



**JAMES G. DIBBINI  
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*Attorneys At Law*  
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## **Removing Occupants from Illegal Apartments – Know the Legal Risks and Requirements**

Renting out an apartment that does not have a valid Certificate of Occupancy (CO)—commonly referred to as an illegal apartment—exposes landlords to serious legal and financial risks. If you find yourself needing to remove an occupant from such a unit, it is essential to understand the rights and obligations of both landlord and tenant, as well as the potential consequences of noncompliance.

### **What Is an Illegal Apartment?**

An apartment is considered illegal if it lacks a valid Certificate of Occupancy or is being used in a way that violates the existing CO for the building. Common examples include:

- Basement or cellar units not approved for residential use
- Unpermitted conversions of single-family or two-family homes into multi-unit dwellings
- Apartments created without proper building permits or inspections

### **Risks of Renting Illegal Apartments**

Landlords who rent illegal apartments expose themselves to multiple risks, including:

- Violations and fines from the local building or housing department
- Orders to vacate the apartment, often on an expedited basis
- Ineligibility to enforce lease terms or collect rent in court
- Increased civil liability in the event of injury or damage
- And most critically:

If a claim arises—such as a fire, accident, or injury—the landlord’s insurance company may deny coverage due to the illegal occupancy. This could result in substantial out-of-pocket liability for property damage, personal injury claims, or wrongful death suits.

### **Tenant Rights in an Illegal Apartment**

Even when a unit is illegal, tenants retain certain legal rights. Courts will often treat the relationship as a de facto tenancy, especially if rent has been accepted. Notably:

- Tenants must be given proper notice before legal proceedings can begin
- Courts generally do not allow landlords to recover rent arrears on illegal apartments
- Tenants may raise the illegality of the unit as a defense in nonpayment proceeding

## How to Legally Remove an Occupant

To remove an occupant from an illegal apartment, you must follow strict legal procedures:

### Notice Requirements

Any notice must comply with New York Real Property Law and applicable local statutes.

### Holdover Proceedings

Once notice has expired, you may initiate a holdover eviction proceeding in Housing Court. Keep in mind:

- You cannot recover unpaid rent for the period the apartment was illegally occupied
- Courts focus on possession, not money judgments, in these cases
- Accepting rent during the process may reinstate tenancy rights, complicating the case

### Important Reminders

- Do not use self-help methods such as changing locks or cutting off utilities—these are illegal and can lead to fines or criminal charges
- Consult an experienced attorney to ensure compliance and reduce exposure
- Consider bringing the apartment into compliance to preserve future rental income and limit risk

### We're Here to Help

At James G. Dibbini & Associates, P.C., we have extensive experience helping landlords navigate complex legal situations, including illegal occupancy and tenant removal. If you are unsure about the legal status of a unit or how to proceed, our team is ready to assist.

Call us at (914) 240-8270 or email [jdibbini@dibbinilaw.com](mailto:jdibbini@dibbinilaw.com) to schedule a consultation.

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