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SPECIAL LANDLORD/TENANT LAW ISSUE



Eric Ziobro

Eric Ziobro Named Associate

Friedman & Ranzenhofer, PC is pleased to announce that Eric R. Ziobro has been named an Associate Attorney. Eric is admitted to all New York State Courts (1999), the U.S. District Court for the Western District of New York (2000) and U.S. Supreme Court (2003). He served as Assistant Erie County Attorney from 2009 through 2011, and previously practiced as a civil litigation trial attorney. He received a Bachelor of Arts degree in Biology from Ithaca College in 1992, and a Juris Doctor degree from SU.N.Y Buffalo Law School in 1998. His law practice focuses on estates, criminal defense and litigation. Eric resides in Orchard Park with his wife and children. ■

Investment Property Expo & Trade Show

As one of ten speakers at the MULTIFAMILY INVESTMENT PROPERTY EXPO & TRADE SHOW on Saturday, February 16, 2013, Robert Friedman will present "Do's & Don'ts for Drafting Fool-Proof Leases" and "How to Quickly Evict Bad Tenants." The event is being held from 8:30 a.m. to 5:00 p.m. at the Millennium Hotel, 2040 Walden Ave., Cheektowaga, NY. Drawing on over thirty-three years of experience representing landlords, he will provide a step-by-step explanation of the legal procedures necessary to successfully evict tenants and obtain money judgments. Landlords will be briefed on how to be prepared for all possible tenant defenses and counterclaims; what the costs to expect; how to properly prepare, serve and file default notices, notices of petition and petitions; and how to expedite evictions with key lease provisions. Mr. Friedman will detail how landlords can protect their rights, expedite evictions and limit liability with the right lease language. All the necessary lease

clauses will be explained, including security deposits, repairs, utilities, late charges, pets, illegal activities, added rent, attorney's fees and restrictions on subletting and alterations. According to Mr. Friedman, "illegal or ambiguous clauses may render the lease useless and expose the landlord to lawsuits. Landlords need to know what can and cannot legally put in the lease."

For further information, visit rjgullo.com. To register for the free expo, call 716.675.1500. ■

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YEAR-LONG RENT STRIKE SETTLED

After withholding rents for one year, senior mobile home tenants in Newstead have reached a settlement with their landlord. Fifty tenants of the Quarry Hill Mobile Home Park began withholding their rents and water charges through their attorney, Robert Friedman in December, 2011. They alleged unsafe and unsanitary conditions in the park consisting of 120 homes. The owner, Lakeshore NY, LLC of Illinois, began eviction proceedings in Newstead Town Court for nonpayment of rent and water charges in September, 2012. The eviction action was vigorously defended by Mr. Friedman, an expert on landlord-tenant law. The settlement agreement, filed with the court, discontinues the evictions. It also discontinues the tenants' claims for breach of the warranty of habitability. The owner is required to make repairs to the septic system and driveways and provide adequate lighting for the roadways and common areas. ■

DO YOU PREFER TO BE CONTACTED BY EMAIL?

Do you prefer to save a tree and receive communications from us (invoices, scheduling appointments, correspondence, newsletters, etc.) by email? If so, please contact april@legalsurvival.com



Robert Friedman

Free Probate Avoidance Seminar

"How to Avoid Probate & Estate Taxes" will be presented by Robert Friedman, Attorney on Wednesday, February 6, 2013 at 6 PM at Montgomery Park, 6363 Transit Road, E. Amherst. Drawing on over 33 years of estate planning experience, Mr. Friedman will explain the eighteen most common estate and Medicaid planning mistakes; the duties of trustees and executors; and how to prevent will contests. Probate avoidance techniques include life estate deeds, living trusts, life insurance, payable on death accounts and joint ownership. The impact of the estate and capital gains tax law changes will be discussed. Estate taxes can be reduced by using trusts, charitable gifts and limited liability companies. To register for the free seminar, call 716.631.9999 by February 4, 2013. ■

Landlord Pays \$58k for Prohibiting Companion Dog

The owner of a Long Island senior housing development has agreed to pay a settlement of \$58,750 to the surviving husband of a woman who died soon after the landlord refused to make an exception to its no-pets policy to allow her to keep her dog, which her doctors said she needed for her mental and physical health. The woman suffered from severe respiratory problems, depression, anxiety, cirrhosis, diabetes and decreased vision and hearing. In August 2006, she obtained her miniature schnauzer, Mikey, when she was very frail, was on oxygen twenty-four hours a day and was unable to leave her home without an ambulance. In September 2006, the landlord began demanding that she get rid of Mikey and pay fees with interest for harboring the dog. Her family tried to explain that the dog was necessary for her mental and physical health. Four different letters from her doctors stated the dog helped her depression, anxiety and physical ailments. However, the landlord continued to demand that the dog be removed, threatening eviction if it was

not removed. In September 2007, she finally sent the dog to live with a family member. The dog's removal from their home caused her great emotional distress and aggravated her already extremely poor health. She died on Oct. 18, 2007, at the age of 74, about one month after she lost the dog. Even after her death, the landlord continued to threaten her husband with eviction if he did not pay legal fees, fines and interest. He ultimately paid more than \$2,000 to the landlord. The U.S. Attorney's Office sued the owner, accusing it of violating the Fair Housing Act by refusing to make an exception to its no-pets policy. Under the Act, individuals with disabilities are entitled to reasonable accommodations, including the right, where appropriate, to have a comfort animal reside with them. ■



Our Practice Areas:

- Accidents/Personal Injury
- Administrative Proceedings
- Animal Law
- Commercial Litigation
- Corporate/Business/LLC
- Criminal/Traffic/DWI
- Divorce/Custody/Support
- Elder Law/Guardianships
- Landlord/Tenant
- Matrimonial/Family Law
- Municipal Law
- Not-for-Profit Corporations
- Probate/Estates
- Real Estate
- Trials/Appeals
- Wills/Trusts

Landlords' Obligations After a Storm

Many New York tenants returned home after Hurricane Sandy to find catastrophic damage and loss of power, heat, hot water and elevator service. New York residential (including cooperative) tenants are protected by the warranty of habitability (WOH) under New York Real Property Law §235-b. It is implied in every New York residential lease that the premises are habitable and fit for the uses reasonably intended by the parties and that there are no conditions that are detrimental to the tenants' life, health or safety.

The WOH creates an unqualified obligation which is not excused by the acts of third parties or natural disaster. The landlord's good faith may be raised as a defense only if the landlord is prevented from making repairs due to strike or labor dispute. Many of the conditions that usually result from a severe storm, including the loss of electricity, heat and hot water; the reduction of elevator service and other essential services; non-functioning appliances; leaks and flooding; and odors, mildew and mold, have been held to constitute a breach of the WOH. Courts have placed the burden of repairs on landlords even when they are required by events that are wholly out of their control. The expansive view of the WOH taken by the NY courts would include even the extraordinary damages caused by Hurricane Sandy. Landlords have been held responsible for air pollution and other conditions resulting from clean-up of the destruction of the World Trade Center after 9/11/01; an apartment flooded due to a defective roof during a large rainstorm and a below grade apartment flooded after the New York City storm sewers were overwhelmed by extremely heavy rainfall.

These are the limitations on the enforcement of the WOH that protect landlords: (a) the landlord must have had either actual or constructive notice of any conditions requiring repair; (b) the tenant must provide the landlord with reasonable access to make repairs; (c) the tenant may undertake any necessary repairs and set-off their cost against the rent only if the landlord has first been notified of the conditions in need of repair and fails to take action in due course to provide a remedy; and (d) breach of the WOH does not give tenants the right to unilaterally cancel the lease. The WOH permits tenants to withhold rent and use the breach as a defense in a nonpayment eviction proceeding or to raise the breach as a counterclaim or in lawsuit against the landlord. In determining the appropriate abatement or rent reduction to which a tenant is entitled, courts balance the nature, severity and duration of the breach against the landlord's diligence in making repairs. The abatement can range from a rent reduction of a few percent to the full amount of the rent. Where habitability issues affect an entire building, such as in a storm, a group of tenants can organize a rent strike to collectively withhold rent until necessary repairs are made by the landlord. ■



ROTARY PORSCHE RAFFLE

Robert Friedman has been appointed Chairman of the 2013 Clarence Rotary Porsche Raffle. He is Past President of the club and legal counsel to the club's foundation. Tickets for the third annual raffle will be available beginning February 5, 2013 at ClarenceRotaryRaffle.com. The grand prize is the choice of a 2014 Porsche Boxster or Cayenne or \$40,000 cash. Ten \$500 cash prizes will also be awarded. The drawing will be held on August 5, 2013 at 8 PM at the 10th Annual Taste of Clarence. The proceeds of the raffle will be used to fulfill the Clarence Rotary Club Foundation's mission of benefiting healthcare, youth activities, scholarships and community projects. Rotary is the most prominent non-religious, non-sectarian organization in the world dedicated to world understanding, peace and service to those less fortunate than us regardless of race, religion or political beliefs.



BACK ISSUES/ FREE SUBSCRIPTION

Have you missed the past eighteen (18) years of the *LegalSurvival.com* newsletter? If so, all back issues are available at LegalSurvival.com. If you are not on our mailing list, call (716) 542-5444 for a free subscription.

The LegalSurvival.com Newsletter is published as a public service by Friedman & Ranzenhofer, P.C., Attorneys, with offices in Akron, Buffalo, Batavia, Rochester, West Seneca, Wheatfield and Williamsville/Clarence, New York. The firm, founded in 1955, practices estate planning, real estate, personal injury, probate, criminal, traffic, marital, family, business, municipal, corporate, debt collection, landlord/tenant and elder law. Your comments and questions are always welcome. For further information or to obtain permission to reprint the contents of this newsletter, call Robert Friedman at (716) 631-9999, visit the Legal Survival web site at www.legalsurvival.com or e-mail to rfriedman@legalsurvival.com.

While a great deal of care has been taken to provide accurate and current information, the ideas, suggestions, general principles and conclusions presented in this newsletter are subject to local, state and federal laws and regulations, court cases and any revisions of same. The reader is thus urged to consult legal counsel regarding any points of law – this newsletter should not be used as a substitute for competent legal advice.

The purpose of this newsletter is to give the reader a general understanding of the law – not to provide specific advice. Every effort has been made to achieve accuracy. The law constantly changes and is subject to differing interpretations. Always consult with your attorney and act only on his or her advice. Friedman & Ranzenhofer, P.C. shall not be responsible for any damages resulting from any inaccuracy or omission. This newsletter is designed to provide accurate and authoritative information in regard to the subject matter covered. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. Certain portions of this newsletter may be applicable only to New York State law.

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Michael Ranzenhofer

Seller Liable for Injuries After the Closing

In most personal injury lawsuits where an injury was caused by a dangerous condition on property, the injured party will proceed against the current property owner. In rare cases, the personal injury case may actually proceed against the prior owner of the property.

Usually, the responsibility of a seller for injury resulting from a dangerous condition on the premises ceases upon sale of the property. This may change, however, if certain criteria are met. First, the dangerous condition must have existed at the time the property was sold. Second, the seller must have known about the dangerous condition – or had information from which a reasonable person would conclude that a dangerous condi-

tion existed – and failed to tell the buyer about it. Third, the buyer must not have known about the condition or been able to discover it using reasonable care.

If all three of these conditions are met, the seller may be liable for the personal injury. If, however, the buyer had reasonable opportunity to discover the dangerous condition and repair it, but failed to do so, the seller's liability is terminated.

If you have been injured by the dangerous condition of another's property or for answers to commonly asked personal injury law questions, see Michael Ranzenhofer's blog: buffalo-injury-answers.com or call him personally anytime at 716.542.5444 or 585.343.0746. ■

Mike Ranzenhofer's Ten Point Pledge to Accident/Injury Clients is to:

1. Communicate with you in plain language that is easy to understand.
2. Promptly return your telephone calls.
3. Quickly and thoroughly investigate and analyze your case. Friedman & Ranzenhofer, P.C. does not accept every accident case.
4. Have your case personally handled by an attorney.
5. Keep you informed of the progress of your case at all times.
6. Show you the personal care, concern and attention which has been the hallmark of our law firm since 1955.
7. Not handle your case in an "assembly line" fashion.
8. Accommodate the needs of you and your family during the handling of your case.
9. Vigorously protect your legal rights.
10. Never release your name to the media after your case has been completed, except with your written permission.