

LANDLORD'S GUIDE TO HOLDOVER SUMMARY PROCEEDINGS

For Courts Outside New York City



FORMS PACKET

The forms in this packet are free. You should read the “Landlord’s Guide to Holdover Summary Proceedings” completely before filling out these forms and submitting them to the court.

New York State Unified Court System

**DIVISION OF COURT OPERATIONS
OFFICE OF TRIAL COURT OPERATIONS**

SEPTEMBER 2007

FORMS PACKET

HOLDOVER SUMMARY PROCEEDINGS

For Courts Outside New York City

The forms contained in this packet are free and should be used only in Holdover Summary Proceeding in courts outside of New York City. You should read the “Landlord’s Guide to Holdover Summary Proceedings” before completing any of these forms.

FORMS AND INSTRUCTIONS	
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If you feel you need legal advice at any time during your case, talk with a lawyer. If you cannot afford a lawyer, or are unsure how to find one, these resources can help you:

- Go to www.lawhelp.org/ny/;
- Call the New York State Bar Association Lawyer Referral Service (toll free) at 1-800-342-3661;
- Go to www.nycourthelp.gov and click on “Lawyers”;
- Go to www.nycourts.gov/attorneys/nybarassociations.shtml;
- Ask at any courthouse about lawyer referral services.

Instructions for Preparing: Notice to Terminate

Find the number on the form for each instruction below.

Type or print in black ink only.

1. Write the date you are preparing the Notice to Terminate.
2. Write the number of rooms, on which floor(s), which side of the building, and the apartment number of the premises. (For example, 4 rooms, 2 floor(s), Left side, Apt., No. 33).
3. Write the address of the rental property (for example, 321 FIRST ST., ANYWHERE, NY).
4. Check [] the first box if the property is used for business purposes. Check [] the second box if the property is used for residential purposes.
5. Write the name of the tenant(s) residing at the property.
6. Write the tenant's address, including the zip code.
7. If there are any under-tenants, write their names.
8. If there are any under-tenants, write their address including the zip code.
9. Write the date that the tenancy will expire.
10. Write the name of the City/District/Town/Village Court.
11. Write the date you are preparing the Notice to Terminate.
12. The landlord signs on this line. Print the landlord's name next to the signature.
13. If the landlord has an agent, the agent signs on this line. Print the agent's name next to the signature.
14. If the landlord signed the form, write the landlord's address. If the agent signed the form, write the agent's address.

NOTICE TO TERMINATE

(1) _____, 20__
Re: Premises:
(2) ___ rooms ___ floor ___ side, Apt. No. ___
(3) at _____

(4) used for Business Residence

TO:

Tenant(s), under-tenant(s) or assigns, and every person in possession of the premises.

(5) _____ (6) _____

(7) _____ (8) _____

You are hereby notified that the Landlord elects to terminate your tenancy of the above-described premises now held by you on a month-to-month basis. Unless you remove from the said premises by (9) _____, 20__ , the day on which your term expires, the landlord will commence summary proceedings in the City/District/Town/Village Court of (10) _____, to remove you from said premises for holding over after the expiration of your term and will demand the value of your use and occupancy of the premises during such holding over.

(11) Dated: _____

(12) Landlord: _____

Signature

Print or Type Name

(13) Agent: _____

Signature

Print or Type Name

(14) Landlord or Agent's Address: _____

Instructions for Preparing Notice of Petition: Holdover Proceeding

Find the number on the form for each instruction below.

Type or print in black ink only.

1. Write the name of the court where the case is being started.
2. Write the name of the county where the court is located.
3. Write the Index Number or Docket Number after the court gives you one for this case.
4. Write your name and address, if you are the landlord. (The landlord is the “Petitioner.”)
If you are filling out this form for the landlord, write the *landlord’s* name and address, not your own.
5. Write the name and address of the tenant(s). (The tenant is the “Respondent.”)
6. Write the name of the court where the case is being started.
7. Write the name of the county where the court is located.
8. *Leave blank.* The court will fill in the scheduled court date and time.
9. Write the address of the rental property, the number of rooms, which floor(s) and/or apartment number .
10. Write the name of the county where the rental property is located.
11. Write the total amount of money you want the judge to award to you.
12. Write the date of the first day after the rental term ended.

Leave the rest blank. Do not sign the form.

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1) _____
COUNTY OF (2) _____

(4) _____

Petitioner(s)/Landlord(s)

-against-

(3) Index/Docket No. _____

**NOTICE OF PETITION
HOLDOVER PROCEEDING**

(5) _____

Respondent(s)/Tenant(s)

To the Respondents:

PLEASE TAKE NOTICE that a hearing at which you must appear will be held at the

(6) City/District/Town/Village Court

NO. 8 IS FOR COURT USE ONLY

County of (7) _____ on the (8) _____ day of _____, 20____ at _____ am/pm,
upon the annexed petition, which you must answer, which requests a final judgment evicting you from, and
awarding to the petitioner the possession of, premises designated and described as follows:

(9) Street Address Including Zip Code

the _____ rooms on the _____ Floor(s), Apartment No. _____, in the County of
(10) _____ and such other and further relief as is demanded in the petition.

TAKE NOTICE that demand also is made in the petition for judgment against you for the sum of
(11) \$ _____, with interest thereon from (12) _____, 20 _____.

TAKE NOTICE that your answer may set forth any defense or counterclaim you may have against
the petitioner.

TAKE NOTICE also that if you shall fail at such time to interpose and establish any defense that
you may have to the allegations of the petition, you may be precluded from asserting such defense or the
claim on which it is based in any other proceeding or action.

TAKE NOTICE that your failure to appear and answer may result in final judgment by default for
the petitioner evicting you from the premises and ordering you to pay the amount demanded in the
petition.

DATED: the _____ day of _____, 20 _____.

Judge/Clerk/Attorney

Instructions for Preparing Holdover Petition To Recover Possession of Real Property (Page 1 of 2)

Find the number on the form for each instruction below.

Type or print in black ink only.

1. Write the name of the court where the case is being started.
2. Write the name of the county where the court is located.
3. Write the Index Number or Docket Number after the court gives you one for this case.
4. Write your name and address, if you are the landlord. (The landlord is the "Petitioner.") If are filling out this form for the landlord, write the *landlord's name* and address, not your own.
5. Write the name and address of the tenant(s). (The tenant is the "Respondent.")
6. Write the landlord's name.
7. Write the name(s) of the tenant(s).
8. Write the date of the rental agreement.
9. Write the date the rental agreement ended.
10. Write the rental amount.
11. Write the day of the month the rent was due.
12. Write the name of any Undertenant(s) (Subtenants). An Undertenant (Subtenant) is a person renting the property from the person name in the rental agreement.
13. Write the address of the rental property.
14. Write the date the rental agreement ended.
15. Check the first box if the rental agreement was oral or in a writing other than a lease.
Check the second box if the rental agreement was a lease.
16. Check the box(es) that apply.

(4) _____

(3) Index/Docket No. _____

Petitioner(s)/Landlord(s)

-against-

**HOLDOVER PETITION TO
RECOVER POSSESSION OF REAL
PROPERTY**

(5) _____

Respondent(s)/Tenant(s)

THE PETITION OF (6) _____ owner and landlord of the premises allege that:

1. The undersigned is the owner/landlord of the premises claimed herein and the petitioner in this action.

2. Respondent(s) (7) _____

is/are the Tenant(s) of said premises who entered in possession thereof under rental agreement made on or about the (8) ____ day of _____, 20____ and ending on (9)____, 20____ at the rental of (10) _____ for each month payable on the (11) _____ day of each month. Respondent(s)

(12) _____

is/are the Under-tenant(s) of the aforesaid respondent Tenant(s).

3. The premises are described as follows : (13) _____ which is situated within the territorial jurisdiction of this court.

4. The term for which said premises were rented by the respondent(s) expired on (14) _____, 20____ as a result of:

(15)

The agreed-upon time period of the verbal/written agreement has ended.

The agreed-upon time period of the lease has ended.

5. The respondent(s) continue in possession of the premises without permission of the landlord/petitioner after the expiration or termination of said term.

6. (16)

The landlord is in full compliance with the Emergency Tenant(s) Protection Act of 1974 (ETPA), as amended, and the rent demanded is not greater than the maximum rent permitted by law.

The premises are subject to rent control and the rent demanded herein does not exceed the maximum rent prescribed by the New York State Division of Housing and Community Renewal (DHCR).

The premises are presently subject to ETPA, as amended, because _____

Continued Instructions for Preparing Holdover Petition To Recover Possession of Real Property (Page 2 of 2)

17. Read the statement. Check the box if the statement is true in your case. Otherwise, leave it blank.
18. Check the box that applies to your case.
19. Check the box that describes the rental property. (For example, a rental property used *solely* for a business would not be the tenant's residence.)
20. Write the amount of unpaid rent you want the judge to award to you.
21. Write the date of the first day after the end of the rental agreement.
22. Write the date you finish filling out this form.
23. The *landlord* signs on this line. Print or type the landlord's name next to the signature.
24. Write the name of the county where the petition is being signed.

**NOTE: THIS FORM MUST BE NOTARIZED.
LEAVE THE REST OF THIS FORM "BLANK" UNTIL YOU ARE IN THE
PRESENCE OF THE NOTARY PUBLIC.**

25. Check the box that applies.
26. The person signing this form (from #25) must do so in the presence of a Notary Public.
27. The Notary will complete the date and sign his/her name after it has been signed in their presence by the person indicated in # 25.

and the owner of the premises: has registered rents and services with the DHCR pursuant to ETPA and the tenant(s) Protection Regulations promulgated thereunder; is in compliance with ETPA; and the rent demanded herein does not exceed the legal regulated rent permitted the owner under said Law, Regulations, and appropriate Rent Guidelines Board Orders.

(16 continued)

The apartment is not subject to rent control by reason of:

- The premises are located in a community which has not adopted ETPA.
- The building in which the premises are located was constructed after December 31,1973.
- The building in which the premises are located has less than 6 units.

7. **(17)**

- Petitioner lacks written information or notice of any address where the respondent/tenant(s) resides, is employed, has a place of business, has its principal office or place of business in New York State, other than the address of the property sought to be recovered.

8. **(18)**

- At least one month before the expiration of the term the respondent tenant(s) was served in the manner provided for by law with a notice that the landlord elected to terminate the tenancy and that unless the tenant(s) removed from said premises on the day on which said term expired the landlord would commence summary proceedings under the statute to remove tenant(s) therefrom.

OR

- The respondent/tenant(s) was given notice in accordance with the terms of the lease that the landlord elected to terminate said tenancy.

(19)

The property herein sought to be recovered *is* *is not* the residence of the tenant(s) and/or under-tenant(s) herein.

Petitioner requests final judgment: awarding possession of the premises to the petitioner/landlord; issuance of a warrant to remove respondents from possession thereof; judgment for rent in arrears against respondent/tenant(s) for **(20)** \$ _____ fair value of use and occupancy; interest from **(21)** _____; costs and disbursements herein.

Dated: **(22)** _____, 20 ____

Petitioner: **(23)** _____ / _____
(Signature) (Print or Type Name)

STATE OF NEW YORK, COUNTY OF **(24)** _____ ss.: The undersigned

(25)

- Petitioner
- Attorney for petitioner (petitioner is not within the county in which deponent's office is located).
- Agent for petitioner

Being duly sworn states: That deponent has **read /heard** the petition, and the contents of the petition are true to deponent's own knowledge except as to those matters which are alleged on information and belief, and as to them deponent believes them to be true.

(26)

(Signature)

(Print or Type Name)

(27)

Sworn to before me this _____ day
of _____, 20 _____

Notary Public

Instructions for Preparing

Affidavit of Personal Service

Find the number on the form each instruction below.

Type or print in black ink only.

1. Write the name of the court.
2. Write the name of the county where court is located.
3. Write the Index Number or Docket Number after the court gives you one for this case.
4. Write your name and address, if you are the landlord. (The landlord is the “petitioner.”) If you are filling out this form for the landlord, write the *landlord’s* name and address, not your own.
5. Write the name and address of the tenant(s). (The tenant is the “Respondent.”)
6. Write the name of the county where this Affidavit will be signed and sworn to.
7. Write the name of the city, town, or village where this Affidavit will be signed and sworn to.
8. Write the name of the person who served the papers.
9. Write the name of the document that was served.
10. Write the name of the tenant(s) as it appears on the case papers.
11. Write the address of the place where the tenant was served with the case papers.
12. Write the time and date the tenant was served.
13. Fill in the description of the person served.

NOTE: THIS FORM MUST BE NOTARIZED.

LEAVE THE REST OF THIS FORM “BLANK” UNTIL YOU ARE IN THE PRESENCE OF THE NOTARY PUBLIC.

14. The person who served the papers should sign here in the presence of a Notary Public.
15. The notary will complete the date and sign his/her name. The person who served the papers must sign and print his/her name in the presence of a Notary Public.

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1) _____
COUNTY OF (2) _____

(4) _____

(3) Index/Docket No. _____

Petitioner(s)/Landlord(s)

-against-

AFFIDAVIT OF PERSONAL SERVICE

(5) _____

Respondent(s)/Tenant(s)

State of New York
County of (6) _____ ss.: City/Town Village of (7) _____

(8) _____, being duly sworn, deposes and says

that (s)he served the (9) _____

In the above entitled action upon the following named respondent(s) at the following place(s) and time(s):

(10) TENANT NAME(S)	(11) ADDRESS (CITY/TOWN/VILLAGE) & STATE	(12) TIME & DATE
_____	_____	_____
_____	_____	_____
_____	_____	_____

by delivering to and leaving with respondent(s), personally, a true copy thereof, and deponent further says that (s)he knew the person so served to be the same person mentioned and described in the said summons as respondent therein, and that at the time of making such service deponent was over eighteen years of age and not a party to this action. That (s)he asked respondent whether respondent was in the military service of the United State Government, in any capacity whatever, and respondent replied (s)he was not. Respondent was clad in ordinary civilian clothes and wore no military uniform of any kind.

(13) The person served is described as follows:

Sex _____, Color of Skin _____, Hair Color _____, Approximate: Age _____, Weight _____, Height _____. Other identifying features: _____

(14) _____
(Signature)

(Print or Type Name)

(15) Sworn to before me this _____ day
of _____, 20 _____

Notary Public

Instructions for Preparing

Affidavit of Substituted or Conspicuous Place Service

Find the number on the form each instruction below.

Type or print in black ink only.

1. Write the name of the court.
2. Write the name of the county where court is located.
3. Write the Index Number or Docket Number after the court gives you one for this case.
4. Write the landlord's name and address, if you are the landlord. (The landlord is the "Petitioner.") If you are filling out this form for the landlord, write the *landlord's* name and address, not your own.
5. Write the name and address of the tenant(s). (The tenant is the "Respondent.")
6. Write the name of the county where this Affidavit will be signed and sworn to.
7. Write the name of the person who served the papers.
8. Write the name of the case paper(s) that was served.
9. Write the name of the tenant(s) as it appears on the case papers.
10. Write the name of the person who received the papers.
11. Write the date and time that the papers were served.
12. Write the address where the papers were served and place a [✓] in the box that describes that place.
13. Provide the information that describes the person who was served.
14. Write the address to which the papers were mailed.
15. Write the date the papers were mailed.
16. If the papers were affixed or left at the tenant's address, write that address and place a [✓] in the box that describes that place.
17. Write the date and time the papers were affixed or left at the tenant's address.
18. Write the address to which the papers were mailed.
19. Write the date the papers were mailed.
20. Write the dates and times you tried to make personal service on the tenant. Leave blank if no attempts were made at personal service.

NOTE: THIS FORM MUST BE NOTARIZED. LEAVE THE REST OF THIS FORM "BLANK"

UNTIL YOU ARE IN THE PRESENCE OF A NOTARY PUBLIC.

21. The person who served the papers should sign here in the presence of a Notary Public.
22. The notary public will complete the date and sign his/her name.

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1) _____
COUNTY OF (2) _____

(4) _____

Petitioner(s)/Landlord(s)

(3) Index/Docket No. _____

-against-

**AFFIDAVIT OF SUBSTITUTED OR
CONSPICUOUS PLACE SERVICE**

(5) _____

Respondent(s)/Tenant(s)

State of New York County of (6) _____

(7) _____, being duly sworn, deposes and says that (s)he served the (8) _____
_____ in the above entitled action in the following manner, stated herein at the
following place and time: By personally delivering to and leaving a true copy for (9) _____
_____ with (10) _____, a person of suitable age and discretion,
on the (11) _____ day of _____, 20____, at _____ am/pm at
(12) _____ the dwelling place,
 usual place of abode, place of business within the State of New York Deponent further states that
(s)he describes the person actually served as follows:

(13) Sex _____, Color of Skin _____, Hair Color _____, Age _____, Weight _____,
Height _____, Other identifying features _____

AND

by mailing a true copy to the respondent at (14) _____

(his)(her) last known residence by both first class and certified mail on the: (15) _____ of _____,
20____.

OR

by affixing a true copy thereof to respondent's door or by placing a copy of the papers under the entrance
door at (16) _____

the dwelling place, usual place of abode, place of business within the State of New York on
the: (17) _____ day of _____, 20____ at _____ am/pm.

AND

by mailing a true copy of the same to the respondent at (18) _____

(his/her) last known residence by both first class and certified mail on the: (19) _____ day of _____, 20____.
Deponent previously attempted to serve the respondent on the (20) _____ day of _____, 20____
at _____ am/pm; on the ___ day of _____, 20____ at _____ am/pm; and on the ___ day of _____
20____ at _____ am/pm.

(21)

(Signature)

(Print or Type Name)

(22)
Sworn to before me this _____ day
of _____, 20____

Notary
Public

Instructions for Preparing Holdover Judgment

Find the number in the form for each instruction below.
Type or print in black ink only.

1. Write the name of the court where the case was started.
2. Write the name of the county where the court is located.
3. Write the Index Number or Docket Number for this case.
4. Write your name and address, if you are the landlord. (The landlord is the “Petitioner.”) If you are filling out this form for the landlord, write the landlord’s name and address, not your own.
5. Write the name and address of the tenant(s). (The tenant is the “Respondent.”)
6. Write the name of the landlord.
7. Write the name of the landlord
8. Write the name of the tenant(s).
9. Write the tenant’s current address.

Important Note:

- **Do not complete this form after number 9. The remainder of this form will be completed by the Court.**

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1) _____
COUNTY OF (2) _____

(4) _____

(3) Index/Docket No. _____

Petitioner(s)/Landlord(s)

-against-

HOLDOVER JUDGMENT

(5) _____

Respondent(s)/Tenant(s)

The Notice of Petition and Petition in this proceeding having been duly served and filed with the Court and that the Respondent/Tenant(s) having failed to appear and answer or Respondent/Tenant(s) having appeared and an inquest/trial held, and the issues in this proceeding have come before the Court,

NOW, on motion of Petitioner/Landlord, (6) _____, it is

ADJUDGED that the Petitioner/Landlord, (7) _____, recover of the Respondents/Tenant(s), (8) _____, residing at (9) _____, New York, the sum of \$ _____, together with \$ _____ costs and disbursements of this proceeding, amounting in all to the sum of \$ _____, and that the Petitioner/Landlord have execution therefore, and it is further

ADJUDGED that the possession of the premises described in the Petition be granted to the Petitioner/Landlord with \$ _____ costs of this proceeding, and it is further

ADJUDGED that a warrant of eviction issue, such issuance to be stayed to and including the day of _____

OR

ADJUDGED that Respondent/Tenant(s) have judgment dismissing the Petition herein on the merits (or) without prejudice, with _____ costs.

Dated: _____

Date of Judgment: _____

Judge

Clerk

Instructions for Preparing

Warrant of Eviction: Holdover

Find the number in the form for each instruction below.

Type or print in black ink only.

1. Write the name of the court where the case is being started.
2. Write the name of the county where the court is located.
3. Write the Index Number or Docket Number for this case.
4. Write your name and address, if you are the landlord. (The landlord is the "Petitioner.") If are filling out this form for the landlord, write the landlord's name and address, not your own.
5. Write the name and address of the tenant(s). (The tenant is the "Respondent.")
6. Write the name of the County where the rental property is located.
7. Write the name of the landlord.
8. Write the date of the Court's judgment giving you the right to evict the tenant.
9. Write the full address of the rental property, including apartment number, upper, lower, etc.
10. Write the full name of the tenant(s).
11. Write the name of all undertenants, if any.

Do not complete this form after #11. The remainder of this form will be completed by the Court.

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1) _____
COUNTY OF (2) _____

(4) _____

Petitioner(s)/Landlord(s)

(3) Index/Docket No. _____

-against-

**WARRANT OF EVICTION
HOLDOVER**

(5) _____

Respondent(s)/Tenant(s)

TO THE SHERIFF OF (6) _____ COUNTY OR MARSHAL/CONSTABLE:

A petition having been presented in the above-captioned matter to this court by
(7) _____ Petitioner/Landlord and final judgment for Petitioner having
been rendered in the above-entitled proceeding on (8) _____ 20____, awarding to said
Petitioner the delivery of possession of the premises located at:(9) _____
and a warrant to remove: (10) _____
Respondent/Tenant(s) and (11) _____
_____ Respondent/Undertenant(s).

THEREFORE, you are hereby commanded to remove Respondent/Tenant(s) and all other persons
from the previously described premises, on the grounds that said tenant(s): _____

DID HOLD OVER AFTER EXPIRATION OF TENANCY and continued in possession of aforementioned
premises without permission of Landlord/Petitioner after Notice of Petition with date of hearing, petition and
proof of service were presented to this Court. That no defense was established by respondent, and that
the Court awarded possession of said property to the landlord/ petitioner.

Enter,

DATE

CITY / DISTRICT COURT JUDGE
TOWN / VILLAGE JUSTICE