

Evictions During the Pandemic

Community Legal Education Presentation

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*This portion of the
training presented by:*

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Evictions During the Pandemic

- 1. **General Review of Eviction Proceedings**
 - Types of Evictions: Nonpayment and Holdover
 - Process: Commencement, pending, enforcement
- 2. **Housing Stability and Tenant Protection Act of 2019 (HSTPA) Review**
- 3. **The COVID-19 Eviction Moratorium:**
 - Executive Orders: Stays on Enforcement in Evictions, 202.8, 202.28
 - Administrative Orders: No new filings until further notice, unless essential.
 - CARES Act: Applies to subsidized housing
 - New York’s “Tenant Safe Harbor Act”



Types of Evictions: Nonpayment and Holdover

Non Payment	Holdover		
	Termination of a Month-to-Month Tenancy	Termination at the end of a Lease	Termination for Violation of the Lease
Notice to Pay or Quit (14 Days)	Notice of Termination (30/60/90)	Notice of Non-Renewal (30/60/90)	Notice of Termination (Possible Notice to Cure)
Notice of Petition and Petition	Notice of Petition and Petition	Notice of Petition and Petition	Notice of Petition and Petition
Court	Court	Court	Court
(Adjournment)	(Adjournment)	(Adjournment)	(Adjournment)
Hearing/Trial	Hearing/Trial	Hearing/Trial	Hearing/Trial
Warrant (14 Days)	Warrant (14 Days)	Warrant (14 Days)	Warrant (14 Days) (30 Day stay possible.)

Nonpayment Cases

	Non Payment	
	Notice to Pay or Quit (14 Days)	Notice provides 14 Days to Pay Rent Due or Quit the Premises – But tenants do not have to leave.
	Notice of Petition and Petition	Must be served 10-17 days before Court.
	Court	Judge reviews paperwork and decides preliminary matters.
	(Adjournment)	Must be requested. Judge must grant this when there is a triable issue of fact or law.
	Hearing/Trial	Judge hears testimony. Evidence is presented. The Judge generally makes a decision on that date.
	Warrant served. (14 Days)	Issued by the Court, provided to landlord, then served by a Marshal from the County Sheriff.
	Execution of Warrant	Marshal from Sheriff's Office returns and tenants must vacate the premises.

Nonpayment Cases

Status	Non Payment	
	Notice to Pay or Quit (14 Days)	Notice provides 14 Days to Pay Rent Due or Quit the Premises – But tenants do not have to leave.
Commencement (Filed and Served)	Notice of Petition and Petition	Must be served 10-17 days before Court.
Pending.	Court	Judge reviews paperwork and decides preliminary matters.
Pending.	(Adjournment)	Must be requested. Judge must grant this when there is a triable issue of fact or law.
Matter Decided.	Hearing/Trial	Judge hears testimony. Evidence is presented. The Judge generally makes a decision on that date.
Enforcement.	Warrant served. (14 Days)	Issued by the Court, provided to landlord, then served by a Marshal from the County Sheriff.
Enforcement.	Execution of Warrant	Marshal from Sheriff's Office returns and tenants must vacate the premises.

Nonpayment Cases: HSTPA Changes

	Non Payment	Former Timelines	HSTPA (now)
	Notice to Pay or Quit (14 Days)	3 Days	14 Days
	Notice of Petition and Petition	5 to 12 Days	10 to 17 Days
	Court		
	(Adjournment)	Not Mandatory.	Mandatory when triable issue exists when requested. 14 Days.
	Hearing/Trial		
	Warrant (14 Days)	72 Hours Notice	14 Days
	Execution of Warrant		

Types of Evictions: Holdover

Holdover		
Termination of a Month-to-Month Tenancy	Termination at the end of a Lease	Termination for Violation of the Lease
Notice of Termination (30/60/90)	Notice of Non-Renewal (30/60/90)	Notice of Termination (Possible Notice to Cure)
Notice of Petition and Petition	Notice of Petition and Petition	Notice of Petition and Petition
Court	Court	Court
(Adjournment)	(Adjournment)	(Adjournment)
Hearing/Trial	Hearing/Trial	Hearing/Trial
Warrant (14 Days) Warrant Executed.	Warrant (14 Days) Warrant Executed.	Warrant (14 Days) (30 Day stay possible.)

Notice Period Required to Terminate a Month-to-Month Tenancy and Non-Renew a Lease (RPL 226-c)

- A Landlord must provide written notice if they intend to raise rent by 5% or more, if they intend not to renew a tenancy or if they are terminating a month-to-month tenancy:
 - 30 Days Notice - When a tenant has occupied the rental property for less than one year.
 - 60 Days Notice - When a tenant has occupied the rental property for one year or more, but less than 2 years, OR has a one-year lease.
 - 90 Days Notice - When a tenant had occupied the rental property for more than two years.

Notice Period Required to Terminate a Month-to-Month Tenancy and Non-Renew a Lease

- The 30/60/90 rule does NOT apply to:
 - Non-Payment Cases
 - Violation Cases
- A tenant may terminate a month-to-month tenancy by giving at least one month's notice.

Holdover: Violation of Lease

Termination for Violation of the Lease	
Notice of Termination (Possible Notice to Cure)	A “Notice to Cure” is not required in private tenancies, but may be in subsidized housing. Instead, Notice of Termination may state “You have violated your lease, you must vacate by a specified date.”
Notice of Petition and Petition	The Petition alleges the facts that constitute the violation and the lease term violated.
Court	Judge reviews Petition & decides preliminary matters.
(Adjournment)	Must be requested. Granted when there is a triable issue of fact or law.
Hearing/Trial	Judge hears testimony. Evidence is presented. The Judge generally makes a decision on that date.
Warrant (14 Days)	Issued by the Court, served by the County Sheriff. (30 Day stay possible.)
Warrant Executed.	Marshal from Sheriff’s Office returns and tenants must vacate the premises.

RPAPL § 753(4) Provides a 30 Day Stay

- In an eviction proceeding based on a lease violation:
- The warrant of eviction shall be stayed for 30 days to allow the tenant to cure the violation;
- Based on the wording, “that a warrant of eviction shall be stayed” this could only be provided after a hearing and judge’s decision that there was in fact a violation;
- Should be requested because it may not be automatically granted.

Housing Security and Tenant Protection Act of 2019 (HSTPA)

- The HSTPA was passed in 2019 and became effective in steps between June and October of last year.
- It contains stronger protections for tenants statewide than we have had in the past.
- It may be some time before members of the community, tenants and landlords alike, become familiar with these new rules.

Housing Security and Tenant Protection Act of 2019 (HSTPA)

The HSTPA made many changes to the housing laws affecting renters.

- A tenant in a non-payment eviction proceeding may pay the full amount of rent due anytime before the court date. RPAPL § 731
- Even after the warrant is issued and/or executed the court can vacate the warrant of eviction when the full amount of rent is tendered or deposited with the court before the tenant is locked out. RPAPL § 749
- A landlord is not allowed to collect fees in a non-payment eviction proceeding, regardless of whether they are considered “added rent.” RPAPL § 702
- A landlord is not allowed to collect attorney’s fees on a default judgment (when the tenant does not appear in court). RPL § 234
- Late fees are limited to \$50 or 5% of rent, whichever is less. This late fee cannot be charged until rent is 5 days late. RPL § 238-a

Housing Security and Tenant Protection Act of 2019 (HSTPA)

- Landlords are limited to asking for a security deposit in the amount of one month's rent.
- The new laws require that landlord return a security deposit within 14 days or provide notice in writing of their justification for keeping any or all of it. If a landlord fails to do so within 14 days, the landlord **forfeits their right to retain any portion of the deposit.**
- Walk-throughs, to assess existing damage, with the landlord or their agent before renting and before termination of a tenancy must be provided upon proper request. GOL § 7-108
- A tenant who is evicted and is not able to find other suitable similar housing in the same area may ask for a stay on the warrant of eviction. This requires a finding of extreme hardship, reasonable efforts to find alternate housing and a deposit of an amount determined by the court which could include past due rent and future periodic rent payments. This is up to the judge to grant or not. RPAPL § 753

Housing Security and Tenant Protection Act of 2019 (HSTPA)

- The unlawful eviction of a tenant (without a valid court order) by a landlord or their agent is now a Class A misdemeanor which could result in civil penalties of between \$1,000 to \$10,000 per violation.
RPAPL § 768
- This includes utility shut-offs, changing the locks or removing a tenant's belongings from the rented premises.
- This may have critical application during the pandemic, during which landlords are unable to file evictions, and an unlawful lockout may result in an increased risk of exposure to the locked out tenants.

This letter from the NYS Attorney General to Law Enforcement provides guidance on how the new unlawful lockout laws should be applied.



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
HOUSING PROTECTION UNIT

To: New York State Law Enforcement Departments

From: New York State Office of the Attorney General

Date: May 4, 2020

Re: Unlawful Evictions under RPAPL § 768

UNLAWFUL EVICTIONS (RPAPL § 768)

New York's Housing Stability and Tenant Protection Act of 2019 created new protections for tenants, including a new provision that makes it a Class A misdemeanor for a person to either evict an occupant from their home without a court order, or to fail to restore an occupant who was evicted without court order. (RPAPL § 768)

Unlawful evictions are now **criminal** matters and law enforcement should play an active role in enforcing the law.

This memorandum is intended to provide guidance to law enforcement departments throughout New York State in handling claims that someone has been illegally removed from their home. Ultimately, the goal of any intervention by law enforcement should be to have the person returned to their home, if legally warranted. Swift action on the part of law enforcement will help ensure that people are not removed from their homes without due process.

The COVID-19 Eviction Moratorium:

Primary Sources of Authority

- Executive Orders: (From the Governor)
Stays on Evictions, 202.8, 202.28, 202.48
- Administrative Orders: (From Courts)
No new filings until further notice, unless essential.
- CARES Act (Federal Legislation) Applies to most subsidized housing & properties backed by fed. funds
- New York's "Tenant Safe Harbor Act" (State Law)

Executive Orders: (From the Governor)

- On March 7th, the Governor issued Executive Order (EO) 202 declaring a state disaster emergency.
- On March 20th, he issued EO 202.8 which stated:
- "There shall be **no enforcement** of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days."
- [Emphasis added.] This would end on June 18, but in some references it is adopted as June 20.
- Then on May 7th he issued EO 202.28 which further adjourned out a specific subset of eviction cases for another sixty days, beginning on June 20th until August 20th:
- "There shall be **no initiation** of a proceeding or enforcement of either an eviction of any residential or commercial tenant, **for nonpayment of rent** or a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, owned or rented by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020." [Emphasis added.]

Executive Orders: (From the Governor)

- **Executive Order 202.48, 7/6/2020:**
- Continues the prohibition on initiating or enforcing an eviction for non-payment of rent for commercial tenants only, through 8/5/2020.
- States that prohibition on initiating or enforcing eviction for non-payment of rent for residential tenants has been superseded by the Tenant Safe Harbor Act.

Administrative Orders: (From the NYS Court System)

- The Chief Administrative Judge of New York State, Lawrence K. Marks, in his March 13 and 15 Administrative Memos stayed and precluded further commencement of new evictions by postponing all nonessential functions of the courts **"until further notice."**
 - "Consistent with our directive of March 13, no other criminal or civil trials shall commence until further notice."
 - "Effective Monday, March 16, all eviction proceedings and pending eviction orders shall be suspended statewide until further notice."
- The Chief Administrative Judge Marks, in his March 22 Administrative Order (AO/78/20) stated that:
 - "...no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters..." Evictions were not listed as essential matters.
 - The list of essential matters did include: "Applications addressing landlord lockouts (including reductions in essential services)."

Administrative Orders: (From the NYS Court System)

- On April 15, 2020, Judge Felix Catena, Administrative Judge for the 4th Judicial District, which includes Saratoga, Warren and Washington Counties, sent out Administrative Order **(AO) 4JD-030-2020** stating that:
 - "eviction proceedings will remain stayed until June 20, 2020."
 - Continues the policy that no default judgments based on non-appearance shall be granted.
- On May 27, 2020 Judge Catena issued **AO 4JD-044-2020** which:
 - "ORDERED that the following will apply to the Fourth District's Town and Village Courts ... eviction proceedings are stayed until August 20, 2020, as provided in Executive Order 202.28."
 - This Order references evictions in City Courts, in a paragraph about cases to be reviewed by an assigned judge for next steps, and specifically excludes eviction proceedings from this process. This seems to imply that they are being excluded because they are not going to be heard at all at this time. But it doesn't state anything specific to that effect.

Administrative Orders: (From the NYS Court System)

- **Administrative Order AO/127/20 (Effective June 20, 2020)**
- Petitions in eviction proceedings whether brought on non-payment grounds or other grounds, shall require the inclusion of an attorney affirmation or petitioner's affidavit if not represented.
- These sworn statements must state that the petitioner or petitioner's attorney is aware of the various state and federal orders pertaining to evictions and that to the best of their knowledge the petition and other papers filed comport with the requirements of those state and federal directives.

- **Administrative Order AO/143/20 (Effective 7/7/2020)**
- Lifted the requirement that the petitioner or petitioner's attorney submit an affidavit/affirmation stating that the petition complies with all authorities regarding eviction proceedings. So this requirement now only applies to petitions filed between 6/20/2020 and 7/7/2020.

The Federal CARES Act

- Section 4024 of the CARES Act imposes a temporary moratorium on evictions, as well as a moratorium on fees and penalties related to nonpayment of rent in subsidized housing for 120 days starting on March 27, 2020 and ending on July 24th.
- Any rent missed during the moratorium will accumulate and still be due at the end of the 120 days. The family must repay the PHA or sign a repayment agreement to pay any amount owed after the moratorium has ended. If they do not, the PHA may terminate the family's assistance and proceed with a legal action to evict.
- This does not prevent the filing of holdover evictions based on such issues as lease violations.
- The temporary eviction moratorium applies to the Public Housing Program, the Section 8 HCV and PBV Programs, and the Section 8 Moderate Rehabilitation (Mod Rehab) Programs administered by the Office of Public and Indian Housing, among others.

The Federal CARES Act

- A Public Housing Authority (PHA) may send a reminder notice of the late rent. However, the reminder notice must not include fees/charges for the nonpayment of rent, and the reminder notice cannot be a notice to vacate. After the moratorium expires, the PHA can proceed with their standard process.
- Residents cannot be required to vacate for at least 30 days after the end of the moratorium, and the PHA cannot issue a notice to vacate until July 24, 2020 (expiration of the moratorium).
- PHA's can still proceed with evictions initiated before March 27, 2020, as the state courts allow.
- PHA's cannot terminate a voucher participant family's assistance based on nonpayment of rent.

NY Tenant Safe Harbor Act

- Effective 6/30/2020.
- Courts are prohibited from issuing a warrant of eviction or judgment of possession for non-payment of rent accruing during the Covered COVID-19 period starting on 3/7/2020 through the end of restrictions put in place by current and future executive orders.
- So... until when?
- “...until the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in [past Executive Orders] and as further extended by any future Executive Order, issued in response to the COVID-19 pandemic continue to apply in the county of the tenant's or lawful occupant's residence.”

NY Tenant Safe Harbor Act

- However, courts can issue money judgments for rent accruing during this period.
- Tenant can raise a “financial hardship during the covered COVID-19 period as a defense” in an article 7 summary proceeding.
- The TSHA includes a non-exhaustive list of factors in considering “financial hardship,” such as tenant’s lawful income prior to and during the covered period and eligibility under state benefit programs.

The COVID-19 Eviction Moratorium:

So what does all of this mean?



The COVID-19 Eviction Moratorium:

- **So what can we expect moving forward?**

- We are likely to start seeing eviction petitions served on tenants very soon.
- Petitions may be filed now in holdover matters and some nonpayment cases.
- It's likely we won't see eviction appearances scheduled in Courts until after August 20.
- Courts may presently be sending out notices offering to schedule voluntary settlement conferences. But be aware the notices may not make it clear that they are voluntary.

The COVID-19 Eviction Moratorium:

• **So what can we expect moving forward?**

- Based on the Tenant Safe Harbor Act: Courts are prohibited from issuing a warrant of eviction or judgment of possession for non-payment of rent accruing during the covered COVID-19 period starting on 3/7/2020 through the end of restrictions put in place by current and future executive orders.
- However, we may see cases filed anyway based on nonpayment either during this covered COVID period or for nonpayment going back before 3/7/20. The courts may issue money judgments for covered periods, without warrants of eviction, or if the nonpayment relates back to before the covered period the courts may begin to issue warrants of eviction.
- Based on Section 4024 of the CARES Act, tenants in subsidized housing (and other covered properties backed by federal funds) cannot be served a Notice to Vacate for nonpayment until after July 24, 2020; residents cannot be required to vacate for at least 30 days after that date; so evictions from subsidized housing for nonpayment cannot be filed before August 24, 2020.
- There is no clear order preventing holdover proceedings from being filed, proceeding, or being enforced.

Conclusion

Thank you for attending!
And for your commitment to helping those in need!

Please do not hesitate to contact us with questions.

Stay healthy and safe!

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