



# S.P.O.N.Y.

## Small Property Owners of New York

### HOUSING INSIGHTS

Exclusively for the Members of the Small Property Owners of New York

[www.spony.org](http://www.spony.org)

December 2016

## MESSAGE FROM THE EDITOR

Dear Fellow SPONY Members,

Fall is upon us and the big holiday season is not far off.

In this edition, we highlight several legal issues - new and old - which we as building owners must all be familiar with.

October 26th Membership Meeting: We had a great turnout for our October meeting. We were fortunate to have attorney Howard Stern, Esq. educate us on non-primary residence cases and reviewing grounds to not renew a tenant's lease. Mr. Stern took questions from our members and covered a variety of important legal topics of interest to owners. We also had Steven Jaffee of Sammatt Research Services, a private investigation firm specializing in laying the groundwork for non-primary residence and illegal sublet cases. Mr. Jaffee's presentation gave us a clear path to laying the foundation for a legal case for these types of lease violations. It was especially helpful in helping owners deal with Air-Bnb type cases. Lucy Orozco of Metropolitan Commercial Bank was once again gracious to offer us the bank for our meeting, some delicious food and even raffled off a gift card! Ms. Orozco reminded us of Metropolitan's promotional interest rates on various types of accounts and also offered the bank's tenant security deposit services. If anyone is interested in these services, you can find her contact information under the vendor member tab on our website or in this newsletter.

Annual SPONY Membership Dues - Fiscal Year 2017 begins May 2016: Please pay your annual dues promptly. Only paid-up members will be able to attend our group meetings. We are a 100% volunteer-run organization and your dues and support are needed for operations, including the distribution of this newsletter, running meetings, etc. If you set up annual dues payment automatically through PayPal, please adjust the payment date to May 1st of each year.

The SPONY Forum: The SPONY Facebook Forum is a private group only available to SPONY Members and Vendors. All SPONY Members are invited to join the private Facebook Forum. It is set up to allow members to share experiences, network with other SPONY members & vendors and to seek referrals. There are two ways to join: 1) Send a request via e-mail with the subject "Facebook Forum" to [tim@spony.org](mailto:tim@spony.org) or 2) Go to <https://www.facebook.com/groups/sponymembers/> and click on the link to request to be added to the group. In both instances you will receive a reply once your membership has been approved. Please note you will need to setup a Facebook account in order to join and access the forum. If you have any questions or need assistance to join the forum, please contact Tim Piper at [tim@spony.org](mailto:tim@spony.org).

### OUR ADDRESS & CONTACT INFORMATION

Small Property Owners of New York Inc. (SPONY)

8802 Ridge Boulevard [Management Office] • Brooklyn, New York 11209

(212) 410-4600 • [SPONYINC@aol.com](mailto:SPONYINC@aol.com)

## **ATTORNEY'S ADVICE**

*[This article was brought to us by Jim Silber, SPONY Executive Committee, and the Alexander Lycoyannis of Rosenberg and Estis, PC. Tel. 212-551-8416, alycoyannis@rosenbergestis.com]*

Our Executive Committee member, Jim Silber (JS), had a chance to discuss several important and practical points for building owners with Alexander Lycoyannis (AL), an attorney well-steeped with NYC's current real estate legal issues. Here is an excerpt of their Q&A:

JS: Non-Primary Residence

a. When must the tenant be notified that the owner is not going to renew his lease?

AL: The tenant must be served with a Notice of Nonrenewal between 150 and 90 days prior to the expiration of the lease.

b. JS: How must this notice be served?

AL: Generally, the notice must be served in the manner set forth in the notice provision of the lease, and, in addition, must be mailed to any alternate address(es) maintained by the tenant of which the owner has notice (or, if the alternate address(es) are in New York City or somewhere relatively close, then personal service should be attempted). If (1) the lease contains no notice provision, or (2) the original lease has been lost, then the owner, to be safe, should serve the notice in the same manner as required by law for service of a petition in a summary proceeding.

c. JS: If the tenant does not sleep in the apt, but he maintains all his records at the apt, i.e., income tax, voter registration, car registration, will the court rule that the tenant is not using the apt for primary residence?

AL: Every nonprimary residence case is different and turns on its particular facts. Generally speaking, however, addresses listed on tax returns, voter registrations and the like, while relevant to a court's inquiry, are not controlling by themselves. Rather, in order to establish an apartment as a primary residence, a rent regulated tenant must maintain "an ongoing, substantial, physical nexus" with the apartment "for actual living purposes." Thus, where a tenant, while actually residing elsewhere, attempts to create the illusory appearance of primary residence at an apartment via the address listed on public documents and other records, courts will generally rule that the landlord has satisfied its burden of establishing the tenant's nonprimary residence.

d. JS: What type of professions are legal for a tenant to be used as a home office?...would interior decorating, and marketing be allowed? what does zoning allow for home occupations?

AL: According to my colleague Frank Chaney, a zoning expert, the New York City Zoning Resolution ("ZR") provides that a "home occupation" is an accessory use of an apartment which (1) is clearly incidental to or secondary to the residential use of the apartment; (2) occupies no more than 25% of the apartment's floor area, but in no event more than 500 square feet; and (3) is carried on by one or more occupants of the apartment, except that in connection with the practice of a profession, one non-resident person may be employed in the apartment. The ZR also contains various restrictions on the types of activities that may be carried out in a home office; for instance, it is not permitted, among other things, to sell articles produced elsewhere than in the apartment, to have exterior displays or a display of goods visible from the outside, or to "produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, or other objectionable effects." With respect to particular types of home occupations, several are explicitly prohibited, one of them being interior decorating. (Other prohibited home occupations include, but are not limited to, barber shops, beauty parlors, pharmacists, veterinary medicine, and real estate, insurance and stockbrokers' offices.) The ZR does not specifically exclude marketing as a permissible home occupation, so it is likely permitted, but subject to the use

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conditions and restrictions detailed elsewhere in the ZR.

e. JS: one of my tenants smokes marijuana in his apt and the smell filters into the hall and other apts, and disturbs neighbors on the floor. What can the owner do to get the tenant to stop?

AL: Every situation will turn on its own facts, but, as a rule, it is always crucial to contemporaneously document each and every instance of marijuana smoke, and also ask any affected tenants to document their complaints as well. The owner should demand in writing to the tenant that the marijuana smoking immediately cease. If the conduct does not cease, the owner can then serve a notice to cure informing the tenant that an eviction proceeding will be commenced if the conduct does not stop - or, in certain circumstances, such as if the smoking is pervasive and/or is accompanied by other antisocial conduct, the owner can serve a notice of termination and commence an eviction proceeding right away without giving the tenant the opportunity to cure.

f. JS: If a tenant does not recycle his garbage and puts it all out in 1 bag, does the owner have any recourse to fine the tenant?

AL: If the City imposes a fine on the owner by reason of the tenant's failure to comply with recycling laws, then most leases will permit the owner to charge that fine back to the tenant. However, residential leases do not usually give a landlord an independent right to fine a tenant for violating recycling laws.

g. JS: When a rent stabilized tenant vacates an apt, must he have paid \$2,700 a month or more in order for the owner to decontrol the apt for the next tenant?

The rent of the outgoing tenant must be above the deregulation threshold at the time he or she vacates in order for the apartment to be deregulated for the next tenant. An owner can no longer deregulate a vacant apartment where the stabilized rent is below the deregulation threshold solely by performing a sufficiently expensive individual apartment improvement (IAI) that would permit the rent to be raised above the threshold. Now, where a new tenant takes possession after the rent first exceeds the deregulation threshold in this manner, that new tenant remains rent stabilized; it is the following tenant that will no longer be subject to rent stabilization. That said, IAIs are still an effective way to raise the legal rent and move the apartment towards eventual deregulation.

h. JS: Can an owner make his building a "non-smoking" building so that tenants could not smoke in their apts.?Would this be different for a rent-regulated tenant vs. an exempt market rate tenant?

Generally speaking, a rent-regulated tenant's rights cannot be reduced during the course of his or her tenancy. Accordingly, if a rent-regulated tenant had the right to smoke at the inception of the tenancy, that right cannot be taken away during the tenancy. A new regulated tenant, however, can be prohibited from smoking upon taking occupancy. By contrast, if a market rate tenant renews his or her lease which initially, permitted smoking, the landlord may take away that right in a renewal lease.

**Evan Levine**  
Director of Operations and Business Development  
3010 Westchester Ave  
Purchase, NY 10577



**ANCHOR**  
GLOBAL LED

917.488.6857 (Direct)  
evan@anchorgloballed.com  
www.anchorgloballed.com



**Robert L. Picone**  
Vice President

47 Neppethan Ave. Ste. 8 • Elmsford, NY 10583  
Tel: 914.723.2001 • Fax: 914.472.2106  
Cell: 914.310.9535

rlpicone@kepplertitle.com  
www.kepplertitle.com