer to whom the warrant is directed and

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Of Interest

• Congratulations to Justice Stephen Knopf for being re-elected as a Justice of the Supreme Court.

• Congratulations to Judges Donna-Marie Golia, Phillip Hom, Maurice Muir and Lourdes Ventura and Wyatt Gibbons, Esq. on being newly elected as Justices of the Supreme Court.

• Congratulations to our colleagues elected as Civil Court Judges, NYC - Claudia Lanzetta; Lumarie Maldonado Cruz; and Michele Titus.

• Congratulations to Barry Seidel on publishing his new book, Evolutions of a Law Practice, that is being printed this month.

*If anyone has something of interest to our members, please call

Arthur Terranova or Janice, 718-291-4500, to pass on the information.

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PHOTOS BY WALTER KARLING

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SAICBA-Q hosts evening on guardianship

Surrogate's Court Judge Peter Kelly (left) and Justice Bernice Siegal spoke Thursday at a panel on guardianship.

From left, Surrogate's Court Judge Peter Kelly, Tali Sehati and Brian Heitner.

From left to right, Edmond Wong, Kathleen Kim, Helen Eichler and Warren Hecht before a discussion on guardianship at the Queens County Bar Association.

EAGLE PHOTOS BY CAROLINE OURSO

From left, Sagar Chadha, Justice Karen Gopee, Judge Ushir Pandir-Durant, Amish Doshi and Manmeet Singh.

Queens honors innovative court program for veterans in need

From left, Judges Michelle Johnson, Tamiko Amaker and Jeffrey Gershuny stand for the Pledge of Allegiance.

From left, Queens Supreme Court Administrative Judge Joseph Zayas, Queens Borough President and DA-elect Melinda Katz and Douglas Knight, director of Alternative Sentencing for the Queens DA's Office.

From left, Judge Jeffrey Gershuny, Judge Michelle Johnson, Queens Law Associates Executive Director Lori Zeno, Judge Scott Dunn and Hettie Powell, from the Queens Law Associates.

QMVTC Presiding Judge Scott Dunn addresses attendees.

From left: Marine Lance Corporal Francisco Martinez, Judge Jeffrey Gershuny, Army Specialist Andres Vega, program graduates Peguy Alcide and Christopher Porr, and Judge Scott Dunn.

Judges, attorneys and court officers assigned to the Queens Misdemeanor Veterans Treatment Court attended a special event marking the court's official opening Wednesday.

Queens County Bar Association

Annual Holiday Dinner Committee:

George E. Nicholas, *Chair* • Jay M. Abrahams, *Vice-Chair* • Michele Schuster, *Secretary*
Kristen J. Dubowski Barba • Jawan N. Finley • Diana C. Gianturco
Maureen McHugh Heitner • Mark J. Keller • Milene Mansouri • Ricardo Rengifo • Peter S. Thomas

HOLIDAY PARTY

THURSDAY, DECEMBER 12, 2019

5:30 pm to 9:30 pm

DOUGLASTON MANOR: 6320 Commonwealth Blvd, Douglaston, NY 11362

Hosted by the following Associations:
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$85.00 per person or Table of 10 for $800 – if payment received before Dec. 2nd
$95.00 after Dec. 2nd & at the door

Financial Assistance for paying for the cost of the ticket is available to Law Students and Attorneys admitted to practice law five years or less; if there is any fiscal concerns about paying contact George Nicholas at 516-459-5800

Valet Parking • Continuous Open Bar • Grand Antipasto Bistro Table • Butlered Hors D'oeuvres • Dinner Buffet

Kosher meals can be ordered provided the request is received by 12/2/19

Dance music by: *DJ Sottile*

Toy Drive! **We will be collecting new, unwrapped toys to be presented to Forestdale, Inc., a non-for-profit foster care agency located in Queens. Monetary Donations will also be accepted. This has been an ongoing tradition on behalf of all the Associations.**

To Reserve for the 2019 Holiday Party with the QUEENS COUNTY BAR ASSOCIATION
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QUEENS COUNTY BAR ASSOCIATION

Queens Daily Eagle

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Any member of the Queens Bar Association is offered an opportunity to write for the Bar Bulletin.

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delivered shall give at least fourteen days' notice, in writing and in the manner prescribed in this article for the service of a notice of petition, to the person or persons to be evicted or dispossessed and shall execute the warrant on a business day between the hours of sunrise and sunset."

This section extends the time of the service of the notice of eviction by 8 days and clarifies the time during which an eviction can occur.

749(2)(b) (NEW) Provides for the safe and proper care of companion animals of the persons dispossessed.

749(3) The court can stay or vacate the warrant for good cause shown prior to the execution thereof, or restore the tenant to the premises after execution of the warrant and in a nonpayment case can vacate the warrant if all monies due and owing are paid prior to the execution of the warrant. This does not apply if the tenant held the rent in bad faith.

MAJOR CHANGE: The issuance of the warrant no longer cancels the agreement under which the person removed held the premises, nor does it annul the landlord and tenant relationship. Thus, going forward, the L&T relationship remains in tact until an actual eviction takes place and there is no subsequent restoration to the premises.

753 STAY IN PREMISES OCCUPIED FOR DWELLING PURPOSES

CAUTION: The following section, in the opinion of this author, has been misapplied for 57 years since its inception in 1962, as set forth below. The reader is advised to pay careful attention to its language. Words matter! Perhaps the Legislature should give this one another look and clarify the ambiguity therein.

753(1) "In a proceeding to recover the possession of premises occupied for dwelling purposes, [ ], the court, on application of the occupant, may stay the issuance of a warrant and also stay any execution to collect the costs of the proceeding for a period of not more than one year, if it appears that the premises is used for dwelling purposes…" (Emphasis and italics added)

While this provision unambiguously states that the issuance of a warrant can be stayed for up to one year, an increase of six months, what does the phrase "execution to collect the costs of the proceeding" mean? If it was intended to mean execution of the warrant itself why didn't the Legislature simply state that? (i.e., "may stay the issuance of a warrant and execution thereof").

I addressed this very issue in two decisions that I wrote 13 and 12 years ago, respectively, NYCHA v. Witherspoon, 12 Misc3d 899 (Civ. Ct, 2006) and Errigo v. Diomede, 14 Misc3d 988 (Civ. Ct, 2007) wherein I concluded that the statute, as written then and amended now, does not state that the execution of the warrant is stayed up to one year. Since issuance of the warrant can be stayed up to one year, when can its execution take place? In fact, my reading of the language is that the former and current statute allows for a court to stay execution of the warrant indefinitely.

This section was also amended to enhance the criteria to be considered by the court in determining whether the occupant is entitled to a stay to include the following: "that the application is made in good faith; that the applicant cannot within the neighborhood secure suitable premises similar to those occupied by the applicant and that the applicant made due and reasonable efforts to secure such other premises, or that by reason of other facts it would occasion extreme hardship to the applicant or the applicant's family if the stay were not granted. In determining whether refusal to grant a stay would occasion extreme hardship, the court shall consider serious ill health, significant exacerbation of an ongoing condition, a child's enrollment in a local school, and any other extenuating life circumstances affecting the ability of the applicant or the applicant's family to relocate and maintain quality of life." (Emphasis added)

To balance the equities between both the occupant and the landlord, following language was added: "The court shall consider any substantial hardship the stay may impose on the landlord in determining whether to grant the stay or in setting the length or other terms of the stay." (Emphasis added)

753(3) The above provisions for a stay do not apply if the landlord "in good faith" seeks to recover the building to demolish it; or if the occupant is "objectionable".

753(4) This section which provides an automatic stay, commonly referred to as the "cure" period, has now been extended from its original 10 days to 30 days for the tenant or lessee to correct a "breached provision of the lease".

768 UNLAWFUL EVICTION

768(1)(a) Unlawful to evict or attempt to evict an occupant for 30 consecutive days or longer

(i)using or threatening force to induce vacating

(ii)engaging in conduct which interferes or intends to interfere with or disturb "the comfort, repose, peace or quiet" of the occupant; landlord cannot discontinue essential services

(iii) removing occupant's possessions; removing the door to premises or changing or rendering the lock inoperable

768(1)(b) Unlawful to fail to take all necessary steps to restore occupant who vacated because of above conduct

768(2)(a) Criminal Penalties – each violation is a class A misdemeanor – each violation is separate and distinct

768(2)(b) Civil Penalties – not less than $1000 nor more than $10,000 – each violation is separate and distinct; failure to restore will subject the landlord to an additional penalty of $100 per day until restoration

GENERAL OBLIGATIONS LAW (GBL)

7-108 Deposits for non-rent stabilized tenants

7-108 (1-a) et. seq. Security Deposits

- No more multiple payments in advance (i.e., first and last month)

- Capped at 1 month

- At the end of the tenancy, landlord must return deposit within 14 days along with an itemized list showing the basis for any deductions such as necessary repairs, cleaning, nonpayment of rent or utilities as agreed in the lease, damage beyond normal wear and tear and moving or storage of tenant's belongings

- Failure to return the security deposit within this 14-day period can result in the landlord absorbing the costs of any damages

- Willful violation can result in punitive damages being assessed against the landlord up to 2X the amount of the deposit

- If there is any dispute as to monies withheld, the landlord bears the burden to show the reasonableness of the amount retained

This section of the GBL also establishes a protocol for inspections of the subject premises.

- Prior to taking possession, the landlord must offer the tenant an opportunity to inspect the apartment

- The landlord and tenant may then execute a written agreement listing any defects or damages so that the landlord cannot deduct for these items when the deposit is returned upon tenant's vacatur

- At least 1 week before, but not more than 2 weeks, before the tenant is scheduled to vacate, the landlord is allowed to inspect the premises with the tenant, upon 48 hours' notice to the tenant

- After inspection, within 14 days, as noted above, the tenant receives an itemized list of the damages, etc., and the amounts the landlord intends to deduct from the security deposit

- The tenant can cure any or all of these items prior to the termination of the tenancy

GENERAL BUSINESS LAW (GBL)

352-eeee Conversion to Cooperative or Condominium Ownership in the City of New York

Previously, only 15% of the tenants in residence was necessary before conversion became effective. That percentage has increased dramatically to 51% and unless an eviction plan was in place prior to the effective date of the HSTPA, they are no longer allowed. There are numerous provisions pertaining to non-purchasing seniors and disabled individuals who may not be subjected to unconscionable rent increases during their occupancy and cannot be evicted unless they fail to pay the rent, maintain an illegal use or occupancy, or refuse reasonable access to the owner or a similar breach to the owner.

CONCLUSION

The HSTPA was a major overhaul of almost every aspect of the laws pertaining to landlord-tenant relationships. Not only does its reach expand beyond NYC and its surrounding counties, it now impacts the entire state, and, in many instances, it affects owners of non-rent regulated premises, as well. This revamping of the statutes was demonstratively one-sided in favor of tenants to reflect the current political climate. Clearly, tenants are pleased with these changes, whereas landlords argue it will greatly impact on their ability to afford maintaining their properties and to profit from their investments. As noted above, they also curtail an owner's rights to recover more than one apartment in their own building for personal use. Pending cases, pre-HSTPA, where the landlord is seeking possession of multiple apartments, or previously obtained possession of at least one apartment, will be dismissed. The landlord will be forced to wait for the next "window period" to commence a new proceeding, if permissible [i.e., seeking the first, and only apartment].

Again, the reference to L&T proceedings as a "summary proceeding" is a nomenclature of a bygone era. Initially designed as a substitute for protracted and expensive ejectment proceedings in Supreme Court, the goal, purportedly, was the expeditious resolution of housing disputes. It remains to be seen if, under the revamped procedures, the current proceedings will be elongated even further.

These changes are in their infancy and it will take time to see how they play out in real time. Housing Court has entered into the "Twilight Zone" of trial and error with respect to many of the newly created or amended statutes. Much litigation and case law await! Stay tuned!

HON. GEORGE M. HEYMANN

[New York City Housing Court Judge (ret); Adjunct Professor of Law, Maurice A. Deane School of Law at Hofstra University; Certified Supreme Court Mediator; Of Counsel, Finz & Finz PC]

NEW RENT REGULATIONS FOR 2019

[NYC Housing Court Judge (Ret); Adjunct Professor of Law, Maurice A. Deane School of Law at Hofstra University; Mediator and Of Counsel, Finz & Finz PC]

On June 14, 2019, Governor Cuomo signed into law the Housing Stability and Tenant Protection Act of 2019 [HSTP] which completely revamped the laws affecting all tenants of rent controlled and rent stabilized apartments. These changes are significant and will become permanent, unless otherwise amended by the Legislature in the future. Except for notice provisions required by the landlord under RPL §226-c regarding rent increases greater than five percent or an intention not to renew which will become effective on October 12, 2019, all other provisions are currently in effect. Below is a brief summary of many of the significant changes. Not included are the new time periods for service of pleadings, answers, etc., and the practitioner is advised to review the appropriate provisions of the RPAPL.

[In full disclosure, I served as a NYC Housing Court Judge for two decades and for fifteen of those years I resided in a rent stabilized apartment subject to the same regulations as all the other rent regulated tenants throughout the city.] Clearly, rent stabilization has its benefits, such as the landlord being required to offer a renewal lease, prior to the expiration of your current one, on the same terms and conditions as the existing lease, except for the allowable rent increases as determined by the Rent Guidelines Board. This is so even if you are in the midst of a non-payment or holdover proceeding in Housing Court. In some instances [not mine], tenants were offered a "preferential" rent below the legally regulated rent. As discussed below, a major issue was whether they should be made permanent to the tenant once offered and accepted for the duration of the tenancy.

On the flip side of the coin, the biggest complaints of tenants were that every time the landlord received approval to make a Major Capital Improvement in the building each tenant was assessed an MCI "additional rent" that could be both retroactive and prospective at the same time. While a burden on all tenants, it could really impact on low income tenants. [I paid my share of those, as well]. The primary outrage over MCI's and individual apartment improvements [IAIs] is that these charges become a permanent part of the tenant(s)' base rent for future rent increases for the duration of the tenancy and, subsequently, for calculating the new rent after a vacancy occurs for the next tenant. IAIs can be made when an apartment is either vacant or if the tenant residing in an apartment requests and consents to such improvements inside the apartment. For example, if a tenant's refrigerator or stove breaks and cannot be repaired and, thus, has to be replaced with a new one, the cost would be added to the rent, a small portion at a time. If such appliance costs $400, once it is paid off the tenant continues to pay the "additional cost" as base rent forever, affecting all future rent increases. In those instances, it might be more prudent for the tenant to purchase their own appliance which they now own, and can take with them should they vacate the premises, possibly saving hundreds of dollars over the long term.

[When I sat on the bench, I was certainly aware of the impact that the MCI and IAI charges had on the tenants. I had no qualms expressing my opinions that I didn't agree with these laws, but made it clear that I was there to uphold the law as written and not what I would like it to be. I encouraged litigants on both sides to address their concerns to the legislators in Albany and continued to do so during my many lectures on the subject. I often incorporated recommendations for resolving these issues in my numerous published decisions and forwarded them to my local legislators.]

Prior to the effective date of the HSTP, rent control and rent stabilization was limited to only eight counties out of the 62 counties in the state: the five counties of NYC, plus Nassau, Westchester and Rockland counties. The new law encompasses all 62 counties of the state for those that wish to opt into the program. It will be interesting to see how many of the remaining counties that now have this opportunity will chose to participate.

Many landlords realizing that the increases in the legal regulated rent for a new vacancy due to MCIs, IAIs, RGB allowable increases and the 20% increase on vacant apartments put the rent at a level that is too high for the potential tenants in the area. Thus, they offered prospective tenants a "preferential (discounted) rent" as an incentive to take the apartment and sign a one or two-year lease. Under the previous law, at the end of the lease term the landlord was required to offer a lease renewal but was not obligated to offer another preferential rent. As a result, if the tenant was not be able to afford the new legally regulated rent he or she was forced to vacate. When this happened, the landlord could then add all the allowable increases, thereby increasing the legal rent even more. Tenant advocates viewed this a blatant attempt of gentrification in low income areas. To prevent this from happening, the new rent regulations provide for a permanent preferential rent that will endure through an entire tenancy, increased only in accordance with the percentages established each year by the RGB. Upon termination of the tenancy, the landlord can adjust the rent based on the legally regulated rent. With respect to such increases, one of the major aspects of the new legislation is the elimination of vacancy decontrol. Prior thereto, once the legal regulated rent reached $2,733 and the apartment becomes vacant it became "deregulated" and no longer subject to rent regulation. Proponents of the HSTP sought to eliminate deregulation altogether to keep such apartments in the regulated housing stock.

In a similar vein, the 20% automatic increase when an apartment is vacated which, over the years, had enabled landlords to reach the magic dollar amount for deregulation has been eliminated.

MCIs and IAIs have certainly been a bane to tenants and a boon to landlords. As I noted above, each time there was an MCI and/or an IAI, the tenant was burdened with an additional expense of "added rent" that lived on in perpetuity, carried over to the next tenant and the next, etc. Moreover, IAIs done to an apartment after the tenant vacates was another monetary amount that helped boost the legal rent toward the deregulation threshold. Elimination of MCIs and IAIs altogether will certainly aid the tenants but it may also create a disincentive to landlords to maintain their buildings in habitable conditions if they cannot recoup the costs for repairs or improvements. Implementation of MCIs and IAIs as temporary surcharges, as opposed to "added rent", that will end when the MCI or IAI is paid off is a fair balance for both the landlord and tenant. MCI's are now capped at 2% and expire in 30 years. IAI's cannot exceed $15,000 over a 15-year period and the landlord cannot make more than 3 during that period which also expire within 30 years.

Currently, tenants who are rent controlled are subject to a "Maximum Base Rent" that allows the landlord to increase the rent by up to 7.5% annually. Under consideration is the elimination of the "Maximum Base Rent" scheme to provide for annual increases formulated to bring them in line with those of rent stabilized tenants pursuant to increases by the RGB.

Another issue of major concern to tenants was known as the "Four Year Lookback Rule". Since its inception, any complaints by tenants to the Division of Housing and Community Renewal (DHCR) regarding rent overcharges were limited to the agency reviewing the records going back only four years from the time of the complaint. The only exception was whether the complaint alleged fraud on the part of the landlord. This look back now extends to six years and the fraud provision is eliminated. [See, 699 Venture Corp. v. Zuniga, decided 7/1/19 (no limitation under CPLR §213-a as amended)]

Perhaps the most controversial of the numerous proposals was the one seeking "good cause" evictions. Clearly, in any lease there are provisions that entitle the landlord to evict a tenant such as failure to pay the rent or for violating a substantial obligation of the lease. In non-rent stabilized buildings (less than six apartments) tenants have no protection from the landlord arbitrarily increasing the rent beyond that which the tenant can afford or simply refusing to renew without any explanation. To rectify this situation, owners of buildings that are not rent stabilized but have at least four apartments would have been prohibited from evicting tenants without alleging and proving "good cause" or raising rents beyond a set percentage. This proposal did not become law.

Over the course of the coming years it will be interesting to see how these changes play out in the courts. Stay tuned.

HON. GEORGE M. HEYMANN

[New York City Housing Court Judge (ret); Adjunct Professor of Law, Maurice A. Deane School of Law at Hofstra University; Certified Supreme Court Mediator; Of Counsel, Finz & Finz PC]

QUEENS COUNTY BAR ASSOCIATION
MEMBERSHIP APPLICATION

Please check the appropriate box below:

☐ **I wish to join the Queens County Bar Association.**
☐ **I wish to update my Membership Information and/or Committee listing (reverse side).**

ENROLLMENT INFORMATION

First Name_____

Last Name_____

Business Address _____

_____

City _____State _____Zip _____

Home Address _____

_____

City _____State _____Zip _____

Office phone ( )_____

Home phone ( )_____

Cell phone ( )_____

Fax Number ( )_____

Email Address _____

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Contact via: _____ Email _____ Mail

Mailing Preference: _____ Business _____ Home

Date of Birth _____

College_____

Graduation Year_____Degree_____

Law School_____

Graduation Year_____Degree_____

Date of Admission to the NYS Bar_____

Judicial Department_____

DUES PAYMENT

☐ Check Enclosed ☐ MasterCard ☐Visa ☐ Amex ☐Discover

Credit Card #_____

Exp. Date _____ CSC/CVV# _____

Signature_____

Date of Application _____

ANNUAL MEMBERSHIP DUES

☐ Sustaining Membership $ 350.00
Member who voluntarily provides additional funds to further support the Association (Includes coupons for three free CLE credits to be used for any CLE program in the coming year)

☐ Combined Sustaining Membership $ 625.00
(Includes coupons of 12.0 CLE Credits for any live Continuing Legal Education Programs)

☐ Attorney Admitted more than 10 years $ 300.00
☐ Attorney Admitted 5-9 years $ 225.00
☐ Attorney Admitted less than 5 years $ 135.00
☐ Associate Membership $ 60.00
(Must meet eligibility requirements)

☐ Admitted less than 1 year Free
☐ Law Student Free
(Current Law School student or recent graduate awaiting admission)

GOVERNMENT SERVICE MEMBERSHIP: *Members who are in Government Service (Judges, Court Attorneys, Law Secretaries, Legal Aid Society, Queens Legal Services, District Attorneys, Queens Law Associates, Corporation Counsel, etc.) are eligible for a 30% dues reduction. Please inform us of which Government Service gives you this eligibility.*

☐ Government Sustaining Membership $ 245.00
☐ Government Attorney 10+ years $ 210.00
☐ Government Attorney 5-9 years $ 157.00
☐ Government Attorney less than 5 years $ 94.00

18B ASSIGNED COUNSEL PLAN MEMBERSHIP:
Eligible for a 20% dues reduction. Please inform us of which 18B Assigned Counsel Plan gives you this eligibility (Family or Criminal).

☐ 18B Sustaining Membership $ 280.00
☐ 18B Attorney 10+ years $ 240.00
☐ 18B Attorney 5-9 years $ 180.00
☐ 18B Attorney less than 5 years $ 108.00

Discounts are also available for members of other local (Queens) bar associations who have never belonged to the Queens County Bar Association.

Membership dues can be made in one payment or by installments.

QUEENS COUNTY BAR ASSOCIATION
90-35 148TH STREET
JAMAICA, NEW YORK 11435

TEL - 718-291-4500
FAX - 718-657-1789

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2019-2020

QUEENS COUNTY BAR ASSOCIATION

90-35 148th Street, Jamaica, New York 11435 · (718) 291-4500 · Fax: (718) 657-1789 · WWW.QCBA.ORG

The Nominating Committee is accepting applications to serve on the Queens County Bar Association Board of Managers

Please take notice that those members who wish to be considered for nomination as Members of the Board of Managers of the Queens County Bar Association should submit written requests and resumes highlighting your activities in the Association prior to January 10, 2020.

Tentative meetings pursuant to the by-laws have been scheduled by the Nominating Committee on January 15, 2020, and finally on January 22, 2020. The final meeting of the Committee will take place on February 5, 2020. Said meetings are scheduled for 5:00 P.M. in the Board of Managers Room - in the Headquarters Building, 90-35 148th Street, Jamaica, N.Y.

At those meetings you may present the names of the persons whom you desire to have considered by the Nominating Committee for nomination to offices to be filled at the Annual Meeting. Hearings will be held at those times for that purpose pursuant to the by-laws.

Adam M. Orlow
Secretary

Please submit your requests in writing to the attention of the:

Nominating Committee
Queens County Bar Association
90-35 148 Street
Jamaica, N.Y. 11435

The Annual Election of Officers and Managers will be held on March 6, 2020. The newly elected Officers and Managers will assume their duties on June 1, 2020.

Dated: December 2, 2019
Jamaica, NY

QUEENS COUNTY BAR ASSOCIATION

LAWYER REFFERAL SERVICE

APPLICATION & REGISTRATION FORM

90-35 148th St.,
Jamaica, NY 11435
T: 718-291-4500
F: 718-657-1789

Name: _____ DOB:_____
First *Middle* *Last*

Firm Name: _____ Practice consists of: ___Trial work ___Office work

Address:_____

Telephone number(s): _____ E-Mail: _____

Date of Admission to the NYS Bar_____ Admission to Other Jurisdictions_____

List two attorneys or judges (*none of whom are my present partners and associates*) who have knowledge of professional work and ability:

_____

Languages other than English that you speak fluently:_____ or Office offers translation:_____

I will accept cases in the area(s) checked below (limit to five). I consider myself competent in such areas. Please indicate any specialties or exclusions within area of law.

AREAS OF PRACTICE	SPECIALTIES	EXCLUSIONS
☐ Adoptions		
☐ Bankruptcy		
☐ Civil Rights		
☐ Civil Service		
☐ Commercial		
☐ Consumer Law		
☐ Elder/Guardianship Law		
☐ Criminal Law		
☐ Decedent's Estates, Wills & Trusts		
☐ Domestic Relations (Family Law)		
☐ Immigration & Naturalization		
☐ Insurance		
☐ Juvenile Delinquency Matters		
☐ Labor Relations & Unemployment Compensation		
☐ Landlord & Tenant		
☐ Libel & Slander		
☐ Malpractice		
☐ Negligence		
☐ Patent, Trademark, Copyright, Unfair Competition		
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☐ Social Security Appeals (SSI, SSD)		
☐ Small Claims		
☐ Traffic Law		
☐ Worker's Compensation		

LAWYER REFERRAL SERVICE DUES PAYMENT

☐ Registration fee with one area law **$395.00** ☐ Additional area(s) of law (limit four) **$ 100.00/per area**

Amount $_____ ☐ Check ☐ MasterCard ☐ Visa ☐ AMEX ☐ Discover

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The undersigned hereby applies for registration on the panel of the Lawyer Referral Service of the Queens County Bar Association and is also a member in good standing. He/she certifies that he/she is familiar with its procedures and that he/she will abide by all rules which may be promulgated by the Association and agrees to be bound thereby.

Date of Application: Signature of Applicant