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Appellate Practice, Winning Residential Appeals: Notices of Appeal, Stays Pending Appeal, and Cross-Appeals in the Appellate Term

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Consolidating Lawsuits: Some Pros and Cons

by Warren A. Estis, Esq.
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In real estate litigation, it is not uncommon for disputes to result in simultaneous lawsuits in two different forums. A Supreme Court declaratory judgment action commenced by the tenant, and a Civil or District Court nonpayment or holdover proceeding brought by the landlord, may both be pending at the same time. When the issues in the lawsuits are intertwined, and involve common issues of fact and law, litigants will often attempt to seek "removal and consolidation"—that is, a motion will be made to have all the matters heard in one case and in a single forum. In that regard, CPLR § 602(b) provides in relevant part that:

> Where an action is pending in the supreme court it may, upon motion, remove to itself an action pending in another court and consolidate it or have it tried together with that in the supreme court ....

Another circumstance in which a party may seek consolidation is where multiple lawsuits are pending in the same court. For example, take the situation where a landlord has leased to a tenant, who in turn has sublet to one or more undertenants. Conceivably, the landlord may have brought a *(continued on page 2)*

Luxury Decontrol: Two New Notice Requirements Added For High-Rent Vacancies

Though many landlords of rent-regulated units believe they have enough paperwork to do, recent amendments to the New York City Administrative Code[1] have added two new notice requirements. The legislation affects all New York City rent-controlled and rent-stabilized units that become exempt from rent regulation due to a monthly rent that has reached $2,000, after a vacancy.

For tenancies commencing on and after April 27, 2000, owners must provide the initial deregulated tenants of such units with two separate notices:

✓ A written notice certifying the last regulated rent for the unit; the reason the unit is not subject to rent stabilization or rent control; a calculation of how the new rent was computed so as to reach $2000 or more per month; a statement advising the tenant that the last regulated *(continued on page 11)*

APPELLATE PRACTICE

Winning Residential Appeals:

Notices of Appeal, Stays Pending Appeal, and Cross-Appeals in the Appellate Term

By Gerald Lebovits, Esq.
and Deborah E. Fisher, Esq.

Editors' Note: *This is the second installment of a three-part series. Part I examined preliminary considerations, including the types of adverse decisions that are appealable and applicable standards of review. Part II, below, looks at preparing and filing the notice of appeal, stays pending appeal, and cross-appeals. The final installment, which will appear in June, will provide invaluable advice on perfecting, briefing, and orally arguing an appeal.*

Once the decision to appeal has been made, the next step is to prepare and file a notice of appeal. Appellate courts can forgive, for good cause shown, any technical mistake in perfecting an appeal except a failure to serve and file a notice of appeal or request for leave to appeal.[1]

When to File a Notice of Appeal

If a litigant might appeal a judgment or order "as of right," the practitioner must file a notice of appeal within 30 days after the prevailing party serves the adversely decided order or judgment, with notice of entry under CPLR 2220(a).[2] If the order with notice of entry is served by mail, the appellant has an extra five days to serve and file the notice of appeal.[3] If the side that lost below serves the notice of entry, the same five-day extension for service by mail is granted.[4]

The time requirement to serve a notice of appeal may not be waived, enlarged, or extended, even by consent.[5] However, if the notice of entry is irregular, not served on all the parties, or served improperly, the time to appeal will not start to run with the defective entry or service.[6] Rather, if notice of entry is not effected or served, or effected or served irregularly, the time to appeal will extend indefinitely, barred only by laches.[7]

The 30-day time limit to serve and file a notice of appeal has a few limited exceptions: substitution of parties;[8] wrong method of appeal, such as *(continued on page 6)*

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dating them with the action pending in the Supreme Court."); *but see Amtorg Trading Co. v. Broadway & 56th Street Associates*, 191 A.D.2d 212, 594 N.Y.S.2d 204 (1st Dep't 1993) ("The mere fact that a case may be somewhat delayed by such consolidation will not suffice to bar it ....").

9. *Brusco v. Braun*, 84 N.Y.2d 674, 621 N.Y.S.2d 291, 645 N.E.2d 724 (1994) ("Article 7 represents the Legislature's attempt to balance the rights of landlords and tenants to provide for expeditious and fair procedures for the determination of disputes involving the possession of real property ...."); *Cotignola v. Lieber*, 34 A.D.2d 700, 309 N.Y.S.2d 498 (3d Dep't 1970) ("A summary proceeding is a special proceeding governed entirely by statute, and the legislative intent is to afford a summary means of obtaining a speedy determination and adjudication of disputes over the right of possession of real property.").

10. *New York Yellow Cab Co. Sales Agency, Inc. v. Courtland Garage and Realty Corp.*, 208 A.D. 765, 203 N.Y.S. 300 (1st Dep't 1924) (Consolidation of Municipal Court cases with a Supreme Court suit was reversed since trial on the merits could be secured more expeditiously in the Municipal Court: "In view of the time which must elapse before the action in the Supreme Court can be reached for trial, we are of the opinion that the discretion of the court at Special Term was not properly exercised in ordering the removal of the Municipal Court actions and consolidating them with the action pending in the Supreme Court."); *see* endnote 8, *supra.*

11. *Tenebaum v. Dunlop,* 200 A.D. 604, 605, 193 N.Y.S. 407, 408 (1st Dep't 1922); *see* endnote 8, *supra.*

12. 40 A.D.2d 794, 338 N.Y.S.2d 84 (1st Dep't 1972).

13. *Id.*, 40 A.D.2d at 794, 338 N.Y.S.2d at 85.

14. *Id.*

15. 88 A.D.2d 570, 571, 451 N.Y.S.2d 86, 89 (1st Dep't 1982)

16. *Id.*, 88 A.D.2d at 571, 451 N.Y.S.2d at 89. ◆

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serving a notice of appeal when a request for leave should have been made;[9] death, suspension, removal, or disability of the appellant's attorney;[10] either late service or late filing of the notice of appeal, but not both;[11] and an automatic stay under the Bankruptcy Code.[12] A practitioner faced with an oral decision can start the time running by serving a shortform cover sheet with notice of entry.[13] To start the time, the winning party need only copy the cover page, enter the judgment, and serve the notice of appeal. If the case was tried, the judgment, not the order, is the appealable paper. Beware a Judge's handwritten changes, which, if they are absent from the order served, will prevent the time from beginning to run.[14] It is best to photocopy the order with the handwritten changes.

Where and Whom to Serve the Notice of Appeal

The notice of appeal must be served on the adverse party and filed personally or by mail with proof of service in the Housing Part Clerk's Office in which the judgment or order issued.[15] The $25.00 filing fee, payable in the Civil Court Clerk's Office, is waived if permission to proceed as a poor person is granted under CPLR Article 11. Obtaining poor-person relief is helpful for *pro bono* practitioners in the First Department because doing so allows a simplified appeal on the original record rather than on the full record or by appendix.[16] If there are multiple parties, a notice of appeal must be served on all of them. A practitioner unsure whether the decision is adverse to a party should serve everyone and let them decide whether the appeal affects them.

Service on a party not represented by counsel may be effected personally; otherwise, serve the attorney of record.[17] If served on an attorney, the notice may be served by ordinary mail, although some attorneys prefer to use registered, certified, or priority mail. The appeal is formally taken when the addressed and stamped envelope carrying the notice is dropped into a mailbox.[18]

In the Appellate Division, First Department, the appellant must serve and file a preargument statement with the notice of appeal.[19] In the Appellate Division, Second Department, the appellant must serve and file a Request for Appellate Division Intervention.[20] Housing Part appeals to the Appellate Term have no such requirements.

Drafting Tips for the Notice of Appeal

A notice of appeal must contain a caption of the proceeding, the name of the appealing party, the judgment or order being appealed, and the court to which the appeal is taken.[21]

Be careful not to waive appellate issues. If only part of an order is appealed from, an appeal from the balance of the order is foreclosed.[22] Picking and choosing issues or framing the notice of appeal too narrowly can cause problems later.[23] The appeal should therefore be from "each and every part" of the order or judgment.[24]

A litigant may appeal the amount of a judgment, not merely the judgment or order itself. For example, if the appeal concerns an award of attorney fees, the practitioner should also appeal the amount of the award. The appellant's first argument is that fees should not have been awarded. The second argument is that even if fees were properly awarded, the amount awarded was too high. The issue will be waived if the amount awarded is not challenged.[25]

If a later order may affect the appeal, it is necessary to appeal all later orders. CPLR 5517(b) permits the Appellate Term to review any subsequent order if the first order is appealable as of right. A single record will serve for all the appeals taken. All that is required is that the practitioner serve and file an additional notice of appeal from each of the later orders, include the orders in the record with their underlying papers, and add further argument to the brief.

Stays Pending Appeal

It is often necessary for practitioners to obtain a stay while the appeal is pending. Stays are often sought when a judgment is entered against a tenant-respondent. Judgments against tenants may encompass eviction from their residence. For example, a tenant who loses a nonprimary-residence proceeding will be evicted unless a stay is obtained while the appeal is pending. Similarly, if a judgment is entered against a tenant-respondent in a nonpayment proceeding, the tenant's failure to tender the entire amount to the prevailing landlord before the warrant of eviction issues will result in immediate eviction unless a stay is obtained. Losing landlord-petitioners also often seek stays. That may happen if a tenant is awarded a large abatement, treble damages, counterclaim, or legal fees, or if the Housing Part directs the landlord to make repairs.

A) Discretionary Stays

There are two types of stays: automatic and discretionary. Litigants typically seek discretionary stays, found in CPLR 5519(c), which applies if the automatic-

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stay provisions of CPLR 5519(a)(2)-(6) do not apply.[26] CPLR 5519(c) lets the Appellate Term modify or vacate a stay motion without the need to appeal a Housing Part stay. The party seeking the stay may move either in Housing Part under CPLR 5519(c) or in the Appellate Term by affidavit of the party, affirmation of the party's attorney, or both.

Where to seek the stay is a matter of strategy. The notice of appeal must be served and filed before a stay is sought in the Appellate Term or Civil Court. The motion should include a copy of the judgment or order being appealed, the notice of appeal, and any related orders or decisions. In addition, the practitioner should attach any other exhibit that demonstrates why the stay is needed. A brief procedural history and a statement of the merits of the appeal should appear in the affirmation or affidavit or, better, in an attached memorandum of law that is both succinct and concise. The motion should also state when the movant will perfect the appeal.

The Appellate Term often conditions granting a discretionary stay on respondent's perfecting the appeal by the next term or, in the Second Department, by a specific date. The court will also set an undertaking, usually the payment or posting of judgment and monthly sums for accruing rent, to maintain the status quo. If a tenant-appellant fails to comply with the Appellate Term's conditions of the discretionary stay, the landlord-respondent may move to vacate the stay and dismiss the appeal. A practitioner who represents tenant-appellants should advise them to abide by the terms of the discretionary stay. One consequence of failing to adhere to the Appellate Term's conditions is dismissal of the appeal before its merits are determined. Another is an eviction that follows immediately on the heels of the dismissal.

Practitioners should also carefully examine the term dates; a stay granted shortly before the end of a term may require perfecting an appeal more expeditiously than a stay granted shortly after the beginning of a term.[27]

As one source explains, "[t]he goal of virtually all pre-appeals motions ... is to obtain an interim stay pending disposition of the motion."[28] It is possible to move at the Appellate Term, Second Department, for a stay by order to show cause if interim relief is sought. The practitioner should submit the order to the clerk's office at 111 Livingston Street. The clerk will give a Justice the order for possible signature. Motion papers on notice are required if interim relief is not requested.[29]

In the First Department, an interim stay is obtained from one Justice, although the stay pending appeal may be heard by the entire panel.[30] Practitioners should not use an order to show cause. Rather, they should use a short-service notice of motion to obtain an interim stay or a short return date. The papers should include the notice of motion, a supporting affirmation or affidavit, a notice of appeal with the filing-fee receipt, and the order or judgment appealed from. Include a blank sheet of paper between the notice of motion and the supporting papers. The Appellate Term will stamp the return date and a short stay pending decision on the blank sheet. If an interim stay is granted, the adversary must be served.[31]

The adversary may serve responsive papers by ordinary mail up to the return date of the motion. There is no right to reply, although replies are considered if they are filed by the return date. As with all motions in the Appellate Term, there is no oral argument; all motions are submitted, and no appearance on the return date is contemplated.[32]

Practitioners who represent tenant-appellants should know that the entire judgment amount awarded below will likely be the amount the Appellate Term will require to be deposited with the Civil Court as an undertaking, payable to the Department of Finance by bond, money order, or certified check or directly to the landlord.

B) Automatic Stays

Subsection 751(1) of the RPAPL contains an automatic-stay provision. A tenant sued for not paying rent can obtain a stay by depositing with the Housing Part the amount of rent due after a judgment is issued but before the warrant of eviction issues. This provision is rarely invoked, though it is effective. RPAPL § 751(1) is a Housing Part remedy, not an appellate remedy, but all appellate practitioners should know about it.

CPLR 5519(a)(1). Other than the automatic stay in RPAPL § 751(1), the CPLR's automatic-stay provisions are not always useful. Three subdivisions of CPLR 5519 may apply when appealing a summary proceeding. The first is CPLR 5519(a)(1), which provides an automatic stay for a governmental authority. This stay will usually occur only if the City of New York or the New York City Housing Authority lose below.

CPLR 5519(a)(2). The second automatic stay provision is found in CPLR 5519(a)(2), which requires a deposit of an undertaking with the court from which an appeal is taken.[33] However, CPLR 5519(a)(2) deals only with a judgment or order that "directs the payment of a sum of money," and landlord-tenant *(continued on page 8)*

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proceedings primarily concern possessory issues, which must exist for the Housing Part to have jurisdiction. Assuming that CPLR 5519(a)(2) applies to Housing Part cases—and it likely does not—this subdivision enables a litigant to obtain an appeal bond from an insurance company or to deposit the judgment in court under CPLR Art. 26.

CPLR 5519(a)(6). The last automatic-stay provision specifically deals with "possession or control of real property which the judgment or order directs be conveyed or delivered ...." CPLR 5519(a)(6). The authorities disagree over whether this subdivision applies to Housing Part proceedings. One leading authority suggests that this subdivision refers to selling real property, not possessing real property.[34] In addition, many Civil Court and Housing Part Judges believe that this subdivision does not apply to residential landlord-tenant cases.

Still, some decisions have held that the automatic stay applies to appeals from summary proceedings.[35] Moreover, at least one author has opined that CPLR 5519(a)(6) provides that "an appellant is entitled to a stay as of right."[36]

If an automatic stay is granted, the appellant will be required to deposit an undertaking with the court from which the appeal is taken.[37] It is unclear whether that undertaking must be fixed by noticed motion, by *ex parte* order, or by neither. CPLR 5519(a) concerns stays without court order, unlike the discretionary stays in CPLR 5519(c), which necessarily invite opposition. But a court that grants an automatic stay will likely refrain from fixing an undertaking *ex parte*. Thus, it is recommended that a CPLR 5519(a)(6) application be made by order to show cause. Whether or not a CPLR 5519(a)(6) stay is discretionary, "the amount of the undertaking is, and the opposing party should be given the opportunity to challenge the amount."[38]

The advantage to making a CPLR 5519(a)(6) motion is that if it succeeds, the tenant-appellant ordered evicted under RPAPL §§ 711(1), 713, or 715 is not automatically required to deposit the entire amount of the judgment as an undertaking. This could aid holdover tenant-appellants, who might pay only the rent specified in the lease and not the full market rent for use and occupancy. However, the Appellate Term often remands for the Housing Part to set the amount of use and occupancy to be paid *pendente lite* or issues orders without prejudice to remand, especially when landlords move to modify the conditions for use and occupancy because the lease rent is lower than market rent. The risk is that there is no guarantee that this motion will succeed.

Vacating the Stay

Only the court that hears the appeal may vacate an automatic stay granted under CPLR 5519(a).[39] To vacate an automatic stay, the respondent must show that the appeal is without merit or was brought in bad faith or solely to delay, that the stay will cause an undue burden or hardship, or that the appellant failed to comply with the court's order requiring an undertaking.[40]

If the Appellate Term affirms the judgment below or dismisses the appeal, the stay, whether discretionary or automatic, continues for five days after the notice of entry is served and filed in the Appellate Term.[41] Another five days are added if the notice of entry is served by regular mail under CPLR 2103(b). Pursuant to CPLR 5519(e), a stay will expire absent a motion for leave to appeal to the Appellate Division made five days after service of the notice of entry and filing. Practitioners who plan to seek leave to appeal from the Appellate Division if they lose in the Appellate Term should regularly call the Appellate Term Clerk's Office with the term when oral argument took place and the Appellate Term's calendar number to determine whether the Appellate Term has rendered a decision. Doing so rather than waiting for a decision published in the *New York Law Journal* or service from opposing counsel will add more time to prepare a leave application and possibly to continue the stay.[42] The stay expires once the Appellate Division renders a decision affirming or modifying. There is a debate over whether a notice of entry need be served or filed.[43]

Stays And *Ex Parte* Orders Under CPLR 5704(b)

The Appellate Term, which has the same power as the courts from which it hears appeals, may review *ex parte* the Housing Part's *ex parte* orders. The result can be twofold: either an *ex parte* order that was granted below will be vacated or modified or an *ex parte* order that was denied below will be granted. The *ex parte* order the Housing Part typically considers is an order to show cause. *Pro se* forms in the Landlord-Tenant Clerk's Office are routinely given to tenants who seek judgment relief. A tenant in a nonpayment proceeding may be paying out a judgment over time according to a stipulation that provides that an eviction may take place on the tenant's failure to pay. If the tenant returns to the Housing Part to request extra time to pay and shows that money is

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forthcoming, a Judge may sign the order to show cause.

A landlord that believes that the tenant did not have a meritorious reason to obtain an order to show cause may file a CPLR 5704(b) motion with the Appellate Term to vacate the order, especially if several orders to show cause have been signed in one proceeding or if the landlord has reason to believe that the tenant abused the procedure. The landlord may seek to strike and vacate a stay in an order to show cause, to strike the order from the Civil Court calendar, to direct that no additional 72-hour notice be required, and to direct that no further applications for a stay be sought.[44]

Similarly, a tenant who brought an order to show cause that the Housing Part declined to sign may go to the Appellate Term to request CPLR 5704(b) review.[45]

To file a CPLR 5704(b) motion, the movant prepares a proposed *ex parte* order with an affidavit or affirmation and attached exhibits, including the underlying order. Modifying or vacating the underlying order is drastic and will be granted only on a strong showing of abuse. If granted against a tenant, the Appellate Term Justice who considered it will likely require that eviction be preceded by proof of service on the tenant filed with the Housing Part's Clerk's Office. Once the tenant is served, the tenant can go to the Appellate Term to read the CPLR 5704(b) application; it is an *ex parte* application, not a sealed document. By then, however, it may be too late to seek reargument before eviction. Reargument may be futile in any event.

Although the Appellate Division will not review interim Appellate Term orders, the tenant may nevertheless try to seek review from the Appellate Division by way of a CPLR 5704(a) *ex parte* motion if the tenant can assert that the landlord itself committed an abuse in its CPLR 5704(b) motion to the Appellate Term. Under CPLR 5704(a), the Appellate Division has the jurisdiction to "vacate or modify an order granted without notice to the adverse party by any court or a judge thereof from which an appeal would lie to such appellate division." It is uncertain whether this procedure will work, however. No appeal to the Appellate Division lies from anything the Appellate Term does not decide on appeal; the Appellate Division may find that no appeal lies from the Appellate Term's decision on a CPLR 5704(b) motion. A CPLR 5704(b) motion should therefore be made before the return date on an order to show cause.

Although a single Appellate Term Justice may modify or vacate an *ex parte* stay, the full panel, according to one author, considers whether to grant relief to a party who failed to obtain it below.[46] If the Housing Part hears both sides on a stay issue, the application is no longer *ex parte*, and CPLR 5704 jurisdiction is lost.

Cross Appeals

The respondent on appeal may also appeal, called a cross-appeal. A respondent may not request any modifications to the Housing Court's order unless a cross-appeal is taken.[47] To cross-appeal, the respondent must be an "aggrieved party."[48] The exception to that rule is when the judgment or order did not grant the respondent complete relief or when an error occurred below that, if corrected, would support a judgment in the respondent's favor.[49] For example, an award may be less than the respondent sought below, or the judgment may deny an affirmative claim.[50]

The respondent must serve its cross-appeal during either of the following two time periods, whichever is later: ten days after the appellant serves its notice of appeal or within the original 30-day period following service of the order with notice of *(continued on page 10)*

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entry.[51] A cross-appeal not served within these time limits will be dismissed.[52] In addition, a cross-appeal perfected improperly will be dismissed.[53]

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Endnotes:

1. CPLR 5520, 5514.

2. CPLR 5513(a).

3. CPLR 2103(b)(2); *Messner v. Messner*, 42 A.D.2d 889, 890, 347 N.Y.S.2d 589, 589 (1st Dep't 1973) (per curiam).

4. CPLR 5513(d) (eff. June 22, 1999).

5. CPLR 5513, 5514, 5520; *Haverstraw Park v. Runcible Properties Corp.*, 33 N.Y.2d 637, 637, 347 N.Y.S.2d 585, 585 (1973) (mem.); *Reinfeld v. 325 West End Corp.*, 43 A.D.2d 671, 671, 350 N.Y.S.2d 140, 141 (1st Dep't 1973) (per curiam) (waiver).

6. *Cohen v. Grossman*, 185 A.D.2d 719, 720, NYS2d 893, 893 (4th Dep't 1992) (mem.); *Maddox v. New York*, 104 A.D.2d 430, 431, 478 N.Y.S.2d 923, 924 (2d Dep't 1984) (mem.); *Nagin v. Long Island Sav. Bank*, 94 A.D.2d 710, 710, 462 N.Y.S.2d 69, 70 (2d Dep't 1983) (mem.).

7. *Dobess Realty Corp. v. City of New York*, 79 A.D.2d 348, 350, 436 N.Y.S.2d 296, 299 (1st Dep't) (per curiam), *appeal dismissed*, 53 N.Y.2d 1054, 442 N.Y.S.2d 500 (1981).

8. CPLR 1022.

9. CPLR 5514(a).

10. CPLR 5514(b).

11. CPLR 5520(a).

12. 11 U.S.C. § 362.

13. CPLR 2219(a); *Corteguera v. City of New York*, 179 A.D.2d 362, 363, 577 N.Y.S.2d 837, 838 (1st Dep't 1992) (mem.).

14. *Masters, Inc. v. White House Discounts, Inc.*, 119 A.D.2d 639, 640, 500 N.Y.S.2d 790, 791 (2d Dep't 1986) (mem.).

15. CPLR 5515(1).

16. All appeals in the Appellate Term, Second Department, are on the original record. 22 NYCRR 731.1(a), 732.1(a).

17. CPLR 2103.

18. CPLR 2103(b)(2).

19. 22 NYCRR 600.17(a).

20. 22 NYCRR 670.3(a).

21. CPLR 5515(1).

22. *See, e.g., Dingle v. Pergament Home Centers, Inc.*, 141 A.D.2d 798, 798, 530 N.Y.S.2d 25, 25 (2d Dep't 1988) (mem.).

23. *See City of Mt. Vernon v. Mt. Vernon Hous. Auth.*, 235 A.D.2d 516, 517, 652 N.Y.S.2d 771, 772 (2d Dep't 1997) (mem.) (prohibiting appellant from amending notice because appellant appealed from order that denied motion to amend complaint but not from order that granted dismissal against appellant).

24. CPLR 5515.

25. *See, e.g., Stanley v. Hawkins*, 180 Misc. 2d 302, 302, 688 N.Y.S.2d 379, 379 (App.Term, 1st Dep't, 1999) (per curiam).

26. Jeffrey R. Metz and Paul N. Gruber, *Motion Practice in the Appellate Term* 41 (1994) (unpublished NYSBA monograph).

27. James Briscoe West, *Landlord-Tenant Appeals* 17 n.7 (1999) (unpublished NYCLA monograph).

28. *Motion Practice in the Appellate Term*, *supra*, *supra* note 26 at 47 (emphasis in the original).

29. *Id.* at 48.

30. *Id.* at 47.

31. *Id.* at 48.

32. 22 NYCRR 640.8(c), 731.7, 732.7; *see generally* CPLR Art. 22 (motions).

33. *See* CPLR Article 25 (undertakings).

34. *See* Eric A. Portugese, *CLS Commentaries to CPLR 5519.*

35. *See, e.g., Horowitz v. Safeco Ins. Co. of Am.*, 50 A.D.2d 1042, 1042, 377 N.Y.S.2d 750, 751 (3d Dep't 1975) (mem.); *In re Eleven Eleven Book Book Center, Inc. v. Ribaudo*, 86 Misc. 2d 17, 19-20, 381 N.Y.S.2d 643, 644-45 (Sup.Ct, N.Y. County, 1976) (dismissing Article 78 Petition to stay warrant and fix undertaking, but only because petitioner did not appeal judgment of eviction); *Oleck v. Pearlman*, 49 Misc.2d 202 *passim*, 267 N.Y.S.2d 76 *passim* (Sup.Ct., Kings County, 1966); *Mountbatten Equities v. Tabard Press Corp.*, 87 Misc. 2d 861, 864-65, 386 N.Y.S.2d 785, 788 (Civ.Ct., N.Y. County), *modified on other grounds*, 88 Misc. 2d 831, 390 N.Y.S.2d 513 (App.Term, 1st Dep't, 1976) (per curiam); *Moskowitz v. Rassbach*, N.Y.L.J., 4/2/97, p. 29, col. 2 (Civ.Ct., N.Y. County).

36. Andrew A. Scherer, *Residential Landlord-Tenant Law in New York* § 18:23, at 18-6 (1997).

37. CPLR 5519(a)(6); *Pisano v. County of Nassau*, 41 Misc. 2d 844, 845-46, 246 N.Y.S.2d 733, 736 (Sup.Ct., Nassau County, 1963), aff'd, 21 A.D.2d 754, 252 N.Y.S.2d 22 (2d Dep't) (mem.), lv. denied, 14 N.Y.2d 489, 253 N.Y.S.2d 1027 (1964).

38. *Landlord-Tenant Appeals*, *supra*, *supra* note 27 at 16.

39. CPLR 5519(c); *Hunt v. Grinker*, 169 A.D.2d 477, 478, 564

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N.Y.S.2d 350, 351 (1st Dep't 1991) (mem.).

40. Eric A. Portugese, *CLS Commentaries to CPLR 5519.*

41. CPLR 5519(e).

42. *See* 22 NYCRR 640.9(c) (providing for stay applications pending motion for reargument or leave to appeal before Appellate Term, First Department).

43. Compare CPLR 5519(e)(ii) with 5519(e)(i).

44. *Motion Practice in the Appellate Term, supra*, *supra* note 28 at 70.

45. *Greenhaus v. Milano*, 242 A.D.2d 383, 384, 661 N.Y.S.2d 664, 665 (2d Dep't 1997) (mem.).

46. *Residential Landlord-Tenant Law in New York*, *supra*, *supra* note 36 at § 18:28, at 18-8.

47. *Thoda v. Arcoleo*, 179 A.D.2d 508, 509, 579 N.Y.S.2d 30, 31 (1st Dep't 1992) (mem.); *Creative Cabinet v. Future Visions Comp.*, 140 A.D. 483, 484, 528 N.Y.S.2d 596, 597 (2d Dep't 1988) (mem.).

48. CPLR 5511; *Parochial Bus Sys. v. Bd. of Educ. of NYC*, 60 N.Y.2d 539, 544, 470 N.Y.S.2d 564, 566 (1983).

49. CPLR 5501.

50. *See 87th Street Owners Corp. v. Olnick Org.*, 21 H.C.R. 8A, N.Y.L.J., 1/7/93, p. 21, col. 2 (App.Term, 1st Dep't) (per curiam) (holding that respondent may not get additional attorney fees from court below absent cross-appeal).

51. CPLR 5513(c).

52. *In re Sudarsky v. DHCR*, 285 A.D.2d 405, 406, 685 N.Y.S.2d 704, 707 (1st Dep't) (mem.), lv. granted, 94 N.Y.2d 753 (1999).

53. *D'Onofrio Bros. Const. Corp. v. Board of Educ.*, 72 A.D.2d 760, 760, 421 N.Y.S.2d 377, 378 (2d Dep't 1979) (mem.). ◆

Luxury Decontrol *(continued from page 1)*

rent may be verified by contacting the New York State Division of Housing and Community Renewal ("DHCR"); and the DHCR's address and telephone number. This notice must be delivered to the tenant when the rent agreement is signed, or sent to the tenant by certified mail within 30 days after the tenancy begins.

✓ The tenant must also be provided with a copy of the registration statement form filed with DHCR indicating that the rental unit became exempt from rent regulation and the last regulated rent. The form, which must be certified by the owner, must be sent to the tenant within 30 days after the tenancy begins or after the filing of such registration, whichever occurs later.

The Rent Stabilization Association of New York City ("RSA") has prepared sample notices to assist owners and managers in complying with these new requirements. The notices may be downloaded from the RSA's website (www.rsanyc.com; click "News," then "High Rent Deregulation Notice").

Endnote

1 On March 28, 2000, Mayor Rudolph Guiliani signed legislation to extend rent stabilization and rent control until April 2003. [N.Y.C. Admin. Code §§ 26-502, 26-520, as amended.] The same legislation amended § 25-504.2 by lettering the existing section as subdivision "a" and by adding a new subdivision "b" which sets forth the notice requirements discussed in this article. ◆