

## Advocate's View: Navigating the status of evictions in New York State

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As a result of the pandemic, New York protected both commercial and residential tenants from eviction. Eviction proceedings have been paused and modified for nearly six months because of Executive Orders, legislation, and judicial Administrative Orders.

This article summarizes the background of New York's eviction moratorium and the status of eviction proceedings while highlighting considerations for landlords and tenants moving forward.

### **Executive Orders Suspending Eviction Proceedings**

In response to COVID-19, on March 20, 2020, Gov. Cuomo issued Executive Order 202.8, which stated: "[t]here shall be no enforcement of ... an eviction of any tenant residential or commercial ... for a period of ninety days."

On May 7, 2020, the governor extended this period by Executive Order 202.28, which provided "there shall be no initiation of a proceeding or enforcement of ... an eviction of any residential or commercial tenant, for nonpayment of rent ... 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."



After the issuance of Executive Order 202.28, residential landlords unsuccessfully filed a lawsuit challenging its constitutionality. The court granted summary judgment to Cuomo and dismissed the lawsuit, finding the Executive Order did not violate the Contracts Clause and did not constitute a physical or regulatory taking. *See Elmsford Apartment Assocs., LLC v. Cuomo*, 2020 WL 3498456 (S.D.N.Y. June 29, 2020).

The Executive Orders do not relieve tenants of their lease obligations. Tenants cannot be evicted but remain responsible for rent due. The court in *Elmsford Apartment* recognized this distinction, noting that Executive Order 202.28 did not suspend “the landlords’ right to initiate a common law breach of contract action in the New York State Supreme Court to redress a tenant’s failure to perform its payment obligations under his or her lease[.]” *Id.* at \*4. But the Court acknowledged that landlords do not “usually” bring traditional breach of contract actions to enforce their rights in this context. *Id.*

On July 6, 2020, Cuomo issued Executive Order 202.48, continuing the eviction moratorium as it applies to commercial tenants only and clarifying that the prior restrictions on residential evictions were superseded by the Tenant Safe Harbor Act, discussed below.

The commercial eviction moratorium has since been extended to September 20, 2020.

### **The Tenant Safe Harbor Act**

On June 30, 2020, Cuomo signed the Tenant Safe Harbor Act (“TSHA”) into law. TSHA, which applies only to residential evictions, prohibits courts from issuing warrants of eviction dispossessing tenants for non-payment of rent if the non-paying tenant suffered a financial hardship during the covered period, beginning March 7, 2020. TSHA authorizes tenants to raise financial hardship as a defense to summary eviction proceedings. To determine the applicability of the defense, TSHA instructs courts to consider, among other factors, the tenant’s income prior to and

during the covered period, the tenant's liquid assets, and the tenant's eligibility for various government assistance programs.

Like the Executive Orders, TSHA does not relieve a tenant's monetary obligations under a lease, and it specifically states that it does not prohibit courts from awarding judgments for rent owed to a landlord who prevails in a summary proceeding.

### **Court Procedures**

Faced with the challenges of phased reopening, the New York State Unified Court System has adopted procedures for handling eviction matters. In addition to phasing in new eviction matters, courts must process those cases filed before the initial restrictions were issued in March.

On August 12, 2020, Chief Administrative Judge Marks issued a memorandum and accompanying Administrative Order (AO/160/20) updating the status of eviction proceedings in New York Courts. Under this Order, both commercial and residential eviction proceedings commenced after March 16, 2020 remain suspended.

For residential matters commenced before March 17, courts must initiate conferences to "review any special relief under state or federal law to which the parties may be entitled in light of the pandemic." AO/160/20. If, following the conference, the court determines the matter can proceed, the eviction cannot be scheduled before October 1.

Commercial matters commenced before March 17 may proceed, subject to the continuing Executive Orders.

Locally, the Administrative Judge of the Seventh Judicial District, which includes Monroe County, adopted the protocols described in AO/160/20.

### **Considerations for Landlords and Tenants**

Tenants must be aware that while the governor and Legislature have implemented protections against eviction, they remain liable for their monetary obligations under leases.

Landlords should consider that summary eviction proceedings, which were implemented to provide efficient relief for landlords seeking to recover possession of property, remain restricted. Landlords may wish to consider different options to enforce their rights such as traditional common law actions or engaging in alternative dispute resolution with their tenants.

The status of eviction proceedings in New York State continues to evolve. It is important for both landlords and tenants to monitor these changes to protect their interests moving forward.

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