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Effective Dec. 3, 2014, all residential leases in New York State require a notice to the tenant about the presence or absence of sprinkler systems in the "leased premises." The new law, while defining what a sprinkler system is, does not define what a "lease" is or what "premises" are. The law is effective through the entire state of New York and appears to cover both main leases and subleases as well as new leases and renewal leases and makes no exceptions for premises that are governmentally regulated or even governmentally run. Notably, while stating what must exist, the law has no enforcement mechanism on its face and no penalty stated for noncompliance.

The law, Real Property Law Section 231-a, denominated "Sprinkler system notice in residential leases," is short and simple. It says, "(1) Every residential lease shall provide conspicuous notice in bold face type as to the existence or non-existence of a maintained and operative sprinkler system in the leased premises. (2) For purposes of this section, "sprinkler system" shall have the same meaning as defined in section one hundred fifty-five-a of the executive law. (3) If there is a maintained and operative sprinkler system in the leased premises, the residential lease agreement shall provide further notice as to the last date of maintenance and inspection."

Mandatory Language

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While most leases call themselves "leases," there are other names as well. Even where the name is modified in some manner, common perception fails to recognize a lease as being such. Thus, many cooperators under "proprietary leases" are so focused on their being shareholders in the corporation, they lose track of the fact that they are also conventional tenants in a conventional landlord-tenant relationship.

The bylaws of the overwhelming majority of cooperative corporations require that the development's proprietary leases be identical to each other. Since this new law requires that all residential leases issued on or after Dec. 3, 2014, contain the required language, this means that in order to issue one proprietary lease to the new owner of an apartment in a cooperative complex, all of the proprietary leases for that complex will have had to have been amended on or prior to Dec. 2, 2014.

Since the statute specifies that the new language has to be in bold print (without specifying just what the language is), this means that it will not be good enough for the board of directors to pass a resolution that all of the leases in the complex are "deemed" or considered amended by adding this language. It will actually have to be done in real time on real paper. We have no way of predicting the results if a shareholder simply refuses to sign the new lease. We note that in some

Other leases for residential space go by the name "occupancy agreement," but are nonetheless actually leases. In fact, there is no legal requirement for what the parties call the agreement. Even more confusing, some leases deny that they are leases. This is typical of leases that call themselves licenses. While, some licenses really are licenses, they are difficult to draft correctly, and therefore, the courts hold many documents that want or claim to be licenses to actually be leases. As a result, the parties holding this kind of lease could be very surprised to find out that this statute applies to them.

The consequences for such a document failing in good faith to include the required sprinkler language are at this point too difficult to imagine. But, on the flip side of the issue, if there is a license where one of the parties claims that it is really a lease and the document includes the mandatory sprinkler language, the party arguing that it is a license may be finding itself having accidentally conceded that it was a lease.

While leases given in some form of regulatory housing typically have lease clauses that the lease must contain, required lan guage in unregulated residential leases is exceedingly rare. Generally speaking, in the state of New York, a landlord and a tenant could write on the back of a cocktail napkin, “The apartment at 123 Mockingbird Lane will be rented to the tenant to live in for X months at $Y rent per month” and, once they sign it, they have a “residential lease” within the meaning of this new law. Now the law requires that cocktail napkin to state facts about whether or not there is a sprinkler system and what its recent maintenance history is and to do so “in bold face type.”

So, while the rest of the cocktail napkin can be handwritten, the sprinkler language has to be machine generated. The statute, however, does not specify what happens if the cocktail napkin fails to obey the law. Is this no longer a valid lease under New York law? Nobody knows. However, if it is not a valid lease, the courts will probably find that there is a valid month-to-month tenancy and will give both sides the minimal protections that kind of tenancy accords somewhat differently inside the boundaries of New York City and outside those boundaries.

Sublets

Where this law can have a substantial anti-consumer effect is on the question of subletting. In residential rentals in buildings of three units or fewer, in co-ops, and in public housing or other housing where there are governmental qualifications for tenancy, there is no statutory right to sublet. However, in buildings of four or more units that are not in those special situations, New York law presents a statutory right to sublet, provided the tenant follows to the letter, a clearly described procedure set forth in the statute. There are several steps to that procedure and the first step in the procedure includes sending the landlord a copy of the proposed sublease.

Under this new statute, the landlord can drag the sublet-wanting tenant through the rest of the sublet procedure. However, the landlord will be in possession from the very beginning of an ace in the hole that allows denial of the sublet request at the very end of the procedure because the sublease did not comply with this new statute. And two things are going to make it very likely that the sublease won’t comply with the new statute: The first is that the subletting tenant will have no warning in the sublet law that leases need to have any particular language; the second is that the sublet-wanting tenant probably has no access to the maintenance history of the sprinkler system and no way to demand it.

Particularly inside the city of New York, folks who are subletting may find themselves in for quite a surprise from this statute. Sublessors have essentially no control over any sprinkler system on the premises nor do they have any access to the maintenance records or the ability to demand such access. If they are rent-regulated tenants, their last renewal lease could have been two years earlier. Therefore, by the time the subletting takes place, the tenant-sublessor's information could be as much as two years stale, or even more.

Rent-Regulated Leases

With regard to rent-regulated leases, we note that the statute requires that the lease set forth "the last date of maintenance and inspection." However, on the probably valid assumption that the lease is offered as early as 150 days before the expiration of the last lease, the landlord will be filling out "the last date of maintenance and inspection" on a date that is nearly half a year prior to the lease going into effect. So, the effective date of the lease may be after a maintenance and inspection that took place between the time of the lease offer and the time of the lease acceptance (even assuming that the tenant is absolutely prompt in accepting the lease renewal, a not particularly valid assumption).

Should the landlord be notifying the tenant of a different date of maintenance and inspection after the offer? Perhaps the landlord should notify the tenant of that, but we note that under rent stabilization, the landlord cannot change the lease offer. So, the lease when signed by the tenant may have information that is no longer true, information that perhaps this new law requires and the rent stabilization law simultaneously prohibits. This problem could possibly be solved by the landlord mailing an update on the date the renewal lease is to take effect.

Also, on the subject of rent stabilization, we note that this lease renewal would be different from the lease it renews, but while rent stabilization requires that the renewal of the lease be on the same terms and conditions as the expiring lease, this notification of the status of the sprinkler system is not a "term and condition"; it is merely a notification. So, at least as to that matter, rent stabilization should present no problem under the new statute.
Implications, Enforcement

This law will affect at least tens of thousands of dwelling arrangements where people will have absolutely no idea they are in violation of the law. In New York City, this will include sublets and apartments of all kinds in buildings with fewer than six residential units. Owners of larger buildings are more likely to expect obscure laws to be ruling their obligations regarding sprinklers. In the vast rural parts of the state, tens of thousands of rentals will be affected in places that might be living under the misapprehension that housing regulation is a New York City phenomenon alone.

And in all these places, in the large buildings and small, inside New York City and out, landlords and tenants will all have the same question which we can't answer: How is this thing going to be enforced? Possible enforcement mechanisms include courts finding leases that lack the required language invalid. Perhaps the New York State Attorney General's Office will take the attitude that folks who rent to several or more different tenants with leases that lack this mandatory language are guilty of fraudulent business activities and are subject to fines and penalties.

Perhaps fire insurers will deny coverage of fires in tenancies where the insureds failed to insist upon this language being present in the lease and are therefore, under the insurer's theory, partially responsible for their own fire damage. Or perhaps they will deny coverage on the theory that the renter fraudulently claimed to have a lease.

We doubt that the Legislature really thought through any of the issues that are presented in this article. Private communications with legislators have informed us that the Legislature realizes that the statute is heavily flawed and they can be expected to be repairing it in the coming years. Until then, this law will serve as a stellar example of the law of unintended consequences.

Whatever those consequences may be, these authors, as the drafters of all the Blumberg-Excelsior New York residential leases of the last decade have updated all of our lease forms to include the required language. We are advised that the new forms are ready.