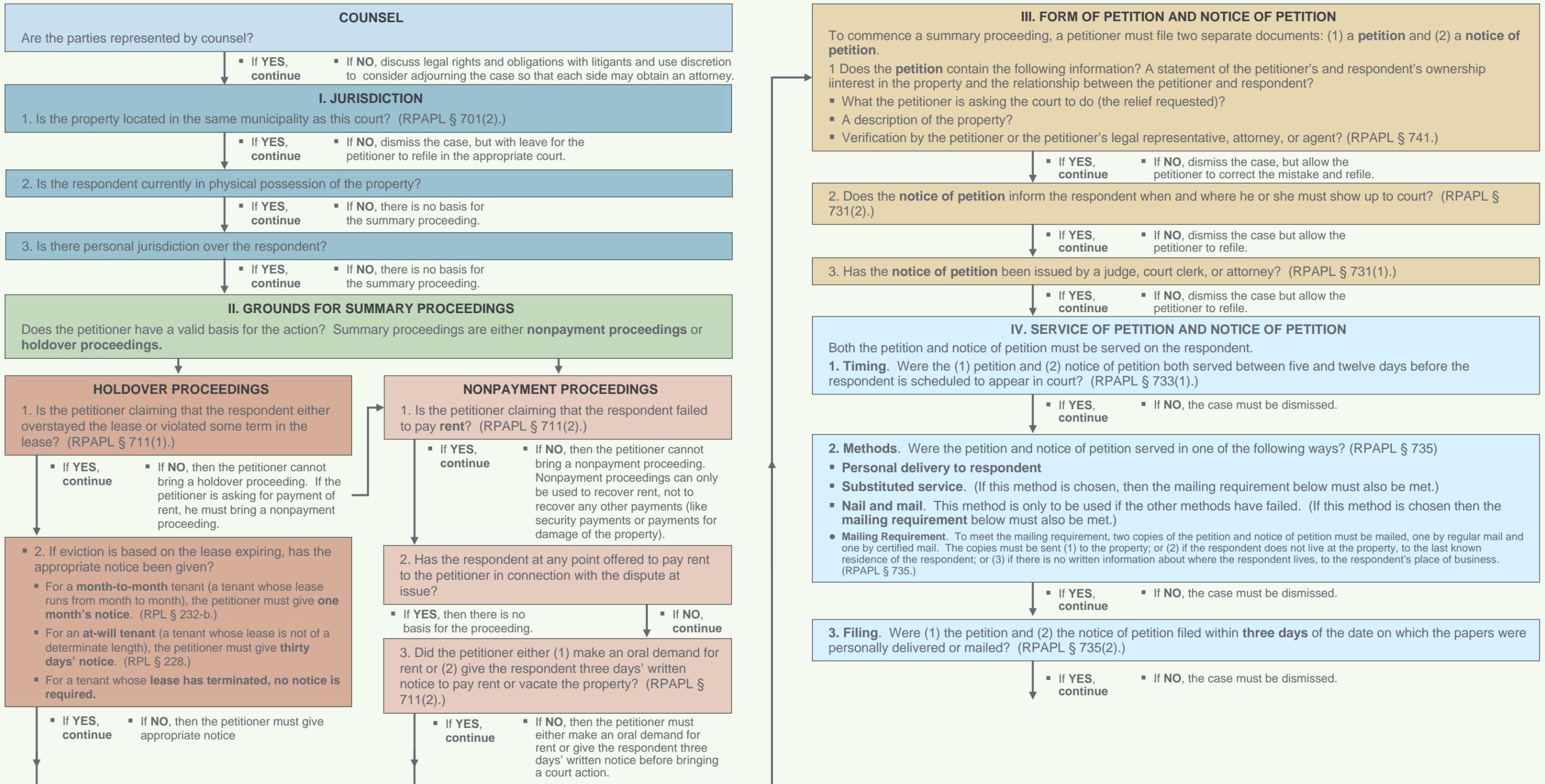


# Summary Proceeding Checklist

## PROCESS ISSUES



# 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.