


Legal Information
and
Resource Guide
For
Owners and Tenants
Affected By
The World Trade Center Disaster



*Civil Court of the City of New York
Honorable Fern Fisher-Brandveen
Administrative Judge
October 2001*

LEGAL INFORMATION AND RESOURCE GUIDE FOR OWNERS AND TENANTS AFFECTED BY THE WORLD TRADE CENTER DISASTER

The purpose of this guide is to provide an overview of some of the legal issues that owners and tenants of New York City may face as a result of the World Trade Center disaster. If you are a family member of a victim of the World Trade Center disaster, or were employed in or near the World Trade Center and now cannot pay your rent, or were displaced from either your home or business, or you own a building in the area around the World Trade Center, this guide may be helpful to you.

This guide is designed to explain the basics about each legal issue and to refer you to the right place for further assistance. It may not answer all of your questions and you may require the assistance of an attorney. If you have a housing related question, you may speak with a Housing Court Counselor, free of charge, who can be found in any of the New York City Civil Courthouses listed below. No appointment is necessary to meet with these counselors. If you are affected by the events of September 11, 2001, you may also seek free legal advice and referrals by contacting the New York City and County Bar Associations, or the New York State or American Bar Associations.

New York County Civil Court
111 Centre Street
New York, New York 10013

Kings County Civil Court
141 Livingston Street
Brooklyn, New York 11201

Queens County Civil Court
89-17 Sutphin Boulevard
Jamaica, New York 11435

Bronx County Housing Court
1118 Grand Concourse
Bronx, New York 10456

Richmond County Civil
Court
927 Castleton Avenue
Staten Island, N.Y. 11310

New York State Bar Assoc.
(877) HELP-321
(518) 487-5709
www.nysba.org

Legal Referral Service of
the New York City and
County Bar Associations
(212) 626-7373
www.ilawyer.com

American Bar Association
Disaster Legal Services
(866) 606-0626
www.abanet.org

TABLE OF CONTENTS

BRINGING A PROCEEDING IN HOUSING COURT	1
Service of Legal Papers on Owners and Tenants Who Are Not Presently Living or Working in the Apartment or Premises	1
Non-military affidavits	2
Active Duty Military Personnel	3
Determining if Your Tenant was a Victim of the World Trade Center Disaster	4
Proceedings Against a Tenant Who No Longer Occupies the Apartment Due to Death ..	5
RIGHTS TO CONTINUE LIVING IN THE APARTMENT IF THE TENANT NAMED ON THE LEASE HAS DIED	6
Rent-Regulated Apartments	6
Federally Subsidized Housing	7
City Owned Housing	8
Tenant Interim Lease Program (TIL)	8
Mitchell-Lama Housing	8
Lofts	9
Condominiums and Cooperatives	9
Unregulated Apartments	10
Licensees and Roommates	10
ACCESS TO APARTMENTS	11
Access To Obtain Items	11
Access To the Apartment For a Locked-Out Roommate	12
Access For Owner To Inspect and Repair	13
BREAKING A LEASE AND OTHER LEASE ISSUES	14
Tenants	15
Owners	18
Co-Tenants on Leases	21
CLEANUP AND REPAIR	22
Duty to Maintain Habitable Premises and Who is Responsible for Cleanup	22
What to do if you are Responsible for Cleanup	23
What to do if you are <u>Not</u> Responsible for Cleanup	25
Repair and Deduct	27
Proceedings to Obtain Repairs - HP	28
Asbestos	28
Damage to Personal Property	29
RENT REDUCTION/ABATEMENT	30

WHAT TO DO IF YOU ARE IN FINANCIAL TROUBLE	32
RESOURCES AND ASSISTANCE	33
Federal Emergency Management Agency - FEMA	34
Small Business Administration-SBA	34
New York State Crime Victims Board	35
National Association of Realtors	35
New York State Department of Insurance	35
Unemployment Benefits Insurance	36
State Department of Labor	36
Real Property Tax Credit (IT-214)	37
Social Security (Old Age and Survivors Insurance)/Supplemental Security Income (SSI)	37
Veterans Benefits	38
Senior Citizen Rent Increase Exemption (SCRIE)	39
Senior Citizen Homeowners Exemption (SCHE)	39
New York State School Tax Relief Program (STAR)	39
Home Energy Assistance Program (HEAP)	40
Office of Temporary and Disability Assistance (OTDA)/Public Assistance/Welfare	40
Food Stamps	42
Subsidized Housing	42
Safe Horizons Mediation Centers	43
Charities	44
Legal Assistance	46
Locating Possible Victims	47

BRINGING A PROCEEDING IN HOUSING COURT

If you are an **owner** and wish to bring a proceeding in housing court against a tenant to recover unpaid rent and/or possession, or your tenant has brought a proceeding against you in housing court, you will find general information on how to proceed in the “Landlord’s Guide to the New York City Housing Court,” available free from any Civil Court Resource Center or Clerk’s office. If you are a **tenant** and the owner has commenced a proceeding in housing court against you or you wish to bring a proceeding against the owner, you may find general information on how to proceed in the “Tenant’s Guide to the New York City Housing Court,” available free from any Civil Court Resource Center, Clerk’s office or the Association of the Bar of the City of New York. However, the additional information listed in this section may be pertinent if your situation has been affected by the September 11, 2001 tragedy.

Service of Legal Papers on Owners and Tenants Who Are Not Presently Living or Working in the Apartment or Premises

Many tenants and owners are not living or working in their apartment or business due to the events of September 11, 2001. Some tenants or owners have left their apartments or place of business because of emotional distress, or because the building has been destroyed or become inhabitable for reasons such as, no electricity, no water, excessive dust, noxious odors, property damage, or some other destruction. Many owners and managing agents and some of their attorneys have been forced to move their businesses from the World Trade Center Area.

If you are an owner or tenant and intend to serve legal papers required to bring a proceeding in housing court, such as a written rent demand, a termination notice, or a notice of petition and petition, and you are aware that the intended recipient is not presently living in the apartment, or not

presently conducting business in the premises, and you have information as to where the tenant or owner works or is temporarily residing or conducting business, you must give this information to your process server so that a “reasonable application” to serve personally can be made. If you are aware that the tenant or owner is not presently residing or working in the apartment or premises, any attempts to serve process at the empty premises would not be result in sufficient service. In addition, where “nail and mail” service is employed, any mailings solely to the unoccupied apartment or business, when you have actual notice of another address, is insufficient to properly commence a proceeding. The papers must also be mailed to the address where you know the owner or tenant lives or works.

If you are a tenant and you have informed your landlord that you are not residing or working in the premises or you are an owner and have informed your tenant that you have moved your place of business, and have provided written information of another address, and you were not served at the other address, you may have a defense to the proceeding. You may want to consider including the defense of “improper service” in your answer to the petition.

If you were involved in litigation prior to September 11, 2001, and the other party’s attorney or your own attorney has been displaced from its regular place of business, check with the Clerk of the Landlord-Tenant office of the Civil Courthouse, or call the New York State Bar Association, for any new or temporary address.

Non-military Affidavits

Before an owner can get a default judgment against a tenant in housing court (or civil court for a commercial tenant) because that tenant did not answer a non-payment petition or appear on a holdover petition, an affidavit (a sworn statement) must be filed with the court that states that the

tenant is not on active duty in the military. This is called a “non-military affidavit.” This affidavit may be sworn to by the owner, the owner’s agent, the owner’s attorney, or the owner’s employee. The affidavit must state facts as to the basis for the affiant’s (the person swearing) belief that the tenant is not serving in the military. Possible methods of gaining facts sufficient for a non-military affidavit are where an affiant: asked the tenant personally, spoke to neighbors who know the tenant personally, spoke with employees who work in the building who know the tenant, spoke to the tenant’s employer or coworkers, looked up the tenant’s military records, observed that the tenant is elderly (with approximate age listed) or infirm. Names and descriptions of people interviewed as well as a description of the location where the interview was carried out must be included in the affidavit.

Cases hold that a non-military affidavit must be made “contemporaneous” with the entry of a judgment. Due to recent events, the Civil Court and Housing Court by directive have imposed time limits to define what is “contemporaneous” for non-military affidavits. For residential or commercial summary proceedings, a non-military affidavit which is done less than 30 days before an application for a default judgment is received by the court is sufficient. If the non-military affidavit is made more than 30 days before an application for a default judgment is received by the court, that application will be brought to the attention of the judge. In addition, any non-military affidavit done before September 11, 2001 must be redone and a new non-military affidavit filed with the court.

Active Duty Military Personnel

A tenant who is serving in the military (including activated reserves) and that tenant’s dependents (spouse or children) have certain protections in the context of a Housing Court eviction proceeding. A judge can appoint an attorney to represent you if you are a member of the military or that member’s dependent and can require an owner to post a bond to protect your interest. The judge

can also postpone the proceeding for three months if being in the military has affected your ability to pay rent. Finally, you can cancel your lease prior to the end of the lease term. So, if you receive legal papers you will need to go to the Housing Court and answer these papers. You should inform the clerk that either you or your dependent is in the military. The clerk will give you a court date, and assign you to a courtroom. A special Military Part has been set up for the handling of these cases. On the court date, make sure that you inform both the owner's representative and/or attorney, and the judge that you are either in the military or a military dependant. You should bring the military or dependent ID card, a copy of the service member's order, or telegram calling them to active duty with you when you go to court on your court date. If you do not have these documents, you can contact the Fiscal Officer of the service member's Unit or call these numbers for assistance: Army Emergency Relief (718) 630-4552 or 4710, Navy and Marines Emergency Relief (718) 876-6245 or 6246, Air Force Family Aid (609) 724-3154, Reserve Civilian Job Rights (800) 336-4590.

If you did not appear in court for an eviction proceeding and a default judgment was entered against you, you can request that the judgment be re-opened within 90 days after it was entered. Bring the documents listed above to prove to the court that you were an active member of the military or dependent on someone in military service at the time you defaulted.

If you are in the military or dependent on someone in the military you should inform the owner of your building in writing that you are in the military to avoid problems.

Determining if Your Tenant was a Victim of the World Trade Center Disaster

So many New York City tenants are missing as a result of the events of September 11, 2001. If you have been unable to contact your tenant and suspect that he or she may have been a victim of the World Trade Center disaster, you can contact the American Red Cross at (212) 560-2730. There

are unofficial websites you can check which are listed in the resource section at the end of this booklet.

Proceedings Against a Tenant Who No Longer Occupies the Apartment Due to Death

Tragically, many New York City tenants have died as a result of the World Trade Center disaster. If you are a landlord and your tenant no longer resides in the apartment due to death, or if you are a representative of a tenant's estate, the following information is relevant.

A lease does not terminate upon the death of the tenant, rather, it becomes the property of the tenant's estate and the estate is entitled to possession of the apartment for the remainder of the time left on the lease provided all the rent is paid. For information on whether you are entitled to continued possession of an apartment after the lease expires, when the tenant named on the lease has died, see the section on **Rights to Continue Living in the Apartment if the Tenant Named on the Lease has Died** in this guide.

When a tenant dies during the term of the lease, and rent is not paid, the landlord cannot bring a proceeding until three months after the tenant's death. The estate of a deceased tenant is a "necessary party" to the proceeding. That means the landlord must name and serve a representative of the tenant's estate, such as a known surviving spouse, surviving children, or an identifiable distributee, as a party in the proceeding. In the absence of a recognized estate representative, the landlord must petition Surrogate's Court to have an administrator appointed. If the landlord fails to name the tenant's estate in the proceeding, the estate may consider including the defense of failure to name a necessary party in its answer to the petition. A landlord who seeks a default judgment against a tenant who they know is deceased, may be subject to sanctions by the court.

RIGHTS TO CONTINUE LIVING IN THE APARTMENT IF THE TENANT NAMED ON THE LEASE HAS DIED

Many tenants of New York City were victims of the September 11, 2001 attacks on the World Trade Center, leaving family members, loved ones and roommates in their apartments who are not named on the lease. When the tenant named on the lease has passed away prior to the expiration of the lease term, the balance of the time left on the lease becomes the property of the tenant's estate and any permission ("license") he or she gave to another to occupy the apartment ends. The estate may remain in possession of the apartment and is responsible for paying the rent. However, it is possible that the remaining occupants may be entitled to a lease in their own names. This is called "succession rights." Whether or not an individual has succession rights depends on the type of housing unit involved and the individual's relationship to the deceased tenant. Even if there is no legal right to "succeed," the owner and tenant may be able to agree to the terms of a lease in the remaining occupant's name, though an owner is not required to give a lease to an occupant who does not have "succession rights." As a result, if there is no legal right to "succeed" the tenant's estate or the owner can bring an eviction proceeding to force a licensee or roommate to move out of the apartment.

Rent-Regulated Apartments

The rights of an individual to "succeed" and obtain a lease in their own name after the named tenant is no longer occupying the apartment, are covered by various laws including Rent Stabilization and Rent Control Laws and Codes. These laws permit certain family members and loved ones of the deceased tenant to a lease in their own names, depending on their relationship to the named tenant and their relationship to the apartment. Subject to certain requirements, the following family

members of the named tenant are entitled to “succession rights”: husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in law, son-in-law or daughter-in law. In addition, any other person residing with the tenant in the apartment as a his or her main or “primary” residence, who can prove an emotional and financial commitment and interdependence between themselves and the former tenant may be entitled to “succession rights.”

An individual who can demonstrate one of the above relationships could “succeed” to the rights of the former tenant of record and obtain a lease in their own name, if the occupant resided in the apartment with the named tenant, as his or her main residence for at least two years (one year for senior citizens over sixty-two, and disabled persons) prior to the tenant’s death. If the tenancy or relationship to the named tenant began less than two years ago (one year ago for senior citizens and disabled persons), the person must have resided in the apartment with the named tenant since the tenancy began or the relationship began.

A person who did not have the type of relationship listed above with the named tenant and is not named on the lease, is a “licensee” or roommate, and most likely does not have a legal right to “succeed” to the apartment. See the section below on **Licensees and Roommates**.

Federally Subsidized Housing

Remaining family members living in federally subsidized housing such as the New York City Housing Authority or Section 8, may have the right to “succeed” to the named tenant’s leasehold and/or rent subsidy, where the named tenant of record has died. The Housing Authority Management Manual defines remaining “family members“ as persons who were members of a tenant’s family or became permanent members of the tenant’s family subsequent to moving in, with the written approval

of the project management, or subsequent to moving in were born or adopted into the tenant's family and who thereafter remained in continuous occupancy up to and including the time the tenant of record moved out or died, and who have been listed on income affidavits submitted to the housing authority at the time of recertification. If the remaining individual has not been listed on the tenant's income affidavit, that will probably prevent succession to the apartment. Under federal regulations, persons claiming they are remaining family members of a tenant's family are entitled to a grievance hearing before an eviction proceeding may be brought.

City Owned Housing

The Department of Housing Preservation and Development (DHPD) regulations governing the rights of a remaining tenant to "succeed" to an apartment define "family member" identical to the Rent Stabilization Code (see **Rent-Regulated Apartments** above). However, a remaining family member is ineligible to succeed to the tenancy if the remaining family member has engaged in "unacceptable behavior," or the remaining family member refuses to pay accrued rent, or the tenant of record was evicted for cause.

Tenant Interim Lease Program (TIL)

There may be no legal right to succession for units in the TIL Program. For further information, you can call HPD at 212-863-7317.

Mitchell-Lama Housing

For state supervised Mitchell-Lama housing, the Division of Housing and Community Renewal promulgated succession rights regulations that are substantially identical to the regulations that apply to tenants in rent regulated housing (see **Rent-Regulated Apartments**, above). However, one difference between rent-regulated and Mitchell-Lama regulations is the requirement that in a

Mitchell-Lama apartment, a remaining family member must have been listed on the income affidavit (which must be filed annually) and /or in the Notice of Change to Tenant's Family form (which must be filed upon a change in the persons occupying the apartment).

If the owner of Mitchell-Lama cooperative shares bequests the shares to someone other than a remaining family member entitled to succession, that person must surrender the shares to the cooperative for redemption, and the remaining family member must be given a reasonable opportunity to purchase the shares at the statutorily permitted price.

Occupants who seek succession rights after the tenant no longer resides in the unit are entitled to an administrative hearing before the Division of Housing and Community Renewal to resolve their claim.

For city supervised Mitchell-Lama housing, only immediate family members may acquire cooperative shares when the tenant of record no longer resides in the unit. Here, "immediate family" is limited to spouses, children, and parents.

Occupants of city supervised buildings who seek succession rights after the tenant no longer resides in the unit are entitled to an administrative hearing before Department of Housing Preservation and Development to resolve their claim.

Lofts

The Loft Board of the City of New York has recognized "succession rights" to loft units.

Condominiums and Cooperatives

Generally speaking there is no "succession" in cooperatives and condominiums akin to the protections extended to rent-regulated units. However, each cooperative has its own set of by-laws and proprietary leases, as every condo has its own set of by-laws and rules, which may permit an

interest in the property to be transferred to specific individuals by will, or operation of law, if a will does not exist.

Unregulated Apartments

If the apartment is not governed by any of the above rent regulations, such as a two-family house or a luxury rental, the tenant most likely does not have a legal right to a lease or a renewal lease, in his or her own name. However, the owner and tenant are free to agree on terms to a new lease.

Licensees and Roommates

A “licensee” is a person who was brought in by the tenant but is not named on the lease. A licensee can be a family member, a roommate or a guest of the tenant. If a licensee is occupying the apartment of a missing person, the licensee should determine if he or she has rights to “succeed.” to the unit. (See **Rent-Regulated Apartments**, above). Whether an occupant/licensee has a right to “succeed” will also depend on the type of housing in which he or she resides. For example, rent-regulated apartments provide for “succession” while condominiums do not (see above). Roommates, who are not family members of the tenant-of-record or named on the lease are not entitled to a possessory interest in the apartment unless they can demonstrate an “emotional and financial commitment and interdependence” with the tenant of record. If a roommate can prove a succession right, and is living in a type of housing accommodation which recognizes “succession” rights (See **Rent-Regulated Apartments**, above), a roommate can continue to occupy the apartment as a tenant. If a roommate does not have succession rights or does not live in a type of housing accommodation which recognizes “succession” rights, and has lived there for more than 30 days, an owner or the estate of the tenant must commence an eviction proceeding to reclaim possession of the apartment.

ACCESS TO APARTMENTS

Access To Obtain Items

If you are missing loved ones as a result of the World Trade Center disaster, and want to get into the apartment to obtain some personal items, or items for DNA testing or a Will, you may have contacted the owner and requested permission to enter the apartment. An owner may have been approached for access by a friend or family member of someone missing or deceased and declined to allow access, believing that it could expose him or her to liability. Without a court order, an owner is not legally obligated to give a family member, or friend or any other individual who is not a named tenant, access to an apartment. The Surrogate's Court and the Supreme Court can issue an order permitting limited supervised access, in order to obtain certain items.

The Surrogate's Court can issue an "Apartment Search Order." This Order can be obtained the same day it is applied for, and will permit search and removal of a Last Will and Testament, insurance policies and burial instructions. The Apartment Search Order will not allow access for search or removal of any other items, including for identification or DNA purposes. To obtain an Apartment Search Order from the Surrogate's Court, you will need to bring, the death certificate, which can be obtained at Pier 94, and proof that you are the next- of-kin, such as the spouse, father, mother, sister, brother, niece, or nephew of the person who died, or that you are the named executor of the Will.

If you require access to secure DNA samples or another purpose, you can petition the Surrogate's Court for Letters of Administration (if the decedent did not have a will) or Letters Testamentary (if the decedent had a will). The forms you will need to fill out are available in the Surrogate's Court, and you will need to bring with you the death certificate and proof that you are

next-of-kin (and the Will, in the case of Letters Testamentary).

The Surrogate's Court has waived the fee for these applications for victims of the September 11, 2001 disaster and their families, and have implemented procedures to issue the necessary documents on an expedited basis.

You should go to the Surrogate's Court, in the County where the person lived immediately before his or her death. There is a Surrogate's Court in every County in New York City, and their addresses and telephone numbers are as follows:

Surrogate's Court
Bronx County
851 Grand Concourse
Bronx, NY 10451
(718) 590-3611

Surrogate's Court
Kings County
2 Johnson Street
Brooklyn, NY 11201
(718) 643-5262

Surrogate's Court
New York County
31 Chambers Street
New York, NY 10007
(212) 374-8233

Surrogate's Court
Queens County
88-11 Sutphin Blvd.
Jamaica, NY 11435
(718) 520-3132

Surrogate's Court
Richmond County
County Courthouse, St. George
Staten Island, NY 10301
(718) 390-5400

Access To the Apartment For a Locked-Out Roommate

You may be a roommate who has been out of possession of an apartment where you were living before the events of September 11, 2001. If you are not currently living in the unit, it may not be possible for you to regain possession. A person who does not have a right to possession and who has been locked out of an apartment does not have a right to get back in. Because a roommate is usually a "licensee" who does not have a separate right to possession of an apartment, under the law as it stands, a roommate might not be able to regain possession.

Considering the extreme circumstances suffered by occupants of units in the vicinity of the World Trade Center, it is always possible that the law will be applied in a way that preserves a

roommate's occupancy, at least for a short term. However, roommates not in possession should realize that generally they can be prevented from entering the apartment, since they have no independent right to continued occupancy. Nevertheless, it is still possible for such an individual to bring an "alleged illegal lockout" proceeding in Housing Court to, at a minimum, be allowed in to retrieve belongings. If you have been locked out by a representative of your deceased roommate's estate (who is now entitled to possession of the apartment for the remainder of the term left on the lease), and you wish to bring an illegal lockout proceeding, you must bring the proceeding against the estate of the deceased tenant. If the owner of the apartment has locked you out, in order to bring an illegal lockout proceeding, you must bring the proceeding against both the owner and the tenant's estate. For more information on how to bring an illegal lockout proceeding, see the "Tenant's Guide to the New York City Housing Court," available free from any Civil Court Resource Center or Clerk's office, or speak to a Civil Court Housing Court Counselor. If you believe that you have a right to continued possession, see the subheading in this guide on **Roommates** in the section entitled, **Continued Occupancy of the Apartment When the Named Tenant has Died.**

Access For Owner To Inspect and Repair

If you are an owner you may want to enter a unit to inspect what if any damage it has sustained as a result of the September 11, 2001 tragedy, and begin repairs if needed. In general, landlords have the right to enter a rental unit for purposes of making repairs and improvements and to inspect the unit or show it to a prospective purchaser.

The law requires that tenants must permit the owner to enter or make repairs or improvements required by law or to inspect the premises to determine compliance with the law. The owner should contact the tenant to provide reasonable notice of his or her intention to inspect. The notice should

state the purpose of the inspection and/or the nature of the repair, and should be a minimum of 24 hours notice for inspection and one week for repair. The notice should be in writing. If it is not unsafe, it may be wise to have the tenant or a member of the tenant's family accompany the owner on his or her inspection, this way the tenant's concerns can be stated and an owner may avoid future liability in the event something is broken or missing.

If the owner is prohibited from entering a building or space by the authorities, the owner will not be permitted to enter the space, even with the tenant's permission.

In the event the tenant is missing or otherwise unavailable, or if the tenant refuses access, the owner will have to bring an action in court against the tenant. The owner may commence a holdover against the tenant in the Civil Court or the Housing Part. The owner must comply with lease provisions and governmental laws and regulations regarding notices prior to commencing the holdover. A summary proceeding holdover may take time. An owner may also consider commencing a case in Supreme Court for an injunction which may be quicker, but more expensive. In the event the condition in the apartment is an emergency, such as a gas leak, or fire, the local police or fire department should be contacted. Absent an immediate emergency which can not await authorities, it is improvident for an owner to enter a unit to make repairs without the tenant's permission. An attorney should be consulted in the event access is a problem.

BREAKING A LEASE AND OTHER LEASE ISSUES

As a result of the September 11, 2001 tragedy, many New York City property owners and tenants are seeking information about their legal rights and remedies. You may be an owner who has been approached by your tenant about breaking the lease and you want to know if you can seek the remainder of the rent left on the lease term. There are any number of reasons why a tenant may wish

to break his or her lease prior to the end of the lease as a result of the World Trade Center disaster. You might be a tenant living near “Ground Zero” who wants to move because it is too emotional to remain there, or because of excessive noise or poor air quality, or because access to your home has been restricted. You may be a tenant with a business that has been effected by the World Trade Center crisis and you seek to relocate. You may be a tenant who can no longer afford the rent on your apartment because you have lost a roommate, you have lost the family bread winner, or you have lost your job as a result of the September 11, 2001 attacks. You may wish to move because your office has relocated and your apartment is no longer convenient to your job. Whatever the reason, the information below may explain your rights and remedies.

Tenants

Whether you are a commercial tenant or a residential tenant, or even a subtenant, you cannot be forced to live in a place where you do not want to live, or work in a place where you do not want to conduct business. However, most residential leases and some commercial leases have clauses stating that if you move out before the lease expires, you will be responsible to pay the owner monthly rent as it becomes due until the lease term ends. If your lease has such a provision, and you move out of the premises before the lease ends, you may be required to pay all or some of the rent to the owner until the end of the lease term, even though you are no longer living or working there. Some leases, particularly commercial leases, may have clauses requiring the tenant to pay a certain sum of money as a penalty for breaking the lease. Other leases have clauses permitting a tenant to leave before the term ends if the tenant gives the owner proper notice. For example, a lease may allow the tenant to move out early upon 60 days written notice to the owner. If you properly comply with the notice requirements, you will not have to pay any penalty for breaking your lease. Since a

tenant's rights and remedies depend upon the language of your lease, you may want to bring your lease to a lawyer to review.

If you do not have a clause in your lease permitting you to leave before the expiration of the lease term, and the owner will not agree to allow you to break your lease early, you can start a "declaratory judgment" action in Supreme Court. The owner can also choose to start a case in Supreme Court seeking an adjudication of the parties' rights. In a declaratory judgment action, a judge will decide whether you are entitled to break the lease and what you may be responsible to pay to the owner. There may be legally valid reasons for a tenant to move before the lease expires without penalty. However, generally speaking, emotional distress, inability to pay the rent, inconvenience, and loss of business, are not legally valid reasons.

If you move out without a legally valid reason before the lease expires and the owner re-rents the premises, and your lease holds you responsible for the remainder of the rent due on the lease, you will only be responsible for the rent for those months that the premises remained vacant and the owner did not receive any rent, and for any difference between what your lease required you to pay per month and the amount the owner collected. For example, if your lease required you to pay \$1,200.00 per month and the owner was only able to rent the premises to a new tenant for \$1,000.00 per month, you may be responsible to pay the owner the difference between the two rents, or \$200.00 per month, until the original lease term ends. If the owner rents the premises for more money than you were required to pay, you are not entitled to collect the excess difference from the owner. If the owner rents the premises immediately, without any loss, you may be entitled to get your security deposit back. Any lawsuit brought against you before the rent is due is premature.

If the owner does sue you for any rents remaining on the lease term and obtains a judgment,

the owner can then pursue his or her legal remedies to collect the money from you, if you do not pay the judgment. The owner can seek to obtain a percentage of your salary directly from your employer, or can seek to have your bank turnover monies in your accounts, or can seek to have your property taken away from you and auctioned for sale in order to satisfy the unpaid part of the money judgment.

An owner's attempt to re-rent the premises for the remainder of the term of the lease after you move out is called "mitigation of damages." At present, an owner is not required to take steps to "mitigate" the damages in a commercial premises. In a residential apartment, an appellate court has held that an owner does not have to take steps to mitigate damages in Manhattan or the Bronx. In other counties, the appellate courts have not ruled on this issue and an owner's failure to take reasonable steps to re-rent the premises *may* relieve you of your obligation to pay the rent until the end of the original lease term.

If you decide to vacate your space before the expiration of your lease and risk responsibility for any rents which come due, you should remove all personal belongings and surrender possession of the premises by returning the keys to the owner. This is because the owner may not legally re-rent the premises until you have clearly surrendered possession.

Depending on the type of premises involved, and the language of your lease, you may be able to assign your rights to the lease to a new tenant that you may find. However, the right to assign usually requires permission from the owner. You may have a legal right to sublet the premises which cannot be unreasonably denied by the owner. If the owner unreasonably withholds his or her consent to your sublet request, you may be able to break your lease without penalty. If you know someone who is interested in taking over your lease, you may want to bring your lease to an attorney to discuss your rights. In any case, an owner may agree to permit you to break your lease without penalty if you

have found a new tenant.

In light of this information, it may be reasonable for the owner and tenant to discuss the tenant's breaking the lease and agree on an amount and or payment schedule to satisfy the owner's claim for rent remaining on the lease before resorting to litigation. If you are interested in free mediation of your dispute, you may contact Safe Horizons Mediation Centers. For more information see the section in this guide entitled, **Resources and Assistance**.

If you are seeking to break your lease because you are no longer able to pay your rent due to the loss of the family breadwinner or alimony or child support payments, the loss of your job, or for any other reason related to the events of September 11, 2001, you should see the section in this guide entitled, **Resources and Assistance**, where you may find information that will assist you with rent payments or other necessities that will enable you to pay your rent and remain in your apartment.

Owners

Like any other breach of contract, if your tenant breaks the lease, the lease usually provides that the tenant must pay a penalty. Most leases have clauses stating that the tenant will be responsible for the monthly rent as it becomes due until the lease term ends. Some leases, particularly commercial leases, may have a specific provision which requires the tenant to pay you a certain sum of money. Your tenant may be entitled to legally break the lease if the tenant has a legally valid reason, you give your permission, or the lease has a clause permitting the tenant to do so by following the lease's specific notification provisions. You should review your lease with a lawyer to see under what conditions the tenant may be entitled to break the lease without penalty and what are the penalty provisions.

If you believe that the tenant does not have a valid reason to break the lease, or if the tenant

believes that he or she does, either one of you may start a “declaratory judgment” action in Supreme Court, where a judge will resolve the dispute. In general, emotional distress, inability to pay the rent, inconvenience, and loss of business, are not legally valid reasons for a tenant to break a lease.

If the tenant clearly surrenders possession of the premises before the lease expires by informing you in writing and or by returning the keys, you may re-rent the space. If the tenant has abandoned the premises, but has not clearly surrendered possession, it may be advisable to bring a proceeding against the tenant to recover possession before re-renting the premises. If the lease provides that the tenant is responsible for the remainder of the rent left due on the lease, and you re-rent the premises, you may seek to recover the rent for the months that the premises remained vacant and you did not receive any rent, and any difference between what the lease required the tenant to pay per month and the amount you are now collecting. For example, if the lease required the tenant to pay \$1,200.00 per month and you were only able to rent the premises to a new tenant for \$1,000.00 per month, you may be able to recover the difference between the two rents, or \$200.00 per month, until the lease term ends. If you rent the premises for the same or more money, you are not entitled to recover the rent twice, since that would give you a windfall. If you rent the premises immediately without any loss, and there is no other damage to the premises, your tenant may be entitled to get the security deposit back.

Since the amount you may be entitled to recover from the tenant depends on when and how much the premises are re-rented for, you cannot bring a lawsuit to recover any money until the rent becomes due. Re-renting the premises for the remainder of the term of the lease after the tenant abandons the premises is called “mitigation of damages.” At present, you are not required to take steps to “mitigate” your damages in a commercial premises. An appellate court has held that you are

not required to take steps to mitigate your damages for those residential apartments in Manhattan or the Bronx. In other counties, it is advisable to consult an attorney as to whether or not your failure to take reasonable steps to re-rent the premises can relieve the tenant of the obligation to pay the remainder of the rent on the lease.

If the tenant has abandoned the premises, you may seek to enforce the provisions of the lease by bringing a lawsuit against the tenant. You can bring the case in the Small Claims Part of the Civil Court if you are suing for \$3,000.00 or less; or in the Civil Court if you are suing for \$25,000.00 or less; or in Supreme Court if you are suing for more than \$25,000.00. Once you obtain a judgment, you can pursue your legal remedies to enforce collection of the judgment if the tenant does not pay the judgment. These remedies include taking a percentage of the tenant's salary directly from his or her employer, obtaining the money from the tenant's bank accounts, or obtaining the tenant's property for sale to satisfy the judgment.

Depending on the type of premises involved and the language of the lease, the tenant may be entitled to assign their rights to the lease, which usually requires your permission. The tenant may also have a legal right to sublet the premises to a new tenant, and you may be legally prevented from unreasonably withholding your consent. If the tenant approaches you and requests an assignment or sublet, you may want to consult an attorney to learn about your rights and remedies.

In light of this information, it may be reasonable for the owner and tenant to discuss the tenant's breaking the lease and agree on an amount and or payment schedule to satisfy the owner's claim for rent remaining on the lease, without resorting to litigation. If you are interested in free mediation of your dispute, you may contact Safe Horizons Mediation Centers. For more information see the section in this guide entitled **Resources and Assistance**.

Co-Tenants on Leases

If a tenant has signed a lease with another individual, and that individual died as a result of the tragedy, generally the remaining tenant is responsible for paying all of the rent each month until the end of the lease term. Most leases provide that co-tenants are “jointly and severally” liable for paying the rent, meaning that an owner can sue both co-tenants together or either of the tenants individually for back rent. The language of the lease must be examined.

CLEANUP AND REPAIR

In the wake of the September 11, 2001 disaster many owners and tenants have returned to lower Manhattan to find themselves burdened with a massive cleanup job in addition to the other tragedies and disruptions they have had to face. One of their foremost concerns is the presence of excessive amounts of dust in affected apartments, some of which may possibly contain asbestos. Both owners and tenants are interested in learning who is responsible for the cost of removing this dust, as well as that of doing other necessary repairs. This section sets forth the law governing the rights and responsibilities of owners and tenants whose property was damaged and is in need of cleanup and other renovation. It also contains contact information about governmental agencies who may be able to provide additional assistance or answer other questions.

Duty to Maintain Habitable Premises and Who is Responsible for Cleanup

The duty to keep residential property in livable and usable condition is known by the legal name of the “warranty of habitability.” Who bears the responsibility of discharging this duty - owner or tenant - depends on the type of property involved. The failure to fulfill a responsibility to maintain a residential apartment in livable and usable condition is called a “breach of the warranty of habitability.” Some residential leases may contain clauses imposing certain requirements on the tenants who sign them; however, these requirements do not relieve an owner that is responsible under the law for the warranty of habitability.

Damage to a building or apartment unit caused by an explosion or flying debris as well as the removal of excessive dust would be considered a “repair” or “waste removal” obligation to which the warranty of habitability would apply. If dust were found to contain asbestos it would constitute yet another ground on which the warranty of habitability would be breached.

In the past, New York State courts have held that the warranty of habitability applies to conditions caused by the acts of third parties. Thus, if you are an owner, it may not be a defense that you did not cause the condition and had no control over the events of September 11, 2001. You may still be responsible for the cleanup or repair. Judges will determine based on prior case law, in light of the September 11, 2001 tragedy, on a case by case basis the responsibility for the warranty of habitability between the owner of a building or the tenant and the extent the conditions diminished the value of the apartment. It is clear owners of buildings are responsible for cleaning up common areas.

There are many classifications of residential property, and in New York City such property is governed by many different bodies of law. As a general matter, if your apartment is either **Government subsidized** (i.e. Section 8, New York City Housing Authority or Mitchell-Lama), **Rent Controlled** or **Rent Stabilized**, **Luxury Rental**, **Deregulated Unit**, or a **Loft**, the owner of the building is responsible for maintaining the warranty of habitability. This is so because the various laws which have been enacted to govern these types of housing place the responsibility on the owner of the building.

Similarly, if the premises is a **Cooperative**, the Board of Directors of the cooperative maybe responsible for ensuring the warranty of habitability, since those who own shares of the cooperative are technically tenants. In some cooperatives, the cooperative owner is responsible for some of his or her own repairs depending on the terms of the proprietary lease. Thus, if you live in a cooperative, you may want to check your lease to see your rights and responsibilities. In contrast, if the apartment is a **Condominium**, the condominium owner is responsible for maintaining the warranty of habitability in the individual unit since the owners of such premises have rights of ownership beyond

mere tenancy rights and thus bear correspondingly greater responsibility. The owner of the building is responsible for maintaining the common areas. Tenants who are renting cooperative or condominium apartments from the unit owners are not responsible for the warranty of habitability, but they should assert any claims against the owners from whom they are renting the unit - not the cooperative or condominium boards.

The warranty of habitability does not apply to a **Commercial** tenancy and the tenant is responsible for most cleanup and repair. However, a commercial tenant should check the lease to see exactly what obligations the owner may have. A commercial tenant may be able to raise a claim of constructive or partial eviction against the owner due to actions the owner has taken subsequent to September 11, 2001, if the owner has failed to cleanup or correct conditions for which the owner is responsible. See the section in this guide entitled **Rent Reduction/Abatement** for more information.

What to do if you are Responsible for Cleanup

Any owner of a government- subsidized building, Rent Control or Rent Stabilized premises, luxury rental, deregulated premises, loft, condominium, or any cooperative corporation or commercial tenant, who suspects or has been notified that there may be asbestos dust in the premises should see the subsection in this section entitled **Asbestos**. If there is asbestos dust in the premises, contact your insurance carrier immediately. In the event that an insurance carrier refuses coverage or if any other coverage questions arise, the New York State Department of Insurance maintains a Disaster Hotline at (800) 339-1759, 7 days a week from 8am to 8pm. They can also be contacted at their web site (<http://www.ins.state.ny.us/>) or visited at the following locations: 25 Beaver Street, (212) 480-6400, Mon.-Fri. 8am to 5pm or Pier 94 (54th Street and 12th Ave.), Cubicle A-15, Sun.-Sat. 8am.

When an owner is required by law or lease to ensure the warranty of habitability, the only

obligation that a tenant has is to notify the owner that a condition exists which needs to be corrected. If the owner fails to do anything after being notified, the law provides that the tenant may consider withholding rent payments. Should the owner bring a lawsuit against the tenant for the unpaid rent, the tenant is entitled to have the premises inspected and to request that the court abate (i.e. reduce) the rent for the time the tenant was denied the necessary repairs. If the court finds that the tenant's claims are without legal basis and the lease provides for the recovery of legal fees, an owner of a building maybe entitled to recover legal fees and costs. Conversely, if the tenant is represented by an attorney and establishes that the owner of a building has breached the warranty of habitability and the lease allows for the recovery of legal fees the owner of the building may have to pay the tenant legal fees and costs. If you are unsure as to whether the complained of condition constitutes a breach of the warranty of habitability, you should contact an attorney.

Owners participating in the federal Section 8 Program may contact HUD at their temporary number (212-264-8000) until the New York City office returns to work full time. HUD can also be contacted via e mail at their web page <http://www.hud.gov/local/nyn/index.html>. Any owner of a rent regulated premises with additional questions about their rights and responsibilities can contact the DHCR (25 Beaver Street, New York, New York 10004, Phone: 212-480-6700, website: <http://www.dhcr.state.ny.us/general/contact.htm>).

A condominium owner can bring an action in the Supreme Court based on bad faith, oppressive conduct or breach of contractual or other duties to force the Board or other condominium owner to make repairs which can only be effectuated by the Board or another condominium owner.

What to do if you are Not Responsible for Cleanup

The warranty of habitability requires a tenant to notify the owner that a condition exists which

needs to be corrected. Any tenant who needs repair work done or asbestos dust checked and removed particularly as a result of the September 11, 2001 tragedy, should notify the owner about the condition. It is always recommended that you notify the owner in writing and keep a copy of the letter for your records.

If you live in government- subsidized housing and the owner fails to perform the work, you may contact the appropriate agency. The tenant can contact the New York City Housing Authority or Section 8 administrator. Either agency would then inspect the premises. HUD may be contacted at their temporary number (212-264-8000) until the New York City office returns to work full time. They can also be contacted via e mail at their web page at <http://www.hud.gov/local/nyn/index.html>. Tenants of city owned housing can contact NYCHA at (212) 306-3000 or visit their website (<http://www.nyc.gov/html/nycha/home.html>) for additional information about their rights.

Rent-regulated tenants may contact the New York State Division of Housing and Community Renewal, the agency which oversees Rent- Controlled and Rent Stabilized housing throughout New York State (25 Beaver Street, New York, New York 10004, Phone: (212) 480-6700, rent information line (718) 739-6400, web site: <http://www.dhcr.state.ny.us/general/contact.htm>), to complain of “diminution of services” (i.e. lack of essential maintenance and/or repairs). The DHCR has the authority to issue rent reduction orders which continue in effect until the services are restored.

Loft tenants can bring harassment proceedings before the Loft Board if they feel that the owner is using the events of September 11, 2001, as a pretext to try to force them out of their units. The Board can impose fines (of up to \$1000.00 per occurrence) for such behavior. Tenants with additional questions about their rights or about the scope of the Loft Board’s Minimum Housing Maintenance Standards should visit the Loft Board’s website

(<http://www.nyc.gov/html/loft/home.html>) and read the FAQ's there. They may also call the Loft Board at (212) 788-7610.

If the owner fails to perform the work, the tenant may consider discontinuing rent payments until the work is done. If you are considering making the repairs yourself and deducting the cost from your rent, see the section below entitled **Repair and Deduct**.

If you are a cooperative owner and the board fails to perform the work, you may consider withholding maintenance payments until the work is done. However, a cooperative owner should check the lease first to see what conditions the cooperative corporation is actually responsible for fixing. If the cooperative owner elects to pay to have the work done, he or she must comply with the cooperative corporation's by-laws regarding insurance and outside contractors and must obtain proper permits and permission from the board. Cooperative owners must be careful proceeding on their own to make repairs. Failure to proceed properly may result in the imposition of legal fees against the cooperative unit's owner, particularly if it is found by the court that the conditions were not significant or were corrected improperly.

Tenants can also commence a proceeding in Housing Court to obtain repairs, which is further explained in the section entitled **Proceedings to Obtain Repairs-HP** below. Tenants with conditions, such as cascading water leaks or no hot water, gas, or electricity can call HPD's Central Complaint Bureau at (212) 824-4328, a 24 hours a day, 7 days a week hotline. These phone lines are fully staffed in all HPD borough offices and their phone numbers have all been restored. Please dial (212) 863-8000 for general information or visit the website at: <http://www.nyc.gov/html/hpd/home.html>.

If you have a dispute about repairs, you can seek free mediation at the Safe Horizon

Mediation Centers. For information, see the section in this guide on **Resources and Assistance**.

Repair and Deduct

If there are repairs which affect the habitability of the apartment, such as broken windows or dust, and the tenant has given notice to the owner of the conditions but the owner refuses to make repairs, it is possible for the tenant to do the repairs and then deduct the actual costs of the repairs from the rent due. However, this remedy is very risky because if the owner refuses to pay for the repairs and the dispute ends up in court, the judge can find that the repairs the tenant made were unnecessary, too costly, or improperly completed. Accordingly, if you are a tenant, you may want to think twice before making repairs on your own of which you are not prepared to bear the cost. Furthermore, if the lease permits legal fees can be imposed by the court against a tenant who improperly proceeds with repairing and deducting.

If a tenant does decide to repair and deduct, it is important that the owner be given reasonable notice in writing of the required repair and enough time to reasonably make the repair. The cost of the work done must be reasonable and you must be able to present receipts for any work done. If the receipt is below \$1500.00, the tenant should have the repair-person certify the receipt in case the tenant later needs to use the receipt as proof at a trial. If the repair cost is over \$1500.00, the receipt alone will be insufficient proof at trial and the repair-person must testify.

Proceedings to Obtain Repairs - HP

Many tenants in residential units require repairs as a result of the World Trade Center disaster. If conditions in their apartment need repair and the owner has been notified, but the owner will not make the repairs, tenants can start an “HP proceeding” in the Landlord-Tenant Clerk’s of the Civil Courthouse in the county where the apartment is located to force compliance. More than one tenant

can join together to get repairs done by either bringing an HP proceeding or by contacting the Department of Housing Preservation and Development (HPD) Tenant Assistance Unit. It is the tenant's burden to prove that conditions exist which affect the habitability of the apartment. To determine the existence of conditions, the court will send an inspector from HPD to detail any violations of the Housing Maintenance Code in the apartment. The tenant will then return to court with the inspector's findings which will be evidence of the repairs that must be completed. For more information on how to start or defend an HP proceeding, speak to a Housing Court Counselor located in the Civil Courthouse in your county or you may view a video on HP actions in any Resource Center.

Asbestos

There is a distinction between ordinary repair work and the removal of asbestos dust-an extraordinary condition and a health hazard which, like lead paint, requires special procedures for its safe removal. Anyone concerned with the presence of asbestos dust in their premises should contact the New York City Department of Environmental Protection Asbestos Abatement Program (DEP) at (718) 595-3682, or visit their web page, located at <http://www.nyc.gov/html/dep/home.html>. There you may click on the link for the latest results of air quality monitoring tests being performed by the DEP. These tests are being conducted almost block- by- block and are continuously updated. The reports indicate ambient indoor air contains more than the minimally safe amount of asbestos.

In the event that your premises contain higher than legally acceptable amounts of asbestos dust, the DEP's website also contains a list of available Asbestos Remediation Contractors and Air Monitoring Firms. The DEP makes no referrals for work but maintains the list for the public's convenience. Another website which explains the required methods for removal of asbestos dust is

maintained by Rutgers University at <http://www.eohsi.rutgers.edu/rc/response.shtml>. Finally, the New York City Department of Health maintains an air quality alert page at its website (<http://www.nyc.gov/html/doh/home.html>); this page also provides pertinent information about asbestos and provides the updates on the air quality tests which the U.S. Environmental Protection Agency is continually conducting.

Damage to Personal Property

An owner is not required to repair or replace a tenant's personal property unless it was damaged through the owner's willful conduct or negligence. Thus, any damage which may have resulted to such property (furniture, books, art, etc.) as a result of the events of September 11, 2001, may not be the owner's responsibility. Any tenant who maintains renter's insurance to guard against damage to or loss of personal property should contact their insurance carrier to make a claim. In the event that an insurance carrier refuses coverage or if any other coverage questions arise, the New York State Department of Insurance maintains a Disaster Hotline at (800) 339-1759, 7 days a week from 8am to 8pm. They can also be contacted at their website (<http://www.ins.state.ny.us/>) or visited at the following locations: 25 Beaver Street, (212) 480-6400, Mon.-Fri. 8am to 5pm or Pier 94 (54th Street and 12th Ave.), Cubicle A-15, Sun.-Sat. 8am to 8pm.

RENT REDUCTION/ABATEMENT

As a result of the tragic events which impacted New York City, many apartments and buildings were hit by flying debris and dust, causing various conditions, including property destruction, lack of electricity, lack of water, damaged windows, and noxious odors. Many tenants could not, or have decided not, to live in their apartments for a period of time. Other tenants believe that their apartments are not in as good condition as they were before this tragedy, and want to know

if they are entitled to a reduction in their rent. Many owners want to know whether they are obligated to discount the rent. Prior to the tragedy of September 11, 2001, courts held owners responsible for repairs and conditions caused by acts of third parties or other factors completely out of the control of the owner. In litigation which arises out of September 11, 2001, each judge will determine on a case-by-case basis how prior law will apply after this tragedy.

Whether and how much of a reduction in rent a tenant will receive will, depend on many things such as the nature, duration, severity and cause of the condition, the type of apartment it is, and the type of tenancy you have. Additionally, although you may be permitted to return to the apartment, conditions may exist in your apartment such as lack of water or no windows, which may make it uninhabitable. This is known as “constructive eviction”. A constructive eviction can be total, when the tenant vacates the entire apartment, or “partial” when the tenant vacates only a portion of the premises. An example of a “partial constructive eviction” may be in a two bedroom apartment where the windows in one of the bedrooms is missing making that portion of the apartment unusable by the tenant. If a court determines that a tenant has been constructively or partially evicted, the Judge may award an abatement in rent. Generally, the abatement will be based on how much and how long the apartment (or part thereof) was not useable. If you are a tenant and the authorities have determined that the building is unsafe and will not permit you to enter your apartment, the court will determine if you will have to pay rent for any period of time you were living elsewhere, based on all the circumstances involved.

In Housing Court or Civil Court, rent discounts/abatements may be awarded as an offset to rent. Abatements are awarded in cases brought by landlords where a tenant defends or has raised counterclaims claiming that rent was withheld because needed repairs were not made. Abatements

can be awarded in non-payment proceedings based on a defense or counterclaim raised by the tenant. In a holdover proceeding, the tenant can raise the issue of an abatement as a counterclaim. The Court will figure out abatements by reviewing how the condition or required repair diminished the overall value of the apartment. Because there is a wide variation of problems that occur in apartments and because the standard is subjective, the amount of an abatement will vary and will depend on the severity and duration of the problem as well as how hard the owner tried to address or solve the problem. Usually, there is no duty for the owner to repair in commercial premises, unless the lease states otherwise. Commercial owners and tenants should review their leases carefully.

Condominium owners will have to repair and clean dust themselves in their units because there is no requirement of warranty of habitability imposed on a condominium. Condominium owners may have a civil action against the condominium board or individual condominium owner for conditions in common areas or other apartments which affect the condominium owner. By contrast, a cooperative owner can seek a discount in maintenance payments, depending on the terms of the proprietary lease. In commercial leases, there is usually no requirement that the owner keep the premises habitable. However, it is recommended that commercial tenants consult with an attorney to review their leases to determine their rights and responsibilities.

Abatements or discounts in rent are not awarded in housing court for complaints of emotional distress, property damage or inconvenience. A civil action maybe able to be brought in Civil Court or the Supreme Court for the owner's own negligent or intentional actions after September 11, 2001. An abatement may be awarded when the tenant complains of such conditions as noxious odors, damaged windows, or sporadic tap water. If a tenant needs repairs and believes there is an entitlement to a discounted rent, the landlord should be contacted because it is possible that they can agree on

a remedy of the situation, without resorting to litigation. Either party may contact Safe Horizons for free mediation of an abatement dispute. For information about where to call and the hours of operation see the section on **Safe Horizons** in the **Resources and Assistance** section of this guide.

WHAT TO DO IF YOU ARE IN FINANCIAL TROUBLE

As a result of the World Trade Center disaster, many New York City tenants are no longer able to afford their rent, and some owners are unable to pay their maintenance, property taxes, or mortgage payments. If you have lost the person whom you depend on financially, or have lost your job, or business has substantially declined, or are not receiving building rental income, you may not have to move or face foreclosure. In addition to previously existing government and private assistance programs, numerous emergency and charitable organizations are offering various types of relief and aid to persons in financial need as a result of the attacks on the World Trade Center. For information, please see the **Resources and Assistance** section in this guide for an overview of programs and organization and their addresses and telephone numbers, which may be able to help you.

Before anyone can be required to move from their home or business, as a result of non-payment, they must be properly sued in a non-payment proceeding or a foreclosure action. If you are served with an action or proceeding for eviction or foreclosure due to failure to pay rent or mortgage payments, it is not a defense or excuse that you cannot pay as a result of the September 11, 2001 events. However, you may be afforded the time to seek financial assistance in. Once you are in court, you may be able to negotiate an agreement with the owner or the bank as to a payment schedule, waiver of rent or maintenance, or time to move. In the courthouse, the judge, court attorneys and mediators are available to assist in negotiating a settlement, if you are interested. For

more information regarding non-payment proceedings in Housing Court, see the “Tenant’s Guide to the New York City Housing Court,” available free from any Civil Court Resource Center, Clerk’s office or the Association of the Bar of the City of New York.

If you have not been sued, but wish to discuss your rent problems with the owner before a mediator, you can contact the Safe Horizons Mediation Centers for free mediation assistance. See **Safe Horizons** listed in the section entitled **Resources and Assistance** in this guide for information as to hours of operation and location.

RESOURCES AND ASSISTANCE

As a result of the World Trade Center Disaster, you may be eligible for a number of benefit programs. Generally, most of these programs have a different eligibility criteria. In order to determine what you are eligible for, you will have to contact the agency that administers that program. Most of the agencies have automated answering systems that you can contact with a touch tone phone, and some have helpful web sites. Perhaps you are a tenant that lost your job, and need some assistance in paying your rent; your missing loved one is the head of the household, and you have no income; you are an owner and need some assistance in making your mortgage payments; or you are a tenant who cannot live in your apartment until it is cleaned or the structure is repaired. You may be eligible for state and/or federal assistance that can help you even if you have insurance. Government assistance can be especially helpful, since there may be certain things that need to be replaced that insurance will not cover. Most of the agencies have a representative at the Family Assistance Center located at Pier 94 (54th & 12th); or you can visit the Disaster Assistance Service Center at 141 Worth Street or call the Help line at (800) 525-0321. www.nyc.gov/html/em/familyasst.html.

Federal Emergency Management Agency - FEMA www.fema.gov

FEMA is the executive agency that at the onset of a major disaster responds to the immediate need of the individuals that are affected. Usually, FEMA will establish a field office and along with state and local governments, give individuals information about the various forms of assistance that is available to them.

FEMA is offering Housing Assistance, Information, and Referrals in various forms to residents or victims and their family members affected by the World Trade Center disaster. For example, tenants may need to be reimbursed for the cost of short-term lodging and/or rental assistance. Owners may need help making immediate emergency repairs to live in their residence while permanent repairs are being completed. Both owners and tenants may need mortgage and rental assistance. FEMA can be reached at (800) 462-9029 (800) 462-7585 (TTY), or on the web at: www.fema.gov.

Small Business Administration-SBA www.sba.gov

The SBA provides low-interest (4% or less), long-term (up to 30 years) loans to help owners, tenants and non-farm business recover from a disaster. Victims of a disaster may be eligible for financial assistance from the SBA even if you do not own a business. As a homeowner, tenant, and/or personal property owner you may apply to the SBA for a loan. Owners may apply for loans for up to \$200,000 to repair or replace your primary residence to pre-disaster condition. Owners and tenants may apply for loans for up to \$40,000 to repair or replace damaged or destroyed personal property such as clothing, furniture, and automobiles. Business of all sizes can apply for loans up to \$1.5 million to repair or replace damaged real and personal property such as machinery, equipment, inventory, furniture and fixtures. Further, businesses can apply for loans for working capital to small

businesses to assist them through the disaster. SBA is working in partnership with FEMA, the American Red Cross, and the Internal Revenue Service, so for further information you should first contact FEMA at (800) 462-9029 or www.fema.gov/ to register and get further information.

New York State Crime Victims Board www.cvb.state.ny.us

You may have incurred expenses as a result of the World Trade Center; this agency can give you some financial assistance, and referrals. Perhaps you have incurred medical bills, funeral expenses, lost earnings or support due to an injury or the loss of a loved one and or need mental health counseling. For more information, you can call (800) 247-8035/TTY (888) 289-9747.

National Association of Realtors www.nysar.com

The New York State Association of Realtors is working with the National Association of Realtors to help establish a Housing Relief Fund. Both owners and tenants that have lost their primary breadwinner may be eligible for immediate assistance in paying your mortgage or your rent. Residents in New York can contact (800) 422-2501.

New York State Department of Insurance www.ins.state.ny.us

If you have lost a loved one, and are perhaps entitled to life insurance, this agency is offering consumers information and referral services. They will assist individuals with establishing a record of missing loved ones. They may also assist renters with property damage claims, or an owner with assistance in cleaning their property. You can contact them via their automated telephone system at (800) 339-1759 (212) 480-5265, or visit in person at 80 Centre Street/141 Worth Street, 25 Beaver Street, Pier 94 (54th & 12th) Cubicle A-15, or 200 Old Country Road Mineola, NY.

Unemployment Benefits Insurance www.labor.state.ny.us

If you have lost your job (as a result of the WTC disaster), you may be eligible for

unemployment insurance benefits. Unemployment insurance provides temporary income for eligible workers who became unemployed through no fault of their own. You also have to be ready, willing, and able to work and have sufficient work and wages in covered employment. You can file an unemployment claim in person at a state unemployment center or through an automated Tel-Claim System (888) 209-8124. If you are hearing impaired you can call (800) 662-1220 TTY/TDD, and request an operator to call (888) 783-1370. When you file your claim, you should have the following information available: social security number; driver's license or non-driver identification; mailing address and zip code; a telephone number where you can be contacted; alien registration card (if applicable); the names and addresses of all employers for whom you've worked within the last 18 months, including those out of state; for former federal employees, form SF8, and SF50; for ex-service members form DD214, if you're claiming benefits based on your military service.

State Department of Labor www.labor.state.ny.us

This agency is administering the Individual and Family Grant Program (IFG). The IFG provides families with funds to cover losses that are not covered by other sources of aid. For example, IFG is giving funds to families that need to replace personal property, clothing, appliances, furniture, transportation, and/or have medical/dental and funeral expenses, and owners making repairs to their property.

Real Property Tax Credit (IT-214)

Owner and tenants of all ages, can receive up to \$375.00 for a portion of the previous year's rent or real property taxes. Your property must be valued at no more than \$85,000; and your rent must be no more than \$450.00. There is an income restriction of no more than \$18,000. You apply for this credit, when you file your state and local taxes, and you can file for up to three years

retroactive credit. For further information, you can contact the Taxpayers Assistance Bureau, New York State Department for Taxation and Finance.

**Social Security (Old Age and Survivors Insurance)/Supplemental
Security Income (SSI) www.ssa.gov**

When an insured worker dies, his or her spouse or minor children may be eligible for Social Security benefits. As a general matter, benefits are calculated on the earnings recorded under the insured worker's social security number. An insured worker is eligible for benefits if he or she paid social security taxes and earned 40 credits (approximately 10 years) of employment. If the insured worker becomes permanently disabled, the worker may need fewer years of work to qualify for benefits.

There are five major categories of benefits paid through social security taxes. **Retirement benefits** where full benefits are payable when you reaches age 65, or at a reduced rate at age 62. **Disability benefits** that are payable to you if you have enough social security credits and become severely physically and/or mentally impaired. The physical or mental impairment prevents you from returning to work. **Family benefits** that are payable if the insured worker is eligible for retirement or disability benefits to other members of his or her family. These family members include a spouse if he or she is at least 62 year old or under but is caring for a child under the age of 16; unmarried children that are under 18 years old, or under 19 but still in school, or 18 and older but are disabled. If you are divorced, your ex-spouse could be eligible for benefits on your record. **Survivor benefits** are payable to certain family members when the insured worker dies, if as mentioned earlier, enough credits have been earned. Those family members that may be eligible for benefits include a widow or widower at least 60 years old, or at least 50 years old and disabled, or at any age caring for a child

under age 16; unmarried children that are under 18, 19, if they are still in school or 18 and older but are disabled; parents if the worker was their primary means of support. There is also a special one-time payment of \$255 to a spouse or children when you die. If divorced, an ex-spouse could also be entitled to the \$255 benefit. Those that are at least 65 and are receiving social security and those receiving disability benefits for two years automatically qualify for **Medicare benefits**. Medicare is divided into 2 parts: hospital insurance (Part A) and medical insurance (Part B). All others that are receiving social security benefits must file an application to determine eligibility.

Supplemental Security Income (SSI) benefits are monthly payments made to individuals who have low income, few assets, and are at least 65 years or disabled. Both adults and children can qualify for SSI payments. To file for benefits you can call at (800) 772-1213, or can visit the New York City Assistance Center at Pier 94 (54th & 12th) or the New Jersey Family Assistance Center at Liberty State Park, Hudson County N.J.

Veterans Benefits www.va.gov

This agency primarily provides pensions, health care, vocational training, rehabilitation, education, home loans, disability compensation, life insurance, burial and other benefits to low income and disabled veterans. In some instances, your dependants and survivors may also be eligible for certain benefits. Both you and or your dependants and survivors can apply to U.S. Department of Veterans Affairs NY Regional Office or at (800) 827-1000 or (212) 807-7229.

Senior Citizen Rent Increase Exemption (SCRIE)

SCRIE exempts rent-controlled or stabilized, Mitchell Lama (tenants), and hotel senior citizen tenants from certain (guideline) rent increases. In exchange for “freezing” the rent, the owner gets a tax abatement. The senior citizens must be the head of household, at least 62 years old, the rent at

least a of the net monthly income, and a household income no greater than \$20,000. You can apply by contacting New York City Department for the Aging SCRIE 2 Lafayette Street, 6th floor, New York, New York 10007, (212) 442-1000.

Senior Citizen Homeowners Exemption (SCHE)

SCHE provides a savings up to 50% to property owners that are at least 65 years old. Owners must have held title to the property for at least 12 consecutive months, and the property must be both your legal residence, and used exclusively for residential purposes. In other words, the property cannot contain any commercial units, and can have not more than three residential units. When you apply, your income can be no more than \$28,900 for the last calendar year. If you and your spouse are co-owners, one of the owners must be at least 65 years. If persons other than your spouse are co-owners, one of the owners must be at least 65 years old. You can obtain an application from the Property Division Office of the borough where the property is located. After you complete the application, you can either mail it or bring the application back to the Property Division office in the borough where the property is located.

New York State School Tax Relief Program (STAR)

STAR provides an exemption from the school portion of the property taxes for owner-occupied residences. All New Yorkers of any age and or income that own and occupy a one, two, three-family home, condominium, or co-operative apartment may be eligible for the STAR tax reduction. Senior citizens owners, at least age 65, with a yearly income of \$60,000 or less may qualify for the **Enhanced STAR exemption**. These senior citizens will be have their school property taxed reduced by 11.25% each year. Applications are accepted from November 1 through January 5. Low income owners who already receive the Senior Citizen Homeowners Exemptions automatically

qualify for the **STAR** exemption, and do not have to file a separate application. All other interested owners can contact (212) 361-8215 or write the STAR Program NYC Department of Finance, 66 John Street, 13th floor, New York, New York 10038.

Home Energy Assistance Program (HEAP)

Low-income owners and tenants may be eligible for a one time grant per year for assistance in paying their fuel and utility bills. There are specific age requirements, but there is a limit to your income. Owners and the tenants can have a monthly income of no more than \$1,486.00 for one person; \$1,943.00 for two persons. If you are 60 years or older, you can call NYC Department for the Aging HEAP (212)442-1000 to apply; if you are less than 60 years, you can call (877) 472-8411.

Office of Temporary and Disability Assistance (OTDA)/Public Assistance/Welfare

This agency offers Temporary Assistance (TA) to needy men, woman and children who are unable to find a job or whose job does not pay enough, with temporary help to pay for your expenses. The Human Resources Administration, (HRA), administers the program for New York City. These new programs replace what used to be referred to as **public assistance**, or **welfare** or **social services**. The assistance can take the form of on going assistance, or emergency assistance, to both single or childless adults, and adults with children. Presently, there are two kinds of assistance: **Family Assistance (FA)** that provides case assistance to needy families that include a minor child living with a parent or caretaker relative. FA can take the form of on going public assistance (formerly called AFDC), or emergency assistance (formerly called an EAF grant or “one shot deal”). Eligible adults may be limited to receiving benefits for a total 60 months in their lifetime. The 60 months need not be consecutive, and the parent and/or other adult relative must be working or involved in work-like activities after receiving FA benefits for two years. Those that are eligible for FA may also be eligible

to an enhanced shelter allowance as a result of the Jiggetts class action lawsuit. Once you become eligible for FA, you would go to your local Legal Aid, Legal Services, or community organization, and these organizations would apply for “Jiggetts relief” on your behalf.

Those are not eligible for FA, may be eligible for **Safety Net Assistance (SNA)**. Generally, single adults, childless couples, children living apart from any adult relative, families of person that are substance abusers, families of persons refusing drug/alcohol screening, assessment or treatment, persons who have exceeded the 60 month limit, and or aliens who are eligible for temporary assistance, but not eligible for federal reimbursement can get benefits from SNA. Again, SNA can take the form of on going assistance (formerly called Home Relief), or emergency assistance, (formerly called an EHR/EAA, or “on shot deal”). Those that receive SNA would not be eligible for Jiggetts relief, since there are no children in the household. Again, there may be a two year lifetime maximum benefit limit. You can apply for TA or public assistance at your local Income Support (Welfare) or Job Center by completing an application form. When you apply for benefits, HRA can determine which benefits are appropriate for you. If you have any emergency needs you can identify them at the time of application. Some examples of an emergency are: homelessness; little or no food; eviction; no fuel for heat during the cold weather season; a utility shut-off notice; or a 72 hour disconnect notice. In New York City, HRA administers the above referenced programs. You can obtain further information by contacting HRA at (888) 472-8411.

Food Stamps

New York State has set up a Disaster Food Stamp Benefit Program (DFSBP) for households that are directly impacted by the disaster. You may be eligible if you have lost food or it is no longer accessible because it is near ground zero, damage to, or destruction to your home or self-employment

business; disaster related expenses not expected to be reimbursed such as temporary shelter expenses or home or business repairs; loss or inaccessibility of income, reduction of income, termination of income, or delay in receipt of income; an increase in household size as a result of providing shelter to someone who is dislocated by the disaster. Those who are eligible for **Family Assistance (FA)** and **Safety Net Assistance (SNA)** are automatically eligible for food stamps. For further information you can contact HRA at (877) 472-8411, and applications are being accepted at the New York City Family Assistance Center at 180 Water Street.

Subsidized Housing

If you are a tenant living in an apartment that is subsidized by Housing Urban Development (HUD) via a subsidy program such as §8 and §236, your rent is based on the number of individuals (household composition), that are living in your apartment, and your income. Usually, you complete an income verification form once a year. If there are any changes in your household composition, and or your income, you are supposed to inform the management office/owner so that your rent can be adjusted. This process is called an interim re-certification, and you will have to complete some forms that the management office will provide. So, you need to report the following kinds of changes to the management office: you have lost your job, or your primary breadwinner has died or is missing, or another wage earning is no longer working, a wage earner living with you has died, or you need to have the lease changed into your name because the head of household died. Once you have reported your household changes, and completed the forms, your rent can be adjusted properly, and or the lease put into your name. If you have any further questions, contact HUD at (212) 742-8559.

Additionally, if you live in a New York City Housing Authority (NYCHA), apartment you should also report any changes to your income, and or household composition to your Housing

Assistant (HA). You will probably have to provide them with documentation and fill out a number of forms before these changes are made.

If you have a §8 certificate or voucher, and you have lost your job, you also need to contact your NYCHA §8 Leased Housing Division HA, so that your portion of the rent can be re-adjusted. You will also need to speak to your HA to determine if the certificate can be transferred to your name if your primary breadwinner has died or is missing as a result of the World Trade Center disaster. Apparently, if you are an immediate family member (a spouse, or a child that is 18 years old), and you are on part of the household composition, the certificate can probably be transferred to your name. For further information, you can contact Barry Levine from NYCHA at (718) 772-6626/6625.

If you are a homeowner, and your ability to make your mortgage payments has been affected by the World Trade Center Disaster, you may also qualify for FHA Disaster Relief. You can first contact your lender, and if you are not satisfied with their response, you can call National Servicing Center at (888) 297-8685.

Safe Horizons Mediation Centers

The Manhattan and Brooklyn Mediation Centers provide free mediation to owners and tenants to assist in resolving disputes. If you are an owner or tenant and you are interested in mediating the tenant's breaking of the lease, or settling a rent abatement dispute, or any other issue regarding the tenancy, you may contact the Manhattan Mediation Center at 346 Broadway, Suite 400W, New York, New York 10013, (212) 577-1740. The Manhattan Center is open for mediation Mondays and Tuesdays from 12-8:00, and Wednesdays, Thursdays and Fridays from 9-5:00. Or you may contact the Brooklyn Mediation Center at 210 Joralemon Street, room 618, Brooklyn, New York 11201, (718) 834-6671. The Brooklyn Center is open for mediation Mondays, Tuesdays and Wednesdays

from 12-8:00, and Thursdays and Fridays from 9-5:00. Both parties can contact the centers together, or one party may contact the center and if the dispute is appropriate for mediation, the center will send a letter to the other party asking if they are interested in mediation. Participation is voluntary.

Charities

The following is a list of charities and organizations offering various types of relief and services which may be useful to those effected by the September 11, 2001 tragedy:

Catholic Charities

1011 First Avenue

New York, NY 11201

(212) 371-1000

www.catholiccharities.com

offering financial assistance, referrals, food pantry to victims and family members of the September 11, 2001 disaster

Coalition for the Homeless

89 Columbus Street

New York, NY 10007

(212) 964-5900

attn: Maryana Alexander

offering referrals for financial assistance, food clothing, employment, to anyone affected by the September 11, 2001 disaster

Community Service Society

105 East 22nd Street, Room 411

New York, NY 11010

(212) 614-5566

www.cssny.org

offering financial assistance for food, rent, home payments clothes for victims and their family members affected by the September 11, 2001 disaster

East Harlem Neighborhood Based Alliance

240 East 123rd Street, 3rd Floor

New York, NY 10035

(212) 289-1900

offering referrals for financial assistance, food clothing, employment, to anyone affected by the September 11, 2001 disaster

Federation of Protestant Welfare Agencies

281 Park Avenue
New York, NY
(212) 777-4800 X366
Attn: Laura Demaio

Offering financial assistance to individuals who lost their jobs as a result of the September 11, 2001 disaster

Gay Men's Health Crisis
119 West 24th Street
New York, NY 11001
(212) 367-1000
offering counseling and support groups

Highbridge Community Life Center
979 Ogden Avenue
Bronx, NY
(718) 293-4352
offering food and clothing to anyone affected by the September 11, 2001 disaster

Jewish Board of Family
120 West 57th Street
New York, NY 10019
(212) 632-4687
offering financial assistance and counseling for anyone in need, in addition to anyone affected by the September 11, 2001 disaster

Safe Horizon
Pier 94
1-800-621-HOPE
offering financial assistance and emotional support to survivors and workers who were displaced as a result of the September 11, 2001 disaster

Salvation Army
141 Worth Street
Pier 94
offering financial assistance for rent and vouchers for food and clothing to family members and victims of the September 11, 2001 disaster

The American Red Cross Shelter
141 Worth Street
Pier 94
(212) 219-6200
offering financial assistance for rent, food and clothing to anyone affected by the disaster of September 11, 2001

Legal Assistance

Legal Aid Society
230 East 106th Street
New York, NY 10029

Attn: Sheryl Karp

(212) 426-3029

(212) 426-3070 hotline for victims of the September 11, 2001 disaster and their families

Offering legal advice to victims of the September 11, 2001 disaster and their families

Legal Referral Service of the Association of the Bar

42 West 44th Street

New York, NY 10036

(212) 626-7373

(212) 626-7374 (Spanish)

www.abcny.org

e-mail-LRF@ABCNY.COM

providing referrals of lawyers for advise and representation to victims of the September 11, 2001 disaster and their families

Northern Manhattan Improvement Corp.

76 Wadsworth Avenue

New York, NY 10033

(212) 822-8300

offering legal advise and representation to victims of the September 11, 2001 disaster and their families who live in the areas of Washington Heights, Inwood, and Marble Hill

West Side SRO

647 Columbus Avenue

New York, NY 10025

(212) 799-9638

Offering legal advice to victims of the September 11, 2001 disaster and their families, who live in SRO's between 14th Street and the southern tip of manhattan and in NYC apartments between 100th Street and 110th Street

Locating Possible Victims

These unofficial websites may be helpful:

www.cnn.com/specials/2001/trade.center/missing

www.pedestrian.com

www.wikipedia.com/wiki/Sepember_11,_2001_Terrorist_Attack/Missing_Persons

Compiled and written by the Civil Court of the City of New York, with thanks to Rochelle Klempner, Esq., Susan Weissman, Esq., Deborah E. Fisher, Esq., Cheryl Davis, Esq., Francis J. Lane, Esq., and Sunita Girdharrie, Esq.