

## Overview of New York State Article 78

Article 78 of the New York Civil Practice Law and Rules (CPLR) establishes a special legal proceeding that allows individuals or entities to challenge the actions or inactions of New York State and local government agencies, public bodies, or officers<sup>[1] [2] [3] [4] [5] [6] [7]</sup>. It effectively replaces the old common law writs of *mandamus*, *certiorari*, and *prohibition* with a streamlined judicial process<sup>[3] [5]</sup>.

## Purpose and Scope

Article 78 proceedings are used to seek judicial review of administrative decisions or compel or prohibit government action. Common scenarios include:

- Challenging the denial, revocation, or suspension of licenses or permits.
- Contesting decisions made by zoning boards, school boards, or other municipal bodies.
- Appealing disciplinary actions against public employees.
- Compelling a government agency to perform a duty required by law.
- Preventing a government agency from acting outside its legal authority<sup>[1] [4] [5] [7]</sup>.

## Grounds for an Article 78 Proceeding

According to CPLR §7803, four main questions can be raised in an Article 78 proceeding:

1. **Failure to Perform a Duty:** Whether the agency or officer failed to perform a duty required by law (*mandamus*).
2. **Acting Beyond Authority:** Whether the agency or officer acted without or in excess of its jurisdiction (*prohibition*).
3. **Arbitrary or Capricious Action:** Whether a determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion.
4. **Lack of Substantial Evidence:** Whether a determination made after a hearing was supported by substantial evidence (*certiorari*)<sup>[5] [7]</sup>.

## Procedure

- **Where Filed:** Article 78 proceedings are filed in the New York State Supreme Court in the county where the action arose<sup>[6]</sup>.
- **Who May File:** The person or entity challenging the agency action is called the *petitioner*; the agency or official is the *respondent*<sup>[6]</sup>.
- **Time Limit:** Proceedings must generally be commenced within four months (120 days) of the final agency determination<sup>[5] [6]</sup>.

- **Required Documents:**

- Verified Petition
- Notice of Petition or Order to Show Cause
- Request for Judicial Intervention (RJI)
- Optional: Affidavits, Memorandum of Law<sup>[6]</sup>

- **Process:** Article 78 proceedings are typically decided based on written submissions and oral arguments. Trials are rare, and discovery is limited<sup>[3]</sup>.

## Examples of Article 78 Proceedings

- A public employee challenging termination or disciplinary action.
- A business contesting the denial of a required license.
- A resident appealing a zoning board's decision.
- An individual seeking to compel a government agency to issue records under the Freedom of Information Law (FOIL)<sup>[4]</sup> <sup>[5]</sup>.

## Key Considerations

- **Exhaustion of Remedies:** Before filing, the petitioner must generally exhaust all available administrative remedies<sup>[5]</sup>.
- **Relief Available:** The court can order the agency to act, prohibit it from acting, annul its decision, or remand the matter for further proceedings<sup>[3]</sup> <sup>[5]</sup>.

## Summary Table: Article 78 at a Glance

Feature	Details
Purpose	Challenge or compel government agency action
Legal Basis	CPLR Article 78
Filing Deadline	4 months (120 days) from final agency action
Court	NY State Supreme Court (county where action arose)
Common Grounds	Failure to act, overstepping authority, arbitrary/capricious action, lack of evidence
Required Documents	Verified Petition, Notice of Petition/Order to Show Cause, RJI
Typical Relief	Annulment of decision, order to act, prohibition of action

Article 78 provides a crucial mechanism for holding New York State and local government agencies accountable, ensuring their decisions are lawful, reasonable, and supported by evidence<sup>[1]</sup> <sup>[4]</sup> <sup>[5]</sup> <sup>[6]</sup>.



1. <https://www.lawny.org/node/62/article-78-proceedings-how-appeal-agency-decision>
2. <https://www.nysenate.gov/legislation/laws/CVP/A78>

3. <https://askalawlibrarian.nycourts.gov/legalresearch/faq/274630>
4. <https://www.gibsondunn.com/wp-content/uploads/2023/01/WebcastSlides-Article-78-Challenges-to-Government-Action-in-New-York-Strategic-Considerations-and-Pitfalls-10-JAN-2023.pdf>
5. <https://www.laborlawfirm.org/practice-areas/article-78-proceedings/>
6. [https://www.nycourts.gov/LegacyPDFS/courts/5jd/onondaga/helpcenter/COMMENCE\\_AN\\_ARTICLE\\_78.pdf](https://www.nycourts.gov/LegacyPDFS/courts/5jd/onondaga/helpcenter/COMMENCE_AN_ARTICLE_78.pdf)
7. <https://www.newyorkappellatelawyer.com/article-78-proceedings>