

COVID-19 EMERGENCY RENTAL ASSISTANCE PROGRAM OF 2021

On April 7, 2021, the New York State Legislature passed the 2021-2022 State Budget, which among other things, enacted the COVID-19 Emergency Rental Assistance Program of 2021 (the “Program”), setting aside more than \$2 billion in Federal and State rent relief. The following is a brief summary of the Program, as outlined within the State Budget:

I. Eligibility Requirements

- Tenants and occupants are eligible, regardless of their immigration status, if:
 1. They pay rent in an apartment, home or mobile home;
 2. They qualify for unemployment, have experienced a reduction in household income, or have incurred significant costs or other financial hardship due to COVID-19;
 3. They are at risk of homelessness or housing instability; and
 4. They have a household income at or below 80% of the area median income, adjusted for household size.

- For the initial 30 days of the Program, households which meet any of the following criteria will be given the highest priority in processing application and allocating funds:
 1. Whose income does not exceed 50% of the area median income adjusted for household size;
 2. Have one or more individuals who are unemployed as of the date of the application for assistance and have not been employed for the 90 days preceding such date;
 3. Have pending eviction cases
 4. Are located in communities disproportionately impacted by the COVID-19 pandemic
 5. Reside in a building or development with 20 or fewer units owned by a small landlord
 6. Include victims of domestic violence, survivors of human trafficking, or veterans

II. Application Process

- Applications will be made available online on the NYS Office of Temporary and Disability Assistance’s (“OTDA”) website in languages that are commonly used within the State.
- Tenants will be allowed to self-attest to their eligibility, although it is unclear as to what will be deemed permissible at this time.
- Landlords may initiate applications on behalf of tenants but are not mandated to participate in the Program.
- For applications initiated by tenants, OTDA will make reasonable efforts to obtain the cooperation of landlords to accept payments. OTDA’s efforts will be deemed complete if:
 1. A request for the landlord’s participation has been sent by mail and a response has not been received from the landlord within 14 days; or
 2. At least 3 attempts via phone, text or e-mail have been made over a 10 calendar day period to request participation; or
 3. The landlord confirms in writing to OTDA that they do not wish to participate in the Program.

III. Payments

- Payments made under the Program can cover up to 12 months of rent arrears accrued on or after March 13, 2020, with an additional 3 months available for tenants in rent-burdened households (i.e., tenants who dedicate 30% or more of their monthly income toward rent).
- Payments will be made directly to landlords by the OTDA.
- By accepting payments for rent or rental arrears, landlords will be agreeing:
 1. That the arrears covered by the payment are satisfied and cannot be used as the basis for a non-payment eviction;
 2. To waive any late fees due on the arrears paid by the Program;
 3. To not increase the monthly rent for 1 year after the first payment is received under the Program;
 4. To not commence holdover proceedings for an expired lease (as set forth below); and
 5. To notify tenants of such protections.

IV. Impact of Program on Eviction Proceedings

- **Commencing New Proceedings:**

1. While Tenant's Application to the Program is Pending: Landlords may not commence holdover or non-payment proceedings against tenants who have applied for the Program until the tenants are deemed ineligible for the Program.
 - **Note:** it is unclear as to whether holdover proceedings based on nuisance are also included.
2. After Accepting Payments: Landlords who accept payments are barred from commencing holdover proceedings based on expired leases, except for landlords who have properties with 4 or fewer units and intend to occupy the unit personally, or for the use of an immediate family member.
 - **Note:** it is unclear as to whether holdover proceedings based on nuisance are also included.
3. After Refusing Payments: If a landlord refuses to accept payments from a tenant within 12 months of the tenant being deemed eligible for the Program by the OTDA, the landlord will be deemed to have waived the unpaid rent and cannot pursue a monetary action or judgment.
 - **Note:** Tenants will be allowed to assert a landlord's lack of cooperation with the Program as an affirmative defense in a non-payment proceeding for the period that would have otherwise been covered by payments from the Program.

- **Pending Proceedings:**

- Any pending proceedings will be stayed against tenants who apply for the Program and the courts will provide notice to tenants regarding how tenants may apply for the Program.
- Any payments received by a landlord will create a presumption that the tenant's rent has been fully satisfied for the time period covered by the payment.

Should you have any questions or need assistance, please contact us:

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