



TPA 2019 will immediately affect residential and commercial landlords and tenants – by Stephen Lasser

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The Housing Stability and Tenant Protection Act of 2019 and Statewide Housing Security Protection Act of 2019 (collectively the TPA 2019) were signed into law by governor Cuomo on June 14th, and all landlords and tenants in New York will be affected by its sweeping amendments of long-standing New York laws. This article summarizes some of the most potentially impactful amendments, which went into effect June 14th, unless noted otherwise.

New Era of Rent Stabilization

TPA 2019 has eliminated the ability of landlords of rent stabilized apartments to increase rents based on vacancies and greatly reduces rent increases based on building and apartment renovations. This may eliminate landlords' incentives to buy out tenants, to enforce primary occupancy and sublet restrictions and to complete any repairs or upgrades that are not legally mandated. Preferential rents will now be considered the legal registered rent, and the look-back period for rent overcharge claims has been increased from four years to six years.

In addition to completely changing the laws covering Rent Stabilized apartments, TPA 2019 changes the rules for leasing rent stabilized and free market apartments, as well as adding significant impediments to both residential and commercial landlords seeking to evict tenants who are in default or whose leases have expired.

Residential Tenant Screening

TPA 2019 provides that all residential landlords can only charge a maximum application fee of \$20 to cover the actual cost of obtaining a credit check. Landlords must provide prospective tenants with a copy of their credit report and the receipt from the entity conducting the credit check.

Effective July 14th, residential landlords cannot refuse to offer a lease to a potential tenant on the basis that the tenant was involved in a past or present landlord-tenant lawsuit, and security deposits are limited to one month's rent.

Residential Lease Term Requirements

Perhaps one of the largest new burdens imposed on residential landlords is a requirement that a notice of default be sent by certified mail to tenants who are five days or more late in the payment of rent. In addition, if a tenant's rent payment is not made within five days of the date it was due, the maximum late fee that can be charged is \$50 or 5% of the monthly rent, whichever is less. And late fees, repair charges and fines cannot be charged as rent or additional rent.

Lastly, effective October 12th, if a residential landlord intends to not offer a lease renewal or to increase the renewal lease rent by 5% or greater, then the landlord must provide the tenant with advanced written notice. At least:

- 30 days in advance if the tenant was in the apartment for less than one year;
- 60 days for tenancies from one to two years; and
- 90 days for leases and tenancies two years or more in duration.

Residential and Commercial Lease Termination

If a residential tenant vacates an apartment prior to the expiration of his or her lease, the landlord now has a duty to mitigate damages by seeking to relet the apartment at the current lease rent or fair market value, whichever is lower.

Prior to the enactment of TPA 2019, both residential and commercial landlords in New York City were required to provide month to month tenants with 30 days' notice that their leases were being terminated. Effective October 12th, the notice period has been increased for residential leases and seemingly for commercial leases to match the 30-, 60- and 90-day notice requirements applicable to residential leases that are not being renewed, which is summarized above.

Residential and Commercial Landlord-Tenant Proceedings

When a landlord and tenant have a dispute, New York has specific statutes authorizing landlords to file lawsuits to evict tenants on an expedited basis. However, the reality is that these lawsuits are rarely expedited and TPA 2019 has increased the time it will take to complete these proceedings by increasing notice requirements and extending the time a tenant in default can potentially remain in possession of its apartment or commercial space after being ruled to be in default.

The most significant amendments are increasing the time for tenants to respond to predicate rent demand notices from three days to 14 days and increasing the time to respond to non-payment petitions from five days to 10 days; increasing the time to respond to holdover petitions from five days to ten days; increasing the notice period to schedule an eviction from 72 hours to 14 days; and making it easier for tenants to obtain court adjournments and be restored to possession even after they have been evicted.

In conclusion, TPA 2019 will immediately affect residential and commercial landlords and tenants on a day to day basis as well as having a long-term impact on the economics of the New York residential rental market. There is much more to the TPA 2019 than can be fully summarized here as well as ambiguities in its applicability that remain to be clarified by the legislature or courts.

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