

Summary Proceedings Updates

What We're Covering Today

- ❖ Who, What, Where, & Why
- ❖ Types of Actions
- ❖ Filing Process
- ❖ The Clerk's Role
- ❖ Recusals

Who, What, Where, & Why

SUMMARY PROCEEDINGS IN A NUTSHELL

What?: The Sources of Law for Evictions

- ❖ Real Property Actions and Proceedings Law (RPAPL)
- ❖ Real Property Law (RPL)
- ❖ Uniform Justice Court Act (UJCA)
- ❖ Civil Practice Law and Rules (CPLR)

Why?: The Purpose of a Summary Proceeding

- ❖ To restore **POSSESSION** of real property
- ❖ NOT to determine OWNERSHIP

Where?: The Proper Court

- ❖ The summary proceeding must be filed in the **geographic jurisdiction** where property is located (RPAPL § 701)
- ❖ For a village within a town, this means that it could be properly filed in either the town OR the village where property is physically situated
 - ❖ Who chooses? The filing party

Who?: The Parties to the Action

- ❖ **Petitioner** – party bringing the action (i.e. Landlord)
- ❖ **Respondent** – party named in the action (i.e. Tenant)

- ❖ Proper & Necessary Parties
 - ❖ All known tenants – this is jurisdictional in nature
 - ❖ Children do not have to be independently named in Petition
- ❖ Family evictions – generally not permitted in Justice Court, as need an Ejectment proceeding in Superior Court to evict family member with an expectation to continue living in premises

Types of Actions

THE HOW AND WHEN

Types of Summary Proceedings

❖ Two general categories of summary proceeding:

❖ **Non-payment**

❖ Landlord-tenant relationship exists, but allegation is that respondent (tenant) has not met obligation to pay rent

❖ **Holdover**

❖ Landlord-tenant relationship severed or did not exist

Nonpayment Action

- ❖ Landlord-tenant relationship exists
- ❖ Landlord is seeking to regain possession of real property due to rent not being paid

Holdover Action

- ❖ When the landlord has sought to sever the landlord-tenant relationship OR no such landlord-tenant relationship exists
- ❖ Some examples:
 - ❖ Lease has expired and tenant has not moved out
 - ❖ Landlord seeks to end a month-to-month tenancy
 - ❖ Landlord accuses tenant of breaking lease terms
 - ❖ Landlord accuses tenant of being “objectionable”
 - ❖ Licensee or Squatter

Filing Process

How a Summary Proceeding Begins

- ❖ Predicate Notice to respondent
 - ❖ Varies based on type of action – more on this shortly!
- ❖ Notice of Petition and Petition
- ❖ Service of Notice of Petition and Petition

Nonpayment Action: Predicate Notice

❖ 14-Day Written Notice

- ❖ Landlord is required to serve written notice on the tenant that rent has not been paid, giving them 14 days to pay up or vacate, or else legal proceedings will commence (RPAPL § 711)
- ❖ This written notice must be served in same manner as Petition & Notice of Petition (RPAPL § 735)
- ❖ Failure to provide this notice is **NOT** jurisdictional in nature
 - ❖ But if raised by the respondent, may result in the action being dismissed if not correctly performed

Holdover Action: Predicate Notices

- ❖ The length of predicate notice for a holdover depends on type of relationship

Some Examples:

- ❖ Effective October 12, 2019, if the lease has expired but tenant has not moved out:
 - ❖ If had occupied for less than 1 year and did not have a lease term of at least year → must provide 30 days' notice
 - ❖ If had occupied for more than 1 year, but less than 2 years or has a lease term of at least 1 year but less than 2 years → must provide 60 days' notice
 - ❖ If had occupied for more than 2 years or has a lease term of at least 2 years → must provide 90 days' notice

Holdover Action: Predicate Notices, cont'd

- ❖ Length of predicate notice depends on type of relationship
- ❖ Examples:
 - ❖ Landlord seeks to end a month-to-month tenancy → must provide 1 months' notice
 - ❖ Landlord accuses tenant of breaking lease terms → must provide opportunity to cure (depends on terms of lease), but generally 10 days to rectify breach
 - ❖ Landlord accuses tenant of being “objectionable” → governed by lease
 - ❖ Licensee or Squatter → 10 days

Filing Process

- ❖ Notice of Petition must:
 - ❖ Be issued by an **Attorney**, a **Judge**, or a **Clerk**
 - ❖ If the Notice of Petition is signed by Judge or Clerk, \$20 Issuing Fee to be charged by Court (this is separate from the filing fee)
 - ❖ Specify the time and place of hearing (this date is often assigned by Clerk)
- ❖ \$20 Filing Fee for Notice of Petition & Petition

Service of Notice of Petition and Petition

- ❖ Notice of Petition must be served no less than 10 days prior to court date, but no more than 17 days prior to court date
 - ❖ Commonly known as “10 and 17” rule (formerly 5 and 12!)
- ❖ Types of Service:
 - ❖ Personal Service – handing documents to person to be served
 - ❖ Substituted Service – handing document to another person of suitable age and discretion at the business or dwelling place of the person to be served and mailing a copy to the residence or business
 - ❖ Conspicuous Service (Nail & Mail) – when personal or substituted service cannot be made with due diligence, by affixing the summons to the door and mailing a copy to the residence or business

When is the Action Commenced?

- ❖ Action is Deemed Commenced when **Service is Complete**
- ❖ It depends on type of service to determine when action is commenced:
 - ❖ If **Personal Service** → Service is complete upon serving respondent
 - ❖ If **other than Personal Service** → Service is complete when Affidavit of Service is filed with the Court

Summary Proceedings – Judge's Responsibility

- ❖ Judge rules on the timeliness and sufficiency of the papers, conducts the hearing (if required) and renders judgment.

Filing of a Summary Proceeding – Clerk's Responsibility

- ❖ Sign Notice of Petition (if requested)
- ❖ Set court date (maybe)
- ❖ Accept papers for filing following service
- ❖ Collect filing fee(s)

Clerk's Role, continued

- ❖ Cannot provide legal assistance to either party
 - ❖ Should not be providing forms to either party
 - ❖ Can refer anyone requesting assistance to speak with an attorney or go to the CourtHelp website:
www.nycourts.gov/courthelp

Notice of Petition – Clerk's Responsibility

Signing the Notice of Petition:

- ❖ The Notice of Petition may be signed by the clerk or the judge.
- ❖ The Notice must contain the court date (return date) for the proceeding.
- ❖ The Court collects **\$20.00 issuing fee** for signing the Notice of Petition.

Accepting papers for filing – Clerk's Responsibility

Accept papers for filing & collect filing fee:

- ❖ Following service of the Notice of Petition and Petition on the respondent (tenant), the petitioner (landlord) must file a copy of the Notice of Petition, Petition and Affidavit of Service with the court.
- ❖ Filing Fee is \$20.00

The Court Appearance

- ❖ If the respondent requests an adjournment to seek counsel, court **must** adjourn
- ❖ If the respondent fails to appear:
 - ❖ No statutory requirement to wait upon respondent's failure to appear (1 hour waiting period is only small claims)
 - ❖ Court must still conduct inquest before granting relief (warrant of eviction)
 - ❖ No attorneys' fees for residential default

Summary Proceedings – Clerk’s Responsibility

Preparing Warrant of Eviction and/or Money Judgment:

- ❖ The court may grant a **Warrant of Eviction** and a **Money Judgment**.
- ❖ Generally, courts have the petitioner prepare and submit these documents for the court’s signature.
- ❖ **New in 2019:** The warrant of eviction must state the earliest date upon which execution may occur
 - ❖ This is the earliest date it can be delivered to the sheriff
 - ❖ Once delivered, the sheriff must give at least 14 days’ notice (previously 72 hours)

Default judgments – what comes next

- ❖ If tenant wants to vacate a default judgment, must file an Order to Show Cause
- ❖ This is a formal motion to restore the action to the court's calendar
- ❖ Requires sworn statement alleging:
 - ❖ Valid excuse (good cause)
 - ❖ Meritorious defense
- ❖ **Important:** The court **cannot** provide legal advice or assistance to anyone asking about the procedure

Order to Show Cause - Clerk's role

- ❖ Accept papers for filing
- ❖ Submit papers to your judge for review – should be handled promptly!
- ❖ Cannot provide legal advice to either party

Order to Show Cause – Judge's role

- ❖ Review papers filed
- ❖ Often, the OSC is accompanied by a request to stay the warrant of eviction
- ❖ Judge must decide whether to vacate the judgment and warrant of eviction

Appeals

- ❖ Notice of Appeal **must** be accompanied by Affidavit of Service
 - ❖ If no affidavit of service, do NOT accept the notice of appeal for filing
- ❖ \$5.00 filing fee

- ❖ For detailed Appeals procedures, see Civil Appeals 2018 clerk training materials on OJCS website

Recusals

Recusals in Summary Proceedings

- ❖ Because summary proceedings are required to be heard in the geographic jurisdiction where the property is located, the recusal process is different!
- ❖ Must get administrative order from Judicial District for another judge to be assigned into the court to preside over the case
- ❖ The assigned judge must file a monthly report with Office of State Comptroller for each month that the judge is assigned to the court (will be assigned OSC ID for limited appointment)
 - ❖ The judge may file multiple reports
 - ❖ Judge is required to keep filing reports until their appointment has officially ended – make sure the paperwork is properly filed with the Comptroller's Office

Questions?

YOU CAN ALWAYS CALL THE OFFICE OF JUSTICE COURT SUPPORT AT
(800) 232-0630