

NEW YORK STATE
REAL PROPERTY ACTIONS AND PROCEEDINGS LAW
(RPAPL)

ARTICLE 7

SUMMARY PROCEEDING TO RECOVER POSSESSION OF REAL PROPERTY

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Sec. 701. JURISDICTION; COURTS; VENUE.

- 1. A special proceeding to recover real property may be maintained in a county court, the court of a police justice of the village, a justice court, a court of civil jurisdiction in a city, or a district court.
- 2. The place of trial of the special proceeding shall be within the jurisdictional area of the court in which the real property or a portion thereof is situated; except that where the property is located in an incorporated village which includes parts of two or more towns the proceeding may be tried by a justice of the peace of any such town who keeps an office in the village.

Sec. 711. GROUNDS WHERE LANDLORD-TENANT RELATIONSHIP EXISTS.

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; he shall not 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 demand of the rent has been made, or at least three days' notice in writing requiring, in the alternative, the payment of the rent, or the possession of the premises, has been served upon him as prescribed in section 735. The landlord may waive his right to proceed upon this ground only by an express consent in writing to permit the tenant to continue in possession, which consent shall be revocable at will, in which event the landlord shall be deemed to have waived his right to summary dispossession for nonpayment of rent accruing during the time said consent remains unrevoked. 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 no representative or person has taken possession of the premises and no administrator or executor has been appointed, the proceeding may be commenced after three months from the date of death of the tenant by joining the surviving spouse or if there is none, then one of the surviving issue or if there is none, then any one of the distributees.
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.

Sec. 713. GROUNDS WHERE NO LANDLORD-TENANT RELATIONSHIP EXISTS.

A special proceeding may be maintained under this article after a ten-day notice to quit has been served upon the respondent in the manner prescribed in section 735, upon the following grounds:

1. The property has been sold by virtue of an execution against him or a person under whom he claims and a title under the sale has been perfected.
2. He occupies or holds the property under an agreement with the owner to occupy and cultivate it upon shares or for a share of the crops and the time fixed in the agreement for his occupancy has expired.
3. He or the person to whom he has succeeded has intruded into or squatted upon the property without the permission of the person entitled to possession and the occupancy has continued without permission or permission has been revoked and notice of the revocation given to the person to be removed.
4. The property has been sold for unpaid taxes and a tax deed has been executed and delivered to the purchaser and he or any subsequent grantee, distributee or devisee claiming title through such purchaser has complied with all provisions of law precedent to the right to possession and the time of redemption by the former owner or occupant has expired.
5. The property has been sold in foreclosure and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the civil practice law and rules, has been exhibited to him.
6. He is the tenant of a life tenant of the property, holding over and continuing in possession of the property after the termination of the estate of such life tenant without the permission of the person entitled to possession of the property upon termination of the life estate.
7. He is a licensee of the person entitled to possession of the property at the time of the license, and (a) his license has expired, or (b) his license has been revoked by the licensor, or (c) the licensor is no longer entitled to possession of the property; provided, however, that a mortgagee or vendee in possession shall not be deemed to be a licensee within the meaning of this subdivision.

8. The owner of real property, being in possession of all or a part thereof, and having voluntarily conveyed title to the same to a purchaser for value, remains in possession without permission of the purchaser.
9. A vendee under a contract of sale, the performance of which is to be completed within ninety days after its execution, being in possession of all or a part thereof, and having defaulted in the performance of the terms of the contract of sale, remains in possession without permission of the vendor.
10. The person in possession has entered the property or remains in possession by force or unlawful means and he or his predecessor in interest was not in quiet possession for three years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer; no notice to quit shall be required in order to maintain a proceeding under this subdivision.
11. The person in possession entered into possession as an incident to employment by petitioner, and the time agreed upon for such possession has expired or, if no such time was agreed upon, the employment has been terminated; no notice to quit shall be required in order to maintain the proceeding under this subdivision.

Sec. 713a. SPECIAL PROCEEDING FOR TERMINATION OF ADULT HOME AND RESIDENCE FOR ADULTS ADMISSION AGREEMENTS.

A special proceeding to terminate the admission agreement of a resident of an adult home or residence for adults and discharge a resident therefrom may be maintained in a court of competent jurisdiction pursuant to the provisions of section four hundred sixty-one-h of the social services law and nothing contained in such section shall be construed to create a relationship of landlord and tenant between the operator of an adult home or residence for adults and a resident thereof.

Sec. 715. GROUNDS AND PROCEDURE WHERE USE OR OCCUPANCY IS ILLEGAL.

1. An owner or tenant, including a tenant of one or more rooms of an apartment house, tenement house or multiple dwelling, of any premises within two hundred feet from other demised real property used or occupied in whole or in part as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade, business or manufacture, or any domestic corporation organized for the suppression of vice, subject to or which submits to visitation by the state department of social services and possesses a certificate from such department of

such fact and of conformity with regulations of the department, or any duly authorized enforcement agency of the state or of a subdivision thereof, under a duty to enforce the provisions of the penal law or of any state or local law, ordinance, code, rule or regulation relating to buildings, may serve personally upon the owner or landlord of the premises so used or occupied, or upon his agent, a written notice requiring the owner or landlord to make an application for the removal of the person so using or occupying the same. If the owner or landlord or his agent does not make such application within five days thereafter; or, having made it, does not in good faith diligently prosecute it, the person, corporation or enforcement agency giving the notice may bring a proceeding under this article for such removal as though the petitioner were the owner or landlord of the premises, and shall have precedence over any similar proceeding thereafter brought by such owner or landlord or to one theretofore brought by him and not prosecuted diligently and in good faith. Proof of the ill repute of the demised premises or of the inmates thereof or of those resorting thereto shall constitute presumptive evidence of the unlawful use of the demised premises required to be stated in the petition for removal. Both the person in possession of the property and the owner or landlord shall be made respondents in the proceeding.

2. For purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.05, 230.20, 230.25, 230.30 or 230.40 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.
3. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 225.00, 225.05, 225.10, 225.15, 225.20, 225.30, 225.32, 225.35 or 225.40 of the penal law, arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owner's knowledge of the same.
4. A court granting a petition pursuant to this section may, in addition to any other order provided by law, make an order imposing and requiring the payment by the respondent of a civil penalty not exceeding five thousand dollars to the municipality in which the subject premises is located and, the payment of reasonable attorneys fees and the costs of the proceeding to the petitioner. In any such case multiple respondents shall be jointly and severally liable for any payment so ordered and the amounts of such payments shall constitute a lien upon the subject realty.

5. For the purposes of a proceeding under this section, an enforcement agency of the state or of a subdivision thereof, which may commence a proceeding under this section, may subpoena witnesses, compel their attendance, examine them under oath before himself or a court and require that any books, records, documents or papers relevant or material to the inquiry be turned over to him for inspection, examination or audit, pursuant to the civil practice law and rules. If a person subpoenaed to attend upon such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper, when ordered to do so by the officer conducting such inquiry, he shall be guilty of a class B misdemeanor.

Sec. 721. PERSON WHO MAY MAINTAIN PROCEEDING. THE PROCEEDING MAY BE BROUGHT BY:

1. The landlord or lessor.
2. The reversioner or remainderman next entitled to possession of the property upon the termination of the estate of a life tenant, where a tenant of such life tenant holds over.
3. The purchaser upon the execution or foreclosure sale, or the purchaser on a tax sale to whom a deed has been executed and delivered or any subsequent grantee, distributee or devisee claiming title through such purchaser.
4. The person forcibly put out or kept out.
5. The person with whom, as owner, the agreement was made, or the owner of the property occupied under an agreement to cultivate the property upon shares or for a share of the crops.
6. The person lawfully entitled to the possession of property intruded into or squatted upon.
7. The person entitled to possession of the property occupied by a licensee who may be dispossessed.
8. The person, corporation or law enforcement agency authorized by this article to proceed to remove persons using or occupying premises for illegal purposes.
9. The receiver of a landlord, purchaser or other person so entitled to apply, when authorized by the court.
10. The lessee of the premises, entitled to possession.
11. Not-for-profit corporations, and tenant associations authorized in writing by the commissioner of the department of the city of New York charged with enforcement of the housing maintenance code of such city to manage residential

real property owned by such city.

Sec. 731. COMMENCEMENT; NOTICE OF PETITION.

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.

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

If the appropriate appellate division shall so provide in the rules of a particular court, this section shall be applicable in such court in a proceeding brought on the ground that the respondent has defaulted in the payment of rent; in such event, all other provisions of this article shall remain applicable in such proceeding, except to the extent inconsistent with the provisions of this section.

1. The notice of petition shall be returnable before the clerk, and shall be made returnable within five days after its service.
2. If the respondent answers, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination.
3. If the respondent fails to answer within five days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, the judge shall render judgment in favor of the petitioner and may stay the issuance of the warrant for a period of not to exceed ten days from the date of service.
4. The notice of petition shall advise the respondent of the requirements of subdivisions 1, 2 and 3, above.

Sec. 733. TIME OF SERVICE; ORDER TO SHOW CAUSE.

1. Except as provided in section 732, relating to a proceeding

for non-payment of rent, the notice of petition and petition shall be served at least five and not more than twelve days before the time at which the petition is noticed to be heard.

2. The court may grant an order to show cause to be served in lieu of a notice of petition. If the special proceeding is based upon the ground specified in subdivision 1 of section 711, and the order to show cause is sought on the day of the expiration of the lease or the next day thereafter, it may be served at a time specified therein which shall be at least two hours before the hour at which the petition is to be heard.

Sec. 734. NOTICE OF PETITION; SERVICE ON THE WESTCHESTER COUNTY DEPARTMENT OF SOCIAL SERVICES.

In the county of Westchester, if the local legislative body has, by local law, opted to require such notice, service of a copy of the notice of petition and petition in any proceeding commenced against a residential tenant in accordance with the provisions of this article shall be served upon the county commissioner of social services. Such service shall be made by certified mail, return receipt requested, directed to an address set forth in the local law, or pursuant to the provisions of the civil practice law and rules. Such service shall be made at least five days before the return date set in the notice of petition. Proof of such service shall be filed with the court. Failure to serve the commissioner shall not be a jurisdictional defect, and shall not be a defense to a proceeding brought pursuant to the provisions of this article.

Sec. 735. MANNER OF SERVICE; FILING; WHEN SERVICE COMPLETE.

1. Service of the notice of petition and petition shall be made by personally delivering them to the respondent; or by delivering to and leaving personally with a person of suitable age and discretion who resides or is employed at the property sought to be recovered, a copy of the notice of petition and petition, if upon reasonable application admittance can be obtained and such person found who will receive it; or if admittance cannot be obtained and such person found, by affixing a copy of the notice and petition upon a conspicuous part of the property sought to be recovered or placing a copy under the entrance door of such premises; and in addition, within one day after such delivering to such suitable person or such affixing or placement, by mailing to the respondent both by registered or certified mail and by regular first class mail,
 - (a) if a natural person, as follows: at the property sought to be recovered, and if such property is not the place of residence of such person and if the petitioner shall have written information of the residence address of such person, at the last residence address as to which

the petitioner has such information, or if the petitioner shall have no such information, but shall have written information of the place of business or employment of such person, to the last business or employment address as to which the petitioner has such information; and

- (b) if a corporation, joint-stock or other unincorporated association, as follows: at the property sought to be recovered, and if the principal office or principal place of business of such corporation, joint stock or other unincorporated association is not located on the property sought to be recovered, and if the petitioner shall have written information of the principal office or principal place of business within the state, at the last place as to which petitioner has such information, or if the petitioner shall have no such information but shall have written information of any office or place of business within the state, to any such place as to which the petitioner has such information. Allegations as to such information as may affect the mailing address shall be set forth either in the petition, or in a separate affidavit and filed as part of the proof of service.

2. The notice of petition, or order to show cause, and petition together with proof of service thereof shall be filed with the court or clerk thereof within three days after;

- (a) personal delivery to respondent, when service has been made by that means, and such service shall be complete immediately upon such personal delivery; or
- (b) mailing to respondent, when service is made by the alternatives above provided, and such service shall be complete upon the filing of proof of service.

Sec. 741. CONTENTS OF PETITION.

The petition shall be verified by the person authorized by section seven hundred twenty-one to maintain the proceeding; or by a legal representative, attorney or agent of such person pursuant to subdivision (d) of section thirty hundred twenty of the civil practice law and rules. An attorney of such person may verify the petition on information and belief notwithstanding the fact that such person is in the county where the attorney has his office. Every petition shall:

1. State the interest of the petitioner in the premises from which removal is sought.
2. State the respondent's interest in the premises and his relationship to petitioner with regard thereto.
3. Describe the premises from which removal is sought.

4. State the facts upon which the special proceeding is based.
5. State the relief sought. The relief may include a judgment for rent due, and for a period of occupancy during which no rent is due, for the fair value of use and occupancy of the premises if the notice of petition contains a notice that a demand for such a judgment has been made.

Sec. 743. ANSWER.

Except as provided in section 732, 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 indorsed upon the petition. If the notice of petition was served at least eight days before the time at which it was noticed to be heard and it so demands, the answer shall be made at least three days before the time the petition is noticed to be heard and, if in writing, it shall be served within such time; whereupon any reply shall be served at least one day before such time. 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.

Sec. 745. TRIAL.

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, in its discretion at the request of either party and upon proof to its satisfaction by affidavit or orally that an adjournment is necessary to enable the applicant to procure his necessary witnesses, or by consent of all the parties who appear, may adjourn the trial of the issue, but not more than ten days, except by consent of all parties.
2. In the city of New York:
 - (a) In a summary proceeding upon the second request by the tenant for an adjournment, the court shall direct that the tenant post all sums as they become due for future rent and use and occupancy, which may be established without the use of expert testimony, unless waived by the court for good cause shown. Two adjournments shall not include an adjournment requested by a tenant unrepresented by counsel for the purpose of securing counsel made on the initial return date of the proceeding. Such future rent and use and occupancy sums shall be deposited with the clerk of the court or paid to such other person or entity, including the petitioner, as the court shall direct or shall be expended for such emergency repairs as the court shall approve.

- (b) In any adjournment of a summary proceeding, other than on consent or at the request of the petitioner, the court shall at the petitioner's request state on the record why for good cause shown it is not directing the tenant to pay or post all sums demanded pursuant to a lease or rental agreement in the proceeding as rent and use and occupancy.
- (c) The provisions of this subdivision shall not apply if the housing accommodation in question or the public areas pertaining thereto are charged with immediately hazardous violations of record as defined by the New York city housing maintenance code.
- (d) The court may dismiss any summary proceeding without prejudice and with costs to the respondent by reason of excessive adjournments requested by the petitioner.
- (e) The provisions of this subdivision shall not be construed as to deprive a tenant of a trial of any summary proceeding.

Sec. 747. JUDGMENT.

1. The court shall direct that a final judgment be entered determining the rights of the parties. The judgment shall award to the successful party the costs of the special proceeding.
2. The judgment shall not bar an action to recover the possession of real property. The judgment shall not bar an action, proceeding or counterclaim, commenced or interposed within sixty days of entry of the judgment, for affirmative equitable relief which was not sought by counterclaim in the proceeding because of the limited jurisdiction of the court.
3. If the proceeding is founded upon an allegation of forcible entry or forcible holding out the court may award to the successful party a fixed sum as costs, not exceeding fifty dollars, in addition to his disbursements.
4. The judgment, including such money as it may award for rent or otherwise, may be docketed in such books as the court maintains for recording the steps in a summary proceeding; unless a rule of the court, or the court by order in a given case, otherwise provides, such judgment need not be recorded or docketed in the books, if separately maintained, in which are docketed money judgments in an action.

Sec. 749. WARRANT.

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, and commanding the officer to remove all persons, and, except where the case is within section 715, to put the petitioner into full possession.

2. The officer to whom the warrant is directed and delivered shall give at least seventy-two hours 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 between the hours of sunrise and sunset.
3. The issuing of a warrant for the removal of a tenant cancels the agreement under which the person removed held the premises, and annuls the relation of landlord and tenant, but nothing contained herein shall deprive the court of the power to vacate such warrant for good cause shown prior to the execution thereof. 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.

Sec. 751. STAY UPON PAYING RENT OR GIVING UNDERTAKING;
DISCRETIONARY STAY OUTSIDE CITY OF NEW YORK.

The respondent may, at any time before a warrant is issued, stay the issuing thereof and also stay an execution to collect the costs, as follows:

1. Where the lessee or tenant holds over after a default in the payment of rent, or of taxes or assessments, he may effect a stay by depositing the amount of the rent due or of such taxes or assessments, and interest and penalty, if any thereon due, and the costs of the special proceeding, with the clerk of the court, or where the office of clerk is not provided for, with the court, who shall thereupon, upon demand, pay the amount deposited to the petitioner or his duly authorized agent; or by delivering to the court or clerk his undertaking to the petitioner in such sum as the court approves to the effect that he will pay the rent, or such taxes or assessments, and interest and penalty and costs within ten days, at the expiration of which time a warrant may issue, unless he produces to the court satisfactory evidence of the payment.
2. Where the lessee or tenant has taken the benefit of an insolvency statute or has been adjudicated a bankrupt, he may effect a stay by paying the costs of the special proceeding and by delivering to the court or clerk his undertaking to the petitioner in such a sum as the court approves to the effect that he will pay the rent of the premises as it has become or thereafter becomes due.

3. Where he continues in possession of real property which has been sold by virtue of an execution against his property, he may effect a stay by paying the costs of the special proceeding, and delivering to the court or clerk an affidavit that he claims the possession of the property by virtue of a right or title acquired after the sale or as guardian or trustee for another; together with his undertaking to the petitioner in such a sum as the court approves to the effect that he will pay any costs and damages which may be recovered against him in an action to recover the property brought against him by the petitioner within six months thereafter; and that he will not commit any waste upon or injury to the property during his occupation thereof.

4. (a) In a proceeding to recover the possession of premises outside the city of New York occupied for dwelling purposes, other than a room or rooms in an hotel, lodging house or rooming house, upon the ground that the occupant is holding over and continuing in possession of the premises after the expiration of his term and 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, 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 four months, if it appears that the premises described in the petition 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 him and that he made due and reasonable efforts to secure such other premises, or that by reason of other facts it would occasion extreme hardship to him or his family if the stay were not granted.

- (b) 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 he was liable as rent for the month immediately prior to the expiration of his 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 shall also include all rent unpaid by the occupant prior to 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 his duly authorized agent, the amount of such deposit in accordance with the terms of the stay or the further order of the court.

- (c) The provisions of this subdivision shall not apply to a proceeding where the petitioner shows to the satisfaction of the court that he desires in good faith to recover the premises for the purposes of demolishing same with the intention of constructing a new building, plans for which new building shall have been duly filed and approved by the proper authority; nor shall it apply to a proceeding to recover possession upon the ground that an occupant is holding over and is objectionable if the landlord shall establish to the satisfaction of the court that such occupant is objectionable.
- (d) Any provision of a lease or other agreement whereby a lessee or tenant waives any provision of this subdivision shall be deemed against public policy and void.
- (e) The provisions of this subdivision shall continue in effect only until September first, nineteen hundred sixty-seven.

Sec. 753. STAY WHERE TENANT HOLDS OVER IN PREMISES OCCUPIED FOR DWELLING PURPOSES IN CITY OF NEW YORK.

1. In a proceeding to recover the possession of premises in the city of New York occupied for dwelling purposes, other than a room or rooms in an hotel, lodging house, or rooming house, upon the ground that the occupant is holding over and continuing in possession of the premises after the expiration of his term and 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, 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 six months, 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 him and that he made due and reasonable efforts to secure such other premises, or that by reason of other facts it would occasion extreme hardship to him or his family if the stay were not granted.

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 he was liable as rent for the month immediately prior to the expiration of his 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 shall 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 his 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 where the petitioner shows to the satisfaction of the court that he desires in good faith to recover the premises for the purpose of demolishing same with the intention of constructing a new building, plans for which new building shall have been duly filed and approved by the proper authority; nor shall it apply to a proceeding to recover possession upon the ground that an occupant is holding over and is objectionable if the landlord shall establish 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 ten 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.

Sec. 755. STAY OF PROCEEDING OR ACTION FOR RENT UPON FAILURE TO MAKE REPAIRS.

1. (a) Upon proper proof that a notice or order to remove or cease a nuisance or a violation or to make necessary and proper repairs has been made by the municipal department charged with the enforcement of the multiple

dwelling law, the multiple residence law, or any other applicable local housing code, or officer or officers thereof charged with the supervision of such matters, if the condition against which such notice or order is directed is, in the opinion of the court, such as to constructively evict the tenant from a portion of the premises occupied by him, or is, or is likely to become, dangerous to life, health, or safety, the court before which the case is pending may stay proceedings to dispossess the tenant for non-payment of rent or any action for rent or rental value. In any such proceeding, on the question of fact, as to the condition of the dwelling the landlord or petitioner shall have the burden of disproving the condition of the dwelling as such condition is described in the notice or order.

- (b) Upon proper proof of the existence of a condition that is in the opinion of the court, such as to constructively evict the tenant from a portion of the premises occupied by him, or is or is, likely to become, dangerous to life, health, or safety, the court before which the case is pending may stay proceedings to dispossess the tenant for non-payment of rent, or any action for rent or rental value.
 - (c) The court shall in no case grant a stay where it appears that the condition against which the notice or order is directed has been created by the willful or negligent act of the tenant or his agent. Such stay shall continue in force, until an order shall be made by the court vacating it, but no order vacating such stay shall be made, except upon three days' notice of hearing to the tenant, or respondent, or his attorney, and proof that such notice or order has been complied with.
2. The tenant or respondent shall not be entitled to the stay unless he shall deposit with the clerk of the court the rent then due, which shall, for the purposes of this section, be deemed the same as the tenant was liable for during the preceding month or such as is reserved as the monthly rent in the agreement under which he obtained possession of the premises. The stay may be vacated upon three days' notice upon failure to deposit with the clerk the rent within five days after it is due, during the pendency of the proceeding or action.
 3. During the continuance of the stay, the court may direct, in its discretion, upon three days notice to all parties, the release to a contractor or materialman of all or such part of the moneys on deposit as shall be sufficient to pay bills properly presented by such contractor or materialman for the maintenance of and necessary repairs to the building (including but not limited to payments for fuel, electricity, gas, janitorial services and repairs necessary to remove violations), upon a showing by the tenant that the

landlord is not meeting his legal obligations therefor or direct such release to a municipal department to pay bills and expenses for such maintenance and repairs upon a showing that the landlord did not meet his legal obligation to provide such maintenance or perform repairs and that the department incurred expenses therefor. Upon the entry of an order vacating the stay the remaining money deposited shall be paid to the plaintiff or landlord or his duly authorized agent.

4. Neither party shall be entitled to any costs in any proceeding or action wherein the stay shall be granted except that costs may be awarded against the tenant or defendant in the discretion of the court in the event the condition complained of shall be found to be due to the willful act of the tenant or defendant, such costs, however, not to exceed the sum of twenty-five dollars.

Sec. 756. STAY OF SUMMARY PROCEEDINGS OR ACTIONS FOR RENT UNDER CERTAIN CONDITIONS.

In the event that utilities are discontinued in any part of a multiple dwelling because of the failure of the landlord or other person having control of said multiple dwelling to pay for utilities for which he may have contracted, any proceeding to dispossess a tenant from said building or an action against any tenant of said building for rent shall be stayed until such time as the landlord or person having control of said multiple dwelling pays the amount owing for said utilities and until such time as the utilities are restored to working order.

Sec. 761. REDEMPTION BY LESSEE.

Where the special proceeding is founded upon an allegation that a lessee holds over after a default in the payment of rent, and the unexpired term of the lease under which the premises are held exceeds five years at the time when the warrant is issued the lessee, his executor, administrator or assignee, at any time within one year after the execution of the warrant, unless by the terms of the lease such lessee shall have waived his right to redeem, or such lessee, executor, administrator or assignee shall have subsequently waived the right to redeem by a written instrument filed and recorded in the office in which the lease is recorded, or if not so recorded, in the office in which deeds are required to be recorded of the county in which the leased premises are located, may pay or tender to the petitioner, his heir, executor, administrator or assignee, or if, within five days before the expiration of the year he cannot be found with reasonable diligence within the city or town wherein the property or a portion thereof is situated, then to the court which issued the warrant, all rent in arrears at the time of the payment or tender with interest thereupon and the costs and charges incurred by the petitioner. Thereupon the person making the payment or tender shall be entitled to the possession of the demised premises under the lease and may hold and enjoy the same

according to the terms of the original demise, except as otherwise prescribed in section 765.

Sec. 763. REDEMPTION BY CREDITOR OF LESSEE.

In a case specified in section 761, a judgment creditor of the lessee whose judgment was docketed in the county before the precept was issued, or a mortgagee of the lease whose mortgage was duly recorded in the county before the precept was issued, unless by the terms of the lease the lessee shall have waived his right to redeem, or such lessee, or his executor, administrator or assignee shall have subsequently waived the right to redeem by a written instrument filed and recorded in the office in which the lease is recorded, or if not so recorded, in the office in which deeds are required to be recorded of the county in which the leased premises are located, before such judgment was docketed or such mortgage recorded, or such judgment creditor or mortgagee himself shall have waived in writing his right to redeem, may at any time before the expiration of one year after the execution of the warrant, unless a redemption has been made as prescribed in section 761, file with the court which issued the warrant a notice specifying his interest and the sum due to him, describing the premises, and stating that it is his intention to redeem as prescribed in this section. If a redemption is not made by the lessee, his executor, administrator or assignee within a year after the execution of the warrant, the person so filing a notice, or, if two or more persons have filed such notices the one who holds the first lien, at any time before two o'clock of the day, not a Sunday or a public holiday, next succeeding the last day of the year, may redeem for his own benefit in like manner as the lessee, his executor, administrator or assignee might have so redeemed. Where two or more judgment creditors or mortgagees have filed such notices, the holder of the second lien may so redeem at any time before two o'clock of the day, not a Sunday or a public holiday, next succeeding that in which the holder of the first lien might have redeemed; and the holder of the third and each subsequent lien may redeem in like manner at any time before two o'clock of the day, not a Sunday or a public holiday, next succeeding that in which his predecessor might have redeemed. But a second or subsequent redemption is not valid unless the person redeeming pays or tenders to each of his predecessors who has redeemed the sum paid by him to redeem and also the sum due upon his judgment or mortgage; or deposits those sums with the court for the benefit of his predecessor or predecessors.

Sec. 765. EFFECT OF REDEMPTION UPON LEASE.

Where a redemption is made, as prescribed in this article, the rights of the person redeeming are subject to a lease, if any, executed by the petitioner since the warrant was issued, so far that the new lessee, his assigns, undertenants, or other representatives, upon complying with the terms of the lease, may hold the premises so leased until twelve o'clock, noon, of the first day of May next succeeding the redemption. And in all other

respects, the person so redeeming, his assigns and representatives succeed to all the rights and liabilities of the petitioner under such a lease.

Sec. 767. ORDER OF REDEMPTION; LIABILITY OF PERSONS REDEEMING.

The person redeeming, as prescribed in this article or the owner of the property so redeemed, may present to the court which issued the warrant a petition setting forth the facts of the redemption and praying for an order establishing the rights and liabilities of the parties upon the redemption, whereupon the court must make an order requiring the other party to the redemption to show cause at a time and place therein specified why the prayer of the petition should not be granted. The order to show cause must be made returnable not less than two nor more than ten days after it is granted; and it must be served at least two days before it is returnable. Upon the return thereof, the court must hear the allegations and proofs of the parties and must make such a judgment as justice requires. The costs and expenses must be paid by the petitioner. The judgment, or a certified copy thereof, may be recorded in like manner as a deed. A person, other than the lessee, who redeems as prescribed in this article succeeds to all the duties and liabilities of the lessee accruing after the redemption as if he was named as lessee in the lease.

Sec. 769. JURISDICTION; COURT; VENUE.

1. A special proceeding by tenants of a dwelling in the city of New York or the counties of Nassau, Suffolk, Rockland and Westchester for a judgment directing the deposit of rents into court and their use for the purpose of remedying conditions dangerous to life, health or safety may be maintained in the civil court of the city of New York, the district court of the counties of Suffolk and Nassau and the county courts or city courts in the counties of Rockland and Westchester.
2. The place of trial of the special proceeding shall be within the county in which the real property or a portion thereof from which the rents issue is situated.