

COUNSELORS AT LAW

# Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP

FORCHELLILAW.COM

P R E S E N T S

## The COUNSELOR



Message from Managing Partner Jeffrey D. Forchelli

### TO OUR CLIENTS, COLLEAGUES AND FRIENDS,

As we continue to recover from the devastation of Super Storm Sandy, the Firm has decided to produce a special edition of *The Counselor* as a resource for both homeowners and businesses. Our dedicated attorneys continue to serve and represent clients as we all work together to get back to normal and rebuild our communities and businesses.

Jeffrey D. Forchelli Managing Partner

## REAL ESTATE TAX RELIEF FOR STORM DAMAGED PROPERTIES

Unfortunately, even though your commercial or residential real property may have been damaged or completely destroyed by Super Storm Sandy, your current real estate taxes (which in most cases includes taxes that will have to be paid in calendar year 2013) will be unaffected and you will have to pay the taxes based on the status and value of your property prior to the Storm. The reason is that real property tax assessments are based upon the value of your real property as of a particular taxable status date. In Nassau County the taxable status date is January 2nd of each year. The Towns in Suffolk County utilize March 1st of each year. The Incorporated Villages and Cities use various different dates. Our tax certiorari department is familiar with the taxable status dates for all the different municipalities.

Nevertheless, you may still be able to get real estate tax relief. If you have not rebuilt or repaired the damage by the next taxable status date relative to your property, you are entitled to a reduced assessment for the next tax year that reflects the reduced value of your property due to the damage. A reduced assessment will reduce your future real estate taxes. In order to make sure you get the reduction you are entitled to, you should notify the Board of Assessors or Assessor for your municipality prior to the next taxable status date relative to your property. Document the damage by taking date-stamped photographs and keeping copies of repair estimates and/or bills. Finally, if we are not already filing a tax certiorari proceeding on your property and your property has been damaged, we should do so immediately. If we file a tax certiorari proceeding, we can make sure that you get the reduction you are entitled to.



John V. Terrana



Robert L. Renda

*If you have any  
questions, please  
do not hesitate to  
contact us.*



# LANDLORD-TENANT ISSUES RAISED BY SUPER STORM SANDY



Brian R. Sahn



Jared Newman

Super Storm Sandy left in her wake many homes completely uninhabitable, and even more without power, heat, and hot water. We have received many inquiries from landlords and tenants regarding their rights and obligations in this unique situation that Sandy has placed many of us in. Here are answers to some of the most frequently asked questions we have received.

## Is the tenant required to continue paying rent if the apartment or house is not fit to live in?

Whether or not the tenant's lease addresses this type of situation, all residential leases in New York contain an implied Warranty of Habitability, as set forth in Section 235-b of the Real Property Law. This warranty says that it is the landlord's responsibility to provide premises that are "fit for human habitation" and "the occupants of such

premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety." This warranty is deemed breached whether the conditions are caused by an act of the landlord, third party, or natural disaster.

If an apartment or house has been so damaged that it is uninhabitable, or unsafe to live in, the warranty kicks in and provides a remedy. In most cases, New York courts have held that tenants are entitled to 100% rent abatements for the period of time that the premises were uninhabitable. Heat and hot water are the two pillars of the Warranty of Habitability. Courts have consistently said that if these are not provided, especially during the winter months, the warranty has been breached. A tenant may leave the premises and will not be required to pay rent (or will at least get a refund for rent paid) for the period of time these services are not provided.

We recommend that tenants stay in touch with their landlords and understand the landlords' expectations with regard to rent. Some landlords will tell tenants to stop sending rent checks and others will have the tenants pay and offer refunds. Both options are allowable under New York law.

## Can the landlord terminate the lease?

This depends on the specific terms of the lease. Most residential "form" leases have a section titled "Fire and Casualty" or "Destruction of Premises." This is typically where you would find the answer to this. Just as an example, under the standard Blumberg lease forms, the landlord may terminate the lease upon 60 days notice to the tenant within 30 days of the casualty if the tenant's premises are habitable, or immediately if the premises are uninhabitable.

## Can the tenant terminate the lease?

This also depends on the terms of the lease. You will likely find the answer in the same section as the previous question. In this case, the Blumberg lease forms allow the tenant

to terminate as of the date of the casualty if the landlord does not repair the premises within 30 days.

## Is the landlord required to repair the building?

If the landlord decides not to cancel a lease, it must make the necessary repairs to restore basic utilities and make the premises habitable, thus curing the breach of the Warranty of Habitability. If the landlord fails to do this, a tenant may bring an action to compel the landlord to make such repairs or recover damages as the court may see fit.

## Is the landlord responsible for damaged personal belongings?

Generally, no. Unless there was a defect in the building that the landlord failed to repair which made the effects of the storm worse, the landlord is not at fault and cannot be held responsible for damaged personal belongings. An example of a defect that may cause a landlord to be responsible would be a missing or broken window. Further, leases generally say that the tenant is responsible for its personal property. We advise tenants to look towards their renter's insurance policy (if they have one).

## Can the landlord use a tenant's security deposit to make repairs?

No. Generally, a landlord may only use security deposit to cover tenant-caused damage.

*As each scenario and lease is unique, we strongly recommend that landlords and tenants look to the express terms of their lease agreements and contact their attorney for further consultation.*







## REBUILDING STRUCTURES AND CONTINUING USES DAMAGED OR DESTROYED IN THE STORM



Kathleen Deegan  
Dickson

**M**any of the communities affected by Super-Storm Sandy consisted of older homes and businesses that have existed since before local zoning regulations were put into effect. Many local zoning codes have regulations that limit the rebuilding of structures and the resumption of discontinued uses which do not comply with current codes. Because of this, these regulations may apply even if your building was damaged or your business was involuntarily discontinued due to a natural disaster such as Superstorm Sandy.

**T**he most common regulations restrict or prohibit the reconstruction of these “non-conforming” buildings and businesses which were damaged by more than 50% unless you obtain special permission from the local zoning board, town board or board of trustees. These regulations may also prevent you from resuming your business or residential use if that use is not currently permitted, and it has been “discontinued” or “abandoned” for a period of time ranging anywhere from six months to two years.

**I**n addition to local City, Village and Town zoning regulations, other restrictions may exist by virtue of federal regulations (e.g., in the Fire Island National Seashore) or local cooperative restrictions (e.g., the Breezy Point Cooperative), and State and County regulations (Dept. of Health and Fire Prevention Codes) among others.

**F**ortunately, some municipalities are relaxing their restrictions to make it easier for land and business owners to restore their property to pre-Sandy condition. We are available to help you determine whether or not your building or use was non-conforming, and whether or not you will be able to rebuild without special permission. If variances or special permits are required, we can advise you as to the most efficient path and assist you with your application.

- Absent special consideration from a governing body, or a union/personal contract, the issue of employee pay during natural disasters is governed by the Fair Labor Standards Act and New York State law. For nonexempt hourly employees, private employers need only pay employees for the hours that they actually worked. Hourly employees are only paid for the hours that they worked, regardless of why they did not work. However, if the employee was required to come in to work, but was sent home because of the hurricane, then NYS law requires that the employee be paid for “call-in” time, which is usually four hours at minimum wage or the employee’s regular shift, whichever is less. Where non-exempt employees are paid a fixed salary for fluctuating, non-overtime, workweeks, an employer must pay these employees their full weekly salary for any week in which any work was performed.
- Legitimately exempt (salaried) employees are different. The federal Fair Labor Standards Act exempts some employees from minimum wage and overtime payments, such as salaried, executive, administrative or professional employees who reach a threshold income level each week. If the employer was open for business, then an exempt employee’s absence due to a state of emergency is deemed to be an absence for personal reasons. This means that the employer can dock the employee’s wages for a full day’s absence, or may require the employee to use accrued vacation or other leave to cover the absence. The employer may not dock the employee for less than a full day’s absence. It is also permissible to require exempt employees to make up lost time.
- If, on the other hand, the office was closed as a result of the hurricane, then an employer may not dock an exempt employee’s pay, but may require the employee to use vacation or other accrued leave.
- Of course, an employer can always choose to voluntarily pay the employee for the missed time, even where the law does not require payment.

*An attorney’s advice should be obtained before addressing any legal situation or problem.*

## PAY DURING HURRICANES, BLIZZARDS AND OTHER NATURAL DISASTERS



Gregory S. Lisi



## OPPORTUNITIES FOR VOLUNTEERING

The Long Island Volunteer Center, a New York State regional volunteer center, is coordinating local efforts. visit it's website at [www.longislandvolunteercenter.org](http://www.longislandvolunteercenter.org)

- To volunteer for the American Red Cross: call 516-747-3500
- To volunteer for the Salvation Army: call 516-485-4900
- To volunteer for Island Harvest: call 516-294-8528
- To volunteer for L.I. Cares: call 516-442-5221
- To volunteer for North Shore Animal League America: call 516-272-0017

## INFORMATION AND RESOURCES

- Disaster Recovery Assistance information: call 800-621-FEMA
- New York State Hotline for Insurance Issues: call 800-339-1759
- Department of Financial Services disaster hotline, (insurance related storm questions): call 800-339-1759
- U.S. Small Business Administration disaster assistance hotline: call 800-659-2955

### COUNSELORS AT LAW

## Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP

### FORCHELLILAW.COM

The Omni | 333 Earle Ovington Boulevard | Suite 1010 | Uniondale, NY 11553

PRESORTED  
FIRST CLASS MAIL  
US POSTAGE  
**PAID**  
PERMIT NO 60  
FARMINGDALE, NY 11735

READ THE COUNSELOR ONLINE  
[www.forchellilaw.com](http://www.forchellilaw.com)

#### PARTNERS

JEFFREY D. FORCHELLI  
ANTHONY V. CURTO, P.C.  
DANIEL P. DEEGAN  
DONALD JAY SCHWARTZ  
PETER R. MINEO  
JOHN V. TERRANA, P.C.  
KATHLEEN DEEGAN DICKSON  
PETER ALPERT  
BRIAN R. SAHN  
BARBARA SHAHEEN ALESI  
ANTHONY B. BARTON  
JAMES C. RICCA, P.C.  
ROBERT CHICCO  
ROBERT H. GROMAN, P.C.  
RUSSELL G. TISMAN  
WILLIAM F. BONESSO, P.C.  
ANDREW E. CURTO, P.C.  
STEVEN G. GAEBLER  
JUDY LYNN SIMONCIC, P.C.  
JOSEPH V. CUOMO  
GREGORY S. LISI  
JEFFREY G. STARK  
WARREN S. ARTHUR  
RICHARD A. BLUMBERG  
FRANK DAVIS  
AARON GERSHONOWITZ  
VINCENT J. PIZZULLI, JR.  
ANDREA TSOUKALAS

#### COUNSEL

BARRY C. FELDMAN  
HON. JOHN J. FLANAGAN  
JANET GANIO  
JACK L. LIBERT  
MARY E. MONGIOI  
EDWARD P. RA  
MICHAEL S. STROMBERG

#### ASSOCIATES

STEPHANIE M. ALBERTS  
DOUGLAS W. ATKINS  
KATHRYN SAMMON BURNS  
SUSAN J. DEITH  
ELI ELBAUM  
DANIELLE B. GATTO  
THOMAS D. GLASCOCK  
BRIAN J. HUFNAGEL  
NATHAN R. JONES  
LAUREN E. KANTOR  
DANIELLE TRICOLLA

Find us on

