

CIVIL COURT OF THE CITY OF NEW YORK

Legal/Statutory Memorandum

Subject: Order to Show Cause Procedure
under RPAPL §747-a

Class: LSM-145

Category: LT40

Date: November 3, 1997

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BACKGROUND:

Chapter 116 of the laws of 1997 amends various sections of the RPAPL and creates a new section titled 747-a, attached. This section requires that under certain conditions a respondent establish payment of the amount of the judgment to the satisfaction of the Court before the judge may grant a stay of the issuance or execution of a warrant or the re-letting of the premises.

The conditions under which a payment is required are the following:

1. The respondent appeared on the case.
2. The judgment was entered following RPAPL §747; and
3. More than five (5) days have elapsed since the entry of the judgment.

CLERK'S PROCEDURES:

In any order to show cause in which the judgment was entered following RPAPL §747 the Clerk is to check the date of the entry of the judgment. Note: This date appears in the lower portion of CIV-LT-52, 53, and 88b, and may differ from the date on which the judge signed the decision and judgment.

A. If more than five calendar days have elapsed since the date of entry of the judgment and the warrant has not been executed, the Clerk shall inform the applicant that s/he must establish payment of the full amount of the judgment by either:

1. Sworn testimony and documentary proof that the amount of the judgment was paid to the petitioner, or by
2. Deposit of the amount of the judgment into Court.

If documentary proof of payment is submitted, copies of it must be attached to the order to show cause application.

If the respondent offers to pay the full amount of the judgment, the Clerk is to accept the payment without the requirement of a further order from the Court, and is to attach the receipt to the order to show cause application. In this situation, the size of the building in which the respondent's premises is located (RPAPL §745(a)) is not an issue, and all payments are to be made to the Court.

B. If five days or less have elapsed since the entry of the judgment, or if the fifth day fell on a day on which the Court was closed and the day of the application is the first day of business after that day, the Clerk is to fill out the application without requiring the above conditions.

C. The requirements of RPAPL §747-a do not apply to judgments based on a respondent's failure to answer, and the respondent need not offer proof of payment nor make a deposit into to Court.

D. In some circumstances there may be a stipulation to restore the case to the calendar without the requirement of a deposit into court under RPAPL §747-a. The procedures outlined above do not apply in this circumstance, and the order to show cause is to be processed without proof of payment or a deposit into Court.

Dated

Hon. Fern Fisher-Brandveen
Administrative Judge