# NOTICE TO THE BAR

## LANDLORD/TENANT -- PROPOSED AMENDMENTS TO RULE 1:38-3(f) TO REMOVE FROM PUBLIC ACCESS RECORDS OF LANDLORD/TENANT MATTERS NOT RESULTING IN A JUDGMENT FOR POSSESSION - PUBLICATION FOR COMMENT

The Supreme Court invites written comments on a proposal to amend Rule 1:38-3 ("Court Records Excluded from Public Access") so as to remove from public access two categories of records in landlord/tenant matters: (1) those never generating a judgment for possession, or (2) those where a judgment for possession was subsequently dismissed. The proposal is submitted on the recommendation of the Supreme Court Advisory Committee on Public Access to Court Records. The proposed rule amendments are attached.

Background

The Court on June 5, 2020 issued a public statement recommitting the Judiciary to the elimination of barriers to equal justice, including for individuals historically and currently excluded from and disadvantaged by court processes. Building on that statement, the Court on July 16, 2020 issued an Action Plan for Equal Justice, which outlines a series of initiatives that the Judiciary will seek to accomplish within a year.

The Court included in its July 16, 2020 Action Plan the following action item:

> 8. Reexamining Access to Misused Court Records. The Supreme Court will prioritize ongoing efforts to amend Court Rule 1:38 ("Public Access to Court and Administrative Records") to exclude from public access records that as currently maintained create inappropriate hardships for disadvantaged populations (e.g., records of landlord/tenant complaint filings that do not note the outcome), while upholding the Judiciary's commitment to transparency.

Landlord/tenant actions have five possible outcomes: (1) withdrawal or dismissal; (2) default; (3) default judgment; (4) settlement; or (5) trial to judgment. In the case of default judgment, settlement, or trial in which the landlord prevails, the court enters a judgment for possession, which requires a finding that as a matter of law the landlord is entitled to regain possession of the premises. In the case of withdrawal, dismissal, or default, either a judgment for possession was never entered, or it was entered and subsequently dismissed.

It is a widespread practice for landlords to consult publicly available court records as part of the process for screening prospective tenants. Rather than performing individual public access searches, landlords instead may purchase records on a periodic basis from private vendors that obtain those records from the Judiciary in bulk. Up to this point, those bulk records have included landlord/tenant matters, regardless of outcome.

Those Records Proposed to be Excluded from Public Access

The proposed amendments would exclude from public access records of landlord/tenant actions that never generate a judgment for possession (e.g., where the landlord voluntarily dismissed the complaint, or the court dismissed the case after trial). The proposed amendments also would exclude from public access records where a judgment for possession was entered and then subsequently dismissed (e.g., because a tenant paid the rental arrearage within three business days after the eviction as permitted by N.J.S.A. 2A:42-10.16A or complied with the terms of a settlement agreement) or vacated on appeal.

Reclassifying landlord/tenant records that do not result in a judgment for possession as confidential (rather than public) would ensure that tenants who successfully defend against an eviction complaint are not subject to future penalty simply because an unsuccessful complaint was filed against them. Moreover, reclassifying as confidential (rather than public) landlord/tenant records where a judgment for possession was subsequently dismissed would ensure that tenants who successfully paid in full and / or reached mutually agreeable terms with their landlord would not be subject to future penalty.

Those Records That Would Still be Publicly Accessible

Records of landlord/tenant matters resulting in a judgment for possession (that is not subsequently dismissed or vacated) would remain public (rather than confidential) and thus available to landlords and others.

Application to Records in All Court Systems

The proposed amendments would not change the outcome of previously decided cases. The proposed amendments only would change access to records of all cases where no judgment for possession was recorded, or cases where a

judgment for possession was recorded, but the matter subsequently was dismissed. The proposed amendments would apply to all existing landlord/tenant records in the Judiciary's public databases or case files, including in the Automated Case Management System (ACMS) and files maintained in eCourts or on paper. Going forward, any bulk records requests would not include any records of landlord/tenant cases that did not or do not result in a judgment for possession or where such judgment was subsequently dismissed.

Please send any comments on the Committees' proposed rule amendments in writing by October 16, 2020 to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Amendments to Rule 1:38-3 – Records of Landlord/Tenant Matters Not Resulting in Judgment for Possession
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Comments may also be submitted by e-mail to: Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). Comments are subject to public disclosure upon receipt.

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: September 16, 2020

## Proposed Amendments to Rule 1:38-3(f)

Rule 1:38-3. Court Records Excluded from Public Access

The following court records are excluded from public access:

(a) – (e) … no change

(f) Records of Other Proceedings.

(1) – (9) … no change

(10) Certification of Confidential Information for Name Change forms and Final Judgment Addendum forms prepared in actions for change of name pursuant to N.J.S.A. 2A:52-1 and R. 4:72-1 et seq.;

(11) Records of any landlord/tenant matter that did not or does not result in a judgment for possession.

**Note:** New Rule 1:38-3 adopted July 16, 2009 to be effective September 1, 2009; subparagraph (b)(1) amended December 9, 2009 to be effective immediately; paragraphs (e) and (f) amended January 5, 2010 to be effective immediately; subparagraph (c)(11) amended, subparagraph (c)(12) adopted, and subparagraph (d)(10) amended February 16, 2010 to be effective immediately; subparagraph (d)(1) amended June 23, 2010 to be effective July 1, 2010; paragraph (e) amended October 26, 2010 to be effective immediately; paragraph (e) amended February 28, 2013 to be effective immediately; subparagraph (d)(12) amended July 9, 2013 to be effective September 1, 2013; subparagraphs (f)(2) and (f)(5) amended, and new subparagraph (f)(9) added December 9, 2014 to be effective immediately; subparagraph (d)(2) amended July 27, 2015 to be effective September 1, 2015; subparagraph (b)(1) amended May 30, 2017 to be effective immediately; paragraph (a) and subparagraphs (d)(1) and (d)(13) amended July 28, 2017 to be effective September 1, 2017, subparagraphs (c)(1), (d)(1), (d)(2), (d)(5), (d)(6), (d)(9), and (f)(6) amended May 15, 2018 to be effective immediately; new subparagraph (c)(13) adopted July 27, 2018 to be effective September 1, 2018; new subparagraph (c)(14) adopted and subparagraph (f)(5) amended September 12, 2018 to be effective immediately; new subparagraph (d)(18) adopted July 29, 2019 to be effective September 1, 2019; new subparagraph (f)(11) adopted _____ to be effective _____.