

**Fordham University School of Law**

---

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

---

August, 2000

# What Readers of Legal Briefs Hate: The Top 30 Sins

Gerald Lebovits



Available at: [https://works.bepress.com/gerald\\_lebovits/94/](https://works.bepress.com/gerald_lebovits/94/)

# LANDLORD-TENANT PRACTICE REPORTER

August 2000

Volume 1  
Issue 9

## CONTENTS

### Feature

"Yellowstone" Relief: An Important Tenant Remedy.....1

### Rent Regulations

Succession of Regulated Apartments: A Primer.....1

### Trial Tips

Holdover Proceedings: Essentials of a Stipulation of Settlement.....5

Brett's Co-ops and Condos.....9

### Regulatory Update

NYC Rent Guidelines: Board Issues Order #32, Hotel Order #30.....10

### Persuasive Writing

What Readers of Legal Briefs Hate: The Top 30 Sins.....12

### Premises Liability

Insurance: Insurer May Not Deny Coverage for Tenant's Murder.....13

Off the Record.....14

Upcoming Seminars.....16

## "Yellowstone" Relief: An Important Tenant Remedy

By Jonathan H. Newman, Esq.

Many leases provide for their premature termination when, after appropriate notice to the tenant, a cure is not effected. Where the existence of the cited condition is disputed, or is incapable of correction within the time constraints provided, the tenant may make an application to a court of equity for an award of injunctive relief tolling the curative period and preserving the *status quo* until the merits of the underlying dispute have been addressed by the court. This equitable remedy is commonly known as a "Yellowstone" injunction.<sup>1</sup>

The *Yellowstone* affords the tenant the opportunity to challenge the sufficiency or accuracy of the landlord's notice and to request additional time to implement a cure while preserving the parties' relative positions.<sup>2</sup> Since this injunction is designed to prevent the unjust or premature termination of a valuable leasehold interest,<sup>3</sup> courts "routinely" grant the relief to avoid a forfeiture.<sup>4</sup> Absent such intervention, once a lease terminates or expires, courts are considered powerless to revive the agreement absent a showing of fraud, mutual mistake, or some other acceptable basis for the reformation of the parties' contract.<sup>5</sup>

Prior to the *Yellowstone*, a tenant had limited recourse (continued on page 2)

## Succession of Regulated Apartments: A Primer

When a tenant dies or vacates a regulated unit, it's not uncommon for remaining occupants to claim an entitlement to succeed to the apartment as a "family member" or "companion." Since those who can demonstrate the existence of this kind of relationship are afforded protected status, and can "succeed" to the unit as a regulated tenant, it's important for tenants, owners, property managers, and their counsel to be familiar with how the law applies.

### Who are "Family Members?"

A "family member" is defined as a spouse, child, step-child, parent, step-parent, sibling, grandparent, grandchild, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant.<sup>1</sup> Prior to the Rent Regulation Reform Act of 1997, nephews, nieces, aunts and uncles (continued on page 10)



**PERSUASIVE WRITING****WHAT READERS OF LEGAL BRIEFS HATE: THE TOP 30 SINS**

By Gerald Lebovits, Esq.

*Editors' Note: Ever wonder what drives a judge crazy? Here are 30 traps to avoid when drafting papers, memos and briefs.*

Late papers, boilerplate arguments  
 Personal attacks  
 Poor typeface  
 Sarcasm, failed humor, condescending language  
 Pontificating, pomposity, rhetorical questions  
 Exaggerating, adverbial excesses  
 Undefined acronyms, excess cross-references  
 Unnecessary facts and dates and, worse, getting facts wrong  
 Long quotations, misquotations  
 Wordiness, repetition  
 Typos, misciting  
 Conclusory, cowardly, and abstract writing  
 Subject-verb separation  
 Long sentences and paragraphs  
 Bold, italics, underlining, capitals, and quotation marks for emphasis  
 Writing in the negative, with complex conditionals  
 Legalese, bureaucratese  
 String citations (except as research tools)

Footnotes with argument or discussion  
 Lengthy case-law analysis  
 Setting out facts without analysis and application to law  
 Ignoring your case's major weaknesses  
 Buried points, mystery-novel writing  
 Not featuring the subject of a sentence  
 Rambling, anything boring  
 Not stating the relief requested  
 Passive voice, nominalizations  
 Kitchen-sink approach  
 Undeveloped argument or discussion  
 Whatever makes the reader work hard

*Gerald Lebovits, Esq., is a principal court attorney in Supreme Court, New York County, and an adjunct professor at New York Law School. He will be a featured speaker at our upcoming seminar, "Persuasive Legal Writing/Landlord-Tenant Proceedings and Beyond," scheduled for Saturday, November 4, 2000, in midtown Manhattan. (Application for CLE accreditation of this course in New York is currently pending.) For more information, see page 16. ♦*

**Succession** (continued from page 11)

- relationship with the tenant; or
- ✓ from the tenancy's initiation.<sup>10</sup>

**Endnotes:**

1. (RSC) 9 NYCRR § 2520.6(o); (Rent & Evict.Reg.) 9 NYCRR § 2104.6(d)(3); (N.Y.C. Rent & Evict.Reg.) 9 NYCRR § 2204.6(d)(3); (ETPR) 9 NYCRR § 2500.2(n)(2).
2. (RSC) 9 NYCRR § 2520.6(o); (Rent & Evict.Reg.) 9 NYCRR § 2104.6(d)(3); (N.Y.C. Rent & Evict.Reg.) 9 NYCRR § 2204.6(d)(3); (ETPR) 9 NYCRR § 2500.2(n)(2); see *Braschi v. Stahl Associates Co.*, 74 N.Y.2d 201, 544 N.Y.S.2d 784, 543 N.E.2d 49 (1989) ("[W]e conclude that the term family ... should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order. The intended protection against sudden eviction should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life. In the context of eviction, a more realistic, and certainly equally valid, view of a family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commit-

- ment and interdependence. This view comports both with our society's traditional concept of 'family' and with the expectations of individuals who live in such nuclear units ....").
3. See (RSC) 9 NYCRR § 2520.6(o)(2); (Rent & Evict.Reg.) 9 NYCRR § 2104.6(d)(3); (N.Y.C. Rent & Evict.Reg.) 9 NYCRR § 2204.6(d)(3); (ETPR) 9 NYCRR § 2500.2(n)(2); *Braschi v. Stahl Associates Co.*, 74 N.Y.2d 201, 544 N.Y.S.2d 784, 543 N.E.2d 49 (1989) ("These factors are most helpful, although it should be emphasized that the presence or absence of one or more of them is not dispositive since it is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control.").
  4. *Lepar Realty Corp. v. Griffin*, 151 Misc.2d 579, 581 N.Y.S.2d 521 (App.Term, 1st Dep't, 1991).
  5. *Strassman v. Estate of Donald Eggena*, 151 Misc.2d 638, 582 N.Y.S.2d 899 (App.Term, 1st Dep't, 1992) ("Based upon the proven emotional and financial interdependence between respondent and the tenant of record, respondent established his entitlement to be named as a tenant on a renewal lease.").
  6. *RSP Realty Associates v. Paegeo*, N.Y.L.J., 8/14/92, p. 21,