Finkelstein Newman LLP

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Newsletter

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FINKELSTEIN NEWMAN RANKS IN TOP 50!

In its February 2005 issue, Finkelstein Newman LLP was selected by *Development New York* as one of New York's "Top 50" real-estate law firms.

The collection of attorneys featured in that issue includes some of the most well-respected names in the legal profession, and real-estate litigation in particular. Finkelstein Newman is grouped with established New York-based firms such as: Cadwalader Wickersham & Taft LLP; Cleary Gottlieb Steen & Hamilton; and, Skadden, Arps, Slate, Meagher & Flom LLP; all recognized as industry leaders.

"With the thousands of lawyers and law firms in New York City alone, this is clearly a great honor for us," observed managing partner Jonathan H. Newman. "This is yet another recognition of our outstanding reputation and work product. It is a testament to the high level of attention and detail that we deliver to our clients and their legal matters."

Senior partner Daniel Finkelstein noted, "To be listed along with 'white-shoe firms,' the so-called 'big guns' of the New York City legal community, is humbling and a reflection of the caliber of our attorneys and staff." Mr. Finkelstein continued, "It is all about the end result, and everyone at our firm plays a key role in helping our clients achieve their ultimate objectives."

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DANIEL FINKELSTEIN MARKS 50TH YEAR!

This year marks the *fiftieth* year that Senior Partner Daniel Finkelstein has been a lawyer! Over the course of the last five decades, Mr. Finkelstein has witnessed a sea change of developments in the real-estate market, as well as in the practice of real-estate law. Mr. Finkelstein notes that when he graduated law school, "there were only a handful of landlord-tenant lawyers; it was not the practice area that it is today, with millions of dollars and square feet at issue and the hundreds upon thousands of cases that are processed each year. As time has passed, real-estate litigation, and the landlord-tenant field in particular, has evolved and grown with this great City."

Often referred to as the "Dean of landlord-tenant lawyers," Mr. Finkelstein's milestone year will be celebrated with a number of special receptions. Stay tuned for further details about some of these VIP events!

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RIGHT TO COUNSEL IN HOUSING COURT?

Last month the New York County Lawyers' Association ("NYCLA") endorsed a resolution whereby residential tenants who find themselves embroiled in litigation in New York City's Housing Courts would be entitled to legal representation, provided they are financially incapable of securing counsel.

NYCLA's resolution—based in part on the work of its Justice Center's October 29, 2004, conference entitled, "The New York City Housing Court in the 21st Century: Can it Better Address the Problems Before it?"—acknowledged the negative impact eviction has on tenants, particularly those who are unrepresented, as well as the financial benefit to the City that will result when tenants who would otherwise be unable to retain counsel are provided representation.

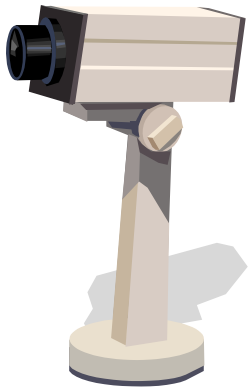
As part of its study, NYCLA's resolution noted a correlation between evictions and homelessness, and found that the City would ultimately benefit were indigent tenants provided a right to counsel in Housing Court proceedings. As a result, NYCLA's president, Norman Reimer noted recently, "NYCLA urges the implementation of this basic right, and funding to establish a pilot program to provide counsel to particularly vulnerable groups such as the elderly."

In an effort to secure appropriate legislation, advocates for the right to counsel in housing court matters have cited some compelling statistics. One study has shown that the funding of eviction-prevention services, in a single year, kept 6000 families in their homes and saved the City more than $27 million that would have otherwise been expended on shelter-related assistance and services. Yet another study, conducted by the New York City Department of Social Services, found that every dollar spent on eviction prevention saves four dollars in costs associated with homelessness. Armed with this and other data, some have concluded that the time has come to effect change.

Senior Partner and active NYCLA member, Daniel Finkelstein noted that "this movement is far from novel and has been circulating around the Civil Court and the landlord-tenant bar for over 40 years. While there is no doubt that access to justice should be a key consideration, the NYCLA resolution seems one-sided and completely ignores the needs of owners who are also unable to afford counsel." Finkelstein added, "It remains to be seen if the implementation of a program such as this will have the all-around beneficial impact cited by the studies. Many legislators and practitioners I have spoken to are doubtful that such a program will ever reach fruition or succeed in reaching its laudable goals."

You may find information regarding this proposal on NYCLA's website at www.nycla.org.

SURVEILLANCE EQUIPMENT: FOR GOOD OR EVIL?



Law abiding citizens are entitled to use and enjoy their homes without unreasonable interference or annoyance. Lease provisions typically provide that upon taking possession of a space, a tenant is entitled to exclusive possession and control of the premises demised, for the duration of the lease term, even as against a landlord's entry into the unit. If an owner enters without consent or over the tenant's objections, in addition to violating the lease such conduct triggers an array of rights and remedies. With regulated tenants, the landlord's conduct may constitute a form of harassment. Rent Stabilization Code § 2525.5 provides that owners may not engage in "any course of conduct . . . which interferes with, or disturbs, or is intended to interfere with or disturb, the privacy, comfort, peace, repose or quiet enjoyment of the tenant in his or her use or occupancy of the housing accommodation." However, tenants' reasonable expectations of privacy only pertain to private areas of living space and do not extend to the "common areas" of residential buildings. "Common areas" have been defined by New York courts as hallways, lobbies, vestibules, public telephone booths, stairwells, and any other areas used for ingress and egress where access is relatively uncontrolled.

Surveillance cameras are frequently installed in the common areas of residential and commercial buildings both by building owners and law enforcement agencies. Many of the cases reviewed by New York courts, relating to the use of such equipment, typically involve tenants seeking to prevent its implementation based on an "invasion of privacy" theory. Tenants have objected to the use of security cameras, intercom systems, doorman services, and keyless entry systems, and, courts have held that these arrangements do not violate the law as long as their purpose is to enhance security and improve the property. Contrary to the arguments made by some residential tenants, a breach of the "warranty of habitability" is not triggered and only occurs when a reasonable person would conclude that defects in a dwelling deprive a tenant of "those essential functions which a residence is expected to provide."

In the State of New York, there are surprisingly few restrictions on the use of a person's "name, portrait or picture," unless such use is commercially or fraudulently exploitive. New York Civil Rights Law §§ 50 and 51 create a "right of privacy" and a "right of publicity," making it a misdemeanor offense to use an individual's name, portrait or picture for advertising or trade purposes without consent. However, there is no law in New York that extends a right of privacy to "non-fraudulent" and "non-commercial" use of one's picture or portrait. Therefore, surveillance in building common areas does not violate any "privacy right" currently recognized by New York law.

Even police surveillance of the common areas of residential or commercial buildings is permitted and will not invalidate an arrest. The rationale for this policy is that because tenants can have no reasonable expectations of privacy in common hallways that are in joint control of landlords and tenants, surveillance of such areas may be undertaken without tenants' knowledge and even over their objections. New York's criminal laws support this rationale by defining "public places" to include building "common areas." Penal Law § 240.00(1) provides that lobbies of apartment houses not constituting private rooms are defined as "public places." Accordingly, New York courts have upheld criminal arrests based on crimes perpetrated and observed in these areas since there can be no legitimate expectation of privacy in places which have "public or substantial group access."

Ultimately, the strong policy concerns underlying common-area surveillance will require a careful balancing or weighing of the parties' interests. And, as technology advances, our legislature and courts will be called upon with increasing frequency to address the problems raised by the ever-growing presence and grasp of electronic surveillance.

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INSTALL CARBON MONOXIDE DETECTORS

Pursuant to Section 27-2046.1 of the New York City Administrative Code, carbon monoxide (CO) detectors are now required in all residential units. The CO detectors must meet the National Fire Protection Association's requirements and must be installed within 15 feet of the entrance to all rooms lawfully used for sleeping. Building owners must provide written information to tenants regarding CO alarm testing and maintenance, inform tenants about the dangers of CO poisoning, and advise them of the protocols they should follow if a CO alarm sounds. These written notices should also advise of the $25 reimbursement fee owed to building owners for installation costs. Notices must also be posted in building common area alerting tenants of their responsibility to maintain, repair, and replace the CO detectors once they are installed. However, if a detector becomes inoperable, at no fault of a tenant, s/he may elect to provide the owner with written, 30-day notice, requiring replacement of the detector. An owner's noncompliance with these requirements triggers a violation. Civil penalties can range from $25 to $100 and $10 per day for each violation until certified as corrected. Fines notwithstanding, since the reason for this requirement is to prevent the loss of life in the event of a CO gas leak, the implementation of this equipment is of critical importance.

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