

## *Become the Master of Your Electric Costs: End Master Metering*

**A**re you paying too much for electricity at your building? Do your tenants leave their air-conditioners running full blast on cool days? Are lights and appliances left running all day? Do tenants treat electricity as free – because it is the owner who is paying for the service? If so, there is a procedure that allows an owner of rent regulated property to file an application and pass the cost of the actual usage of electricity onto each individual tenant.

Many buildings in New York are master metered, which means that there is one electric meter in the building and the Owner pays the utility directly for all of the electricity used by the tenants. Under this scenario, there is no in-

centive for tenants to conserve electricity.

Pursuant to DHCR policy (set forth in DHCR Fact Sheet # 29), in an effort to promote energy conservation, property owners are permitted to modify services by terminating rent inclusion of electricity and have the tenants begin to pay the utility directly for their individual electric charges. Each individual apartment is individually metered with an electric meter solely for that apartment, and the tenants' rents are appropriately reduced for the loss of this service. The reduction in rent is a one time reduction. The cessation of the owner's obligation to pay for electric usage is permanent.

*(Cont. on p. 2)*

## *Discharging An Ancient Mortgage Presumed Paid*

**A**n open mortgage, which has been paid, but not actually satisfied of record, can create hardship and delay for parties looking to close on a real estate transaction. The process to clear a paid off mortgage still appearing of record can be both time-consuming and costly, especially when the encumbrance is an ancient mortgage where, due to the death of the mortgagees or their assignees, satisfaction

cannot be obtained without recourse to a plenary action.

To alleviate such hardship, the New York Legislature enacted §1931 of the Real Property Actions and Proceedings Law ("RPAPL §1931"), which provides for the discharge of a mortgage that, from lapse of time, is presumed to be paid.

New York courts have defined an "ancient mortgage" within the

*(Cont. on p. 3)*

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### Special Points of Interest

- **How to save money on increasing utility costs.**
- **Overcoming a Closing Delay: Ancient Mortgages Still of Record.**
- **Do not Procrastinate in Bringing Non-Payment Proceedings — or You Could Lose Your Rent.**

*“End Master Metering”...**(Cont. from p. 1)*

An alternative method of eliminating master metering is via submetering, whereby the owner buys the electricity from the utility in bulk (at a reduced rate), the owner pays the utility, and the owner bills the tenants directly for electric usage (plus an administrative fee).

Because of recent rulings by the Public Service Commission, imposing onerous procedures upon owners that submeter, treating owners as if they were actual utilities, BBW&G does not presently recommend submetering as an alternative to master metering. (BBW&G is presently appealing this PSC ruling.) We believe that changing to individual meters is the preferred method of conversion.

An application must be filed with DHCR asking for permission to modify services by eliminating master metering. DHCR has published a schedule of proposed rent reductions, when the usage of electricity is altered and modified. After DHCR approves the switch-over for a one room and two room apartment, the apartment rent is reduced by \$40.00 per month. For a 3 room apartment, the rent is reduced by \$45.00 per month, and so forth. Owners of master metered buildings

often seek to eliminate such electric service in conjunction with an upgrade of the electric wiring, which qualifies for a Major Capital Improvement (“MCI”) rent increase. This way the rent reduction (for the elimination of master metering) is offset by a rent increase (for the MCI).

BBW&G recently filed an application with DHCR for a large multi-family building on the Upper West Side, where the electric costs were all paid by the Owner and the usage was extremely high. After much opposition by the tenants, DHCR issued an Order granting BBW&G’s application, thereby permitting the Owner to install individual electric meters in the tenants’ apartments. The entire process took about 6 months. And after several months, the Owner has realized tremendous utility savings.

*This article was written by Martin J. Heistein, partner in BBW&G’s Administrative Law Department. To discuss this application process, please contact Mr. Heistein.*



Martin J. Heistein

### MCI USEFUL LIFE/WAIVER REQUIREMENTS

**T**he Rent Stabilization Code sets forth the Useful Life Schedule of building-wide Major Capital Improvements (“MCI”) for various installations and improvements. This Schedule provides the norm for the frequency with which a building component may be replaced and still qualify for MCI treatment. Simply stated, generally a building component must have outlived its “useful life” in order for its replacement to qualify for an MCI rent increase.

It is important for owners (especially new owners or prospective purchasers) to perform due diligence by obtaining a case docket report from DHCR to determine if an MCI rent increase was granted for similar items of work that an owner is contemplating undertaking. Postponing the MCI by just a few days or weeks may make the difference in obtaining another MCI rent increase or having the MCI application denied in whole or in part because the item replaced did not exceed its “useful life.”

If conditions are such that the component needs to be replaced, although not yet beyond the schedule of “useful life,” a waiver may be obtained from DHCR. However, DHCR has strict requirements for granting a waiver. An application for a waiver of the “useful life” MUST be submitted PRIOR to the commencement of the new work. If an owner starts the work prior to

*(Cont. on p. 3)*



## *Timing Can Be Everything: Losing Rent By Laches*

**T**enants are obligated to pay their rent on a monthly basis. But tenants often fail to pay their rent, causing owners to commence non-payment proceedings to recover the rent and, if the rent is not paid, evict the tenant. Unfortunately, some owners delay in bringing the proceedings which may have a material impact on their rights and remedies.

The statute of limitations for an owner to collect rent is six years. If an owner (or its predecessor) failed to collect rent for more than six years, the unpaid rent prior to that date would no longer be collectible, such that the owner would permanently forfeit the money. Although this sounds like an unusual situation, BBW&G has represented owners who have, for one reason or another, neither collected rent for as much as fifteen years, nor instituted legal proceedings to collect the arrears.

Even if the owner did not wait six years, but waited months before commencing summary proceedings, there still can be problems collecting the rent due to the legal doctrine known as “laches.” This rule was created to prevent an owner from allowing rent arrears to accrue and then, hoping that the tenant could not pay the large lump sum, resulting in the tenant being

### Highlights:

- The statute of limitations for an owner to collect rent is six years.
- Even if the owner did not wait six years, but waited months before commencing summary proceedings, there still can be problems collecting the rent due to the legal doctrine known as “laches.”
- If the rent is not paid within five days of the judgment, then the tenant can be evicted and the owner can attempt to collect the money judgment by freezing the tenant’s bank account.

evicted evict for non-payment of rent.

The courts have ruled that if the rent is overdue more than six months and a non-payment proceeding is started; the owner may be precluded from collecting that rent in t proceeding or getting possession of the apartment via the summary proceeding.

In the ordinary non-payment proceeding, after proving the rent is owed, the owner receives a judgment for possession of the apartment and a money judgment for the unpaid rent. If the rent is not paid within five days of the judgment, then the tenant can be evicted and the owner can attempt to collect the money judgment by freezing the tenant’s bank account.

Under the doctrine of laches, for the rent due more

than six months prior to the start of proceedings, the owner would not get a possessory judgment. As an example, if the owner commenced a non-payment proceeding for ten months of rent arrears and the tenant paid six months rent, the tenant could not be evicted. The owner could only get a monetary judgment for the balance of the rent due longer than six months. [Alternatively, the owner could commence a plenary action for rent, which is a far more time consuming and cumbersome procedure than the normal non-payment proceeding.]

That judgment could be satisfied by seeking payment from the tenant’s bank account. However, the monies would not be collectible from a tenant without a bank account or a tenant who is on public assistance. Thus, it is important for owners to contact their attorneys to promptly commence non-payment proceedings in a timely fashion.

*This article was written by Joseph Burden, a partner in BBW&G’s Litigation Department.*



Joseph Burden



## BBW&G NEWS

### MAY I QUOTE YOU?



**Edward Baer's** article "Landlord-Tenant Law Developments" was published in *Landlord Tenant–New York*. Mr. Baer discussed recent cases involving nuisance, non primary residence, debt collection practice and succession to rent regulated apartments.



**Sherwin Belkin** answered a query posed in *The New York Times*, Real Estate Section "Q & A" column pertaining to the "80 per cent carpet" rule. Mr. Belkin noted that although the requirement of covering 80 per cent of an apartment's floor area is often found in residential leases, it is not a statutory requirement. Instead, the issue often turns on the degree of noise and whether the warranty of habitability is being breached by an excessively noisy tenant.



**Matthew Brett** was appointed Secretary of the Housing Court Committee of the Association of the Bar of the City of New York. Mr. Brett has served on this Committee for the past two years.

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