

Landlords Beware....Or Another Lease Renewal Problem

COUNSELS' CORNER:

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WHITE PLAINS - The issue of a lease renewal in an Emergency Tenant Protection Act (ETPA), or Rent Stabilized apartment, has been one that has led to a plethora of litigation.

In previous articles we discussed the history. In a future article we shall discuss the "right" to cure the failure to renew a lease in a timely manner.

The law provides that a tenant in Westchester, protected by the 1974 Emergency Tenant Protection Act ("ETPA") is entitled to a written notice of an option to renew the lease not more than 120 days and not less than 90 days before the existing lease expires.

The written renewal offer must be made by certified mail. A New York City landlord must give a rent-stabilized tenant written notice of the option to renew by mail or personal delivery not more than 150 days and not less than 90 days before the existing lease expires.

The tenant then has 60 days from the date of mailing or personal delivery to accept the offer of renewal. If the tenant does not transmit the acceptance in a timely fashion, the Landlord is entitled to either deem the lease renewed or to refuse to renew the lease and commence eviction proceedings by the service of a notice of termination and thereafter moving in court for a petition to recover possession of real property.

A Difficult Scenario

What happens, however, if the premises are no longer the primary residence of the tenant? The Landlord has the right to seek to recover possession. Some landlords have run into a problem in this regard. When a landlord discovers that

lease renewal and as every first-year law student knows, with leases you have to have signatures for validity. He timely sent the Golub notice and mistakenly after the "renewal period" sent the renewal.

The Decision

Based on the Golub notice,

"...Involve your attorney as soon as possible, so that you do not undertake any act to negate your hard-earned anticipated vacancy."

a tenant is no longer using the housing as the tenant's primary residence, the landlord has the right to serve what is known as a "Golub" notice, which is a notice that is sent in the same time frame as the lease renewal notice advising the tenant that the tenant's lease will not be renewed because of the failure of the tenant to use the premises as the tenant's primary residence.

All too frequently however, the landlord's right hand may not fully know what the left hand knows and/or is doing, and when the right hand sends out the "Golub" notice, the left hand may thereafter send out a lease renewal notice.

One such landlord did just that in the case of *123 W. 15th Street v. Lafayette Compton*. However, that landlord thought he was protected because, fortunately, he did not sign the

the Landlord moved to evict the tenant in court and the court agreed, holding that the Tenant failed to demonstrate that the Landlord clearly and unmistakably intended to renew the lease and that the Landlord did not waive the Golub non-renewal notice by issuing an unsigned lease renewal outside the window period.

The Court said that the unsigned renewal lease is not binding under the statute of frauds (General Obligations Law § 5-703 [2]). The Court also drew a distinction based on the giving of the various notice within or without the window period. So far, so good for the Landlord.

Then, the bad news. The Tenant appealed to the Appellate Term.

The Appeal

The Appellate Term said that "...as we read the Code, a belated offer of a renewal lease cannot prejudice the tenant. Acceptance by the tenant created a binding lease agreement on the terms included in the offer, and superseded the prior notice of non-renewal (see *Steinmetz v. Barnett*, 155 Misc.2d 98). "The fact that the landlord may not have intended the proposed lease ... to constitute a binding offer is immaterial because the statute requires that the offer be binding" (*Matter of East 56th Plaza, Inc. v. New York City Conciliation & Appeals Board*, 56 N.Y.2d 544, 546; see also, *Jacreg Realty Corp. v. Barnes*, 284 A.D.2d 280).

Similarly, the Court also found that the fact that the Landlord had not signed the lease renewal notice did not have any bearing. The Court concluded by saying that a tenant should not be placed in the position of having to parse equivocal notices given by the landlord in renewal situations.

Here, the tenant would reasonably have relied upon the

latest expression of landlord's intent—i.e., the offer of renewal, and would have had no cause to prepare to vacate or to defend legal proceedings."

Thus, the Appellate Term reversed the Court below and held the lease renewal valid, even though not signed by the Landlord and even though not proffered until after the lease renewal window.

An Important Lesson

The Lesson to be Learned: make sure that once you have a non-primary residence, non-renewal notice that you have not only the appropriate proof

and investigation (in anticipation of both a trial and a complaint to the Division of Housing and Community Renewal (DHCR)), but involve your attorney as soon as possible so that you do not undertake any act to negate your hard-earned anticipated vacancy.

Editor's Note: The authors are with the law firm of Finger and Finger, A Professional Corporation. Finger and Finger is chief counsel to the Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI). The firm is based in White Plains.

THE HANLEY REPORT

By Jeff Hanley
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Noting a Special Landmark for the Building and Realty Industry

ARMONK – A magnificent milestone.

That phrase is most appropriate when describing the landmark commemoration members of the local building, realty and construction industry will be marking throughout this year – the 60th anniversary of the Building and Realty Institute (BRI).

The BRI, formed in 1946, has more than 1,700 members in 14 counties of New York state. The association is regarded as one of the most well-known business membership organizations in New York. It is comprised of the Builders Institute (BI), the Apartment Owners

Advisory Council (AOAC), the Cooperative and Condominium Advisory Council (CCAC) and the Advisory Council of Managing Agents (ACMA). The BRI also publishes this newspaper.

Members of those organizations, as well as members of the overall business sector, will officially mark the BRI's anniversary during a gala dinner dance on Friday, June 2, at the Renaissance Westchester Hotel in White Plains.

The event, scheduled to begin at 7 p.m., will honor past presidents of the BRI. It will also review the achievements

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Reaction Strong to the BRI's First Two Membership Meetings of the New Year

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*The object of his administration is to maintain the county's strong quality of life.

A Strong Co-op and Condo Connection

The Feb. 6 General Membership Meeting of the Cooperative and Condominium Advisory Council (CCAC) was another success for the BRI. The conference focused on how co-op boards should interview prospective shareholders. More than 90 CCAC members attended the meeting at the Crowne Plaza Hotel in White Plains.

The event's panel featured Carl Finger, Esq., of Finger and Finger, A Professional Corporation, of White Plains; Bill Ploski, a representative of the New York State Division of Human Rights; and Donna Harrison, property manager of the self-managed co-op of River Ridge Owners Corp. of

Peekskill.

Each panel member gave a presentation on the full and proper procedures boards should follow during the interview process. Ken Finger, chief counsel to the CCAC and the BRI, served as moderator. A lively question-and-answer period followed the presentations.

"We were absolutely delighted by the response to this meeting," said Diana Virrill, chair of the CCAC, which represents more than 400 co-ops and condos in the Westchester and Mid-Hudson Region. "We've always had a positive response to this topic, and this meeting was no exception. We've had strong responses to our membership meetings for years now, and we're really happy that the CCAC membership finds our programs so important."

Photo coverage of the meetings are on page 10.

IMPACT BUILDING & REALTY NEWS

Publisher: ALBERT ANNUNZIATA
Executive Editor: JEFFREY R. HANLEY
Editorial Assistants: SABRINA MARSH JANE GILL,
Art Director: BART D'ANDREA
Advertising Consultant: HARRIET K. LERNER
Photographic Consultant: BARBARA HANSEN
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Production: MEADOW ART & DESIGN, FAIR LAWN, N.J.

Published By The Builders Institute/Building and Realty Institute.
Subscription, \$20 Per Year, Included In Membership Dues.
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Entered As Periodical Matter At
Post Office, White Plains, NY 10610
USPS 259-900

IMPACT (USPS 259-900) Is Published Monthly For \$20 Per Year By The Builders Institute/Building and Realty Institute, 80 Business Park Drive, Suite 309, Armonk, NY, 10504.
Periodicals Postage Pending At Armonk, NY.
POSTMASTER: Send Address Changes To IMPACT, 80 Business Park Drive, Suite 309, Armonk, NY 10504.