

# ALERT

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Alex Corey

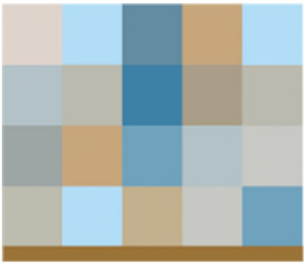
## **New Hurdles For Landlords Seeking To Evict Commercial & Residential Tenants Under New York's Stability and Tenant Protection Act of 2019**

by: Alex Corey

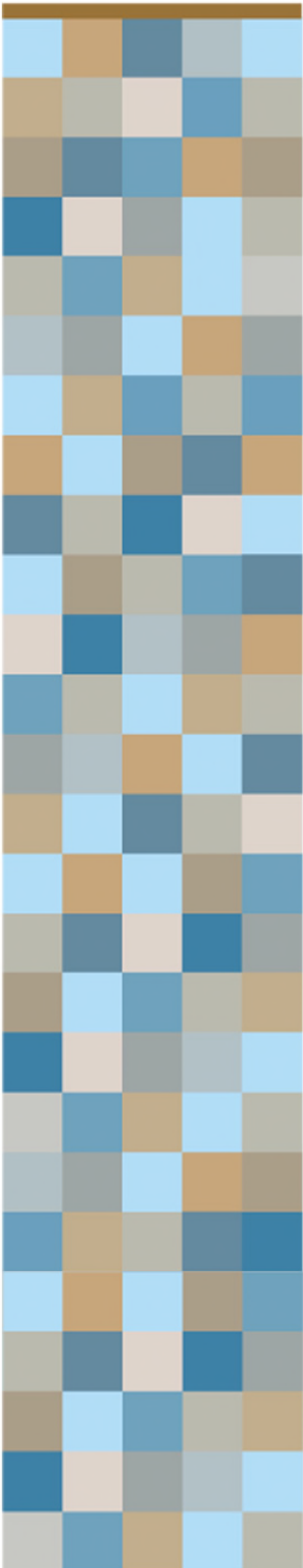
On June 14, 2019, Governor Andrew Cuomo signed into law the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”), which amounts to extensive reform of prior regulations governing rent stabilization and rent control for New York residents. Importantly, the breadth of the recent legislation extends beyond the rent stabilization laws. One particular noteworthy aspect of the new law is that it gives landlords new challenges following the issuance of a warrant of eviction but prior to the execution of the warrant for residential and commercial tenants. While landlords were generally protected from the risk of a tenant bankruptcy filing following the issuance of a warrant of eviction, the new law removes such protections.

Among the sections of New York’s Real Property Actions and Proceedings Law (“RPAPL”) that HSTPA impacted the most is Section 749 concerning warrants of eviction. Pursuant to prior versions of RPAPL § 749, the “issuing of a warrant for the removal of a tenant cancels the agreement under which the person removed held the premises, and annuls the relation of landlord and tenant, but nothing contained herein shall deprive the court of the power to vacate such warrant for good cause shown prior to the execution thereof.” RPAPL § 749 (Aug. 26, 2009). Under the prior version of RPAPL 749, the issuance of a warrant of eviction terminated the lease such that any subsequent bankruptcy filing offered no protection to the debtor-tenant and the landlord could readily seek and obtain relief from the automatic stay to execute on the warrant and recover possession of the leased premises. The rationale of the bankruptcy court’s decisions in this context was that under former RPAPL § 749, a warrant of eviction terminated the landlord tenant relationship and extinguished any possessory rights that a tenant may have to the premises.

HSTPA amended Section 749 to, among other things, remove the text addressing the cancellation of the lease. Revised Section 749 provide as follows:



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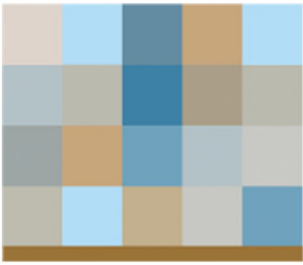


Nothing contained herein shall deprive the court of the power to stay or vacate such warrant for good cause shown prior to the execution thereof, or to restore the tenant to possession subsequent to execution of the warrant. In a judgment for non-payment of rent, the court shall vacate a warrant upon tender or deposit with the court of the full rent due at any time prior to its execution, unless the petitioner establishes that the tenant withheld the rent due in bad faith. Petitioner may recover by action any sum of money which was payable at the time when the special proceeding was commenced and the reasonable value of the use and occupation to the time when the warrant was issued, for any period of time with respect to which the agreement does not make any provision for payment of rent.

RPAPL § 749(3)(2019). Because the text of the new law no longer provides that the issuance of a warrant for the removal of a tenant cancels the lease (resulting in a prepetition termination of the lease), holdover residential or commercial tenants may be able to remain in possession of leased premises upon a bankruptcy filing resulting in increased delays, costs and risk to the landlord.

In addition to protecting holdover commercial and residential tenant-debtors who declare bankruptcy from eviction, the new RPAPL § 749 includes other changes, all of which afford greater legal relief to holdover tenants. For instance, the officer to whom the warrant is directed is now required to give at least 14 days' notice, whereas prior versions of the law only required 72 hours' notice. § 749(2)(a). Moreover, under the new RPAPL § 749, New York courts must vacate an eviction warrant upon the tenant tendering or depositing with the court the full rent due at any time prior to the warrant's execution, unless the landlord establishes that the tenant withheld rent in bad faith. § 749(3). Under the new law, New York judges have the power, upon the tenant's "good cause", to (1) stay or vacate the warrant, (2) enjoin the landlord from releasing the space, and (3) restore the tenant into possession after eviction.

With increased judicial discretion, comes more uncertainty for landlords dealing with holdover tenant-debtors who may now seek bankruptcy as their means of staving off eviction. Whereas a bankruptcy filing following the issuance of a warrant of eviction historically would offer little or no protection to commercial or residential tenants, under HSTPA, tenants may be able to use bankruptcy to stay the execution of warrant of eviction, cure the default and obtain a vacatur of the warrant.



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*This Alert was written by Alex Corey.*

*Mr. Corey, an associate with the firm, concentrates his practice on all facets of complex bankruptcy and commercial litigation related matters.*

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In the new post-HSTPA New York, landlords should consult with an attorney for assistance in navigating the new eviction requirements and hurdles when dealing with either commercial or residential tenants who are in default of lease payments.

Any issues raised in this Alert may be addressed to Mr. Corey who can be reached at (212) 239-2000 or by email at [acorey@moritthock.com](mailto:acorey@moritthock.com).



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