

RPAPL ARTICLE 7:
SUMMARY PROCEEDING TO RECOVER POSSESSION.

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A Special Proceeding to recover possession of real property is made in the County Court, Police Justice Court, Justice Court, City Civil Court, or District Court.

Venue of Trial is in the jurisdiction where property located. If the property is located in an unincorporated village comprising at least 2 towns, it can be by a Justice of the Peace of any such town, who maintains offices in the Village.

Where a LANDLORD/TENANT relationship exists, such tenant can only be removed by a special proceeding. A LANDLORD/TENANT relationship includes any *non-transient* occupying a hotel or rooming house for more than 30 consecutive days.

Grounds for such special proceeding are:

- 1) upon expiration of lease or agreement (accepting further rents does NOT bar action);
- 2) where a tenant is "objectionable", and the lease provides for removal on such grounds [Petitioner must satisfy the Court by "competent" evidence];
- 3) default in rent **AND** either a demand actually made OR service of written notice (in like manner of serving Notice of Petition) of at least 3 days, requiring rent or surrender of premises [The landlord can waive his right to proceed on default grounds **ONLY** by consent in writing, revocable at will];
- 4) if a tenant dies during the lease, and no rent is paid, nor any successor taken possession, and no executor appointed: action can commence 3 months after death, against the surviving spouse, issue (children), or distributee (party given property as per will);
- 5) a tenant within any city who defaults in rent or agreement to pay taxes for at least 60 days, if a demand is made or 3 days notice provided;
- 6) bankruptcy/insolvency of tenant during a lease or less than 3 years;
- 7) if premises being used for bawdy house, lewd acts, prostitution, illegal manufacturing/business;
- 8) in a city with a population greater than 1 million: if tenant removes batteries from smoke detector (or otherwise disables), without having first requested that the landlord relocate them from the kitchen, **AND** a prior order of the Court addressing such violation having been served at least 30 days before new report - provided that the tenant shall be afforded 10 days thereafter to cure the condition;

Where **NO** landlord/tenant relationship exists, a Notice to Quit shall be made at least 10 days before filing special proceeding.

Examples of **NO** landlord/tenant relationship:

- 1) property legally sold, or sold by execution (and title perfected), or for taxes, or on for foreclosure (and certified deed exhibited), but in any such case where original owner won't leave;

- 2) a Sharecropper agreement expires;
- 3) a person "squatting" without permission (or such permission revoked with notice);
- 4) where license to use property expired (mortgage, vendee NOT considered a licence);
- 5) a tenant of a "life tenant" remaining without permission after termination of life tenancy;
- 6) a vendee not in compliance with a contract, ONLY where such contract requires completion within 90 days;
- 7) a person entering into a property - or remaining unlawfully in - by FORCE; AND did not have "quiet possession" for at least 3 years prior, AND Petitioner actually or constructively possesses such property [no Notice to Quit required].
- 8) if possessed by virtue of employment, and agreed term expired or employment terminated [no Notice to Quit required];
- 9) in an Adult-Home Residence agreement (pursuant to Social Services Law);

ILLEGAL USE: A domestic corporation for the suppression of vice (if certified by the Department of Social Services); or a State Enforcement Agency; OR **any** property owner or tenant within 200 feet, may serve written notice on a landlord demanding that such landlord apply to Court for removal of a tenant of: a bawdy house, or place of lewdness or prostitution. If the landlord fails to commence a proceeding within 5 days, any party entitled to make Notice may also commence a proceeding, and the landlord is also named a Respondent. If the landlord *later* makes his own case, the interested party shall have preference if the landlord does not diligently prosecute in good faith.

Proof of "ill repute" is presumptive evidence of unlawful use = 2 or more convictions for Penal Law sections 230 or 225 within 1 year. A civil penalty of not more than \$5,000.00 may be awarded to the city, as well as costs/attorney's fees to the Petitioner. A State Enforcement Agency has subpoena powers herein, and failure to comply with same is a Class **B** Misdemeanor.

Proper petitioners for proceedings in this article are:

- 1) landlord/lessor;
- 2) reversioner/remainderman of "life tenant";
- 3) purchaser on foreclosure;
- 4) person forcibly out/kept out;
- 5) owner of sharecropped property;
- 6) a person lawfully entitled to property squatted upon, or where retains right to dispossess a licensee;
- 7) pursuant to illegal use, above;
- 8) lessee entitled to possession;
- 9) receiver, when authorized by Court;
- 10) NYC Housing Authority (or other such authorized corporation/agency);

A petition herein shall be accompanied by a Notice of Petition issued by: Clerk/Judge/Atty (**NOT** *pro se* party). **Except** in a non-payment proceeding, it shall state: time/place of hearing; AND that any defense not posed herein be precluded in any other action. If Petitioner in NYC will later apply for deposit of rent, Petition/Notice must

specify the requirements of that statute [below].

On a non-payment proceeding, **IF** the appropriate Appellate Division enacts such rules: the Notice shall be returnable before the CLERK within 5 days. If the Respondent ANSWERS, the Clerk shall set matter down for hearing between 3 to 8 days, and *immediately* notice parties/attorneys by mail. The Notice must also state that: a Respondent failing to answer, then upon proof of service provided to the court, the Judge **shall** render judgment in favor of Petitioner, but **MAY** stay the warrant of eviction (not more than 10 days from time of service).

If Appellate Division does **NOT** enact above rules, procedure as follows: service at least 5 days - no more than 12 - before hearing. If a tenant stays in the property after the lease/agreement expired: an Order to Show Cause may be sought on the day of expiration, or the next day, and such - if signed - is served by the specified time, at least 2 hours before hearing.

In Westchester, certain proceedings against a residential tenant may also need to be served on the Department of Social Services by certified mail (return receipt requested), within 5 days. However failure to comply is neither jurisdictional defect, nor defense.

Service on the Respondent is by: personal delivery; delivery to a person of "suitable age and discretion" [SAD] *at the property to be recovered*; or if admittance cannot be obtained, by affixing [nailing] to the property to be recovered.

IF SAD or NAIL service, must also mail the petition & notice by both: 1) certified or registered mail; **AND** 1st Class mail. Mailing to be done within 1 day of SAD/NAIL. Mailing shall be done on address of property to be recovered. If the Petitioner has written information that a "NATURAL" Respondent has a residence *other* than such property, shall **also** be mailed on such last known residence; or if NO residence known, then at last known place of business.

If the Respondent is a corporation, service at the property firstly; **AND** at the principal office (if another location within the State), or any other place where Respondent corporation doing business [addresses upon written information, as above].

If service upon other such addresses, petition shall so specify (and why); OR an affidavit can be provided to the Court when filing the proof of service. Petition/Notice/Proof of Service to be filed within 3 days. If personally delivered, service "complete" on date of such delivery; in any other case, service is complete upon *filing*.

Petitions herein shall be VERIFIED, may be by the party OR attorney [including by attorney "upon information and belief", even if party located in same county as atty].

Petition states: petitioner's legal interest in property; Respondent's interest, and legal relationship to petitioner; a description of the premises at issue; the facts; and relief

requested.

An ANSWER to the petition may be orally or in writing, and can be provided at the time of hearing (except if a non-payment proceeding by special rules of Appellate Division [see above]). If made orally, the Clerk (or Judge if no clerk) shall record the substance of the answer. If service of the petition was made at least 8 days before hearing, AND so demanded: answer within 3 days, and serve if written variety; replies then due at least 1 day before hearing.

TRIAL of issue is by the Judge; or a Jury upon demand. Trial may not be adjourned for more than 10 days except on consent of all parties. In NYC: after 2nd adjournment *pursuant to Respondent's request* [including an adjournment for the purposes of seeking counsel], **OR** the 30th day [excluding any adjournments by Petitioner] (whichever earlier), the Petitioner may apply for - and the Court **shall** grant - a requirement that the Respondent pay all rents due by deposit with the Court, within 5 days thereafter.

EXCEPT; if the Respondent has the following defense(s): Petitioner has no legal standing; Respondent already quit the premises following eviction; where rent usually paid by Social Services is withheld for building violations; or where the Court lacks jurisdiction.

If the property at issue is part of a building with 12 units or less, any amount of rent which the Respondent does not dispute shall be remitted by Court to landlord. The Court may also direct such funds be used for emergency repairs.

Rent paid generally by Government Subsidy/Senior Citizen Assistance/ or Social Services is **NOT** required to be so "paid into court". If the Respondent gets a "shelter allowance" however, shall deposit the amount of the allowance. If on Supplemental Security Income (SSI), a Respondent only required to deposit 1/3 of monthly check.

A Respondent who fails to deposit funds as directed (and unless can provide proof that rent was already paid) **shall** have their defenses/counterclaims dismissed without prejudice; and the proceeding GRANTED in favor of Petitioner.

If the Respondent deposits back rent as directed, but later fails to make payment of rent accruing thereafter: "immediate" trial = day-to-day, no adjournments without Petitioner's consent, and no STAY or proceedings without payment upon order. the time for deposit shall NOT be extended, EXCEPT on Petitioner's consent. neither can the Court WAIVE any provisions herein.

Payments deposited with the Court shall be credited against any final judgment, and paid out without order.

If a Petitioner makes excessive adjournments, the Court **MAY** dismiss the action and award costs to the Respondent.

The prevailing party is awarded costs. Additional costs, up to \$50, may be awarded on a case of "forcibly" taking property.

A Judgment for rent arrears shall NOT bar action to recover possession; nor any other relief not asked for because of the Court's limited jurisdiction, if action thereupon made within 60 days.

A judgment herein may be docketed in the Court's books, and need not then be recorded as a general money judgment (unless so ordered or ruled).

In NYC: in a non-payment proceeding where the Respondent appeared, the Court **SHALL NOT** stay issuance of a "warrant of eviction" OR order allowing re-letting of premises, after more than 5 days have elapsed since judgment; **EXCEPT**: where Respondent proves by sworn statement & documentary proof that payment was made to Petitioner *before* execution, OR money was deposited with the Court.

Following judgment, warrant of eviction shall otherwise issue to: Sheriff of county; Constable/Marshall of city; ,or Constable of town. The warrant shall describe the property, and order all persons to be removed, so as to allow Petitioner possession. The Sheriff shall provide 72 hours written notice (in like manner as service for Notice of Petition), and shall thereafter execute the warrant between sunrise and sunset.

A warrant of eviction annuls any lease/agreement, and voids landlord/tenant relationship. A Court shall vacate the warrant only on good cause shown. An action for rents due for occupancy *after* the expiration of a lease/agreement (and where not so provided for) shall be by Special Proceeding, generally.

OUTSIDE NYC: a STAY in proceedings for holdover (recovery after expiration of lease) - or for non-payment of taxes - may be had by depositing the amount due with the Clerk, together with costs of proceeding, [to be remitted to Petition upon demand] **OR** by *undertaking* to pay within 10 days. If the Respondent bankrupt/insolvent, need only pay costs now, and undertake to pay amount due on later date, not specified.

IN NYC: pursuant to a holdover proceeding for a DWELLING (*not* including hotel), the Court may stay issuance of eviction warrant, and execution *of costs, only*, upon good faith application of the occupant of inability to secure similar premises in the neighborhood after reasonable efforts thus; **OR** that eviction would pose undue hardship. Such stay lasts maximum = 6 months. [** PRIOR STATUTORY PROVISION FOR SIMILAR STAY *OUTSIDE* NYC FOR 4 MONTH MAXIMUM, **EXPIRED** **].

In the case of a stay pursuant to above: tenant **must** deposit all rent due with the Clerk, to be maintained in s separate bank/trust account, and the paid to the landlord.

Stay of proceeding as above **NOT** apply if owner intends to demolish premises and construct new building on *approved* plans; **OR** where the tenant is "objectionable"

AND the lease/agreement provides for removal under such condition. If "objection" based upon breach of lease/agreement, Respondent has 10 days to correct. Any provision of lease/agreement which waives these rights is VOID.

A Respondent "constructively evicted" by the failure of landlord to make necessary repairs, or where such failure constitutes a danger to life/health: any *dispossession* proceeding shall STAY (unless the tenant caused the conditions at issue). Vacatur of such stay ONLY by order after hearing, such hearing to be on 3 days notice. During such stay, the tenant must deposit rent with the Court; if failure to do within 5 days, Court to vacate stay upon 3 days notice thereafter. The Court may direct that payment from such monies deposited be used for repairs; and then vacate stay and remit remainder of rent funds to landlord. No costs shall be awarded for proceedings relating to such stay; EXCEPT: maximum charge of \$25.00 against tenant if caused condition.

If in a *multiple unit dwelling* the utilities are cut off due to landlord's non-payment, proceedings stay until such utilities again be working.

In the case of default on rent for lease, with more than 5 years still outstanding at the time the eviction warrant issues: tenant may REDEEM within 1 year by paying all monies/costs due; EXCEPT: where lease/agreement OR subsequent written instrument (filed where lease recorded, or else with clerk of county where property located) waives such right. If the tenant cannot locate the owner/landlord in city/town where property located, within 5 days before expiration of 1 year time limit, may deposit money with Clerk instead.

A CREDITOR against such tenant may [except where tenant waived redemption right] file notice of intent to redeem within such 1 year time limit, specifying: the interest and sum due on judgment against tenant; AND stating intent to redeem. If tenant fails to redeem within 1 year, creditor can redeem instead on next day after (if not Sunday, legal holiday).

If multiple creditors, preference by whichever *lien* docketed first. However if the 1st creditor in line fails to redeem on the next day allowed after the tenant failed to do so; the 2nd creditor in line may then redeem instead, by the *next, next* day; and so on.

However any second or subsequent redemption (after 1st redeemer than *also* defaults), the redeemer must pay the initial creditor for the amount spent by such individual to originally redeem, AND the monies due on judgment by such creditor against the former tenant.

After redemption, party can possess premises until next May 1st, at Noon; otherwise subject to new lease/agreement executed by owner/landlord.

Petition to the Court may be made either by redeemer OR owner/landlord to fix each party's rights and liabilities. Such proceeding to be by Order to Show Cause, returnable in not less than 2 days, nor more than 10. PETITIONER responsible for costs.

Judgment OR certified copy thereof to be recorded as a deed.