

COVID-19 EMERGENCY EVICTION AND FORECLOSURE PREVENTION ACT OF 2020

On December 28, 2020, the New York State Legislature passed, and the Governor signed into law, new legislation known as the “Covid-19 Emergency Eviction and Foreclosure Prevention Act of 2020,” imposing, among other things, additional restrictions on a landlord’s ability to commence and prosecute eviction proceedings against residential tenants. The following is a summary of this new law in regard to residential eviction proceedings:

1. **Pending Eviction Proceedings:**

- All eviction proceedings, nonpayment and holdover, pending as of December 28, 2020, and all such proceedings commenced within 30 days of December 28, 2020, are stayed for at least 60 days (the Chief Administrative Judge has the discretion to extend such stay).
- The court in each pending eviction case will issue an order directing such stay, and will mail the tenant a written form known as a “Hardship Declaration”, a copy of which is attached as Exhibit A, which must be in the tenant’s primary language and in 14-point type.
- If a tenant provides a Hardship Declaration to the landlord or the court, the pending eviction proceeding will be stayed until at least May 1, 2021.

2. **Pre-Eviction Notices:** Rent Demands, Notices of Petitions, Etc.

- Landlords must include the Hardship Declaration with every written Rent Demand and with any other written notice required by the lease or law, and with every notice of petition.
- The notice must include:
 - A mailing address, telephone number, and active email address the tenant can use to contact the landlord and return the Hardship Declaration; and
 - A list of all not-for-profit legal service providers actively handling housing matters in the county where the premises is located.

3. **Commencement of Eviction Proceedings:**

- Landlords may not commence a nonpayment or holdover eviction proceeding against a tenant who returns the Hardship Declaration until at least May 1, 2021.
- When a landlord does commence an eviction proceeding against a tenant who has not returned a Hardship Declaration, the landlord must file with the court, an affidavit attesting that:
 - At the time of filing, it has not received a Hardship Declaration from the tenant or any other occupant of the premises; or
 - Tenant or another occupant of the premises has returned a Hardship Declaration, but the tenant is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes substantial safety hazard to others, with a specific description of the behavior alleged.

- At the earliest possible opportunity, the court will seek confirmation from the tenant that they received the Hardship Declaration and that they have not submitted a Hardship Declaration to the landlord or the court.
 - If the court determines that the tenant has not received a Hardship Declaration:
 - The proceeding will be stayed for at least 10 business days and the court will provide a copy of the Hardship Declaration to the tenant.
4. **Default Judgments: Where tenant fails to answer the petition**
- To obtain a default judgment or enforce a warrant of eviction pursuant to a default judgment before May 1, 2021, a landlord must make a motion to schedule a hearing.
5. **Warrants of Eviction:**
- Execution on any warrant issued before December 28, 2020 will be stayed until the court has held a status conference with the parties.
 - In any eviction proceeding, if the tenant provides a Hardship Declaration to the landlord or the court prior to the execution of any warrant, execution of the warrant shall be stayed until at least May 1, 2021.
6. **Where a tenant is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others, the May 1, 2021 stay on evictions will not apply, provided:**
- If the eviction proceeding is pending on December 28, 2020, but landlord has not previously alleged that tenant persistently and unreasonably engaged in such behavior, the landlord shall be required to submit a new petition with such allegations.
 - The court will hold a hearing to determine if the tenant's behavior has persisted if a judgment against the tenant was awarded on the basis of objectionable or nuisance behavior prior to December 28, 2020.
 - If landlord fails to establish that the tenant persistently and unreasonably engaged in such behavior and tenant provides a Hardship Declaration to the landlord or court, the proceeding will be stayed until at least May 1, 2021.
 - If landlord establishes that the tenant persistently and unreasonably engaged in such behavior or tenant fails to provide a Hardship Declaration to the petitioner or the court, the proceeding may continue.
7. **Rebuttable Presumption:**
- A Hardship Declaration in which the tenant has selected the option indicating a financial hardship, shall create a rebuttable presumption that the tenant is experiencing financial hardship. What this means is that once such a Hardship Declaration is submitted, it will be considered true and if the landlord believes, for whatever reason, that the Hardship Declaration is not true, it will be the landlord's burden to demonstrate that to the court.

- Unfortunately, the law does not provide for any particular procedure as to how a landlord may demonstrate that the tenant's Hardship Declaration is not accurate. We expect the court to issue rules or directives about this issue in the coming days and weeks.

We hope this summary is helpful and gives you a clearer picture of how residential eviction proceedings will be conducted for at least the next four months. As you know, our attorneys are always available to answer any questions you may have or help you navigate through these unprecedented times.

EXHIBIT A



NOTICE TO TENANT:

If you have lost income or had increased costs during the COVID-19 pandemic, or moving would pose a significant health risk for you or a member of your household due to an increased risk for severe illness or death from COVID-19 due to an underlying medical condition, and you sign and deliver this hardship declaration form to your landlord, you cannot be evicted until at least May 1, 2021 for nonpayment of rent or for holding over after the expiration of your lease. You may still be evicted for violating your lease by persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

If your landlord has provided you with this form, your landlord must also provide you with a mailing address and e-mail address to which you can return this form. If your landlord has already started an eviction proceeding against you, you can return this form to either your landlord, the court, or both at any time. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid rent to your landlord. You should also keep careful track of what you have paid and any amount you still owe.

For more information about legal resources that may be available to you, go to www.nycourts.gov/evictions/nyc/ or call 718-557-1379 if you live in New York City or go to www.nycourts.gov/evictions/outside-nyc/ or call a local bar association or legal services provider if you live outside of New York City. Rent relief may be available to you, and you should contact your local housing assistance office.

TENANT’S DECLARATION OF HARDSHIP DURING THE COVID-19 PANDEMIC

I am a tenant, lawful occupant, or other person responsible for paying rent, use and occupancy, or any other financial obligation under a lease or tenancy agreement at (address of dwelling unit).

YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY SELECTING OPTION “A” OR “B”, OR BOTH.

- A. I am experiencing financial hardship, and I am unable to pay my rent or other financial obligations under the lease in full or obtain alternative suitable permanent housing because of one or more of the following:
1. Significant loss of household income during the COVID-19 pandemic.
 2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
 3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
 4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.
 5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.

To the extent that I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.

- B. Vacating the premises and moving into new permanent housing would pose a significant health risk because I or one or more members of my household have an increased risk for severe illness or death from COVID-19 due to being over the age of sixty-five, having a disability or having an underlying medical condition, which may include but is not limited to being immunocompromised.

I understand that I must comply with all other lawful terms under my tenancy, lease agreement or similar contract. I further understand that lawful fees, penalties or interest for not having paid rent in full or met other financial obligations as required by my tenancy, lease agreement or similar contract may still be charged or collected and may result in a monetary judgment against me. I further understand that my landlord may be able to seek eviction after May 1, 2021, and that the law may provide certain protections at that time that are separate from those available through this declaration.

Signed: _____

Printed name: _____

Date signed: _____

NOTICE: You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false.