



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

April 6, 2017

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposal to Require Certain Early Disclosure in Landlord-Tenant Proceedings

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The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Permanent Commission on Access to Justice, to require early disclosure in landlord-tenant proceedings of (1) the regulatory status of the premises and building from which removal is sought, and (2) all pending housing code violations in those premises and building (as well as corrected violations not properly reflected in the public record). These recommendations were set forth in the Commission's November 2015 Report to the Chief Judge (Attachment A [excerpt]) as initiatives to expand access to justice for tenants, the vast majority of whom are unrepresented in such proceedings. As described in a memorandum by the Commission in support of the proposal (Attachment B), the requirements are designed to provide both the court and tenant-respondents, early in the case, with information needed to assess properly claims and defenses in housing matters. The proposed rules – 22 NYCRR §208.42(j) (New York City Civil Court), §210.42(f) (City Courts outside New York City), and §212.42(f) (District Courts) – are provided in Attachment C. Form templates for compliance with these requirements are provided in Attachment D.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than June 5, 2017.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

Attachment A

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK



NOVEMBER 2015

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Commission recommends that a similar directive be proposed by the Deputy Chief Administrative Judge for Courts Outside New York City.

c. Other Means of Ensuring Access to Justice in Landlord-Tenant Proceedings

Fair and efficient adjudication of a landlord-tenant proceeding also requires that the parties and the court consider, early in the process, any applicable regulatory status and any housing code violations. Relevant information includes whether the housing is either State or federally assisted—and under what specific program and regulations¹³⁹ (some of which are not in the public record¹⁴⁰)—and the existence of housing code violations placed on an apartment or building. Requiring this information to be disclosed at an early stage in the proceeding would benefit the landlord, the tenant and the court: the landlord or landlord’s counsel may refrain from filing a case upon examining the regulations applicable to the subject apartment; the tenants would have specific information about the applicable law and the standards that apply to their tenancy and therefore be better prepared; and the court would be advised of the information necessary to apply the appropriate standards to a particular tenancy.

Recent rules adopted by the court system to assure fair adjudication of foreclosure and consumer debt cases may be a helpful precedent for landlord-tenant matters. In 2010, a new court rule imposed filing requirements in residential foreclosure cases to protect the integrity of the foreclosure process and prevent wrongful foreclosures; counsel are required to file an affirmation certifying that counsel has taken reasonable steps—including inquiry to banks and lenders and careful review of the papers filed in the case—to verify the accuracy of documents filed in support of residential foreclosures.¹⁴¹ In consumer credit-card debt cases, the court system promulgated rules in 2014 requiring, for example, that a creditor’s default application include an Affirmation of Non-Expiration of Statute of Limitations as well as an affidavit with exhibits supporting the claim.¹⁴²

With these precedents in mind, the Permanent Commission recommends that the Administrative Board consider issuing rules—with an appropriate period for public comment—that would require landlord disclosure of the regulatory status and housing code violations of record at an appropriate early stage of the case.

In addition, the court system should consider developing additional training for judges handling housing proceedings, in particular on pleading requirements, burdens of proof, and defenses for such proceedings. To enhance the training, a checklist of federal, State and city subsidy programs with citations to relevant rules and regulations should be developed for quick reference by judges.

VII. Limited-Scope Legal Representation to Expand Access to Justice Should Be Supported

The Permanent Commission continues to encourage the use of limited-scope legal assistance as an efficient and efficacious way to serve low- and moderate-income individuals confronting legal challenges to essentials of life issues.

As Chief Judge Lippman has frequently remarked, some legal representation or legal assistance is always preferable for litigants who would otherwise proceed unrepresented in civil matters that implicate family and personal stability, health, employment, education and housing, which can have life-altering consequences.¹⁴³

Attachment B

MEMORANDUM

April 5, 2017

To: John McConnell
From: Barbara Mulé
Re: Proposed amendment of court rules to require disclosure of government health and housing code violations and regulatory status of dwellings in landlord/tenant proceedings

Landlord and tenant matters comprise a significant percentage of the civil caseload statewide. In these cases, the vast majority of tenants are unrepresented and generally lack the factual and legal knowledge to effectively defend against an eviction. The court system has implemented numerous initiatives to ensure that unrepresented tenants statewide have access to legal information about their rights and defenses. However, the impact of these initiatives has been limited, in part, by the complexity of the various applicable housing laws and the inaccessibility of factual information that is crucial in determining the substantive rights and obligations of the parties. Without this factual information at an early stage in the proceedings, tenants are hindered in their ability to prepare meritorious defenses. Further, the courts are impeded in their ability to fairly and efficiently adjudicate the substantive rights of the parties.

In its 2015 Report to the Chief Judge of the State of New York, the Permanent Commission on Access to Justice recommended a number of initiatives to ensure that tenants, as well as the courts, have access to information that is essential to the fair resolution of landlord/tenant matters at the outset of the proceedings. The Permanent Commission proposed, among others, the adoption of a court rule mandating a landlord's disclosure of the federal and state regulatory status of an apartment or building, as well as the existence of any housing code violations of record, at the commencement of a landlord-tenant proceeding.

As discussed below, a court rule should be adopted that imposes a disclosure requirement through sworn affidavits.

Regulated Housing

There are numerous federal, state and local housing programs, each conferring specific rights and obligations on landlords and tenants with respect to eviction and other terms and conditions of a tenancy. Tenants residing in regulated housing are unlikely to be aware of the specific federal, state or local law that governs their tenancy and the rights and protections provided by the law. It is therefore incumbent upon the courts to determine the type of tenancy, the applicable laws that govern the tenancy, and whether the landlord is in compliance when

resolving a landlord-tenant matter. But courts, particularly those with large caseloads, may overlook this essential issue if the regulatory status is not presented in the pleadings. As a result, tenants are likely to unknowingly waive their rights and agree to settlements that are contrary to their interests, including the possible surrendering of possession of their dwellings.

Given that the majority of landlord-tenant cases are resolved on the first court appearance, the need for early disclosure is crucial. A disclosure requirement would ensure that landlords provide the tenant and the court with essential notice of, and compliance with, the regulatory status of the dwelling or building at the beginning of a proceeding, thus allowing judges to apply the appropriate legal standards in resolving landlord-tenant matters.

Existence of Housing Code and Other Statutory Violations of Record

The myriad state and local health and housing laws and codes pertaining to the habitability of dwellings and health and safety of tenants delineate the landlord's and tenant's responsibilities concerning compliance and related enforcement provisions. The laws' complexity and overlapping applicability to particular dwellings and buildings poses challenges to tenants who have the burden of asserting non-compliance when seeking redress from the courts. Further, public documentation of health and housing code violations are generally not readily accessible to tenants or the courts. While such information is known to the landlord, as notice is provided when violations of record are placed by government agencies, this information is now not required to be provided to the court. Absent this information, courts cannot effectually enforce the relevant health and housing laws and codes to ensure safe and habitable premises for tenants.

A disclosure requirement would ensure that housing and health violations of record are before the court to allow for the full and fair adjudication of habitability matters including, where necessary, the entry of orders to correct unsafe and unhealthy conditions.

Conclusion

Based on the foregoing, a disclosure requirement for regulatory status and housing code violations should be adopted to ensure that tenants and the courts have all essential information when resolving and adjudicating landlord-tenant proceedings.

Attachment C

**Proposed Amendment of Various Uniform Rules of the Trial Courts (22 NYCRR) to
Require Certain Early Disclosure in Landlord-Tenant Proceedings**

Submitted for Public Comment
April 6, 2017

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- § 208.42(j) Disclosure of Health and Housing Code Violations and Government Regulation in Residential Summary Proceedings Under Article 7 of the RPAPL (Uniform Civil Rules for the New York City Civil Court)
- § 210.42(f) Disclosure of Health and Housing Code Violations and Government Regulation in Residential Summary Proceedings Under Article 7 of the RPAPL (Uniform Civil Rules for the City Courts Outside the City of New York)
- § 212.42(f) Disclosure of Health and Housing Code Violations and Government Regulation in Residential Summary Proceedings Under Article 7 of the RPAPL (Uniform Civil Rules for the District Courts)

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At the time of filing with the clerk of the notice of petition with proof of service in a summary proceeding under Article 7 of the Real Property and Proceedings Law involving residential property, the petitioner shall file a sworn statement, in a form approved by the Chief Administrator of the Courts, describing (a) the regulatory status of the premises and building from which removal is sought, and (b) all pending health and housing code violations in those premises and building, with proof of service on all respondents. The statement may be served with the notice of petition.

Attachment D

Statement of Health and Housing Violations, Notices or Citations and Government Regulation

The undersigned, a non-attorney, being duly sworn, deposes and says an attorney, affirms:

I am the petitioner-landlord officer of petitioner-landlord managing agent petitioner's attorney
for the place that is the subject of this court case (premises) located at

_____.

A. Health or Housing Violations, Notices or Citations

Check the box below to indicate whether there are existing health or housing violations of record, or notices or citations of violations in the premises or the public areas of the building.

- No violations of record and/or notices or citations are pending or outstanding.
- There are pending violations of record and/or outstanding notices or citations. I have listed all on the attached sheet, including any that were corrected but the correction is not indicated in public records.

B. Description of Government Regulation

Check the box below to indicate whether there is any rent subsidy, tax benefit, mortgage benefit or any other government regulation or benefit for affordable housing attached to the premises or the building where the premises are located.

- No subsidy or benefit is provided.
- There is a subsidy or benefit provided. List all in the chart below.

For all rental subsidies, tax and mortgage benefits or other benefits provided, list the agency that provides(d) the benefit, the specific housing program and the type of payment or benefit provided. Examples are provided.

Government Agency	Housing Program	Type of Payment/Benefit
Examples: HPD DHCR DHCR	Examples: Section 8 Voucher Program Rent Stabilization Mitchell-Lama	Examples: Rent Subsidy Regulated Rental Amount Mortgage Benefit

The above statements are true and correct to the best of my personal knowledge.

Dated: _____

Signature

Sworn to before me this _____ day
of _____, 20____

Printed Name

Notary Public

