

GENERATION Z, WELCOME TO YOUR FIRST APARTMENT IN NYC

Module 1: Renting, Subletting, Being a Roommate, or Co-Living... What Housing Choice Should You Make and Why?

First Edition



The Tenant Learning Platform, LLC

tenantlearningplatform.com

Materials prepared for the Tenant Learning Platform, LLC
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I. INTRODUCTION

A. Welcome to the Tenant Learning Platform.

- The Tenant Learning Platform delivers on-demand, online classes for all kinds of NYC tenants on specific legal topics, to help tenants prevent and solve problems with their apartments.
- At TLP you will get ACCURATE and ACTIONABLE information on your legal rights as a tenant. We are developing classes like:
 - The Laws About Getting Paint Jobs and Repairs in Your NYC Apartment
 - How To Do Airbnb Legally in Your NYC Apartment
 - How To Protect Your NYC Apartment from a Non-Primary Residence Claim
 - How to Get an Emotional Support Animal in a No-Pets Building
 - Best Practices for Breaking Your NYC Lease Early

The Tenant Learning Platform is NOT:

- A legal referral service. You will never be referred to a lawyer by TLP.
- A marketplace for online legal forms.
- A tenant advocacy group. Buying the class does not mean you are joining or supporting anything. You are just taking a class.

The Tenant Learning Platform's goal is to help people deal with some of the legal problems that relate to their apartments. By "help", we mean that our main focus is keeping people OUT of court. By "help", we do NOT mean teaching people to represent themselves in Housing Court.

This class is attempting to teach you how to *prevent* legal problems. **The class must NOT be considered a substitute for representation by competent counsel if a legal problem regarding your housing should arise.**

Housing Court is not a place that a tenant should be without a lawyer, if she or he can help it. If you do get sued by your landlord, immediately check into whether you qualify for free legal services. The Tenant Learning Platform is NOT a substitute for a Legal Aid attorney. If you are lucky enough to be able to get one. The Legal Aid attorneys working in the area of

Housing in New York City are some of the best attorneys anyone can ever be represented by. If you qualify for their help, do not decline it.

B. This class is part of a series designed to help Gen Z's, who did not grow up in NYC, and who are arriving here for their first job or to otherwise make their fortunes.¹

This class is part of a series designed to help members of Generation Z, who did not grow up in New York City, and who are arriving here for their first job or to otherwise make their fortunes. Whether you are headed for Wall Street, the arts, a tech startup, or whether you are here to continue your education, the Tenant Learning Platform has your back when it comes to your NYC housing.

Generation Z is the newest generation to be named and they were born between 1995 and 2015. As this edition is printed in 2021, Gen Z's are currently between 6 and 26 years old. There are about 74 million of you in the United States², and we figure a fair number of you will do what every generation before you has done, start your careers in the City that Never Sleeps!

This Generation Z Series includes the following modules:

- Module 1: RENTING, SUBLETTING, BEING A ROOMMATE, OR CO-LIVING...WHAT HOUSING CHOICE SHOULD YOU MAKE AND WHY?
- Module 2: ROOMMATES – ITS ALL GOOD...UNTIL IT ISN'T
- Module 3: LEASE LIES AND HALF TRUTHS
- Module 4: PITFALLS FOR PARENT GUARANTORS
- Module 5: BREAKING YOUR LEASE IF YOU'RE HEADED BACK TO KANSAS

C. How To Take This Class

- Read this booklet. This booklet is a comprehensive guide on the topic. It will explain, in clear language, WHAT the law is and WHERE to find it. The booklet contains plenty of helpful examples and best practices.

¹ This class will be helpful to any apartment seeker who is new to the in's and out's and what-have-you's of NYC housing. You do not have to be a member of Generation Z for the material to be relevant to you. Nor do you even have to be from outside NYC - maybe you grew up in your parents' house in Queens and never had to think about renting an apartment on your own before. Indeed, you may even find this material enlightening if you have lived in NYC for a few years and now you are looking for a new apartment.

² <https://www.kasasa.com/articles/generations/gen-x-gen-y-gen-z>.

- Watch the video lessons, which are voiced-over slides.
- Take the online quiz. Taking the multiple-choice quiz will be (we hope) fun and it will help make sure that you have learned what we think is most important.
- Complete the online survey that comes at the end. We want your feedback.
- This class will be about three to six hours of work, depending on how fast you read, etc. **Taking this class is NOT a quick fix.** The TLP is teaching you the law and best practices. Those things are not short stories.

D. Meet Your Instructor

So, whose voice are you hearing when you read this booklet, watch the voiced-over slides, etc.? I am Michelle Itkowitz and I have been a landlord and tenant litigator in NYC for over twenty years. I represent tenants AND landlords in residential and commercial landlord and tenant disputes.

I have always marketed my law practice via *Content Marketing* – I never advertise. I write articles about landlord and tenant law in the City of New York and get them out there any way I can – booklets, blogs, email blasts. In 2018 and 2019, I was invited to speak to groups on landlord and tenant law 21 times; 14 of those lectures were for-credit Continuing Legal Education classes where I taught other lawyers about landlord and tenant law in New York City. In 2020, I did a ton of teaching about tenant's rights during the Pandemic.

Because I have so much content out there, hundreds of residential tenants started finding me and I realized how desperately tenants need practical information about their legal rights. I, however, have a very small firm and I am very expensive at this juncture in my career journey. I cannot be everyone's *lawyer*.

But maybe I can be many people's *teacher*. Maybe I can teach tenants, just as I teach lawyers and real estate professionals.

I am ethically obligated to remind you that, just because you read this booklet or took this course, doesn't mean that we have a lawyer and client relationship. I am not your lawyer. This is not legal advice about your particular situation. We at TLP make no representation or guaranty about the outcome of your particular matter.

The law in this area is evolving. Therefore, this course will be periodically updated.

The law belongs to you! But your ownership of the law is only as great as your understanding of it. OK, now let's *learn...to live* better!

II. RENTING YOUR OWN APARTMENT

A lease for an apartment is *both* a contract between landlord and tenant *and* a conveyance of an interest in real property from landlord to tenant (albeit a temporary conveyance of only a part of a building).³

Here is where I usually get criticism from my editors. They will tell me that my very first sentence is too complicated for regular people, for non-lawyers. Well, too bad, editors. Again, the law belongs to you, but your ownership of the law is only as good as your understanding of the law. So, we are going to start with some basic concepts about real property law, which everyone should understand.

A conveyance is a transfer of an interest in real property from one person (or company) to another.⁴ That transfer is of absolute possession and control, and thus differentiates a lease from other types of contracts.⁵ A lease grants *exclusive* possession of a designated, bounded space to a tenant, usually for a specified rental rate and term, subject to certain rights reserved by the lessor.⁶ "Exclusive possession" means, once the landlord leases you the apartment, that no one else but you may go in to that apartment (and, of course, the people you let in to the apartment). Therefore, once you rent an apartment, not even the landlord may go into the apartment, unless you give her permission.

³ *219 Broadway Corp. v. Alexander's, Inc.*, 46 NY2d 506 [1979].

⁴ Black's Law Dictionary [11th ed 2019].

⁵ *Feder v. Caliguira*, 8 NY2d 400, 404 [1960].

⁶ *Davis v. Dinkins*, 206 AD2d 365 [2d Dept 1994]; *Miller v. City of New York*, 15 NY2d 34 [1964]; *City of New York v. Pennsylvania R. Co.*, 37 NY2d 298 [1975]; *Statement, Inc. v. Pilgrim's Landing, Inc.*, 49 AD2d 28 [4th Dept 1975].

EXAMPLE: I received an email from a young couple who had just rented an apartment in Boerum Hill, Brooklyn. They signed a standard form lease with no special riders. Yet shortly after they moved in, their landlord told them that he needed them to move out for a few weeks so that the landlord could upgrade the plumbing in the building. There was no emergency or leak. It was simply that the landlord needed access to the pipes behind the walls of the couple's apartment to do some optional upgrade work to the building. The couple, however, did not want to move out of their new apartment, even if the landlord was willing to pay for the temporary move. They had a cat. They were busy people; they did not wish to be disrupted. They did not want the walls of their apartment torn open or strange workers in their home all day.

Well, the couple absolutely did not have to allow the landlord the access she was requesting. And this is why my first sentence in this section is important for people to understand. A lease is legally more than just a contract to allow you to use an apartment. A lease is a *conveyance* of a bounded section of real property, and it is exclusive to the tenant against the whole world. **Your apartment is your apartment.** Unless and until you legally surrender it, or a court says otherwise.

Keep in mind, however, that the result in the above example would be different if the landlord had been requesting access to fix a broken pipe that was gushing water onto the apartment beneath, i.e., if there had been an emergency.⁷

⁷ <http://www.itkowitz.com/booklets/A-Landlords-Right-to-Access-a-Tenants-Apartment-In-Emergencies-and-for-Repairs.pdf>

A. Leasing a Free-Market Apartment vs. a Rent Stabilized Apartment and Why It Matters

There are two very different types of apartments to rent in New York City.

1. A Rent Stabilized Apartment

Some apartments are Rent Stabilized. Rent Stabilization is a state regulatory scheme, which applies to about one million tenancies in New York City.⁸ Rent Stabilization limits the rent an owner may charge for an apartment, restricts the right of an owner to evict tenants, and imposes other requirements on landlords and tenants. Rent Stabilization is overseen by the New York State Division of Housing and Community Renewal (“**DHCR**”).⁹

Rent Stabilized tenants are entitled to leases and lease renewals. Even if landlord fails to renew a Rent Stabilized tenant’s lease, all tenant’s rights remain intact.¹⁰

If a Rent Stabilized lease is not properly renewed, a landlord cannot sue tenant for the rent.¹¹

Family members of a Rent Stabilized tenant residing in a Rent Stabilized apartment often have succession rights to the tenancy.¹²

Rent increases for Rent Stabilized tenants are controlled by the New York City Rent Guidelines Board, which sets maximum rates for rent increases once a year, which are effective for leases beginning on or after October 1st.¹³

⁸ Selected Initial Findings of the 2014 New York City Housing and Vacancy Survey; <http://www1.nyc.gov/assets/hpd/downloads/pdf/2014-HVS-initial-Findings.pdf>.

⁹ McKinney's Uncons Laws of NY § 26-516 [Rent Stabilization Law].

¹⁰ 9 NYCRR § 2523.5 [Rent Stabilization Code (“**RSC**”)]

¹¹ *Paid Enters. v. Gonzalez*, 173 Misc 2d 681, 682 [App. Term 2nd Dept. 1997] (“Rent [S]tabilization is a lease-based regulatory scheme. As such, a tenant's obligation to pay the stabilized rent is dependent on the tenant's agreement to pay it.”).

¹² RSC § 2523.5(b)(1); RSC § 2520.6(o).

¹³ <https://www1.nyc.gov/site/rentguidelinesboard/index.page>.

Under Rent Stabilization, landlord is required to follow a very specific procedure for lease renewals. Leases must be entered into and renewed for one- or two-year terms, at the tenant's choice.¹⁴ Landlord must send the lease renewal offer between 150 and 90 days before the expiration of the current lease.¹⁵ Every lease renewal offer must have a special DHCR rider attached. At the time of this writing, the DHCR rider is 12 pages long¹⁶. A Rent Stabilized lease renewal offer must be on the same terms and conditions as the expired lease.¹⁷

Owners are required to register all Rent Stabilized apartments initially and then annually with the DHCR and to provide tenants with a copy of the annual registration.¹⁸

In general, if a building was built before 1974 and contains six or more dwelling units, then the apartments therein are Rent Stabilized, unless certain exceptions apply.¹⁹ Unfortunately, there is no official list somewhere that definitively tells the world which apartments are subject to Rent Stabilization and which are not. The DHCR has jurisdiction over matters relating to Rent Stabilization and the DHCR maintains some records. But the records the DHCR maintains contain information that is largely self-reported by landlords and that is often not controlling regarding an apartment's Rent Stabilization status. Therefore, year after year, a landlord can report to the DHCR that an apartment is "permanently exempt", but that does not make it so. Moreover, a current or former tenant may have signed a document acknowledging that an apartment is not subject to Rent Stabilization. But this, also, does not make it so. Parties may not contract out of Rent

¹⁴ RSC § 2522.5.

¹⁵ RSC § 2523.5.

¹⁶ <http://www.nyshcr.org/Forms/Rent/ralr1.pdf>. RSC § 2522.5.

¹⁷ RSC § 2522.5

¹⁸ RSC § 2528.3; *Re Gelaj*, DHCR Adm. Rev. Docket No. GN610031RO, LVT #30448 [9/10/19] (Landlord asked the DHCR to amend annual rent registrations for one apartment for years 2013 through 2016. The DHCR ruled against landlord, who appealed and lost. Landlord asked the DHCR to change the tenant's name from [AS] to [GS]. Landlord claimed that it made a clerical error. But tenant argued that [AS] was the tenant of record. The DHCR found that an incorrectly identified tenant for four consecutive years was simply not the sort of mistake that could be called ministerial or clerical. Any question concerning who actually was the lawful apartment tenant must be pursued in other proceedings.)

¹⁹ McKinney's Uncons Laws of NY § 8625(a)(5) [Emergency Tenant Protection Act of Nineteen Seventy-Four].

Stabilization coverage.²⁰ It works the other way as well – landlords and tenants cannot contract *in* to Rent Stabilization.²¹

How do you ever get a definitive answer on an apartment's Rent Stabilization status? With some exceptions, the last word on whether an apartment is Rent Stabilized is in the hands of the courts or the DHCR. Until a judge is satisfied that an apartment is not Rent Stabilized, the matter is always, in some measure, unsettled.²²

Buildings built after 1974 are frequently also subject to Rent Stabilization if they are receiving certain real estate tax benefits. Various real estate tax benefits were enacted to spur new construction or rehabilitation of residential housing. In return for the tax exemption, owners need to submit to Rent Stabilization for the duration of the tax benefit period.

Such buildings' status as Rent Stabilized is generally easier to identify. Check the building's status online on the New York City Department of Finance for a construction benefit. Look for these types of tax benefits:

- 421-a
- 421-g
- J-51

²⁰ See RSC § 2520.13 (Waiver of benefit void); *Thornton v. Baron*, 5 NY3d 175 [2005] (“A lease provision purporting to exempt an apartment from rent regulation in exchange for an agreement not to use the apartment as a primary residence is against public policy and void.”) *Drucker v. Mauro*, 30 AD3d 37 [1st Dept 2006] (“It is well settled that the parties to a lease governing a rent-stabilized apartment cannot, by agreement, incorporate terms that compromise the integrity and enforcement of the Rent Stabilization Law.”)

²¹ See *Heller v. Middagh Street Associates*, 4 AD3d 332 [2d Dept 2004] (Landlord did not contractually agree to subject tenants' apartments to Rent Stabilization Law by attaching Rent Stabilization riders to certain leases and by tendering rent renewal leases using Rent Stabilization forms.); *Ruiz v. Chwatt Associates*, 247 AD2d 308 [1st Dept 1998] (“Rent stabilization coverage is matter of statutory right and cannot be created by waiver or estoppel.”)

²² It is way beyond the scope of this class to cover regulatory status beyond the previous few paragraphs. If you think your apartment is Rent Stabilized, [contact an attorney familiar with this area of the law](http://www.itkowitz.com/rent-stabilization-coverage-analysis-for-tenants). <http://www.itkowitz.com/rent-stabilization-coverage-analysis-for-tenants>

Here is an example of what you are looking for:

The screenshot shows the NYC Department of Finance website interface. At the top, there is a navigation bar with 'Property Information', 'Apply for Exemptions', and 'Get Help'. Below this is a search bar with 'Property Address Search', 'BBL Search', and 'REUC Search'. The main content area is divided into a left sidebar and a main panel. The sidebar includes links for 'Property Info', 'Account Balance', 'Account History', 'Payment History', 'Refund History', 'Notices of Property Value', 'Property Tax Bills', 'Benefits - Prop. Owners', 'Benefits - Business & Construction', 'Benefits - Gov. & Non-Prof', 'Market Values & Assessments', '2020-2021 Final', '2020-2021 Tentative', '2019-2020 Final', and 'Prior Years'. The main panel displays property information for 'ON BOULEVARD' in the 'Borough: QUEENS'. It includes a 'Notes' section with text about exemptions and abatements, and an 'Exemptions' table. The 'Exemptions' table has four columns: 'Benefit Name', 'Current Period', 'Current Amount', and 'Proposed for Next Period'. A red circle highlights the 'Benefits - Business & Construction' row in the sidebar and the corresponding row in the 'Exemptions' table, which shows a benefit name of '421A', a current period of '2020 - 2021', and a current amount of '5,187,060'.

In many cases (not all), however, the Rent Stabilization status lasts only as long as the tax benefit is in place. If your apartment is subject to Rent Stabilization because of a tax benefit, your lease must have a special rider informing you of when the benefit will end. If such rider is missing, your apartment will remain subject to Rent Stabilization until you move out.²³

²³ RSC § 2520.11(p)(2) states: “(2) for housing accommodations which first became subject to the rent stabilization requirements of section 421-a after July 3, 1984, where each lease and each renewal thereof of the tenant in occupancy at the time the period of tax exemption pursuant to section 421-a expires, **contains a notice in at least 12-point type informing such tenant that the housing accommodation shall become deregulated upon the expiration of the last lease or rental agreement entered into during the tax benefit period and states the approximate date on which such tax benefit period is scheduled to expire;**” [Emphasis supplied.] See *Tribeca Equity Partners, L.P. v. DHCR*, 144 AD3d 554 [1st Dept 2016]; Real Property Tax Law § 421-a(2)(f)(ii).

PROS OF A RENT STABILIZED APARTMENT
(AS COMPARED TO A FREE-MARKET APARTMENT):

- Rent increases are small and controlled by percentages set periodically by the City
- Tenant can only be evicted for nonpayment of rent or for cause; otherwise, landlord must always renew the lease.

CONS OF A RENT STABILIZED APARTMENT
(AS COMPARED TO A FREE-MARKET APARTMENT):

- Harder to find than free-market apartments
- Comes with more rules for the tenant as well as for the landlord. For example, to be entitled to have your Rent Stabilized lease renewed, you must be living in the apartment as your primary residence.²⁴
- Landlords generally prefer free-market apartments to Rent Stabilized apartments (because they make more money on them). Thus, landlords may be slower to provide repairs to Rent Stabilized apartments.

2. A Free-Market Apartment

Any apartment that is not Rent Stabilized or subject to some other type of government regulation is generally referred to as a “free-market” apartment. With a free-market apartment:

- You only have a right to stay for the lease term; and
- When the lease term is over, you and the landlord must agree on the next rent.

²⁴ RSC § 2524.4. See also the Tenant Learning Platform Class “[How to Protect Your New York City Apartment From a Non-Primary Residence Claim](https://tenantlearningplatform.com/courses/how-to-protect-your-rent-stabilized-apartment-from-a-non-primary-residence-claim/)”. <https://tenantlearningplatform.com/courses/how-to-protect-your-rent-stabilized-apartment-from-a-non-primary-residence-claim/>

There are a few laws in New York State that slow a landlord down when she is refusing to renew a free-market tenant's lease and/or when she is attempting to raise the rent sharply at the end of the term. Real Property Law ("**RPL**") § 226-c (Notice of rent increase or non-renewal of residential tenancy) states:

"1. Whenever a landlord intends to offer to renew the tenancy of an occupant in a residential dwelling unit with a rent increase equal to or greater than five percent above the current rent, or the landlord does not intend to renew the tenancy, the landlord shall provide written notice as required in subdivision two of this section. If the landlord fails to provide timely notice, the occupant's lawful tenancy shall continue under the existing terms of the tenancy from the date on which the landlord gave actual written notice until the notice period has expired, notwithstanding any provision of a lease or other tenancy agreement to the contrary.

2. (a) If the tenant has occupied the unit for less than one year and does not have a lease term of at least one year, the landlord shall provide at least thirty days' notice.

(b) If the tenant has occupied the unit for more than one year but less than two years, or has a lease term of at least one year but less than two years, the landlord shall provide at least sixty days' notice.

(c) If the tenant has occupied the unit for more than two years or has a lease term of at least two years, the landlord shall provide at least ninety days' notice."

NOTICE REQUIREMENTS FOR FREE MARKET APARTMENTS

You have a lease for **less than a year**.

Landlord must give you at least **30 day's** notice that she is not renewing your lease or that she is raising your rent more than 5%.

You have a lease for **more than one year but less than two years**.

Landlord must give you at least **60 day's** notice that she is not renewing your lease or that she is raising your rent more than 5%.

You have a lease for **two or more years**.

Landlord must give you at least **90 day's** notice that she is not renewing your lease or that she is raising your rent more than 5%.

Again, these laws only, at best, slow the landlord down. There is nothing that prevents a landlord of a free-market apartment from not renewing your lease or from demanding from you a large rent increase at the end of your term as a condition of renewing your lease.²⁵

²⁵ A landlord of any apartment, however, may not refuse to renew your lease or demand from you a large rent increase at the end of your term as a condition of renewing your lease if her motivation for so doing is housing discrimination.

“Housing discrimination” can mean refusing to renew a lease on the basis of a tenant’s membership in a protected class. As of this writing, there are many protected classes for purposes of housing discrimination in New York City, including: Age; Color; Disability; Gender; Gender Identity; Immigration Status; Lawful Occupation; Lawful Source of Income (including housing subsidies); Marital or Partnership Status; Military Service; National Origin; Pregnancy; Presence of Children; Race; Religion/Creed; Sexual Orientation; Status as a Victim of Domestic Violence, Sexual Violence, or Stalking. If you think you have been discriminated against, contact the [NYC Human Rights Commission](https://www1.nyc.gov/site/cchr/index.page).
<https://www1.nyc.gov/site/cchr/index.page>

B. Pros and Cons of Renting Your Own Apartment

1. One Person on the Lease as Tenant

If you rent your own apartment, you have more control over your housing than you do in the other situations discussed below. You control the physical space. You can decide to take a roommate, or not. You negotiate your lease directly with your landlord, and subject to applicable laws discussed above, any renewals thereof.

If you rent your own apartment, you are personally liable for the entire rent for the entire term. If you have a guarantor, the guarantor is liable as well.²⁶

EXAMPLE: You rent an apartment and you are the only tenant on the lease. You take in a roommate to help pay the rent. The roommate promises you that he will live in the apartment with you for a year and that he will pay half the rent. The roommate gets a boyfriend and moves out to live with him after three months. You, therefore, have trouble paying the rent and are scrambling to find a new roommate. If the landlord sues for the rent, she is only going to sue you, because you are the only tenant on the lease, and therefore, the only one legally responsible for the rent.

Furthermore, the rental obligation is generally higher if you rent your own apartment, than in the other situations discussed below.

PROS OF RENTING YOUR OWN APARTMENT

The pro of renting your own apartment is control of the physical space and lease renewal negotiations.

CONS OF RENTING YOUR OWN APARTMENT:

The cons of renting your own apartment is that all the liability belongs to you solely, and/or your guarantor.

Also, renting your own apartment is typically more expensive.

²⁶ A later module in this Gen Z Series will be about everything a parent guarantor needs to know when their kid rents NYC apartment.

2. More Than One Person on the Lease as Tenants

If there is more than one person on the lease for an apartment, then all the privileges and liabilities described above are shared equally between them. Control over legal decisions regarding the apartment are also equally shared.

III. SUBLETTING SOMEONE ELSE'S APARTMENT

A sublease is a lease by a tenant to a third party (a subtenant), transferring the right to possession to some or all the leased property for a term shorter than that of the tenant, who retains a right of reversion.²⁷ The important thing to keep in mind about a sublease is that it is a type of lease. As we explored above, a lease is a conveyance of an interest in real property that is, among other things, exclusive. This means that once you sublet an apartment from a tenant, that subtenant can exclude the tenant (also known as the sub-landlord) and the landlord (also known as the over-landlord). When you sublet an apartment, it is your apartment.

If you are entering into an arrangement where you are living in an apartment *with the tenant present*, then you are either renting a room (which is likely illegal, and which is covered below) or you are a roommate (which is legal, depending on other circumstances, and is also covered below).

A. NYS Law on a Tenant's Right to Sublet

Under RPL § 226-b, a tenant renting a residence **in a building with four or more residential units** has a right to sublease the apartment **subject to the written consent of the landlord in advance of the subletting**. Furthermore, the **landlord is prohibited from unreasonably withholding consent**.

The devil is in the details with respect to RPL § 226-b(2). A tenant in a building with four or more units does, indeed, have a right to sublet. But it is a lot of work to exercise that right. There is a specific procedure that the tenant must follow, which is detailed in RPL § 226-b(2), when requesting the landlord's permission to sublet the apartment.

²⁷ Black's Law Dictionary [11th ed 2019].

First, the tenant must inform the landlord of tenant's intent to sublease by mailing a notice of such intent by certified mail, return receipt requested, to the landlord no less than **30 days prior to the proposed subletting** with:

- the term of the proposed sublease
- the name of the proposed subtenant
- the business and home address of the proposed subtenant
- tenant's reason for subletting
- tenant's address for term of the proposed sublease
- written consent of any co-tenant or guarantor of the lease
- a copy of the tenant's lease, where available, attached to a copy of the proposed sublease, acknowledged by the tenant and subtenant as being a true copy of the sublease.

Then, within **ten (10) days** after the mailing of the request, the owner may ask the tenant for additional information. Any such request for additional information shall not be unduly burdensome.

Within 30 days after the mailing of the tenant's request to sublet, or of the additional information reasonably asked for by the owner (whichever is later), the owner must send a reply to the tenant consenting to the sublet or indicating the reasons for denial. Failure of the owner to reply to the tenant's request within the required 30 days will be considered consent.

If the owner consents or does not reply to the request within the appropriate 30-day period, the apartment may be sublet. If the owner reasonably withholds consent, the tenant may not sublet the apartment.

Whether a landlord's withholding of consent is "reasonable" is naturally a fact-sensitive question, but a court will objectively evaluate the proposed sublet based on the character and financial status of the subtenant as relevant factors.²⁸

As a practical matter, tenants often sublet their apartments without seeking their landlords' permission. Also, as a practical matter, many landlords do not penalize their tenants for subletting without permission, as

²⁸ See *Vance v. Century Apartments Associates*, 93 AD2d 701, 703-704 [1st Dept 1983] ("Where a lease affords to a tenant a right to assign or sublet subject to the consent of the landlord, the reasonable ground to support a withholding of consent has always been tested by an objective standard, relating to the acceptability of the proposed subtenant or assignee. Thus, among the relevant criteria from the point of view of the landlord is the character and financial responsibility of the proposed tenant and the nature of the occupancy or purposes for which the property is to be used.")

long as the rent is paid, and the subtenant does not cause problems in the apartment or the building. **Best practices, however, dictate that if you are intending on subletting someone else's apartment, that you make sure that the tenant has first obtained the landlord's permission.** In the next section, we examine the implications of not having that permission in certain types of housing.

B. Implications of Subletting Different Types of Apartments

1. Subletting a Co-Op

Co-op shareholders are a type of tenant. When a person purchases "a co-op", they are buying stock in a cooperatively owned housing corporation, and they are issued a "proprietary lease" for their specific apartment. There is an entire section of the New York City Civil Court Housing Parts dedicated to co-op eviction cases. In other words, co-ops are not that different from regular apartments when it comes to landlord and tenant legal issues.

The above-mentioned RPL § 226-b, which prohibits a landlord from unreasonably denying a tenant permission to sublet, does NOT apply to co-ops.²⁹

Co-ops often have proprietary leases or bylaws that require co-op board pre-approval of any sublet and that limit the amount of time a unit can be sublet. Co-ops tend to enforce these rules. Therefore, it is imperative that you get evidence that a co-op shareholder has permission to sublet a co-op apartment to you before you move in.

2. Subletting a Rent Stabilized Apartment

As mentioned above, to be entitled to have a Rent Stabilized lease renewed, a tenant must be living in the apartment as her primary residence.³⁰ Therefore, landlords of Rent Stabilized apartments are often watching the activity in such apartments closely, looking for an opportunity to be able to refuse to renew a Rent Stabilized lease. Subletting presents that opportunity.

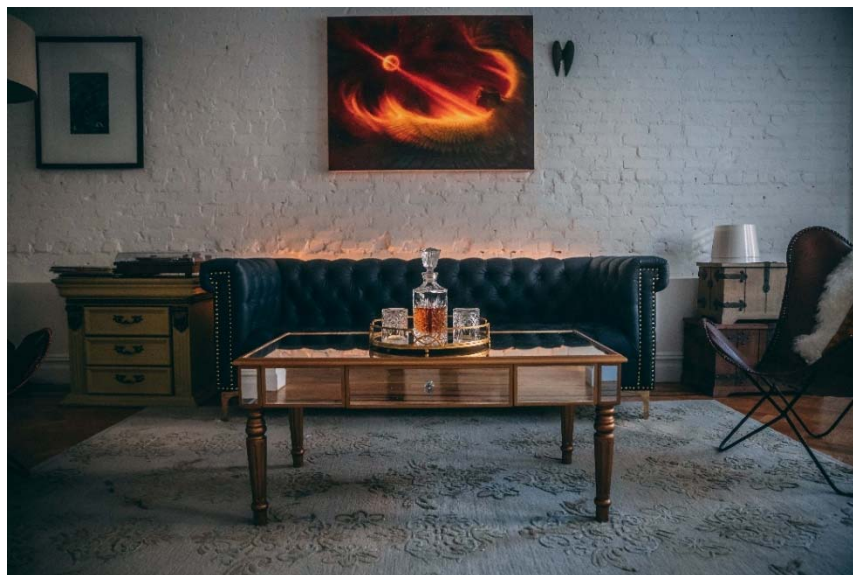
²⁹ See Real Property Law § 226-b(3).

³⁰ RSC § 2524.4. See also the Tenant Learning Platform Class "[How to Protect Your New York City Apartment From a Non-Primary Residence Claim](https://tenantlearningplatform.com/courses/how-to-protect-your-rent-stabilized-apartment-from-a-non-primary-residence-claim/)". <https://tenantlearningplatform.com/courses/how-to-protect-your-rent-stabilized-apartment-from-a-non-primary-residence-claim/>

EXAMPLE: You sublet an apartment from a tenant of that apartment. You did not ask if the tenant had landlord's permission to sublet to you. You are busy at work and you are paying your rent to the tenant. Then one day you come home and find legal papers on the apartment door from the landlord to the tenant. The landlord is alerting the tenant that if tenant does not stop illegally subletting in ten days, the landlord may terminate the tenant's lease. If the situation eventually advances to a lawsuit stage, the landlord may name you (the subtenant) in the lawsuit as a respondent (defendant).

Building on the above example, it is a very unfortunate situation when a subtenant, who has been paying her rent and complying with her sublease, is suddenly drawn into the middle of a legal case between the landlord and the tenant. While it is beyond the scope of these materials to go much deeper into this scenario, **it is important that a subtenant in this situation understand that the tenant may NOT require the subtenant to leave quickly. The tenant's problem with her landlord is not the subtenant's emergency.** If your sublease was for a year, it is extremely unlikely that tenant or the subtenant will be evicted before your sublease concludes.

IMPORTANT TIP: If legal papers are taped to the apartment door, delivered to the apartment, or mailed to the apartment, never ignore them. Seek legal counsel and send copies of the papers to the tenant.



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C. Pros and Cons of Subletting

Subletting may offer more flexibility and less commitment, because you are not renting from a professional New York City landlord. With that flexibility, however, comes somewhat greater risk and less control.

PROS OF SUBLETTING AN APARTMENT

If you sublet, your liability is to the tenant, not to the landlord. Of course, one should honor one's contracts and obligations, but sometimes life throws a curve ball and to do so is not possible. If you break the sublease early, the tenant could, indeed, sue you for the rent. As a practical matter, however, many tenants do not bother chasing subtenants who break leases early. Why? Tenants are not landlords. Their business is not leasing apartments and enforcing those leases. Chasing someone for rent is a difficult and expensive task in New York City.

CONS OF SUBLETTING AN APARTMENT

When you sublet, you have less control and more risk. We discussed the risks in detail above. If the landlord goes after the tenant for illegal subletting, the subtenant may be caught in the middle of the dispute. Also, when you sublet, you are not the landlord's customer. There is a degree of separation between you and the landlord. If the apartment needs a repair, you will generally have to go first to the tenant, who will then go to the landlord. Also, you are not the decision maker. For example, you may really like the sublet apartment and wish to renew for a year. However, it is the tenant you are renting from who gets to decide whether to renew at the end of the term. If, however, tenant decides not to renew her lease, there is nothing stopping you (the subtenant) from asking the landlord if the landlord will directly rent the apartment to you, making you the tenant for the next lease term.

IV. BECOMING A ROOMMATE OF A TENANT

A. Being a Roommate is Different Than Subletting

1. A Roommate is a licensee.

A roommate is *not* a subtenant. The difference between a subtenant and a roommate is often one of contemporaneous occupancy.³¹

Put another way, a roommate does not have exclusive possession of any part of the apartment. Therefore, a roommate does not have a sublease (or any lease at all), because the main characteristic of a lease is that it bestows exclusive possession. Rather, a roommate has what is known as a license to use the real property. A license is a personal, revocable, and non-assignable privilege, conferred either orally or in writing, which permits a particular act (or series of acts) upon the property of another.³²

2. Subleasing just a bedroom in a regular apartment is not legal

Next you ask - *What if a tenant gives me a sublease (exclusive possession) of a room within tenant's apartment? What if I get exclusive possession of just my bedroom and I get to put a lock on the outside of my bedroom door? Isn't that a sublease and not a roommate license?*

Yes, it is a sublease; but an illegal one. **It is illegal to rent single rooms within a regular apartment in New York City.** There is much more about this in the section below on co-living and single room occupancy. Please check that out.

3. It is not any easier to evict a roommate than it is to evict a subtenant.

So, what does this mean to you, legally, as a roommate? Does the non-exclusivity of the tenant-roommate/license relationship mean that a roommate can be more easily evicted than a subtenant? No, it does not. The process, which a tenant (and/or a landlord) must engage in to evict either a

³¹ *1466 Holding Ltd. v. Barasona*, 47 Misc 3d 1224(A) [NYC Civ Ct Bronx County 2015]. A tenant does not live in the apartment when the subtenant lives in the apartment. A tenant does live in the apartment together with tenant's roommate.

³² See *Senrow Concessions, Inc. v. Shelton Properties, Inc.*, 10 NY2d 320, [1961].

subtenant or a roommate, is equally time-consuming, lengthy, expensive, and onerous.

B. NYS Law on a Tenant's Right to a Roommate

Under RPL § 235(f), often referred to as the "Roommate Law", a residential lease entered into by one tenant implicitly permits that tenant to share the apartment with either his/her immediate family or unrelated persons. **This is true even if a residential lease says otherwise.**

Any residential lease entered into by one tenant shall be construed to permit occupancy by:

- the tenant
- immediate family of the tenant
- one additional occupant, and
- dependent children of the occupant

Here is the text of the Roommate Law, RPL § 235(f):

1. As used in this section, the terms:

...(b) "Occupant" means a person, other than a tenant or a member of a tenant's immediate family, occupying a premises with the consent of the tenant or tenants.

2. It shall be unlawful for a landlord to restrict occupancy of residential premises, by express lease terms or otherwise, to a tenant or tenants or to such tenants and immediate family. Any such restriction in a lease or rental agreement entered into or renewed...shall be unenforceable as against public policy.

3. Any lease or rental agreement for residential premises entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupant, and dependent children of the occupant provided that the tenant or the tenant's spouse occupies the premises as his primary residence.

...

5. The tenant shall inform the landlord of the name of any occupant within thirty days following the commencement of occupancy by such person or within thirty days following a request by the landlord.

...

7. Any provision of a lease or rental agreement purporting to waive a provision of this section is null and void.

Thus, a landlord may not restrict occupancy of an apartment to a tenant or even to such tenant and his or her immediate family. Any such restriction in a lease is unenforceable as against public policy. The court will simply ignore it.



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C. Pros and Cons of Being a Roommate

PROS OF BEING A ROOMMATE

Being a roommate has an advantage over being a subtenant because, as you can see from the above, a tenant has a definite right to a roommate and a tenant does not have to get landlord's advanced permission for a roommate. Unless a landlord agrees in writing in advance to allow a sublet, a tenant must go through a complicated request process with their landlord before they obtain permission for a sublet.

If you enter into a roommate situation, your liability is to the tenant, not to the landlord. Of course, one should honor one's contracts and obligations, but sometimes life throws a curve ball and to do so is not possible. If you break the roommate agreement early, the tenant could, indeed, sue you for the rent. As a practical matter, however, many tenants do not bother chasing roommates who break agreements early. Why? Tenants are not real estate professionals. Chasing someone for rent is a difficult and expensive task in New York City.

CONS OF BEING A ROOMMATE

The obvious (and non-legal) downside of being a roommate is that you lack exclusive possession of your own apartment and the privacy that comes with one's own apartment.

Legally, when you are a roommate, you have less control and more risk than when you have your own apartment. Also, when you are a roommate, you are not the landlord's customer. There is a degree of separation between you and the landlord. If the apartment needs a repair, you will generally have to go first to the tenant, who will then go to the landlord to request the repair.

V. RENTING IN A CO-LIVING FACILITY

A. Definition of Co-Living

There seem to be many definitions of “co-living” out there these days. The author of these materials has worked in the co-living field in New York City for many years now, and here is my definition of co-living.

Co-living is an arrangement by which a landlord rents an apartment to a group of tenants, for at least thirty days, where the tenants occupy and share the apartment as roommates, an arrangement which the landlord consents to and facilitates as an active participant. The tenants have flexible terms, which are often short (but more than 30 days), and are allowed to vacate the apartment early without liability for the full term of the lease. If a roommate is lost, the landlord assists the remaining tenants with getting a qualified new roommate to take the lost roommate’s place and gives the remaining tenants rent-relief while doing so. The landlord frequently provides the tenants with other advantages and amenities, including but not limited to furnishings and personal property, services, and thematic programming, such as dinners or lectures on topics of common interest to the roommates. Co-living places a big emphasis on the creation of a community within the apartment. The price per square foot for the apartment is often higher than it would be if the same apartment was not rented for co-living. The advantages of co-living for the tenant are affordability, flexibility, convenience, limited liability for bad roommates, and community. The advantage of co-living to a landlord is a higher price per square foot and greater control of the occupants of an apartment.

A legitimate co-living company is adding value to your life as a tenant because the landlord is finding you qualified roommates and providing you with a nice apartment at an affordable price, while managing the apartment and the tenants closely to create a meaningful community.

Co-living has become very popular in New York City and there are many companies offering co-living placements.

B. Co-Living is NOT Single Room Occupancy.

Co-living is not single-room-occupancy (“SRO”). An SRO scenario is when a landlord rents rooms within an apartment directly to individual tenants, people who have nothing to do with one another, although they may share a bathroom and a kitchen. The landlord in an SRO scenario uses separate leases for each room and each tenant, with separate prices and

terms. There are most likely locks on the outside of the individual bedroom doors, as if each bedroom door is the threshold to a separate living unit.

A landlord may not, however, rent SRO rooms in regular apartments. Multiple Dwelling Law (“MDL”) § 4(16) states:

“Single room occupancy” is the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment.³³

MDL § 301 says that every building will be used in conformity with its certificate of occupancy. The certificate of occupancy will state whether a building contains regular apartments or whether it may be rented for SRO use. Therefore, MDL § 301 would be violated if a regular apartment is rented for SRO use.

If MDL § 301 is violated, then, according to MDL § 302, the building’s mortgage goes into default, no rent is due from the tenants, no lawsuit for rent may be brought against the tenants, and “[HPD] may cause to be vacated any dwelling or any part thereof which...is occupied by more families or persons than permitted in this chapter...”

EXAMPLE: The New York City Department of Buildings (“DOB”) issued violation notices to landlord for converting a two-family house to six SRO units. Landlord claimed that she had not changed the building since buying it in 2014. She claimed that she lived on the first floor and landlord’s relatives lived on the second floor. But photographs were submitted showing that there were locks on room doors. The Administrative Law Judge ruled against landlord and fined her \$47,400, which included daily penalties.³⁴

Some co-living companies, however, are run in buildings that are legally hotels, and they are legally allowed to rent you a single room with a

³³ In *Association for Neighborhood Rehabilitation, Inc. v. Board of Assessors of Ogdensburg*, 81 AD3d 1214 [3d Dept 2011], the court found that “SRO tenants have a single sleeping room, with access to a communal kitchen, bathroom and social area.”

³⁴ *In re Zhao*, www.landlordvtenant.com No. 27928 [ECB App. No. 1700674 8/3/17].

lock on the outside of the door. Such buildings comply with higher safety standards – there are fire doors, there are sprinklers, there are emergency lights and signs, etc. Co-Living placements in legal hotels are typically more expensive. You can look on the NYC Department of Housing Preservation and Development website³⁵ and enter the building’s address and see if the building is a hotel or a regular apartment building.

C. Make sure the co-living facility you choose is legal, safe, and not overcrowded.

It is also illegal for landlords to overcrowd regular apartments. Pursuant to New York City's Administrative Code Section 27-2075, there must be **at least 80 square feet per person in an apartment**. When measuring the available area, for purposes of this statute, the kitchen is counted but bathrooms are excluded.

You should also trust your gut. If you are touring a co-living facility and the residents seem too jammed in, then they probably are. Ask yourself, how would I get out of this building in the event of a fire at night? Make sure the co-living facility you choose is safe, legal, and not overcrowded.

D. Make sure you are not liable for the rent for the whole apartment.

Also, if you are considering a co-living placement, you should make sure you are not liable for the rent for the whole apartment. This is where it gets tricky. Because most co-living is done in regular apartment buildings, where the landlord is not allowed to rent rooms, the landlord will probably give you a lease for the whole apartment. That’s OK. The problem comes when the landlord tries to make each tenant in an apartment responsible for the rent for the entire apartment. That will only work for you if the lease also contains a mechanism for rent-relief if one or more roommates leave early and/or stop paying. Remember, one of the reasons you are paying a bit more for co-living is that the landlord is supposed to absorb the risk of roommate defaults.

The best advice here is to read the proposed lease for a co-living placement carefully.

³⁵ <https://www1.nyc.gov/site/hpd/index.page>.

E. Pros and Cons of Co-Living

PROS OF CO-LIVING

Co-living, when done legally by the landlord, solves many problems for new arrivals to New York City.

- Co-living apartments are usually furnished.
- With co-living, you do not have to find your own roommates.
- Co-living companies usually offer flexible terms.
- Many co-living companies offer ancillary services (like housekeeping) and thematic programming in the common areas of the apartment or building.
- Co-living puts an emphasis on building community.

CONS OF CO-LIVING

The major con with co-living is that there are a lot of companies that pretend to be doing co-living, but they are not. They are renting you an illegal SRO room, which may even be dangerous. Assuming that is not the case, then the other cons are:

- Co-living situations typically provide very limited privacy because co-living encourages fellowship within a co-living apartment.
- Co-living comes with a much higher price per physical square foot, because of all the extras that come with it.



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VI. CONCLUSION

A. Take Aways

- A lease is both a contract and a conveyance of an exclusive interest in real property. Therefore, your apartment is your apartment, and the landlord cannot just walk in whenever she feels like it.
- Everything in life is a tradeoff.
 - As your degree of legal control of your housing situation goes up, your potential liability goes up with it. As we saw above, for example, if you are the only tenant on the lease and you live alone, you have a great degree of control over what happens with the apartment. You also, however, are solely liable for the rent. If you sublet or become someone's roommate you have less control over what happens with the apartment, but generally you will also have less liability.
 - Another trade off is between price and services. As we saw above, for example, co-living is often the most expensive option per square foot, but it also (typically) comes with many advantages and amenities. On the other end of the spectrum, if you manage to rent a Rent Stabilized apartment, then your rent increases will be controlled and your renewals will be assured, but your gravitas as a customer of your landlord (typically) will be lessened.
- Best practices are that you get permission from the landlord before subletting from a tenant.
- Never ignore legal papers delivered to the apartment, mailed to the apartment, or taped to the door of the apartment.
- Take extra care when vetting a co-living placement.
 - Make sure the co-living facility is not really an illegal SRO.
 - Make sure the space is not too crowded and you can get out in an emergency.
 - Make sure that you are not liable for the rent for the whole apartment if you roommates do not pay.

B. What's Next

The next module in this series entitled "Generation Z Welcome to Your First NYC Apartment" is Module 2, "Roommates...It's All Good...Until It Isn't". In that Module we will cover:

- Roommate Agreements
- Be Careful You are Not Illegally Renting a Room
- Profiteering and Overcharge Restrictions Regarding Rent Stabilized Apartments
- Evicting a Roommate
- Huge Liability Implications for the Tenant of the Roommate Not Leaving at the End of the Lease