

## Landlords – Tax Certiorari Proceedings For Landlords in New York State

A landlord being taken advantage of by the government is nothing new. Whether it be a denied or reduced increase for major capital improvements, low rent guidelines increases or changes in the law such as increasing the threshold for vacancy decontrol, the New York State is constantly taking advantage of landlords by increasing the financial burdens that landlords suffer and making it more difficult to operate a building at even a minimal profit. Property taxes, which are virtually guaranteed to rise every year (even with the so-called “2 percent cap”) are just one more way that the State is taking its bite of the every shrinking apple.

Contesting your property taxes is one way that landlords can fight back against the government to attempt have your tax assessment reduced. Tax certiorari proceedings (I know this seems like a mouthful) is the name for the process by which a landlord can contest its tax assessment thereby hopefully reducing the taxes that the landlord would otherwise be required to pay. If a landlord is successful in their tax certiorari proceedings, they will not only save themselves money by reducing their tax assessment but they also may obtain a refund for overpaid taxes during the years for which the landlord has filed tax certiorari proceedings. A successful landlord will receive the additional benefit of having the reduced assessment held at the level of the most recent year of the proceedings for a period of at least three years following the proceedings.

The first step in the tax certiorari process is to file a grievance of your tax assessment with your local (City or Town and/or Village) municipal taxing authority. The date on which this grievance must be filed depends on when the municipal taxing authority publishes (or “opens”) the tax roles. Once the roles are opened, the aggrieved property owner must file his or her “grievance” by a certain date or they will not forfeit their right to contest their taxes for that year. Following the grievance filing the local Board of Assessment Review will examine each grievance filing and determine whether to grant or deny the grievance. In most cases, these grievances are denied as a matter of course.



The Board of Assessment Review publishes its decisions on all of the grievances filed by publishing (or “filing”) the final assessment roll for the municipality. Assuming that the landlord’s grievance is denied, the landlord then has 30 days to file the Notice of Petition and Verified Petition contesting the tax assessment for the property for that year. In New York State, tax certiorari proceedings are Supreme Court proceedings. This is in contrast to the small claims assessment review proceedings that are available to homeowners of residential properties.

It is important for landlords to keep in mind, however, that a new proceeding (including a new grievance) must be filed for each year in which the landlord believes that his property has been over-assessed. It is also important for landlords to communicate with their attorneys during the course of these proceedings as these proceedings are extremely time sensitive and the filing dates involved are firm and non-negotiable (if a filing date is missed, the filing for that year is forfeited). In addition, to further complicate matters, the filing dates vary (as stated above) depending on the municipality.

Typically, a landlord will file these proceedings for several years (four to six years or more) before any meaningful settlement negotiations take place with the representatives for the local municipal authorities. These proceedings are normally resolved together at one time and the landlord will received a refund for each year during which it has been agreed or determined that there was an over-assessment and therefore overpayment of taxes. The refund is in the amount of taxes that were “over-paid” based on the “reduced assessment”. Because of the length of these proceedings and the resulting size of the refunds,

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there is also a great deal of politics involved in getting the municipal board or council to approve the settlement even after it has been agreed to by the parties representatives. Although this can delay the refund, in general the settlements are approved and the funds are distributed to the parties in accordance with the agreed judgment.

This article has provided an introduction to the process of filing and pursuing tax certiorari proceedings. The next article will provide a more detailed look at the methods used for calculating the tax assessments and the market values that are used in determining the actual and assessed values of the properties.

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The law firm of Finger and Finger, A Professional Corporation was founded in 1974 by Kenneth J. Finger. Currently the firm has four principal attorneys: Kenneth J. Finger and Dorothy M. Finger, Carl L. Finger and Daniel S. Finger.

Currently Finger & Finger represents Landlords with free market, Section 8, HUD, ETPA, and other regulated properties throughout Westchester County. The firm processes numerous cases and appears regularly in all of the City Courts and many of the justice courts in Westchester County. The firm drafts notices to cure, notices to terminate, combined notices, three day demands, holdover petitions, non-payment petitions, leases, and other landlord tenant related documents on a consistent basis. Most important to clients is the regular and effective communication system in place at Finger & Finger, which includes not only contact with clients upon a change in status of any case, but a weekly update listing all pending cases and the status of each.

Further, the firm is counsel to the Builder's Institute of Westchester County and its subsidiary, the Apartment Owners Advisory Council. The attorneys work daily on

issues involving all areas of rent regulation and Landlord-Tenant work.

Finger & Finger practices in all aspects of real estate law, including all matters relating to landlord tenant law such as the drafting and negotiation of leases for commercial, retail, office, and residential premises. Additionally, the firm provides services in eviction proceedings and other lease related litigation thus allowing for a particularly relevant perspective to the transactional work regarding leases.

The firm represents clients in considerable litigation in real estate and related areas as well as homeowners' associations, cooperatives, and condominiums. The firm has been successful in matters involving developers, homeowners' associations, individual shareholders, contractors, Sponsors and private water districts. The firm has also represented sponsors of cooperatives, homeowners' associations and condominiums as to offering plans and thus is quite familiar with the legal requirements and also engages in collection matters against delinquent homeowners, unit owners and shareholders involving both city and local court and foreclosure proceedings.

Directly related to Landlord Tenant law, the firm has previously drafted a form "plain language" lease to comply with a change in the law at the time, written articles on Landlord-Tenant law, drafted and litigated commercial lease matters, engaged in the collection of delinquencies and holdover proceedings and other residential and commercial matters. Members of the firm have litigated matters in Federal and State Courts pertaining to housing issues, Section 8, and other HUD and Fair Housing Act related matters. The firm also represents clients in building, housing, and health violations cases, DHCR matters, and discrimination cases.

The principals write articles for legal publications, Impact - the monthly newspaper of the Builders' Institute of Westchester County, Habitat Magazine, and have been retained by other attorneys on landlord-tenant issues in federal court. They also speak at seminars and lectures in Landlord-Tenant, Cooperative, Condominium, and Homeowners' Association matters.

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