

## GENERAL OBLIGATIONS LAW § 5-905: CERTAIN PROVISIONS OF LEASES TO BE INOPERATIVE UNLESS EXPRESS NOTICE THEREOF IS GIVEN TO TENANT

---

**By: Douglas J. Mahr, Esq., Frederick J. Alfreds, 2L S.U. Law School,  
and Kelly Woytowich**

This series of articles is designed to uncover interesting and unique rights that are covered in New York's General Obligations Law. Our next subject will be Automatic Renewal Provisions of Leases, legislated for and contained in General Obligations Law §5-905.

There is a good chance you, or someone you know is renting, so it is important for both landlords and tenants to know about General Obligations Law §5-905, a statute often overlooked. Section 5-905 has been applied to leases in residential and commercial settings, and states that an automatic renewal clause in a lease is not operative unless the landlord, at least 15 days and not more than 30 days before the lease requires, gives written notice to the tenant, served personally or by registered or certified mail, calling the tenant's attention to the existence of that lease provision.

In 1943, the New York State Court of Appeals affirmed the purpose of the language in an earlier version of §5-905, holding that the statute was designed to afford tenants a measure of protection against automatic renewal clauses. *Boyd H. Wood Co. v. Horgan*, 291 N.Y. 422, 423 (1943). In *Horgan*, the landlord failed to notify the tenant of the automatic renewal clause and the landlord sued when the tenant vacated the premises. The Court of Appeals ruled in favor of the tenant, voiding the automatic renewal clause because of the landlord's failure to comply with the statute. In 1971, another Court explained that a landlord places himself in a precarious position if it does not give notice under this section pertaining to a renewal clause, and by failing to do so, the landlord may have to abide by what the tenant decides to do. See *Mobil Oil Corp. v. Lione*, 66 Misc.2d 599, 602 (Suffolk Cnty. 1971). Section 5-905 came up again in a Federal Court case in 2013. *The Stop & Shop Supermarket Company, LLC v. Goldsmith et al.*, 2013 U.S. Dist. LEXIS 90820 (S.D.N.Y. 2013). This Court applied §5-905 in a commercial lease, along with other legal principals, and as you can imagine, its consequences were significant to both parties.

Both landlords and tenants should be aware of General Obligations Law §5-905. Landlords need to be mindful to comply with it if they want the lease to be automatically extended, and tenants may be able to use it to get out of further obligation under a lease.

If you have any questions, please do not hesitate to contact Doug Mahr or the attorney in our firm with whom you typically work.

717664.1