



EQUAL JUSTICE FOR ALL

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WHAT WE KNOW ABOUT EVICTIONS IN NEW YORK STATE

New information continues to come in about how the eviction process is unfolding in New York State and in Buffalo. The following is based on information from the CDC, the Attorney General, the Governor’s Office, and the NYS Office of Court Administration, and is effective September 4, 2020.

Effective September 4, 2020: Courts in New York State are NOT hearing new eviction cases, except for emergencies. If you have not been able to pay your rent because of COVID, your landlord should not be able to evict you for the back rent. Your landlord may still be able to evict you for lease violations. If you get court papers, call Neighborhood Legal Services immediately at (716) 847-0650.

NEW: Effective September 4, 2020

- The Center for Disease Control (CDC) issued a federal moratorium or ban on residential evictions. This ban is effective from **September 4, 2020** through **December 31, 2020**. Tenants must give a written statement to their landlord listing their hardships. For the specific requirements regarding these hardships, please see items 1-5 below.

This is only a temporary ban on evictions. The federal moratorium does NOT say that tenants do not have to pay rent. Tenants should pay their rent if they can. If a tenant is causing a health or safety threat to other tenants or to a building or apartment where they live, the ban does not protect them.

- Landlords are not allowed to evict any “covered person” from their home where the federal ban applies.
 - “Covered person” includes any tenant, lessee, or resident who gives the required written statement to their landlord or other person(s) with a legal right to bring an eviction. This written statement is called a “declaration”.
 - The declaration is a written statement that the tenant and all affected household members meet the 5 listed requirements below:
 1. The tenant has tried to get all available government assistance for rent;
 2. The tenant meets the following income requirements:
 - a. The tenant doesn’t expect to earn \$99,000.00 or more in 2020 (or \$198,000.00 if the tenant is filing their taxes jointly); or
 - b. The tenant and their family did not have to report any income to the IRS in 2019. In other words, the tenant did not pay federal income tax last year; or
 - c. The tenant received a stimulus check under the federal CARES Act.
 3. The tenant and their family can’t pay the full rent because of:
 - a. A substantial loss in income because their hours at work were cut or because they lost their job; or

- b. An extraordinary out-of-pocket medical expense.
 - 4. The tenant has made best efforts to try to make some payment to the landlord. This is based on what the tenant can afford; and
 - 5. If the tenant and their family are evicted, there would be a likelihood that they would have to live with family or friends, or be homeless.
- **This Order is only a temporary ban on eviction:**
 - a. Tenants still have to pay rent, make housing payments, and/or comply with the terms of their lease.
 - b. The federal ban allows a landlord to charge fees, penalties, or interest when a tenant cannot pay the rent.

NEW: Effective August 13, 2020:

- Eviction cases started before March 17, 2020 may be called back to court. This means that **if you had a court case scheduled before March 17, you may get a letter from the court telling you about your new court date.**
- Before the case goes on, any cases that were started before March 17th have to have a status conference. This includes cases where the landlord got a warrant of eviction, but the tenant was not evicted.
 - At the conference, the court and parties will discuss COVID-19 concerns as well as whether the tenant is protected under the New York Tenant Safe Harbor Act (see below).
 - **If you were served with a warrant of eviction, you will have another court date before you are put out.**
- No residential eviction can take place before **October 1, 2020** at earliest.
 - If you were facing an eviction before March 17, 2020 and later suffered financial hardship due to COVID-19, you may be able to use this as a defense. However, there is no guarantee that this will stop an eviction.
 - If you were facing an eviction before March 17, 2020 and did not suffer financial hardship due to COVID-19, the court must still hold a status conference before you can be put out. If you do not attend the status conference, you could be put out as early as October 1, 2020.

WHAT WE KNOW:

- The Tenant Safe Harbor Act allows courts to give landlords a money judgment for rent that came due during COVID-19, but does not allow for a warrant of eviction.
 - The covered period begins March 7th and goes on indefinitely.
 - Tenants may raise a financial hardship as a defense, and the court will examine several factors.
 - Some of those factors include the tenant's income prior to the covered period; the tenant's current income; the tenant's liquid assets (like cash on hand); and whether the tenant qualifies for or receives benefits like PA, TANF, SNAP, SSI, SSD, unemployment, and other Federal and state benefits.

- **If a tenant has a defense under the Tenant Safe Harbor Act, the landlord might get a money judgment against the tenant, but the tenant cannot be ordered to vacate the unit until the covered period ends.**

WHAT'S STILL DEVELOPING:

- Court cases filed before COVID: I had a court case prior to these moratoriums. When will I have to go to court?
 - **Cases filed pre-COVID may now be called back to court. You may receive a letter notifying you of your new court date.**
 - Some courts may hold in-person hearings and others may schedule virtual hearings. This is a court-by-court decision.
 - Social distancing requirements may result in some courts hearing fewer cases each day.
- COVID defenses: Will tenants be able to raise COVID-19-related financial hardship defenses in eviction cases that are not about the nonpayment of rent?
 - **The Tenant Safe Harbor Act covers eviction actions for nonpayment of rent but likely does not cover eviction actions for other reasons.**
 - Tenants may raise COVID-19 defenses in a holdover proceeding, but there is no guarantee that the defenses will prevent eviction.

If you receive a notice with a court date, and you do not have an attorney, call (716) 847-0650.

For more information, go to <https://ag.ny.gov/coronavirus#tenantrights>.