

Dear Clients, Colleagues and Friends,

On June 30, 2020, Governor Cuomo signed into law the Tenant Safe Harbor Act, which creates new defenses that residential tenants may raise in court in summary nonpayment proceedings. While this new law does not affect a landlord's ability to commence a nonpayment proceeding, it places significant restrictions on a landlord's right to remove a non-paying tenant from possession. According to this new law, if a tenant can establish as a defense in a nonpayment proceeding that it has suffered a financial hardship during the period from March 7, 2020 until the governmental restrictions related to the COVID-19 are rescinded (the "Covered Period"), a landlord is only allowed to obtain a non-possessory money judgment for any unpaid rent that became due during that period.

The Court may consider the following factors in determining whether the tenant has suffered financial hardship:

- The tenant's income prior to the Covered Period;
- The tenant's income during the Covered Period;
- The tenant's liquid assets;
- The tenant's receipt of, and eligibility for, cash assistance, supplemental nutrition assistance programs, supplemental security income or unemployment insurance or benefits.

This new law does not address the question of whether a landlord may commence a proceeding for nonpayment of rent against either a residential or commercial tenant. That question has been dealt with by the Governor's Executive Orders and the Chief Administrative Judge's Administrative Orders, which, in sum, provide the following:

- 14 Day Rent Demands may be served on both residential and commercial tenants;
- Nonpayment proceedings may be initiated against residential tenants without restriction. (As noted above, a residential tenant may raise financial hardship as a defense).
- Nonpayment proceedings may be initiated against commercial tenants through August 20, 2020, ONLY if the tenant has not suffered financial hardship due to the pandemic.

Because of the above condition on commencing commercial nonpayment proceedings, we recommend that landlords make good faith efforts to ascertain whether the tenant is faced with financial hardship due to the pandemic. This may be done via telephone, email or some other method which the landlord believes will reach the tenant. Our firm is also attaching letters to rent demands seeking this information from the tenant.

There are still a lot of unknowns regarding the procedures in Housing Court.

- The Court has not advised when they will start scheduling cases involving pro-se tenants (the Court will schedule a virtual conference where a tenant is represented by counsel)
- The Court has not advised when it will begin entering default judgments.
- The Court has not advised when it will begin in person court appearances.

As soon as the Court provides this information, and as new laws, orders and directives are passed or issued, we will pass that information along to you. Please feel free to contact any one of our attorneys if you have any questions.

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