

Navigating the Differences Between Real Property Article 6 Ejectment Cases and Article 7 Eviction Cases

CLE PRESENTATION

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Jonathan P. Di Bari, Esq.

This CLE will cover key differences an attorney should know when faced with the prospect of removing individual(s) from residential real property when there is no lease agreement in effect.

General Differences Between Article 6 Ejectment and Article 7 Landlord Tenant Eviction Cases

Article 7 eviction cases concern issues relating to the ordinary **landlord/tenant** relationship (i.e. there is a contractual agreement between owner and occupant for payment of money in exchange for use and occupancy of the premises in question.) These cases are brought before the lower courts (town, village and city courts) through a summary proceeding in the form of holdover or nonpayment cases. These cases, in theory, are to be “expedited” over traditional litigation.

Article 6 ejectment cases seek the same relief as eviction cases (i.e. court order allowing Marshal or Sheriff to return possession of the property to landowner) however these cases typically involve situations where there is **no formal landlord tenant relationship** between the parties. This case is filed in Supreme Court and will often take longer than a landlord tenant case.

Important Distinction –

Article 7 Eviction Cases CAN successfully be maintained in landlord tenant court for expedited removal where no formal relationship exists under several strict basis. Anything outside of the below ejectment is likely required.

RPAPL § 713.

Under this statute, a pre commencement 10 day notice to quit is required to be served. Most common grounds we see are the following -

713(3). He or the person to whom he has succeeded has intruded into or squatted upon the property without the permission of the person entitled to possession and the occupancy has continued without permission or permission has been revoked and notice of the revocation given to the person to be removed.

(squatter or trespasser)

713(5). Subject to the rights and obligations set forth in section thirteen hundred five of this chapter, the property has been sold in foreclosure and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the civil practice law and rules, has been exhibited to him.

(post mortgage foreclosure eviction)

713(7). He is a licensee of the person entitled to possession of the property at the time of the license, and (a) his license has expired, or (b) his license has been revoked by the licensor, or (c) the licensor is no longer entitled to possession of the property; provided, however, that a mortgagee or vendee in possession shall not be deemed to be a licensee within the meaning of this subdivision.

(i.e. a friend living at the property who overstays his/her welcome)

713(8). The owner of real property, being in possession of all or a part thereof, and having voluntarily conveyed title to the same to a purchaser for value, remains in possession without permission of the purchaser.

(prior owner holding over in premises post-closing)

713(11). The person in possession entered into possession as an incident to employment by petitioner, and the time agreed upon for such possession has expired or, if no such time was agreed upon, the employment has been terminated; no notice to quit shall be required in order to maintain the proceeding under this subdivision.

(typically a former building superintendent refusing to vacate)

713(7) In More Detail....

7. He is a licensee of the person entitled to possession of the property at the time of the license, and (a) his license has expired, or (b) his license has been revoked by the licensor, or (c) the licensor is no longer entitled to possession of the property; provided, however, that a mortgagee or vendee in possession shall not be deemed to be a licensee within the meaning of this subdivision.

On it's face, it appears that we can get rid of just about anybody who isn't a tenant under this ground. Is this true?

The short answer is "no."

When is it a good time to use 713(7) versus Supreme Court ejectment?

IT DEPENDS! This is a very fact intensive analysis and your answer will differ from case to case. The key is whether the person whom removal is sought is a **"family member."** Generally – if family, ejectment may be warranted. No family relationship, a summary proceeding may be maintained.

Seminal Cases Discussing Familial Relationships and Where Ejectment is Warranted...

Rosenstiel v. Rosenstiel, 20 AD2d 71 (App. Div. 1st Dept. 1963).

Husband attempting to remove Wife in a landlord tenant summary proceeding. The Court ruled in this case that the occupation of the marital home by the wife [is not] a possession existing by virtue of the “permission” of her husband or under a “personal” and “revocable privilege” extended by him.

On the contrary, **her possession of the premises exists because of special rights incidental to the marriage contract and relationship**. This court found ejectment to be appropriate as the husband has the “obligation by virtue thereof to support and maintain his wife”

The Court further noted that the Supreme Court and the Family Court were specifically empowered to deal with issues surrounding property and the breakup of a family

As a result of this ruling, many cases have piggybacked off of the idea of the “**obligation of support**” – with landlord and tenant courts declining to grant judgments of possession to owners who owed in some way an obligation of support to those whose removal is sought.

This has extended so far as to the ex-girlfriend of the property owner as the former couple shared a common child who lived in the home. The court ruled ejectment was proper.

Kakwani v. Kakwani, 40 Misc. 3rd 627, 967 NYS 2nd 827 (2013)

Petitioner, her brother and parents moved into a single family home. Brother got married and moved his wife into the home. The relationship soured and petitioner sought to remove the wife of her brother from the property.

The court concluded that a “family member” may not be summarily evicted from the family home with a 10 day notice to quit, ejectment is the proper avenue.

Nagle v Di Paola (134 Misc 2d 753, 512 NYS2d 761 [1987]) – petitioner was permitted to treat his stepchildren as licensees as their right to reside in the home flowed not from petitioner’s permission but from their relationship with their mother who was married to Petitioner.

Sirota v Sirota (164 Misc 2d 966, 626 NYS2d 672 [1995]) – Father sought to evict two adult children from family home after mom died – court ruled that summary proceeding cannot be maintained.

DeJesus v Rodriguez (196 Misc 2d 881, 768 NYS2d 126 [2003]) – petitioner sought to evict former girlfriend and their children in common despite respondent residing there for 10 years. The court recognized that unmarried couples acquire rights similar to married occupants.

Sears v Okin (16 Misc 3d 134[A], 847 NYS2d 899, 2007 NY Slip Op 51510[U] [2007]) – a respondent’s right to occupy the premises expired pursuant to the terms of a family court order (summary proceeding is OK)

Family Defined

Braschi v Stahl Assoc. Co. (74 NY2d 201, 543 NE2d 49, 544 NYS2d 784 [1989]) - a family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence. This view comports both with our society's traditional concept of 'family' and with the expectations of individuals who live in such nuclear units (family unit being something bearing indicia of permanence or continuity) – **A seminal case that provides a very BROAD definition of “family”**

Lally v Fasano (23 Misc 3d 938, 875 NYS2d 750 [2009]) – Respondent lived in a beach cottage located on her father in law’s property. Respondent’s husband and FIL’s son leaves the property and FIL seeks to remove Respondent in a summary proceeding. The court noted Petitioner and Respondent **never lived together in the same home as a family unit and Respondent was not financially dependent upon the petitioner.**

Summary for what is “Family”

In interpreting the definition of a 'family,' courts have traditionally considered whether the parties lived together 'in a family unit' with 'some indicia of permanence or continuity'

What if the Owner Dies?

Same analysis – the Court may analyze the relationship the occupants had with the decedent.

Surrogates' Court will likely entertain ejectment directly rather than having to file in Supreme.

What if the Owner is a Corporation, LLC, etc...

This is an interesting legal question and not a lot of case law exists on this issue. A general argument can be made that a corporation, LLC, etc. is a separate and distinct legal entity from its principals and therefore the family unit exception may not apply – however if the principal of the corporation, LLC, etc. resides in the premises with the occupant with whom removal is sought, it could be viewed as ejectment rather than summary proceeding.

What if the Occupant is outside the definition of “family?”

It is possible for you to proceed with an Article 7 case. Typical examples of 713(7) could be someone such as a friend of the owner (no familial relationship), a tenant or occupant residing in an illegal dwelling (i.e. no certificate of occupancy for the space occupied)

Commencement of Ejectment Cases: Are Pre-Commencement Notices Required?

Modern NYS Law is not 100% clear on this issue so we must go back to common law...

Common Law Requirements:

- I. Notice is required in cases of indefinite tenancies, but **not** in cases of fixed and definite terms.

See Kosa v. Legg, 12 Misc. 3d 369, 370, 816 N.Y.S.2d 840, 841, 2006 N.Y. Misc. LEXIS 296, *1, 2006 NY Slip Op 26061, 1, 235 N.Y.L.J. 45 – Kings County Supreme Court

Article 6 Enacted in the 1820's – Article 6 is silent on notice requirements!

Art 6 only partially codified the action of ejectment. Article 6 did not create any notice requirements, however **it did not abolish any notice requirements required by common law.**

“The common-law principles governing the ejectment action are unchanged, unless explicitly modified by statute” *Alleyne v. Townsley* 110 AD2d 674, 487 NYS 2d 600 [2d Dept 1985]

A few examples...

A tenancy from DATE CERTAIN to DATE CERTAIN does NOT require notice prior to commencement. Tenancy at will/sufferance

Example – Tenancy dates from 01/01/2020 TO 12/31/2026

A tenancy with no fixed and definite term, i.e., month-to-month, year-to-year, etc.... a notice is required.

How Much Notice is Required?

Article 6 is silent. In its silence, it can be presumed the Legislature intended to keep the requirements imposed under common law.

Some common law ejectment cases point toward an understanding that a **6 month** notice is required prior to initiation of an ejectment case.

See Generally:

Jackson v. Bryan (1 Johns 322 [May Term 1806]) “A lease from year to year, which cannot be vacated without half a year’s notice to quit.”

Kosa v. Legg, 12 Misc. 3d 369, 370, 816 N.Y.S.2d 840, 841, 2006 N.Y. Misc. LEXIS 296, *1, 2006 NY Slip Op 26061, 1, 235 N.Y.L.J. 45 – The Legislature has not adopted any notice requirements for removing month-to-month tenants through ejectment actions, nor has it specifically abolished the **common-law six-month notice requirements** for ejectment actions in cases involving month-to-month tenants.

By reason of the foregoing, the common-law requirement of a six-month notice to quit before a tenant may be removed through an ejectment action applies

Family Member Notice Requirements?

Family members are typically invited into a premises without any discussion or formal agreement on a set term. I.E., husband and wife living in marital home.

It is more than likely that a 6 month notice will be required for family member removal. This is often difficult news to hear for owners who have a contentious relationship with the occupant in the same home.

Pleading an Ejectment Claim

Elements to plead a successful claim:

- (1) [Plaintiff] is the owner of an estate in tangible real property;
- (2) with a present or immediate right to possession thereof; and that
- (3) the defendant is in present possession of the estate.

Cases in support -

City of New York v. Prudenti's Rest. on the Riv., Inc., 203 A.D.3d 1127, 1127

Noamex, Inc. v Domsey Worldwide, Ltd., 192 AD3d 817, 819, 144 N.Y.S.3d 77;

City of New York v. Anton, 169 AD3d 999, 1001-1002, 95 N.Y.S.3d 248;

RPAI Pelham Manor, LLC v Two Twenty Four Enters., LLC, 144 AD3d 1125, 1126, 42 N.Y.S.3d 267.

Other Tips on Prevailing on Ejectment vs. Eviction

1. Ensure that you are properly identifying the type notice and case commencement required. Failure to properly identify will be a costly and very time consuming mistake.
2. Confirm that your client is indeed an owner or otherwise has legal grounds for commencement of an ejectment claim
3. The pre eviction notice service requirements are unclear as it comes from common law. Do not leave it up to chance and have a process server do it.

Other Notes on Ejectment Generally

The process for pre-commencement can be unclear and sometimes confusing. However, if the process is completed correctly, an owner may be able to move very quickly for summary judgment in favor of a judgment of possession.

General Timeframes for L&T Cases in Westchester County as of April 2025

COURT	Return Dates	Adjourn Dates	Trial Dates	Time from Judgment on Record to Delivery to Marshal
YONKERS	No Delay	Approx 1 month	1.5-2.5 Months	5-8 Weeks
WHITE PLAINS	No Delay	2-3 Weeks (only 2 calendar dates)	2-4 weeks	1-3 weeks
MT. VERNON	No Delay*	1-3 Weeks	Within 30 days	1-3 weeks
NEW ROCHELLE	No Delay	1 week, no delay	Within 30 days	Usually within an hour/within 24 HRS
TOWN AND VILLAGE	No Delay	Varies – Court dependent	Generally within 30-45 days of appearance	1-4 Weeks

Notes:

1. MVCC gives return date upon filing of petition, we typically get return dates prior to filing in other courts.
2. Some smaller courts will not usually allow for submission of the J/W until the stay date is up.
3. Most Town and Village Courts have very limited court dates – i.e., Sleepy Hollow does 2 court dates per month for L&T.
4. Town and village generally the most delay due to limited calendar days/court resources