



WHAT NYS LANDLORDS NEED TO KNOW ABOUT NEW RENT LAWS

David B. Cabrera, Esq.
Borah, Goldstein, Altschuler,
Nahins & Goidel, P.C.
377 Broadway
New York, New York 10013
Tel: 212 965-2544
Fax: 212 965-2550
dcabrera@borahgoldstein.com

www.borahgoldstein.com



David B. Cabrera

dcabrera@borahgoldstein.com

(212) 965-2544

David B. Cabrera is a senior partner at Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., in the Administrative Division. He has experience in all types of proceedings before the State Division of Housing & Community Renewal (DHCR), as well as matters before the Department of Housing, Preservation & Development (HPD), the Environmental Control Board, the Department of Buildings (DOB), and the Loft Board. Mr. Cabrera has over twenty-five years of real estate law experience, including eleven years with DHCR in various senior positions. He was DHCR's Deputy Commissioner for Housing Operations where he oversaw the State's Section 8, Mitchell-Lama and Public Housing programs. He also served DHCR as General Counsel in the Office of Legal Affairs and Deputy Counsel and Assistant Commissioner in the Office of Rent Administration and specialized in rent stabilization and rent control matters. Prior to joining the DHCR, Mr. Cabrera was in private practice specializing in real estate litigation and transactions.

Topics to be discussed



1. Municipalities opting into Rent Stabilization
2. Statewide Changes to Court Proceedings and Security Deposits
 - a) Real Property Law
 - b) Real Property & Proceedings Law
 - c) General Obligations Law
3. Changes affecting Cooperatives & Condominiums
4. Manufactured Homes
5. Q & A



Housing Stability and Tenant Protection Act of 2019

- This Act directly impacts property owners and property managers, for both regulated and unregulated units, inside New York City and throughout the State of New York.
- The Act consists of a total of fifteen (15) Sections, which are labeled alphabetically A through Q.
 - **Part A through Part L:** Amends Emergency Tenant Protection Act, Emergency Housing Rent Control Law and Rent Stabilization Law
 - **Part M** amends the *Real Property Law* and the *Real Property Actions & Proceedings Law*
 - **Part N** amends provisions concerning cooperative and condominium conversion
 - **Part O** affects manufactured homes



Statewide Tenant Protection Act of 2019

PART G: Rent Stabilization Coverage

- Effective June 14, 2019, the Act extends rent stabilization coverage to all counties within New York State where local legislatures determine that an emergency exists. The Act also permits DHCR to “reconstitute” an existing RGB outside NYC
- Prior law only subjected NYC, Nassau, Rockland and Westchester Counties to rent stabilization coverage

Statewide Changes



Rent Stabilization Coverage continued

- The new law allows municipalities outside NYC to opt into rent stabilization.
 - Who is responsible for deciding this?
 - A local legislature can determine that an emergency exists requiring rent stabilization. A local Rent Guidelines Board (“RGB”) will be created to set rent increase rates where rent stabilization is adopted.
 - DHCR will choose the 9 RGB members based on the municipalities recommendations. Under new law, Division of Housing and Community Renewal can now also “reconstitute” existing RGB’s outside NYC.
 - How is the vacancy rate calculated?
 - Rent stabilization is available statewide to any municipality with less than 5% vacancy rate and a population of less than a million. A local legislature determines that a housing emergency exist.
 - Once a municipality opts in, can it ever opt out?
 - Yes, it must determine that the emergency terminated and that vacancy rate exceeds 5%.
 - DHCR has issued a new fact sheet: [Fact Sheet #8: Emergency Tenant Protection Act \(ETPA\) of 1974 Chapter 576 Laws of 1974 as Last Amended](https://hcr.ny.gov/system/files/documents/2019/09/FACT%20SHEET%2008.pdf)
(<https://hcr.ny.gov/system/files/documents/2019/09/FACT%20SHEET%2008.pdf>)



Part M - Changes to Real Property Law

- **Non-Payment and Holdover Proceedings; Tenant Protections**
 - Effective June 14, 2019, the Act made changes to the Real Property Law, Real Property Actions and Proceedings Law, as well as other laws, that directly impact how summary non-payment and holdover proceedings are commenced and maintained.
 - This webinar will focus on statewide changes to non-regulated tenancies. The following changes apply to all tenancies, even one-family homes.

RPL §226-c: Notice of rent increase or non-renewal of residential tenancy

This newly created section of the RPL took effect on October 12, 2019

Notice of Rent Increase

- The Act requires written notice if landlord seeks to offer renewal of residential lease with a rent increase of 5% or more or does not intend to renew lease;
- in absence of notice, prior tenancy and terms continue until notice is given;

Notice of Termination (non-renewal)

- 30 day notice of termination is required if tenant is in possession less than 1 year or has lease term of 1 year;
- A 60 day notice of termination is required if tenant is in possession more than 1 year but less than 2 years;
- 90 day notice of termination is required if tenant in possession more than 3 years.

Statewide Changes



RPL §227-e - Landlord Duty to Mitigate Damages

- For all apartments, a Landlord has a duty to mitigate damages.
- Landlord must in good faith, according to landlord's resources and abilities, take "reasonable and customary" steps to rent the apartment.
- If a tenant vacates the premises in violation of the lease, the Landlord must take reasonable and customary actions to rent the premises at fair market value or at the rate agreed to during the term of the tenancy, whichever is lower.
- Residential only; commercial leases and licenses not affected.
- Practical Point - The lease provided to new tenant terminates the prior tenant's lease.

Statewide Changes

RPL §235-e (d) Failure to pay rent

- In the event that the landlord does not receive the rent within 5 days of the date specified in the lease agreement, the landlord or its agent shall send the tenant a written notice stating a failure to receive such a rent payment. This written notice must be sent by certified mail.
- If the landlord or its agent fails to provide the tenant with a written notice of the non-payment of rent prior to the commencement of a non-payment proceeding, the tenant may use this as an affirmative defense in the proceeding.
- Applies to commercial and residential tenancies.

Statewide Changes

RPL § 235-e: Duty of Landlord to Provide a written receipt

A lessor of a property or their agent who is authorized to receive rent shall be required to provide a tenant with a written receipt upon the payment of rent for a residential premises made in the form of cash or any instrument other than a personal check. The written receipt must contain the following:

- a) date;
- b) the amount of the payment;
- c) the identity of the premises and the period for which it was paid; and
- d) the signature and title of the person receiving the rent.

Statewide Changes



RPL §238-a: Limitation of Fees

- Landlord may only charge for background checks and credit checks and may only charge the actual cost of the credit or background check up to a maximum of \$20 dollars.
- No other fees/requirements are permitted as a condition of obtaining a lease.
- Landlord may not collect the credit check fee without providing a receipt to the applicant for the cost of the report from the entity issuing the report.

Statewide Changes



RPL §223-b: Retaliation by a Landlord Against a Tenant

- Extends the *presumption* of retaliation to one year. Previously the standard was six (6) months.
- Adds warranty of habitability claim under Multiple Dwelling Law as a ground for retaliatory eviction.
- Includes landlord's agent as actor who can be accused of retaliation.
- Offering a new lease with an unreasonable rent increase is a ground for a retaliatory eviction defense.
- Repeals exception to presumption where tenant breached lease or failed to pay rent.

Statewide Changes



RPAPL §702: Rent in a Residential Dwelling

- No fees, charges or penalties other than rent may be sought in a summary proceeding.
- The Act specifically defines what constitutes the "rent" that can be sought in a summary proceeding. Section 702 specifically defines "rent" as the monthly or weekly amount charged in consideration for the use and occupancy of a dwelling, pursuant to a written or oral agreement.
- Excluded from rent are any and all fees, charges, or penalties that the tenant may be responsible for and/or assessed during the course of their tenancy, even if they are specifically authorized by the lease between the parties.
- Charges such as storage, gym, sales tax, electric, repairs, etc. which the tenant is responsible for cannot be sought in the context of a summary proceeding. They can only be sought in a separate action and cannot be part of a proceeding for possession of the apartment.

Statewide Changes



RPAPL §711(2) Rent Demands

- Oral rent demand has been eliminated.
- A written rent demand must give at least fourteen (14) days' notice, instead of three (3) days' notice.
- Applies to both *commercial* and residential proceedings.

Statewide Changes



RPAPL §749: Warrants

- The court shall state the earliest date that the warrant may execute pursuant to the order of the court.
- Warrant is limited to persons named in the proceeding and commands the marshal/sheriff to remove all persons named in the proceeding.
- Upon a showing of good cause, the court may issue a stay of re-letting or renovation of the premises for a reasonable period of time.

Security Deposits



General Obligations Law §7-108

Limitation on Security Deposit

- No rent deposit or advance shall exceed the amount of one month's rent.

Inspection

- After lease is signed but before lease starts, landlord must offer tenant an opportunity to inspect apartment (with landlord present). After the inspection, the parties must enter into a written agreement attesting to the condition of the apartment and noting any defect or damage. The agreement is admissible as evidence of the condition of the premises at the beginning of the occupancy in actions related to returning the security deposit but not for warranty of habitability.
- Exit inspection shall be made no earlier than two weeks and no later than one week before the end of the tenancy on 48 hours written notice.
- Must provide tenant with itemized statement of repairs or items to be cleaned that are basis for proposed deductions.

Return of Deposit

- 14 days to return security
- If landlord fails to provide itemization or deposit within 14 days, landlord forfeits right to retain any portion of the security deposit.
- The security deposit cannot be withheld based on a claim of wear and tear, attorneys' fees, late fees, additional rent, or other miscellaneous charges.
- If a landlord fails to provide the tenant with the statement and deposit within fourteen days, the landlord shall forfeit any right to retain any portion of the deposit.

Cooperative and Condominiums



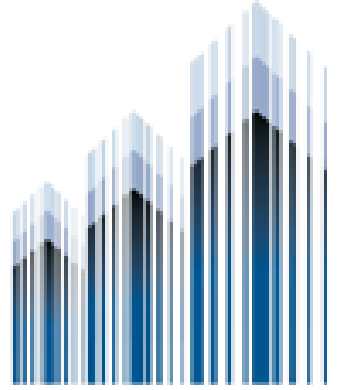
Part N – Cooperative and Condominium Conversions

- Eviction Plans in future filings have been eliminated.
- It is far more complicated to convert a building pursuant to a Non-Eviction Plan. The conversion rate increased to 51% (from 15%) of tenants in occupancy.
- Tenants in occupancy have a 90-day exclusive right to purchase as well as a 6-month right of first refusal.
- Prohibits unreasonable increases for eligible senior or disabled tenants who are unable to purchase their units.



Part O: Mobile and Manufactured Homes

- Effective July 14, 2019, new mobile home tenant protections were adopted. They include provisions on rent-to-own contracts, limitations on rent increases, a bill of rights with new tenant protections, and changes in the use of the underlying land.



Questions & Answers