### Summary Proceeding Checklist PROCESS ISSUES

COUN Are the parties represented by counsel?	ISEL	
If YES, If NO	, discuss legal rights and obligations with litigants and use discretion onsider adjourning the case so that each side may obtain an attorney.	
I. JURISI	DICTION	
1. Is the property located in the same municipality as this cou		
	, dismiss the case, but with leave for the oner to refile in the appropriate court.	
2. Is the respondent currently in physical possession of the p	roperty?	
	, there is no basis for ummary proceeding.	
3. Is there personal jurisdiction over the respondent?		
	, there is no basis for ummary proceeding.	
II. GROUNDS FOR SUMMARY PROCEEDINGS		
Does the petitioner have a valid basis for the action? Summa holdover proceedings.	ary proceedings are either <b>nonpayment proceedings</b> or	
+		
<ul> <li>HOLDOVER PROCEEDINGS</li> <li>1. Is the petitioner claiming that the respondent either overstayed the lease or violated some term in the lease? (RPAPL § 711(1).)</li> <li>If YES, continue</li> <li>If NO, then the petitioner cannot bring a holdover proceeding. If the petitioner is asking for payment of rent, he must bring a nonpayment proceeding.</li> </ul>	<ul> <li>NONPAYMENT PROCEEDINGS</li> <li>1. Is the petitioner claiming that the respondent failed to pay rent? (RPAPL § 711(2).)</li> <li>If YES, continue</li> <li>If NO, then the petitioner cannot bring a nonpayment proceeding. Nonpayment proceedings can only be used to recover rent, not to recover any other payments (like security payments or payments for damage of the property).</li> </ul>	
<ul> <li>2. If eviction is based on the lease expiring, has the appropriate notice been given?</li> <li>For a month-to-month tenant (a tenant whose lease runs from month to month), the petitioner must give one monthly applies (DPL 5 2020 h)</li> </ul>	2. Has the respondent at any point offered to pay rent to the petitioner in connection with the dispute at issue?	
<ul> <li>month's notice. (RPL § 232-b.)</li> <li>For an at-will tenant (a tenant whose lease is not of a</li> </ul>	<ul> <li>If YES, then there is no basis for the proceeding.</li> <li>If NO, continue</li> </ul>	
<ul> <li>determinate length), the petitioner must give thirty days' notice. (RPL § 228.)</li> <li>For a tenant whose lease has terminated, no notice is required.</li> </ul>	3. Did the petitioner either (1) make an oral demand for rent or (2) give the respondent three days' written notice to pay rent or vacate the property? (RPAPL § 711(2).)	
<ul> <li>If YES, continue</li> <li>If NO, then the petitioner must give appropriate notice</li> </ul>	<ul> <li>If YES, continue</li> <li>If NO, then the petitioner must either make an oral demand for rent or give the respondent three days' written notice before bringing a court action.</li> </ul>	

#### **III. FORM OF PETITION AND NOTICE OF PETITION**

<ul> <li>To commence a summary proceeding petition.</li> <li>1 Does the petition contain the followinterest in the property and the relation what the petitioner is asking the A description of the property?</li> <li>Verification by the petitioner or the property of the petitioner or the period of the petitioner or the</li></ul>	owing information? A sationship between the court to do (the relief r		
	<ul> <li>If YES,</li> <li>If one of the second sec</li></ul>		
2. Does the <b>notice of petition</b> infor 731(2).)	rm the respondent whe		
	<ul> <li>If YES,</li> <li>If one of the second sec</li></ul>		
3. Has the <b>notice of petition</b> been issued by a judge, cou			
	<ul> <li>If YES,</li> <li>If ontinue</li> </ul>		
IV. SERVICE OF PETITIC Both the petition and notice of petition must be served on <b>1. Timing</b> . Were the (1) petition and (2) notice of petition respondent is scheduled to appear in court? (RPAPL § 7			
	<ul> <li>If YES,</li> <li>If continue</li> </ul>		
<ul> <li>2. Methods. Were the petition and notice of petition serv</li> <li>Personal delivery to respondent</li> <li>Substituted service. (If this method is chosen, then the Nail and mail. This method is only to be used if the oth mailing requirement below must also be met.)</li> <li>Mailing Requirement. To meet the mailing requirement, two copies one by certified mail. The copies must be sent (1) to the property; o residence of the respondent; or (3) if there is no written information a (RPAPL § 735.)</li> </ul>			
<ul> <li>Substituted service. (If this met</li> <li>Nail and mail. This method is or mailing requirement below mus</li> <li>Mailing Requirement. To meet the mail one by certified mail. The copies must be residence of the respondent; or (3) if ther</li> </ul>	nt thod is chosen, then th nly to be used if the ot st also be met.) ling requirement, two copies e sent (1) to the property; o		
<ul> <li>Substituted service. (If this met</li> <li>Nail and mail. This method is or mailing requirement below mus</li> <li>Mailing Requirement. To meet the mail one by certified mail. The copies must be residence of the respondent; or (3) if ther</li> </ul>	nt thod is chosen, then th nly to be used if the ot st also be met.) ling requirement, two copies e sent (1) to the property; o		
<ul> <li>Substituted service. (If this met</li> <li>Nail and mail. This method is or mailing requirement below mus</li> <li>Mailing Requirement. To meet the mail one by certified mail. The copies must be residence of the respondent; or (3) if ther</li> </ul>	nt thod is chosen, then th nly to be used if the oth st also be met.) ling requirement, two copies e sent (1) to the property; o re is no written information • If YES, continue		
	<ul> <li>petition.</li> <li>1 Does the petition contain the foll interest in the property and the rela</li> <li>What the petitioner is asking the</li> <li>A description of the property?</li> <li>Verification by the petitioner or the petition of the property?</li> <li>2. Does the notice of petition info 731(2).)</li> <li>3. Has the notice of petition been</li> <li>IV.</li> <li>Both the petition and notice of petition ar respondent is scheduled to appear</li> </ul>		

## **Davis Polk**

t file two separate documents: (1) a **petition** and (2) a **notice of** 

statement of the petitioner's and respondent's ownership e petitioner and respondent?

requested)?

epresentative, attorney, or agent? (RPAPL § 741.)

If **NO**, dismiss the case, but allow the petitioner to correct the mistake and refile.

hen and where he or she must show up to court? (RPAPL §

If **NO**, dismiss the case but allow the petitioner to refile.

ourt clerk, or attorney? (RPAPL § 731(1).)

If **NO**, dismiss the case but allow the petitioner to refile.

#### ION AND NOTICE OF PETITION

n the respondent.

n both served between five and twelve days before the 733(1).)

If **NO**, the case must be dismissed.

rved in one of the following ways? (RPAPL § 735)

the mailing requirement below must also be met.) other methods have failed. (If this method is chosen then the

ies of the petition and notice of petition must be mailed, one by regular mail and or (2) if the respondent does not live at the property, to the last known n about where the respondent lives, to the respondent's place of business.

If  $\ensuremath{\text{NO}}\xspace$  , the case must be dismissed.

ition filed within three days of the date on which the papers were

If NO, the case must be dismissed.

### Summary Proceeding Checklist SUBSTANTIVE ISSUES

- 1. Adjournment. Consider adjourning for ten days if (RPAPL § 745(1)):
  - One of the parties does not have an attorney and would like to get one; or
  - One of the parties needs to gather more evidence or witnesses; or
  - Both parties consent.
- 2. Factual dispute. If there is a dispute about a factual issue and one of the parties demands a jury trial, the request must be granted. (RPAPL § 745(1).)
- **3.** Burden of proof. The burden is on the petitioner to prove his or her case. That means the petitioner must submit evidence proving each of the facts that he or she claims is true. If the petitioner fails to prove his or her case, the case must be dismissed. Both sides, however, must be allowed to speak and present their cases
- **4. Warranty of habitability**. Is the respondent arguing that some aspect of the property makes it unlivable (dangerous, hazardous, detrimental to life, health or safety of tenants)? If so, the respondent is entitled not to pay rent under the warranty of habitability defense. (RPL § 235-b.)
  - If an average, middle-class tenant would find a condition dangerous or uninhabitable, the landlord has breached his duty to keep the housing habitable.
  - A tenant can establish that the premises are dangerous and deteriorated by describing them or by showing pictures.
  - The warranty of habitability may not be waived. A tenant and landlord cannot sign a contract giving away the right to safe housing.
- **5. Refusal of rent**. Has the respondent paid rent, or was rent refused by the petitioner? If so, then the nonpayment proceeding must be dismissed and the respondent cannot be evicted.
- 6. Access to Records. Both sides must have access to the to the court documents (including notice of petition) prior to hearing.
- 7. Unique Circumstances. If dispute involves mobile homes, manufactured home, or land grant, special rules for proceeding may apply.

# **Davis Polk**