

**Columbia Law School**

---

**From the Selected Works of Hon. Gerald Lebovits**

---

January, 2011

# NY Residential Landlord-Tenant Law & Procedure—2011-2012 (4th ed. 2011)

Gerald Lebovits



Available at: [https://works.bepress.com/gerald\\_lebovits/204/](https://works.bepress.com/gerald_lebovits/204/)



# NEW YORK STATE BAR ASSOCIATION

*Serving the legal profession and the community since 1876*

## MEMBER LOGIN

username

Login

## JOIN / RENEW

Home

My NYSBA

Blogs

CLE

Committees

Events

For Attorneys

For the Community

Forums / Listserves

Membership

Practice Management

Publications / Forms

Attorney Reference Books

Bar Journal

Bar Journal @ HeinOnline  
(1928-2004)

Downloadable Forms

For Solos: Planning Ahead  
Guide

Guidelines for Arbitration

LegalEASE Informational  
Pamphlets (Series de  
Folletos de Servidumbres  
Legales)NY Law Digest online  
edition

Section Publications

Shop

Browse by Product  
Category

Browse by Topic

eProducts

State Bar News

NYSBA Substantive  
ReportsThe Practice of Law in New  
York State

## Sections

## Special Services

For the Media

Government Relations

Law, Youth &amp; Citizenship

Lawyer Assistance Program

Lawyer Referral Service

Pro Bono Affairs

Conference of Bar Leaders

THE NEW YORK  
BAR FOUNDATION

## Connect With NYSBA

Follow us on Twitter

Like us on Facebook

Join our LinkedIn group

Advanced Search Search Tips

Home → Publications / Forms → Shop

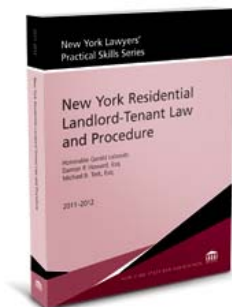
View Basket

Your Account

Order History

Check Out

New York Residential Landlord/Tenant Law &amp; Procedure-2011-12 (Order Now)



Non-Member Price: \$80.00

Member Price: \$72.00

Add to Shopping Cart

Stock Status: In Stock

Product Code: 41691

Author: Hon. Gerald Lebovits; Damon P. Howard, Esq.; Michael B. Terk, Esq.

## Product Description

## New York Residential Landlord-Tenant Law and Procedure

## Authors

**Hon. Gerald Lebovits**

New York City Criminal Court, Manhattan

**Damon P. Howard, Esq.**

Ephron-Mandel &amp; Howard, L.L.P., New York City

**Michael B. Terk, Esq.**

David Rozenholc &amp; Associates, New York City

## Key Benefits

- Understand the statutory framework for landlord-tenant summary proceedings
- Enhance your skills dealing with landlord-tenant disputes

## Product Description

New York residential landlord-tenant law is daunting to newcomers and the experienced alike, given its patchwork statutory framework, discordant case law, and emotion-laden disputes involving homes, money, and the charged landlord-tenant relationship. This practice guide introduces the fundamentals of residential landlord-tenant law and offers a guide to the procedural mechanics practitioners face in landlord-tenant disputes.

The 2011-2012 release is a complete reprint and is current through the 2011 New York State legislative session. This edition expands on the previous version with coverage of new case law and recent statutory developments. Written by Hon. Gerald Lebovits, Damon P. Howard, Esq., and Michael B. Terk, Esq., this publication introduces the substantive fundamentals of residential landlord-tenant law and offers a guide to the procedural mechanics practitioners face in landlord-tenant disputes. It offers practical advice on tenancy, summary proceedings, nonpayment proceedings, illegal lockout/unlawful eviction actions and proceedings, general and affirmative defenses to a residential landlord-tenant proceeding, and includes many forms.

## Info &amp; Pricing

PN: 41691 | 2011-2012 | 451 pages | softbound

**NYSBA Members \$72** | Non-Members \$80[View Table of Contents and Author Biographies](#)

Add to Shopping Cart

Printer Friendly

NEW YORK STATE BAR ASSOCIATION, ONE ELK STREET, ALBANY, NY 12207 PH: (518) 463-3200 FX: (518) 487-5517

Copyright © New York State Bar Association, 2011  
Privacy Statement | Terms of Use

# New York Lawyers' Practical Skills Series

## Residential Landlord-Tenant Law and Procedure

Honorable Gerald Lebovits\*  
Damon P. Howard, Esq.  
Michael B. Terk, Esq.

2011–2012

\* The authors of this edition thank Victor S. Faleck, Esq., for his co-authorship of the second (2009–2010) and third (2010–2011) editions and Dan M. Blumenthal, Esq., for his co-authorship of the first (2008–2009) edition. For their research on this fourth edition (2011–2012), the authors thank Judge Lebovits's judicial interns Daphne Bareket (Florida International), Alison Genova (Fordham), and Hailey B. Render (Syracuse). For their research on the third edition, the authors thank New York Law School students Deena M. Crimaldi and Alana Sliwinski. The authors also thank former Buffalo City Court judge, and now Supreme Court justice, Henry Nowak and now-retired court attorney/referee Mark Doane, Esq., for writing the section on the Buffalo Housing Court and for providing the Buffalo Housing Court forms. For their research on the second edition, the authors thank Judge Lebovits's judicial interns P. Alex de Richemont (Harvard), Mariella Soussou (Fordham), and Mary Jane Yoon (Columbia). For their research on the first edition, the authors thank Mary Ann Amodeo, Esq., Judge Lebovits's court attorney Alexandra Standish, Esq., and Judge Lebovits's judicial interns Alana Wrublin (Fordham) and Stephanie L. Torre (New York Law School).



## CONTENTS

|      |                                                                                                     |    |
|------|-----------------------------------------------------------------------------------------------------|----|
| I.   | Introduction.....                                                                                   | 1  |
| II.  | The Tenancy .....                                                                                   | 2  |
|      | A. Market Rentals .....                                                                             | 7  |
|      | 1. The Parties .....                                                                                | 8  |
|      | 2. The Premises .....                                                                               | 10 |
|      | 3. Rent.....                                                                                        | 11 |
|      | 4. Default .....                                                                                    | 12 |
|      | 5. Recording of Leases .....                                                                        | 14 |
|      | B. Rent Regulation .....                                                                            | 14 |
|      | 1. Rent-Controlled Premises.....                                                                    | 15 |
|      | 2. Rent-Stabilized Premises.....                                                                    | 18 |
|      | a. Rent Stabilization Overview.....                                                                 | 18 |
|      | b. Tenants' Rights Under Rent Stabilization .....                                                   | 19 |
|      | c. Exemptions From Rent Stabilization.....                                                          | 21 |
|      | 3. Rent-Overcharge Claims .....                                                                     | 23 |
|      | 4. Preferential Rents .....                                                                         | 25 |
|      | C. Public Housing.....                                                                              | 26 |
|      | D. Section 8 (Tenant and Project-Based) Housing.....                                                | 28 |
|      | 1. The Voucher Program .....                                                                        | 28 |
|      | 2. Project-Based Section 8.....                                                                     | 32 |
|      | E. Cooperatives and Condominiums.....                                                               | 33 |
|      | 1. Cooperatives Generally .....                                                                     | 33 |
|      | 2. Cooperative and Condominium Conversions.....                                                     | 34 |
|      | 3. Condominiums .....                                                                               | 36 |
|      | 4. Cooperative and Condominium Summary Proceedings in New York City .....                           | 36 |
|      | 5. Subsidized/Regulated Cooperatives Under the Private Housing Finance Law ...                      | 36 |
|      | a. Housing Development Fund Companies .....                                                         | 36 |
|      | b. Limited-Profit Housing Companies (Mitchell-Lama Housing) .....                                   | 37 |
|      | F. Lofts .....                                                                                      | 38 |
|      | G. Single-Room Occupancies (SROs).....                                                              | 40 |
| III. | Tenancy Protections.....                                                                            | 41 |
|      | A. Housing Discrimination.....                                                                      | 41 |
|      | B. Warranty of Habitability .....                                                                   | 43 |
| IV.  | Conveying the Tenancy .....                                                                         | 47 |
| V.   | Types of Proceedings.....                                                                           | 49 |
|      | A. Summary Proceedings .....                                                                        | 49 |
|      | 1. Introduction .....                                                                               | 49 |
|      | 2. The Structure of Modern Summary Proceedings .....                                                | 51 |
|      | 3. Types of Summary Proceedings.....                                                                | 53 |
|      | a. Holdover Proceedings.....                                                                        | 53 |
|      | (1) Grounds to Maintain Holdover Proceedings Where<br>There Is a Landlord-Tenant Relationship ..... | 55 |
|      | (2) Breach of a Substantial Obligation of the Tenancy .....                                         | 55 |
|      | (a) Unauthorized Sublets.....                                                                       | 56 |

|     |                                                                  |     |
|-----|------------------------------------------------------------------|-----|
| (b) | Pets.....                                                        | 59  |
| (c) | Alterations.....                                                 | 60  |
| (d) | Security Deposit.....                                            | 61  |
| (e) | Broker Fee.....                                                  | 61  |
| (f) | Specified Use or Purpose.....                                    | 61  |
| (g) | Nuisance.....                                                    | 62  |
| (h) | Hoarding .....                                                   | 63  |
| (i) | Chronic Late Payment of Rent.....                                | 64  |
| (j) | Access .....                                                     | 65  |
| (k) | Destruction of the Premises .....                                | 66  |
| (l) | Illegal Occupancy .....                                          | 66  |
| (m) | Illegal Use .....                                                | 66  |
| (3) | Grounds to Recover Rent-Regulated Units .....                    | 69  |
| (a) | Nonprimary Residence .....                                       | 69  |
| (b) | Owner's Use .....                                                | 72  |
| (c) | Recovery for Use by Nonprofit Institution .....                  | 75  |
| (d) | Demolition .....                                                 | 75  |
| (e) | Withdrawal From the Rental Market .....                          | 76  |
| (f) | Eviction Plan.....                                               | 76  |
| (g) | Failure to Renew .....                                           | 77  |
| (h) | Profiteering .....                                               | 77  |
| (4) | Grounds for Holdover Proceedings Against Nontenants.....         | 77  |
| (a) | Proceedings by Purchasers in Foreclosure.....                    | 78  |
| (b) | Licensee Proceedings.....                                        | 79  |
| (c) | Squatters.....                                                   | 80  |
| (d) | Occupant Remaining in Possession After Sale of the Premises..... | 80  |
| (e) | Vendee in Possession After Default Under Contract of Sale .....  | 81  |
| (f) | Occupant Under Cultivation Agreement .....                       | 81  |
| (g) | Employer-Employee Proceedings.....                               | 81  |
| (h) | Occupant After Termination of Life Estate .....                  | 83  |
| (i) | Occupant by Forcible or Unlawful Entry .....                     | 83  |
| (5) | Predicate Notices .....                                          | 83  |
| (6) | Notice of Petition and Petition.....                             | 91  |
| (a) | Notice/Service/Necessary Parties .....                           | 91  |
| (b) | Contents of the Petition.....                                    | 94  |
| (c) | Alternative Pleadings .....                                      | 98  |
| (7) | Inquests .....                                                   | 99  |
| b.  | Nonpayment Proceedings .....                                     | 100 |
| (1) | Proper Parties .....                                             | 100 |
| (2) | Elements of a Nonpayment Proceeding.....                         | 100 |
| (3) | What May Be Recovered as Rent in a Nonpayment Proceeding .....   | 100 |
| (4) | Rent Demands.....                                                | 102 |
| (5) | Notice of Petition and Petition.....                             | 106 |
| (6) | Defaults .....                                                   | 107 |
| (7) | Spiegel Law .....                                                | 108 |
| (8) | Bankruptcy .....                                                 | 108 |

|       |                                                                                                                                      |     |
|-------|--------------------------------------------------------------------------------------------------------------------------------------|-----|
|       | c. Answering a Summary Proceeding .....                                                                                              | 109 |
|       | d. Recovery of Use and Occupancy in Summary Proceedings .....                                                                        | 112 |
|       | e. Disclosure .....                                                                                                                  | 115 |
|       | f. Rent Deposits/Pendente Lite Use and Occupancy.....                                                                                | 117 |
|       | g. Stays, Warrant, Cures .....                                                                                                       | 119 |
|       | (1) Stays of Warrants/Execution/Eviction in Nonpayment Proceedings .....                                                             | 119 |
|       | (2) Stays of Warrants/Execution/Eviction in Holdover Proceedings .....                                                               | 120 |
|       | (3) General Powers to Stay Warrants in Summary Proceedings .....                                                                     | 123 |
|       | (4) Stay of the Proceeding Itself Before or After Judgment.....                                                                      | 124 |
|       | 4. Settlements in Landlord-Tenant Summary Proceedings .....                                                                          | 125 |
|       | B. Ejectment Actions.....                                                                                                            | 130 |
|       | C. HP Proceedings.....                                                                                                               | 132 |
|       | D. Article 7-A Proceedings.....                                                                                                      | 137 |
|       | E. Proceedings Under the Tenant Protection Act.....                                                                                  | 138 |
|       | F. Illegal Lockout/Unlawful Eviction Actions and Proceedings .....                                                                   | 139 |
|       | 1. Overview .....                                                                                                                    | 139 |
|       | 2. Summary Proceedings to Be Restored to Possession.....                                                                             | 140 |
|       | 3. Criminal Penalties .....                                                                                                          | 141 |
|       | 4. Plenary Actions for Damages.....                                                                                                  | 141 |
|       | 5. Defenses Against Illegal Lockout Allegations .....                                                                                | 141 |
|       | G. Foreclosure Proceedings .....                                                                                                     | 142 |
|       | H. Plenary Actions Between Landlords and Tenants .....                                                                               | 148 |
| VI.   | Service Rules for Summary Proceedings.....                                                                                           | 148 |
|       | A. Overview.....                                                                                                                     | 148 |
|       | B. Service Requirements .....                                                                                                        | 148 |
|       | C. Challenging Service .....                                                                                                         | 151 |
| VII.  | General and Affirmative Defenses to a Residential Landlord-Tenant Proceeding.....                                                    | 153 |
|       | A. Overview.....                                                                                                                     | 153 |
|       | B. Traverse/Service .....                                                                                                            | 153 |
|       | C. Lack of Multiple Dwelling Registration in New York City .....                                                                     | 154 |
|       | D. Lack of a Proper Certificate of Occupancy .....                                                                                   | 154 |
|       | E. Failure to Accurately State Regulatory Status and Comply With Rent Laws .....                                                     | 155 |
|       | F. Omitting or Misstating Required Elements of the Petition.....                                                                     | 156 |
|       | G. Lack of Proper Predicate Notice/Rent Demand Notice .....                                                                          | 156 |
|       | H. Predicate Notice Vitiating/Tenancy Reinstated .....                                                                               | 156 |
|       | I. Retaliatory Eviction .....                                                                                                        | 156 |
|       | J. A Laches Defense in a Nonpayment Proceeding.....                                                                                  | 157 |
|       | K. Conditions.....                                                                                                                   | 158 |
|       | L. Actual Eviction/Constructive Eviction .....                                                                                       | 158 |
|       | M. Statute of Limitations.....                                                                                                       | 158 |
|       | N. Succession Rights .....                                                                                                           | 159 |
| VIII. | Alleging a Respondent's Military Status .....                                                                                        | 161 |
| IX.   | The Competency of Parties to a Landlord-Tenant Proceeding, Including the<br>Unrepresented and Those Needing Guardians ad Litem ..... | 162 |
| X.    | Enforcing Warrants of Eviction and Orders of Possession.....                                                                         | 165 |
| XI.   | Post-Eviction Relief .....                                                                                                           | 165 |

|            |                                                                                                   |     |
|------------|---------------------------------------------------------------------------------------------------|-----|
| XII.       | Abandonment and Surrender of Possession.....                                                      | 168 |
| XIII.      | Courts That Award Possession of Real Property.....                                                | 170 |
|            | A. Overview of Which Courts Adjudicate Summary Proceedings in Which<br>Geographic Locations ..... | 170 |
|            | B. Supreme Court .....                                                                            | 170 |
|            | C. The New York City Civil Court .....                                                            | 171 |
|            | D. New York State District Courts (Nassau and Suffolk Counties).....                              | 174 |
|            | E. City Court: The Housing Part of Buffalo City Court.....                                        | 175 |
|            | 1. History .....                                                                                  | 175 |
|            | 2. Code Violation Actions .....                                                                   | 175 |
|            | a. The Initial Impetus Behind the Problem-Solving Model—<br>District-by-District Scheduling.....  | 176 |
|            | b. Use of Housing Court Liaisons .....                                                            | 177 |
|            | c. Arraignment.....                                                                               | 178 |
|            | d. Use of Interlocutory Orders .....                                                              | 179 |
|            | (1) Orders to Vacate .....                                                                        | 179 |
|            | (2) Demolition Orders .....                                                                       | 179 |
|            | (3) Receiverships .....                                                                           | 179 |
|            | (4) Case-Specific Orders .....                                                                    | 180 |
|            | e. The Funding Calendar .....                                                                     | 180 |
|            | f. Sentencing .....                                                                               | 181 |
|            | 3. Evictions .....                                                                                | 183 |
|            | a. Accessibility .....                                                                            | 184 |
|            | b. Legal Representation for Qualifying Tenants.....                                               | 184 |
|            | c. Linkage .....                                                                                  | 185 |
|            | d. Stays Until Housing Violations Are Addressed .....                                             | 185 |
|            | e. Stipulations .....                                                                             | 186 |
|            | f. Mandatory Mediation .....                                                                      | 186 |
|            | g. Habitability Investigations and Hearings.....                                                  | 186 |
|            | h. Duty to Repair in the Commercial Setting .....                                                 | 187 |
|            | i. Hearing Before the Court Attorney/Referee.....                                                 | 187 |
|            | j. Money Judgments and Appearances in the Buffalo City Court .....                                | 187 |
|            | k. Attorneys Signing Petitions .....                                                              | 188 |
|            | l. Control of Out Dates.....                                                                      | 188 |
|            | m. Evictions in Section 8 Tenancies.....                                                          | 189 |
|            | n. Conclusion .....                                                                               | 189 |
|            | F. Justice Courts .....                                                                           | 190 |
|            | G. Surrogate’s Court.....                                                                         | 190 |
|            | H. County Courts .....                                                                            | 191 |
|            | I. Federal Courts .....                                                                           | 191 |
| XIV.       | Appeals .....                                                                                     | 191 |
| XV.        | Conclusion .....                                                                                  | 195 |
| Appendix 1 | Buffalo Housing Court—Duties of Housing Court Liaisons.....                                       | 197 |
| Appendix 2 | Script for Arraignments .....                                                                     | 199 |
| Appendix 3 | Order for Access .....                                                                            | 203 |
| Appendix 4 | Order to Vacate .....                                                                             | 205 |

|             |                                                                                         |     |
|-------------|-----------------------------------------------------------------------------------------|-----|
| Appendix 5  | Order Appointing Receiver.....                                                          | 207 |
| Appendix 6  | Funding Calendar Application for Rehabilitation of Property .....                       | 211 |
| Appendix 7  | Addendum to Petition for Non-title Owners.....                                          | 213 |
| Appendix 8  | Memorandum, Decision and Order re: Eviction (Buffalo Housing Court) .....               | 215 |
| Appendix 9  | Stipulation .....                                                                       | 219 |
| Appendix 10 | Referral to Department of Health for Habitability Inspection .....                      | 221 |
| Appendix 11 | Request for Extension of Time for Issuance or Execution of Warrant of<br>Eviction ..... | 223 |
|             | Residential Landlord-Tenant Forms Index .....                                           | 227 |
|             | Table of Authorities .....                                                              | 399 |
|             | About the Authors.....                                                                  | 443 |

## INDEX OF FORMS

|      |                                                                                                       |     |
|------|-------------------------------------------------------------------------------------------------------|-----|
| I.   | Predicate Notices                                                                                     |     |
|      | A. Notice of Non-Renewal .....                                                                        | 231 |
|      | B. Notice of Termination.....                                                                         | 233 |
|      | C. Notice to Cure.....                                                                                | 234 |
|      | D. Ten-Day Notice to Quit .....                                                                       | 235 |
|      | E. Thirty-Day Notice of Termination.....                                                              | 236 |
|      | F. Three-Day Rent Demand.....                                                                         | 237 |
| II.  | Petition                                                                                              |     |
|      | A. Holdover Petition.....                                                                             | 239 |
|      | B. Nonpayment Petition .....                                                                          | 243 |
| III. | Notices of Petition                                                                                   |     |
|      | A. Notice of Petition (Holdover—City Courts Outside NYC).....                                         | 247 |
|      | B. Notice of Petition (Holdover—District Courts) .....                                                | 248 |
|      | C. Notice of Petition (Holdover—NYC).....                                                             | 249 |
|      | D. Notice of Petition (Nonpayment—City Courts Outside NYC).....                                       | 251 |
|      | E. Notice of Petition (Nonpayment—District Court) .....                                               | 253 |
|      | F. Notice of Petition (Nonpayment—NYC).....                                                           | 255 |
| IV.  | Affidavits of Service                                                                                 |     |
|      | A. Affidavit of Service Pursuant to RPAPL § 735 (Nonmilitary Affidavit).....                          | 257 |
|      | B. Affidavit of Service by Conspicuous Place Service .....                                            | 259 |
|      | C. Affidavit of Service by Mail.....                                                                  | 260 |
|      | D. Affidavit of Service by Personal Delivery .....                                                    | 261 |
|      | E. Affidavit of Service by Substituted Service .....                                                  | 262 |
|      | F. Affidavit of Service of Petition and Notice of Petition<br>(Personal/Substituted/Conspicuous)..... | 263 |
|      | G. Service Other Than by Personal Delivery .....                                                      | 265 |
|      | H. Affidavit of Service of Order to Show Cause and Affidavit in Support (LT).....                     | 266 |
|      | I. Affidavit of Service of Judgment With Notice of Entry .....                                        | 267 |
| V.   | Non-Military Affidavits                                                                               |     |
|      | A. Affidavit of Military Investigation.....                                                           | 268 |
|      | B. Non-Military Affidavit of Investigator .....                                                       | 269 |
|      | C. Request for Military Status.....                                                                   | 271 |
| VI.  | Verifications                                                                                         |     |
|      | A. Attorney Verification Pursuant to RPAPL § 741 .....                                                | 272 |
|      | B. Verification (Corporation) .....                                                                   | 273 |
|      | C. Verification (Individual) .....                                                                    | 274 |
|      | D. Verification (Partnership) .....                                                                   | 275 |
|      | E. Verified Petition in Support of Order to Show Cause .....                                          | 276 |
| VII. | Answer                                                                                                |     |
|      | A. Landlord/Tenant Answer in Person .....                                                             | 277 |
|      | B. Notice of Appearance and Answer With Counterclaim (Holdover Proceeding) .....                      | 278 |
|      | C. Notice of Appearance and Answer With Counterclaims (Nonpayment<br>Proceeding).....                 | 280 |
|      | D. Answer in Writing and Verification .....                                                           | 283 |
|      | E. Answer in Person and Verification .....                                                            | 285 |

|       |                                                                                                                                                                       |     |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| VIII. | Application to Waive Court Fees                                                                                                                                       |     |
|       | A. Affidavit in Support of an Application to Commence an Action as a “Poor Person” and to Waive Court Fees .....                                                      | 287 |
|       | B. <i>Ex Parte</i> Order Granting Leave to Proceed as a “Poor Person” and to Waive Court Fees.....                                                                    | 289 |
|       | C. Affidavit in Support of an Application to Proceed as a Poor Person and to Waive Court Fees (Civil Court) .....                                                     | 290 |
|       | D. Affidavit in Support of an Application to Proceed as a Poor Person and Authorizing the State to Pay the Costs for the Production of a Stenographic Transcript..... | 291 |
| IX.   | Article 7-A Proceeding                                                                                                                                                |     |
|       | A. Notice of Petition for Deposit of Rents Pursuant to Art. 7-A .....                                                                                                 | 293 |
|       | B. Verified Petition to Appoint Administrator Pursuant to Art. 7-A .....                                                                                              | 295 |
| X.    | Inspections                                                                                                                                                           |     |
|       | A. Inspection of Premises.....                                                                                                                                        | 297 |
|       | B. Judicial Request/Order for Housing Inspection .....                                                                                                                | 298 |
|       | C. Request for the Report of Resource Assistant Premises Visit.....                                                                                                   | 299 |
|       | D. Tenant’s Request for Inspection .....                                                                                                                              | 300 |
| XI.   | HP Proceedings                                                                                                                                                        |     |
|       | A. Affidavit in Support of Order to Show Cause to Restore to Calendar for a Compliance Hearing for the Assessment of Civil Penalties.....                             | 301 |
|       | B. Affidavit in Support of Order to Show Cause to Restore to the Calendar.....                                                                                        | 303 |
|       | C. Judgment for Civil Penalties.....                                                                                                                                  | 304 |
|       | D. Order to Show Cause Directing the Correction of Violations (HP Action) .....                                                                                       | 305 |
|       | E. Order to Show Cause Directing the Correction of Violations .....                                                                                                   | 307 |
|       | F. Order to Show Cause to Restore to Calendar for a Compliance Hearing for the Assessment of Civil Penalties.....                                                     | 309 |
|       | G. Verified Petition in Support of Order to Show Cause Directing the Correction of Violations .....                                                                   | 311 |
| XII.  | Motion to Dismiss                                                                                                                                                     |     |
|       | A. Affidavit in Support of Motion to Dismiss.....                                                                                                                     | 313 |
|       | B. Notice of Motion to Dismiss Proceeding .....                                                                                                                       | 315 |
|       | C. Affidavit in Opposition to Motion .....                                                                                                                            | 317 |
| XIII. | Reply Affidavit                                                                                                                                                       |     |
|       | A. Reply Affidavit .....                                                                                                                                              | 319 |
| XIV.  | Pro Se                                                                                                                                                                |     |
|       | A. Order to Show Cause to Permit a Represented Party to Appear in Person (Pro Se).....                                                                                | 321 |
| XV.   | Withdrawal of Funds                                                                                                                                                   |     |
|       | A. Affidavit in Support of an Order for Withdrawal of Funds .....                                                                                                     | 323 |
| XVI.  | Subpoenas                                                                                                                                                             |     |
|       | A. Subpoena to Testify .....                                                                                                                                          | 325 |
|       | B. Subpoena for Records.....                                                                                                                                          | 327 |
|       | C. Affidavit in Support of a Requisition for an Order for the Examination of Subpoenaed Records and Order for the Examination of Subpoenaed Records ....              | 329 |

|        |                                                                                                                                                                                              |     |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| XVII.  | Guardian ad Litem                                                                                                                                                                            |     |
|        | A. Order Appointing Guardian ad Litem .....                                                                                                                                                  | 330 |
|        | B. Guardian Ad Litem Request Form .....                                                                                                                                                      | 331 |
|        | C. APS Housing Court Referral Form .....                                                                                                                                                     | 333 |
| XVIII. | Transfer Order                                                                                                                                                                               |     |
|        | A. Transfer Order .....                                                                                                                                                                      | 335 |
| XIX.   | Order to Produce                                                                                                                                                                             |     |
|        | A. Order to Produce.....                                                                                                                                                                     | 336 |
| XX.    | Contempt                                                                                                                                                                                     |     |
|        | A. Order of Commitment to Punish for Contempt.....                                                                                                                                           | 337 |
|        | B. Warrant to Punish for Contempt.....                                                                                                                                                       | 338 |
|        | C. Order to Punish for Contempt .....                                                                                                                                                        | 339 |
|        | D. Order to Show Cause to Punish for Contempt of Court.....                                                                                                                                  | 341 |
|        | E. Order to Show Cause to Punish for Contempt (Punishable by Fine<br>and/or Imprisonment) .....                                                                                              | 343 |
|        | F. Affidavit in Support of Motion to Punish for Contempt of Court.....                                                                                                                       | 345 |
| XXI.   | Interpreter Request Form                                                                                                                                                                     |     |
|        | A. Interpreter Request Form.....                                                                                                                                                             | 347 |
| XXII.  | Consumer Affairs Report                                                                                                                                                                      |     |
|        | A. Report to the Department of Consumer Affairs of a Hearing on the<br>Sufficiency of Service.....                                                                                           | 348 |
| XXIII. | Fair Debt Collection Letter                                                                                                                                                                  |     |
|        | A. Fair Debt Collection (FDCPA) Letter.....                                                                                                                                                  | 349 |
| XXIV.  | Stipulation of Settlement                                                                                                                                                                    |     |
|        | A. Stipulation of Settlement (Holdover—Providing for Vacatur).....                                                                                                                           | 350 |
|        | B. Stipulation of Settlement (Holdover; Providing for Cure—Breach of Lease) .....                                                                                                            | 351 |
|        | C. Stipulation of Settlement (Nonpayment Proceeding With Final Judgment) .....                                                                                                               | 353 |
|        | D. Stipulation of Settlement (Nonpayment Proceeding Without Final Judgment).....                                                                                                             | 355 |
|        | E. Stipulation of Settlement Form (Civil Court).....                                                                                                                                         | 357 |
|        | F. Surrender Agreement 1.....                                                                                                                                                                | 359 |
|        | G. Surrender Agreement 2.....                                                                                                                                                                | 363 |
|        | H. Surrender Agreement 3.....                                                                                                                                                                | 367 |
| XXV.   | Judgment                                                                                                                                                                                     |     |
|        | A. Judgment Upon Tenant’s Failure to Answer (Outside NYC).....                                                                                                                               | 373 |
|        | B. Decision and Judgment (of Decision/Order/Judgment) .....                                                                                                                                  | 374 |
| XXVI.  | Vacating Default                                                                                                                                                                             |     |
|        | A. Affidavit in Support of Application to Vacate Default.....                                                                                                                                | 375 |
|        | B. Order to Show Cause to Vacate Default Judgment and Warrant.....                                                                                                                           | 377 |
| XXVII. | Supporting Affidavits to Vacate Judgment                                                                                                                                                     |     |
|        | A. Affidavit in Support of an Order to Show Cause to Vacate a Judgment<br>Based Upon Failure to Answer, to Permit the Filing of a Late Answer and<br>to Place the Case on the Calendar ..... | 379 |
|        | B. Affidavit in Support of an Order to Show Cause to Vacate a Judgment<br>Based Upon (a) Failure to Appear (b) Failure to Comply and to Restore<br>to the Calendar.....                      | 380 |

|         |                                                                                                      |     |
|---------|------------------------------------------------------------------------------------------------------|-----|
| XXVIII. | Warrants                                                                                             |     |
|         | A. Marshal's Notice of Eviction.....                                                                 | 381 |
|         | B. Warrant Requisition Form .....                                                                    | 382 |
|         | C. Request for Warrant.....                                                                          | 383 |
|         | D. Request for Final Order and Issuance of Warrant .....                                             | 384 |
|         | E. Warrant .....                                                                                     | 385 |
| XXIX.   | Restore to Possession                                                                                |     |
|         | A. Order to Show Cause to be Restored to Possession and for Damages<br>After Unlawful Eviction ..... | 387 |
|         | B. Order to Show Cause in Lieu of Notice of Petition to Restore to Possession.....                   | 389 |
|         | C. Verified Petition in Support of Order to Show Cause for Restoration to<br>Possession.....         | 391 |
|         | D. Affidavit in Support of an Order to Show Cause to Restore to Possession.....                      | 393 |
| XXX.    | Transcript                                                                                           |     |
|         | A. Request for Audio Record .....                                                                    | 394 |
| XXXI.   | Appeal                                                                                               |     |
|         | A. Notice of Appeal.....                                                                             | 395 |
|         | B. Notice of Transmittal of Transcript .....                                                         | 396 |
|         | C. Notice of Settlement of Transcript .....                                                          | 397 |

**DAMON P. HOWARD, ESQ.**

Damon P. Howard is a founding partner of Ephron-Mandel & Howard, L.L.P., located in New York City. His experience ranges from commercial litigation, including actions for injunctive and declaratory relief, to residential and commercial landlord-tenant issues. Mr. Howard is a graduate of the University of Texas at Austin and the Tulane University Law School and received his early training as a litigator as an intern for the U.S. Attorney's Office, Civil Division. He is admitted to practice in New York, the Southern District of New York, and Louisiana.

**HONORABLE GERALD LEBOVITS**

Gerald Lebovits has been a judge of the New York City Criminal Court in Manhattan since 2011. Before that, he was a judge of the New York City Civil Court, Housing Part, from 2001–2010 and served as the president of the Association of Housing Court Judges. A part-time teacher, he is a lecturer-in-law at Columbia Law School, an adjunct associate professor at Fordham University School of Law, an adjunct professor at St. John's University School of Law and, for 18 years, formerly an adjunct professor at New York Law School. Active in the New York State Bar Association, he is a past co-chair of the Association's Committee on Landlord and Tenant Proceedings, has authored the *Bar Journal's* Legal Writer column since 2001, and has published 19 articles in the Association's Real Property Law Journal. He graduated from the Ottawa (LL.L.), Tulane (M.C.L.), and New York University (LL.M.) law schools.

**MICHAEL B. TERK, ESQ.**

Michael B. Terk is an associate with David Rozenholc & Associates, where he practices primarily landlord-tenant and real estate litigation. Prior to joining his present firm, he practiced landlord-tenant law as an associate at two other New York firms. Mr. Terk regularly represents clients in New York State Supreme Court, New York City Civil Court (both residential and commercial parts), and before administrative agencies such as the New York State Division of Housing and Community Renewal (DHCR). He also represents clients at the appellate level and has written briefs in connection with precedent-setting Appellate Term and Appellate Division cases. Mr. Terk is admitted to practice law in New York and Massachusetts. He is a member of the New York County Lawyers' Association, the New York State Bar Association, and the Nassau County Bar Association. He received his J.D. from the Hofstra University School of Law and his B.A. from Brandeis University. He first began landlord-tenant litigation while still in law school, providing free legal representation to low-income tenants in Nassau County District Court under a student practice order, as part of Hofstra Law's Community Legal Assistance Corp.—Housing Rights Clinic.