



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Real Property Law (Refs & Annos)  
Chapter 50. Of the Consolidated Laws  
Article 7. Landlord and Tenant (Refs & Annos)

McKinney's Real Property Law § 223-b

§ 223-b. Retaliation by landlord against tenant

Effective: June 14, 2019

[Currentness](#)

1. No landlord of premises or units to which this section is applicable shall serve a notice to quit upon any tenant or commence any action to recover real property or summary proceeding to recover possession of real property in retaliation for:

a. A good faith complaint, by or in behalf of the tenant, to the landlord, the landlord's agent or a governmental authority of the landlord's alleged violation of any health or safety law, regulation, code, or ordinance, the warranty of habitability under [section two hundred thirty-five-b](#) of this article, the duty to repair under [sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law](#) or [section one hundred seventy-four of the multiple residence law](#), or any law or regulation which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

b. Actions taken in good faith, by or in behalf of the tenant, to secure or enforce any rights under the lease or rental agreement, the warranty of habitability under [section two hundred thirty-five-b](#) of this article, the duty to repair under [sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law](#) or [section one hundred seventy-four of the multiple residence law](#), or under any other law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

c. The tenant's participation in the activities of a tenant's organization.

2. No landlord of premises or units to which this section is applicable or such landlord's agent shall substantially alter the terms of the tenancy in retaliation for any actions set forth in paragraphs a, b, and c of subdivision one of this section. Substantial alteration shall include, but is not limited to, the refusal to continue a tenancy of the tenant, upon expiration of the tenant's lease, to renew the lease or offer a new lease, or offering a new lease with an unreasonable rent increase; provided, however, that a landlord shall not be required under this section to offer a new lease or a lease renewal for a term greater than one year.

3. A landlord shall be subject to a civil action for damages, attorney's fees and costs and other appropriate relief, including injunctive and other equitable remedies, as may be determined by a court of competent jurisdiction in any case in which the landlord has violated the provisions of this section.

4. In any action to recover real property or summary proceeding to recover possession of real property, judgment shall be entered for the tenant if the court finds that the landlord is acting in retaliation for any action set forth in paragraphs a, b, and c of subdivision one of this section. Retaliation shall be asserted as an affirmative defense in such action or proceeding. The tenant shall not be relieved of the obligation to pay any rent for which he is otherwise liable.

5. In an action or proceeding instituted against a tenant of premises or a unit to which this section is applicable, a rebuttable presumption that the landlord is acting in retaliation shall be created if the tenant establishes that the landlord served a notice to quit, or instituted an action or proceeding to recover possession, or attempted to substantially alter the terms of the tenancy, within one year after:

a. A good faith complaint was made, by or in behalf of the tenant, to the landlord, the landlord's agent or a governmental authority of the landlord's violation of any health or safety law, regulation, code, or ordinance, the warranty of habitability under [section two hundred thirty-five-b](#) of this article, the duty to repair under [sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law](#) or [section one hundred seventy-four of the multiple residence law](#), or any law or regulation which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

b. The tenant in good faith took action to secure or enforce against the landlord or his agents any rights under the lease or rental agreement, the warranty of habitability under [section two hundred thirty-five-b](#) of this article, the duty to repair under [sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law](#) or [section one hundred seventy-four of the multiple residence law](#), or under any other law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree.

c. Judgment under subdivision three or four of this section was entered for the tenant in a previous action between the parties; or an inspection was made, an order was entered, or other action was taken as a result of a complaint or act described in paragraph a or b of this subdivision.

The effect of the presumption shall be to require the landlord to establish a nonretaliatory motive for his acts by a preponderance of the evidence.

5-a. Any lease provision which seeks to assess a fee, penalty or dollar charge, in addition to the stated rent, against a tenant because such tenant files a bona fide complaint with the landlord, the landlord's agent or a building code officer regarding the condition of such tenant's leased premises shall be null and void as being against public policy. A landlord or agent of the landlord who seeks to enforce such a fee, penalty or charge shall be liable to the tenant for triple the amount of such fee, penalty or charge.

6. This section shall apply to all rental residential premises except owneroccupied dwellings with less than four units. However, its provisions shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

**Credits**

(Added L.1979, c. 693, § 1. Amended [L.1991, c. 584, § 5](#); [L.2005, c. 466, § 1](#), eff. Sept. 1, 2005; [L.2019, c. 36, pt. M, § 2](#), eff. [June 14, 2019](#).)

McKinney's Real Property Law § 223-b, NY REAL PROP § 223-b

Current through L.2019, chapter 144. Some statute sections may be more current, see credits for details.

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Real Property Law ([Refs & Annos](#))  
Chapter 50. Of the Consolidated Laws  
Article 7. Landlord and Tenant ([Refs & Annos](#))

McKinney's Real Property Law § 226-c

§ 226-c. Notice of rent increase or nonrenewal of residential tenancy

Effective: October 12, 2019

[Currentness](#)

<[Eff. Oct. 12, 2019.]>

1. Whenever a landlord intends to offer to renew the tenancy of an occupant in a residential dwelling unit with a rent increase equal to or greater than five percent above the current rent, or the landlord does not intend to renew the tenancy, the landlord shall provide written notice as required in subdivision two of this section. If the landlord fails to provide timely notice, the occupant's lawful tenancy shall continue under the existing terms of the tenancy from the date on which the landlord gave actual written notice until the notice period has expired, notwithstanding any provision of a lease or other tenancy agreement to the contrary.

2. (a) For the purposes of this section, the required notice shall be based on the cumulative amount of time the tenant has occupied the residence or the length of the tenancy in each lease, whichever is longer.

(b) If the tenant has occupied the unit for less than one year and does not have a lease term of at least one year, the landlord shall provide at least thirty days' notice.

(c) If the tenant has occupied the unit for more than one year but less than two years, or has a lease term of at least one year but less than two years, the landlord shall provide at least sixty days' notice.

(d) If the tenant has occupied the unit for more than two years or has a lease term of at least two years, the landlord shall provide at least ninety days' notice.

**Credits**

(Added [L.2019, c. 36, pt. M, § 3, eff. Oct. 12, 2019](#). Amended [L.2019, c. 39, pt. Q, § 31, eff. Oct. 12, 2019](#).)

McKinney's Real Property Law § 226-c, NY REAL PROP § 226-c

Current through L.2019, chapter 144. Some statute sections may be more current, see credits for details.



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McKinney's Real Property Law § 227-e

§ 227-e. Landlord duty to mitigate damages

Effective: June 14, 2019

[Currentness](#)

In any lease or rental agreement, excluding any real estate purchase contract defined in [paragraphs \(a\), \(c\) and \(d\) of subdivision four of section four hundred sixty-one](#) of this chapter, covering premises occupied for dwelling purposes, if a tenant vacates a premises in violation of the terms of the lease, the landlord shall, in good faith and according to the landlord's resources and abilities, 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. If the landlord rents the premises at fair market value or at the rate agreed to during the term of the tenancy, the new tenant's lease shall, once in effect, terminate the previous tenant's lease and mitigate damages otherwise recoverable against the previous tenant because of such tenant's vacating the premises. The burden of proof shall be on the party seeking to recover damages. Any provision in a lease that exempts a landlord's duty to mitigate damages under this section shall be void as contrary to public policy.

**Credits**

(Added [L.2019, c. 36, pt. M, § 4, eff. June 14, 2019](#).)

McKinney's Real Property Law § 227-e, NY REAL PROP § 227-e

Current through L.2019, chapter 144. Some statute sections may be more current, see credits for details.

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McKinney's Real Property Law § 227-f

§ 227-f. Denial on the basis of involvement in prior disputes prohibited

Effective: July 14, 2019

[Currentness](#)

1. No landlord of a residential premises shall refuse to rent or offer a lease to a potential tenant on the basis that the potential tenant was involved in a past or pending landlordtenant action or summary proceeding under article seven of the real property actions and proceedings law. There shall be a rebuttable presumption that a person is in violation of this section if it is established that the person requested information from a tenant screening bureau relating to a potential tenant or otherwise inspected court records relating to a potential tenant and the person subsequently refuses to rent or offer a lease to the potential tenant.

2. Whenever the attorney general shall believe from evidence satisfactory to him or her that any person, firm, corporation or association or agent or employee thereof has violated subdivision one of this section, he or she may bring an action or special proceeding in the supreme court for a judgment enjoining the continuance of such violation and for a civil penalty of not less than five hundred dollars, but not more than one thousand dollars for each violation.

**Credits**

(Added L.2019, c. 36, pt. M, § 5, eff. July 14, 2019.)

McKinney's Real Property Law § 227-f, NY REAL PROP § 227-f

Current through L.2019, chapter 144. Some statute sections may be more current, see credits for details.



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McKinney's Real Property Law § 234

§ 234. Right to recover attorneys' fees in actions or summary  
proceedings arising out of leases of residential property

Effective: June 14, 2019

[Currentness](#)

Whenever a lease of residential property shall provide that in any action or summary proceeding the landlord may recover attorneys' fees and/or expenses incurred as the result of the failure of the tenant to perform any covenant or agreement contained in such lease, or that amounts paid by the landlord therefor shall be paid by the tenant as additional rent, there shall be implied in such lease a covenant by the landlord to pay to the tenant the reasonable attorneys' fees and/or expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement on its part to be performed under the lease or in the successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the lease, and an agreement that such fees and expenses may be recovered as provided by law in an action commenced against the landlord or by way of counterclaim in any action or summary proceeding commenced by the landlord against the tenant. A landlord may not recover attorneys' fees upon a default judgment. Any waiver of this section shall be void as against public policy.

**Credits**

(Added L.1966, c. 286, § 1. Amended L.1969, c. 297; [L.2019, c. 36, pt. M, § 8, eff. June 14, 2019.](#))

McKinney's Real Property Law § 234, NY REAL PROP § 234

Current through L.2019, chapter 144. Some statute sections may be more current, see credits for details.

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McKinney's Real Property Law § 235-e

§ 235-e. Duty to provide a written receipt

Effective: June 14, 2019

[Currentness](#)

(a) Upon the receipt of the payment of rent for residential premises in the form of cash, or any instrument other than the personal check of the lessee, it shall be the duty of the lessor, or any agent of the lessor authorized to receive rent, to provide the lessee with a written receipt containing the following:

1. The date;
2. The amount;
3. The identity of the premises and period for which paid; and
4. The signature and title of the person receiving the rent.

(b) A lessee may request, in writing, that a lessor provide a receipt for rent paid by personal check. If such request is made, the lessor, or any agent of the lessor authorized to receive rent, shall provide the lessee with the receipt described in subdivision (a) of this section. Such request shall, unless otherwise specified by the lessee, remain in effect for the duration of such lessee's tenancy. The lessor shall maintain a record of all cash receipts for rent for at least three years.

(c) If a payment of rent is personally transmitted to a lessor, or an agent of a lessor authorized to receive rent, the receipt for such payment shall be issued immediately to a lessee. If a payment of rent is transmitted indirectly to a lessor, or an agent of a lessor authorized to receive rent, a lessee shall be provided with a receipt within fifteen days of such lessor or agent's receipt of a rent payment.

(d) If a lessor, or an agent of a lessor authorized to receive rent, fails to receive payment for rent within five days of the date specified in a lease agreement, such lessor or agent shall send the lessee, by certified mail, a written notice stating the failure to receive such rent payment. The failure of a lessor, or any agent of the lessor authorized to receive rent, to provide a lessee with a written notice of the nonpayment of rent may be used as an affirmative defense by such lessee in an eviction proceeding based on the nonpayment of rent.



**Credits**

(Added L.1981, c. 822, § 1. Amended L.1984, c. 16, § 1; L.1986, c. 848, § 1; [L.2019, c. 36, pt. M, § 9, eff. June 14, 2019](#).)

McKinney's Real Property Law § 235-e, NY REAL PROP § 235-e

Current through L.2019, chapter 144. Some statute sections may be more current, see credits for details.

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McKinney's Real Property Law § 238-a

§ 238-a. Limitation on fees

Effective: June 14, 2019

[Currentness](#)

In relation to a residential dwelling unit:

1. (a) Except in instances where statutes or regulations provide for a payment, fee or charge, no landlord, lessor, sublessor or grantor may demand any payment, fee, or charge for the processing, review or acceptance of an application, or demand any other payment, fee or charge before or at the beginning of the tenancy, except background checks and credit checks as provided by paragraph (b) of this subdivision, provided that this subdivision shall not apply to entrance fees charged by continuing care retirement communities licensed pursuant to article forty-six or forty-six-A of the public health law,<sup>1</sup> assisted living providers licensed pursuant to article forty-six-B of the public health law,<sup>2</sup> adult care facilities licensed pursuant to article seven of the social services law, senior residential communities that have submitted an offering plan to the attorney general, or not-for-profit independent retirement communities that offer personal emergency response, housekeeping, transportation and meals to their residents.

(b) A landlord, lessor, sublessor or grantor may charge a fee or fees to reimburse costs associated with conducting a background check and credit check, provided the cumulative fee or fees for such checks is no more than the actual cost of the background check and credit check or twenty dollars, whichever is less, and the landlord, lessor, sublessor or grantor shall waive the fee or fees if the potential tenant provides a copy of a background check or credit check conducted within the past thirty days. The landlord, lessor, sublessor or grantor may not collect the fee or fees unless the landlord, lessor, sublessor or grantor provides the potential tenant with a copy of the background check or credit check and the receipt or invoice from the entity conducting the background check or credit check.

2. No landlord, lessor, sublessor or grantor may demand any payment, fee, or charge for the late payment of rent unless the payment of rent has not been made within five days of the date it was due, and such payment, fee, or charge shall not exceed fifty dollars or five percent of the monthly rent, whichever is less.

3. Any provision of a lease or contract waiving or limiting the provisions of this section shall be void as against public policy.

**Credits**

(Added L.2019, c. 36, pt. M, § 10, eff. June 14, 2019.)

Footnotes

1 NY PUB HEALTH § 4600 et seq, and NY PUB HEALTH § 4650 et seq, respectively.

2 NY PUB HEALTH § 4650 et seq.

McKinney's Real Property Law § 238-a, NY REAL PROP § 238-a

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Article 7. Summary Proceeding to Recover Possession of Real Property (Refs & Annos)

McKinney's RPAPL § 702

§ 702. Rent in a residential dwelling

Effective: June 14, 2019

[Currentness](#)

In a proceeding relating to a residential dwelling or housing accommodation, the term “rent” shall mean the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement. No fees, charges or penalties other than rent may be sought in a summary proceeding pursuant to this article, notwithstanding any language to the contrary in any lease or rental agreement.

**Credits**

(Added [L.2019, c. 36, pt. M, § 11, eff. June 14, 2019.](#))

McKinney's R. P. A. P. L. § 702, NY RP ACT & PRO § 702

Current through L.2019, chapter 144. Some statute sections may be more current, see credits for details.

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McKinney's RPAPL § 711

§ 711. Grounds where landlord-tenant relationship exists

Effective: June 14, 2019

[Currentness](#)

A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer. No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding. A special proceeding may be maintained under this article upon the following grounds:

1. The tenant continues in possession of any portion of the premises after the expiration of his term, without the permission of the landlord or, in a case where a new lessee is entitled to possession, without the permission of the new lessee. Acceptance of rent after commencement of the special proceeding upon this ground shall not terminate such proceeding nor effect any award of possession to the landlord or to the new lessee, as the case may be. A proceeding seeking to recover possession of real property by reason of the termination of the term fixed in the lease pursuant to a provision contained therein giving the landlord the right to terminate the time fixed for occupancy under such agreement if he deem the tenant objectionable, shall not be maintainable unless the landlord shall by competent evidence establish to the satisfaction of the court that the tenant is objectionable.
2. The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days' notice requiring, in the alternative, the payment of the rent, or the possession of the premises, has been served upon him as prescribed in [section seven hundred thirty-five](#) of this article. Any person succeeding to the landlord's interest in the premises may proceed under this subdivision for rent due his predecessor in interest if he has a right thereto. Where a tenant dies during the term of the lease and rent due has not been paid and the apartment is occupied by a person with a claim to possession, a proceeding may be commenced naming the occupants of the apartment seeking a possessory judgment only as against the estate. Entry of such a judgment shall be without prejudice to the possessory claims of the occupants, and any warrant issued shall not be effective as against the occupants.
3. The tenant, in a city defaults in the payment, for sixty days after the same shall be payable, of any taxes or assessments levied on the premises which he has agreed in writing to pay pursuant to the agreement under which the premises are held, and a demand for payment has been made, or at least three days' notice in writing, requiring in the alternative the payment thereof and of any interest and penalty thereon, or the possession of the premises, has been served upon him, as prescribed in [section 735](#). An acceptance of any rent shall not be construed as a waiver of the agreement to pay taxes or assessments.
4. The tenant, under a lease for a term of three years or less, has during the term taken the benefit of an insolvency statute or has been adjudicated a bankrupt.

5. The premises, or any part thereof, are used or occupied as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade or manufacture, or other illegal business.

6. The tenant, in a city having a population of one million or more, removes the batteries or otherwise disconnects or makes inoperable an installed smoke or fire detector which the tenant has not requested be moved from its location so as not to interfere with the reasonable use of kitchen facilities provided that the court, upon complaint thereof, has previously issued an order of violation of the provisions heretofore stated and, subsequent to the thirtieth day after service of such order upon the tenant, an official inspection report by the appropriate department of housing preservation and development is presented, in writing, indicating non-compliance herewith; provided further, that the tenant shall have the additional ten day period to cure such violation in accordance with the provisions of [subdivision four of section seven hundred fifty-three](#) of this chapter.

#### **Credits**

(Added L.1962, c. 312, § 21. Amended L.1963, c. 305, § 1; L.1982, c. 739, § 1; L.1985, c. 699, § 1; [L.2019, c. 36, pt. M, § 12, eff. June 14, 2019](#).)

McKinney's R. P. A. P. L. § 711, NY RP ACT & PRO § 711

Current through L.2019, chapter 139. Some statute sections may be more current, see credits for details.



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McKinney's RPAPL § 731

§ 731. Commencement; notice of petition

Effective: June 14, 2019

[Currentness](#)

1. The special proceeding prescribed by this article shall be commenced by petition and a notice of petition. A notice of petition may be issued only by an attorney, judge or the clerk of the court; it may not be issued by a party prosecuting the proceeding in person.
2. Except as provided in [section 732](#), relating to a proceeding for non-payment of rent, the notice of petition shall specify the time and place of the hearing on the petition and state that if respondent shall fail at such time to interpose and establish any defense that he may have, he may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.
3. In the city of New York, when the petitioner seeks to make an application pursuant to [subdivision two of section seven hundred forty-five](#) of this article, the notice of petition shall advise the respondent of the requirements of [subdivision two of section seven hundred forty-five](#) of this article.
4. In an action premised on a tenant defaulting in the payment of rent, payment to the landlord of the full amount of rent due, when such payment is made at any time prior to the hearing on the petition, shall be accepted by the landlord and renders moot the grounds on which the special proceeding was commenced.

**Credits**

(Added L.1962, c. 312, § 21. Amended L.1965, c. 910, § 2; [L.1994, c. 563, § 10](#); [L.1997, c. 116, § 35, eff. Oct. 18, 1997](#); [L.2019, c. 36, pt. M, § 13, eff. June 14, 2019](#).)

McKinney's R. P. A. P. L. § 731, NY RP ACT & PRO § 731

Current through L.2019, chapter 144. Some statute sections may be more current, see credits for details.

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McKinney's RPAPL § 743

§ 743. Answer

Effective: July 14, 2019

[Currentness](#)

Except as provided in [section seven hundred thirty-two](#) of this article, relating to a proceeding for non-payment of rent, at the time when the petition is to be heard the respondent, or any person in possession or claiming possession of the premises, may answer, orally or in writing. If the answer is oral the substance thereof shall be recorded by the clerk or, if a particular court has no clerk, by the presiding judge or justice of such court, and maintained in the case record. The answer may contain any legal or equitable defense, or counterclaim. The court may render affirmative judgment for the amount found due on the counterclaim.

**Credits**

(Added L.1962, c. 312, § 21. Amended 1965, c. 910, § 10; [L.2003, c. 644, § 1, eff. Dec. 6, 2003](#); [L.2019, c. 36, pt. M, § 16, eff. July 14, 2019](#).)

McKinney's R. P. A. P. L. § 743, NY RP ACT & PRO § 743

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McKinney's RPAPL § 745

§ 745. Trial

Effective: July 14, 2019

[Currentness](#)

1. Where triable issues of fact are raised, they shall be tried by the court unless, at the time the petition is noticed to be heard, a party demands a trial by jury, in which case trial shall be by jury. At the time when issue is joined the court, at the request of either party shall adjourn the trial of the issue, not less than fourteen days, except by consent of all parties. A party's second or subsequent request for adjournment shall be granted in the court's sole discretion.

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, which may be established without the use of expert testimony. The court shall not order deposit or payment of use and occupancy where the respondent can establish, to the satisfaction of the court that respondent has properly interposed one of the following defenses or established the following grounds:

(i) the petitioner is not a proper party to the proceeding pursuant to [section seven hundred twenty-one](#) of this article; or

(ii)(A) actual eviction, or (B) actual partial eviction, or (C) constructive eviction; and respondent has quit the premises; or

(iii) a defense pursuant to [section one hundred forty-three-b of the social services law](#); or

(iv) a defense based upon the existence of hazardous or immediately hazardous violations of the housing maintenance code in the subject apartment or common areas; or

(v) a colorable defense of rent overcharge; or

(vi) a defense that the unit is in violation of the building's certificate of occupancy or is otherwise illegal under the multiple dwelling law or the New York city housing maintenance code; or

(vii) the court lacks personal jurisdiction over the respondent.

Two adjournments shall not include an adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel made on a return date of the proceeding. Such rent or use and occupancy sums shall be deposited with the clerk of the court or paid to such other person or entity, including the petitioner or an agent designated by the division of housing and community renewal, as the court shall direct or shall be expended for such emergency repairs as the court shall approve.

(b) In establishing the monthly amount to be deposited, the court shall not exceed the amount of the regulated rent for the unit under any state, local or federal regulatory scheme, or the amount of the tenant's rent share under a state, local or federal subsidy program, or the amount of the tenant's share under an expired subsidy, unless the tenant has entered into an enforceable new agreement to pay the full lease rent.

(c)(i) The court shall not require the respondent to deposit the portion of rent or use and occupancy, if any, which is payable by direct government housing subsidy, any currently effective senior citizen increase exemption authorized pursuant to [sections four hundred sixty-seven-b](#) and [four hundred sixty-seven-c of the real property tax law](#), direct payment of rent or a two-party check issued by a social services district or the office of temporary and disability assistance, or rental assistance that is payable pursuant to court orders issued in litigation commenced in nineteen hundred eighty-seven in a proceeding in which the amount of shelter allowance is at issue on behalf of recipients of family assistance. In the event the respondent or other adult member of the respondent's household receives public assistance pursuant to title three or title ten of article five of the social services law, the respondent shall, when directed by the court to deposit rent and use or occupancy, only be required to deposit with the court the amount of the shelter allowance portion of the public assistance grant issued by the office of temporary and disability assistance or a social services district. In the event the respondent receives a fixed income, including but not limited to, social security income, supplemental security income pursuant to title sixteen of the federal social security act and title six of article five of the social services law, or pension income, the respondent shall not be required to deposit more than thirty percent of the monthly payments.

(ii) Any sum required to be deposited with the court pursuant to this subdivision shall be offset by payment, if any, made by the respondent pursuant to [section two hundred thirty-five-a of the real property law](#) or [section three hundred two-c of the multiple dwelling law](#).

(d)(i) In the event that the respondent fails to deposit with the court or pay, as the case may be, upon the due date, all rent or use and occupancy which may become due subsequent to the issuance of the court's deposit order, the court upon an application of the petitioner may order an immediate trial of the issues raised in the respondent's answer. An "immediate trial" shall mean that no further adjournments of the proceeding upon respondent's sole request shall be granted, the case shall be assigned by the administrative judge to a trial ready part and such trial shall commence as soon as practicable and continue day to day until completed.

(ii) The court may extend any time provided for such deposit under this subdivision for good cause shown.

(iii) Upon the entry of the final judgment in the proceeding such deposits shall be credited against any judgment amount awarded and, without further order of the court, be paid in accordance with the judgment.

(e) The court may dismiss any summary proceeding without prejudice and with costs to the respondent by reason of excessive adjournments requested by the petitioner.

(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.

#### **Credits**

(Added L.1962, c. 312, § 21. Amended L.1983, c. 403, § 40; [L.1997, c. 116, § 36, eff. Oct. 18, 1997](#); [L.2007, c. 601, § 21, eff. Aug. 15, 2007](#); [L.2019, c. 36, pt. M, § 17, eff. July 14, 2019](#).)

McKinney's R. P. A. P. L. § 745, NY RP ACT & PRO § 745

Current through L.2019, chapter 139. Some statute sections may be more current, see credits for details.

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Real Property Actions and Proceedings Law (Refs & Annos)  
Chapter 81. Of the Consolidated Laws (Refs & Annos)  
Article 7. Summary Proceeding to Recover Possession of Real Property (Refs & Annos)

McKinney's RPAPL § 749

§ 749. Warrant

Effective: June 14, 2019

[Currentness](#)

1. Upon rendering a final judgment for petitioner, the court shall issue a warrant directed to the sheriff of the county or to any constable or marshal of the city in which the property, or a portion thereof, is situated, or, if it is not situated in a city, to any constable of any town in the county, describing the property, stating the earliest date upon which execution may occur pursuant to the order of the court, and commanding the officer to remove all persons named in the proceeding, provided 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.

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

(b) Such officer shall check such property for the presence of a companion animal prior to executing such warrant and coordinate with such person or persons to be evicted or dispossessed to provide for the safe and proper care of such companion animal or animals. If such persons to be evicted or dispossessed cannot be found after reasonable efforts are made to coordinate with such persons, or if such person is found and declines to take possession of such animal or animals, such officer shall promptly coordinate with the duly incorporated humane society, duly incorporated society for the prevention of cruelty to animals or pound maintained by or under contract or agreement with the municipality in which the animal was found for the safe removal of such companion animal or animals. Such officer shall make reasonable efforts to provide notice to the person or persons to be evicted regarding the location of such companion animal or animals. Disposition of such companion animal or animals shall be in accordance with the provisions of [sections one hundred seventeen](#) and [three hundred seventy-four of the agriculture and markets law](#), and all other laws, rules and regulations that govern the humane treatment of animals. "Companion animal," as used in this paragraph, shall have the same meaning as provided in [subdivision five of section three hundred fifty of the agriculture and markets law](#).

3. Nothing contained herein shall deprive the court of the power to stay or vacate such warrant for good cause shown prior to the execution thereof, or to restore the tenant to possession subsequent to execution of the warrant. In a judgment for non-payment of rent, the court shall vacate a warrant upon tender or deposit with the court of the full rent due at any time prior to its execution, unless the petitioner establishes that the tenant withheld the rent due in bad faith. Petitioner may recover by action any sum of money which was payable at the time when the special proceeding was commenced and the reasonable value of the use and occupation to the time when the warrant was issued, for any period of time with respect to which the agreement does not make any provision for payment of rent.

**Credits**

(Added L.1962, c. 312, § 21. Amended L.1963, c. 891; L.1964, c. 404; L.1966, c. 750, § 1; L.1975, c. 192, § 1; [L.2009, c. 256, § 1, eff. Aug. 27, 2009](#); [L.2018, c. 205, § 1, eff. Aug. 23, 2018](#); [L.2019, c. 36, pt. M, § 19, eff. June 14, 2019](#).)

McKinney's R. P. A. P. L. § 749, NY RP ACT & PRO § 749

Current through L.2019, chapter 144. Some statute sections may be more current, see credits for details.

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Real Property Actions and Proceedings Law (Refs & Annos)  
Chapter 81. Of the Consolidated Laws (Refs & Annos)  
Article 7. Summary Proceeding to Recover Possession of Real Property (Refs & Annos)

McKinney's RPAPL § 753

§ 753. Stay in premises occupied for dwelling purposes

Effective: June 14, 2019

[Currentness](#)

1. In a proceeding to recover the possession of premises occupied for dwelling purposes, other than a room or rooms in an hotel, lodging house, or rooming house, 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 are used for dwelling purposes; 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. 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. In an application brought outside a city of one million or more, the term "neighborhood" shall be construed to mean (i) the same town, village or city where the applicant now resides, or (ii) if the applicant has school aged children residing with him or her, "neighborhood" shall mean the school district where such children attend or are eligible to attend.

2. Such stay shall be granted and continue effective only upon the condition that the person against whom the judgment is entered shall make a deposit in court of the entire amount, or such installments thereof from time to time as the court may direct, for the occupation of the premises for the period of the stay, at the rate for which the applicant was liable as rent for the month immediately prior to the expiration of the applicant's term or tenancy, plus such additional amount, if any, as the court may determine to be the difference between such rent and the reasonable rent or value of the use and occupation of the premises; such deposit may also include all rent unpaid by the occupant prior to the period of the stay. The amount of such deposit shall be determined by the court upon the application for the stay and such determination shall be final and conclusive in respect to the amount of such deposit, and the amount thereof shall be paid into court, in such manner and in such installments, if any, as the court may direct. A separate account shall be kept of the amount to the credit of each proceeding, and all such payments shall be deposited in a bank or trust company and shall be subject to the check of the clerk of the court, if there be one, or otherwise of the court. The clerk of the court, if there be one, and otherwise the court shall pay to the landlord or the landlord's duly authorized agent, the amount of such deposit in accordance with the terms of the stay or the further order of the court.

3. The provisions of this section shall not apply to a proceeding to recover possession upon the ground that an occupant is holding over and is objectionable if the landlord shall establish by competent evidence to the satisfaction of the court that such occupant is objectionable.

4. In the event that such proceeding is based upon a claim that the tenant or lessee has breached a provision of the lease, the court shall grant a thirty day stay of issuance of the warrant, during which time the respondent may correct such breach.

5. Any provision of a lease or other agreement whereby a lessee or tenant waives any provision of this section shall be deemed against public policy and void.

**Credits**

(Added L.1962, c. 312, § 21. Amended L.1963, c. 305, § 4; L.1982, c. 870, §§ 1, 2; [L.2019, c. 36, pt. M, § 21, eff. June 14, 2019.](#))

McKinney's R. P. A. P. L. § 753, NY RP ACT & PRO § 753

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McKinney's Consolidated Laws of New York Annotated  
Real Property Actions and Proceedings Law (Refs & Annos)  
Chapter 81. Of the Consolidated Laws (Refs & Annos)  
Article 7. Summary Proceeding to Recover Possession of Real Property (Refs & Annos)

McKinney's RPAPL § 768

§ 768. Unlawful eviction

Effective: June 14, 2019

[Currentness](#)

1. (a) It shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease with respect to such dwelling except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or a governmental vacate order by:

(i) using or threatening the use of force to induce the occupant to vacate the dwelling unit; or

(ii) engaging in a course of conduct which interferes with or is intended to interfere with or disturb the comfort, repose, peace or quiet of such occupant in the use or occupancy of the dwelling unit, to induce the occupant to vacate the dwelling unit including, but not limited to, the interruption or discontinuance of essential services; or

(iii) engaging or threatening to engage in any other conduct which prevents or is intended to prevent such occupant from the lawful occupancy of such dwelling unit or to induce the occupant to vacate the dwelling unit including, but not limited to, removing the occupant's possessions from the dwelling unit, removing the door at the entrance to the dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable, or changing the lock on such entrance door without supplying the occupant with a key.

(b) It shall be unlawful for an owner of a dwelling unit to fail to take all reasonable and necessary action to restore to occupancy an occupant of a dwelling unit who either vacates, has been removed from or is otherwise prevented from occupying a dwelling unit as the result of any of the acts or omissions prescribed in paragraph (a) of this subdivision and to provide to such occupant a dwelling unit within such dwelling suitable for occupancy, after being requested to do so by such occupant or the representative of such occupant, if such owner either committed such unlawful acts or omissions or knew or had reason to know of such unlawful acts or omissions, or if such acts or omissions occurred within seven days prior to such request.

2. Criminal and civil penalties. (a) Any person who intentionally violates or assists in the violation of any of the provisions of this section shall be guilty of a class A misdemeanor. Each such violation shall be a separate and distinct offense.

(b) Such person shall also be subject to a civil penalty of not less than one thousand nor more than ten thousand dollars for each violation. Each such violation shall be a separate and distinct offense. In the case of a failure to take all reasonable and necessary action to restore an occupant pursuant to paragraph (b) of subdivision one of this section, such person shall be subject



to an additional civil penalty of not more than one hundred dollars per day from the date on which restoration to occupancy is requested until the date on which restoration occurs, provided, however, that such period shall not exceed six months.

**Credits**

(Added [L.2019, c. 36, pt. M, § 24, eff. June 14, 2019.](#))

McKinney's R. P. A. P. L. § 768, NY RP ACT & PRO § 768

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McKinney's Consolidated Laws of New York Annotated  
General Obligations Law (Refs & Annos)  
Chapter 24-a. Of the Consolidated Laws (Refs & Annos)  
Article 7. Obligations Relating to Property Received as Security  
Title 1. Money Deposited as Security to be Held in Trust in Certain Cases (Refs & Annos)

McKinney's General Obligations Law § 7-108

§ 7-108. Deposits made by tenants of non-rent stabilized dwelling units

Effective: July 14, 2019

[Currentness](#)

1. This section shall apply to all dwelling units in residential premises, unless such dwelling unit is specifically referred to in [section 7-107](#) of this title.

1-a. Except in dwelling units subject to the city rent and rehabilitation law or the emergency housing rent control law, continuing care retirement communities licensed pursuant to article forty-six or forty-six-A of the public health law, assisted living providers licensed pursuant to article forty-six-B of the public health law, adult care facilities licensed pursuant to article seven of the social services law, senior residential communities that have submitted an offering plan to the attorney general, or not-for-profit independent retirement communities that offer personal emergency response, housekeeping, transportation and meals to their residents:

(a) No deposit or advance shall exceed the amount of one month's rent under such contract.

(b) The entire amount of the deposit or advance shall be refundable to the tenant upon the tenant's vacating of the premises except for an amount lawfully retained for the reasonable and itemized costs due to non-payment of rent, damage caused by the tenant beyond normal wear and tear, non-payment of utility charges payable directly to the landlord under the terms of the lease or tenancy, and moving and storage of the tenant's belongings. The landlord may not retain any amount of the deposit for costs relating to ordinary wear and tear of occupancy or damage caused by a prior tenant.

(c) After initial lease signing but before the tenant begins occupancy, the landlord shall offer the tenant the opportunity to inspect the premises with the landlord or the landlord's agent to determine the condition of the property. If the tenant requests such inspection, the parties shall execute a written agreement before the tenant begins occupancy of the unit attesting to the condition of the property and specifically noting any existing defects or damages. Upon the tenant's vacating of the premises, the landlord may not retain any amount of the deposit or advance due to any condition, defect, or damage noted in such agreement. The agreement shall be admissible as evidence of the condition of the premises at the beginning of occupancy only in proceedings related to the return or amount of the security deposit.

(d) Within a reasonable time after notification of either party's intention to terminate the tenancy, unless the tenant terminates the tenancy with less than two weeks' notice, the landlord shall notify the tenant in writing of the tenant's right to request an

inspection before vacating the premises and of the tenant's right to be present at the inspection. If the tenant requests such an inspection, the inspection shall be made no earlier than two weeks and no later than one week before the end of the tenancy. The landlord shall provide at least forty-eight hours written notice of the date and time of the inspection. After the inspection, the landlord shall provide the tenant with an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the tenant's deposit. The tenant shall have the opportunity to cure any such condition before the end of the tenancy. Any statement produced pursuant to this paragraph shall only be admissible in proceedings related to the return or amount of the security deposit.

(e) Within fourteen days after the tenant has vacated the premises, the landlord shall provide the tenant with an itemized statement indicating the basis for the amount of the deposit retained, if any, and shall return any remaining portion of the deposit to the tenant. 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.

(f) In any action or proceeding disputing the amount of any amount of the deposit retained, the landlord shall bear the burden of proof as to the reasonableness of the amount retained.

(g) Any person who violates the provisions of this subdivision shall be liable for actual damages, provided a person found to have willfully violated this subdivision shall be liable for punitive damages of up to twice the amount of the deposit or advance.

2. (a) In circumstances where any sum of money or any other thing of value deposited as security for the full performance by a tenant of the terms of his lease is not turned over to a successor in interest pursuant to [section 7-105](#) of this chapter, the grantee or assignee of the leased premises shall also be liable to such tenant, upon conveyance of such leased premises, for the repayment of any such security deposit, plus accrued interest, as to which such grantee or assignee has actual knowledge.

(b) For purposes of this section, a grantee or assignee of the leased premises shall be deemed to have actual knowledge of any security deposit which is (i) deposited at any time during the six months immediately prior to closing or other transfer of title in any banking organization pursuant to [subdivision two-a of section 7-103](#) of this chapter, or (ii) acknowledged in any lease in effect at the time of closing or other transfer of title, or (iii) supported by documentary evidence provided by the tenant or lessee as set forth in paragraph (c) of this subdivision.

(c) With respect to any leased premises for which there is no record of security deposit pursuant to subparagraph (i) or (ii) of paragraph (b) of this subdivision, the grantee or assignee of the leased premises shall be obligated to notify the tenant thereof in writing no later than thirty days following the closing or other transfer of title to the fact that there is no record of a security deposit for said leased premises and that unless the tenant within thirty days after receiving notice provides him or it with documentary evidence of deposit, the tenant shall have no further recourse against him or it for said security deposit. For purposes of this subdivision, "documentary evidence" shall be limited to any cancelled check drawn to the order of, a receipt from, or a lease signed by any predecessor in interest, if such predecessor's interest in the leased premises existed on or after the effective date of this section. Except as otherwise provided by subparagraphs (i) and (ii) of paragraph (b) of this subdivision the grantee or assignee of the leased premises shall not be charged with actual knowledge of the security deposit where the tenant fails within the thirty-day period to provide said documentary evidence. Where the grantee or assignee of the leased premises fails to notify the tenant as specified in this paragraph within thirty days following the closing or other transfer of title, the tenant shall be entitled to produce documentary evidence at any time.

(d) The grantee or assignee of the leased premises shall have the right to demand that the grantor or assignor thereof establish an escrow account equal to one month's rent for any leased premises for which there is no record of a security deposit pursuant to paragraph (b) of this subdivision to be used for the purpose of holding harmless the grantee or assignee in any case where, at a date subsequent to the closing or other transfer of title, the tenant gives notice pursuant to paragraph (c) of this subdivision.

(e) The liability of a receiver for payment of any security deposit plus accrued interest pursuant to this subdivision shall be limited to the amount of such deposit actually turned over to him or it pursuant to [subdivision one of section 7-105](#) of this chapter and to the operating income in excess of expenses generated during his or its period of receivership.

3. Any agreement by a lessee or tenant of a dwelling waiving or modifying his rights as set forth in this section shall be absolutely void.

#### **Credits**

(Added L.1984, c. 917, § 1. Amended [L.2019, c. 36, pt. M, § 25, eff. July 14, 2019.](#))

McKinney's General Obligations Law § 7-108, NY GEN OBLIG § 7-108

Current through L.2019, chapter 144. Some statute sections may be more current, see credits for details.