

New York: The Eviction Moratorium, New Eviction Cases and Pre-COVID Lawsuits

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There have been a series of executive orders, court directives, and legislative changes. What does it all mean for evictions, new case filings, court closures and pre-COVID cases? Here is a breakdown!

EVICTON MORATORIUM: Prohibits Tenants from being Physically Evicted from their Homes

CURRENTLY THERE ARE LIMITED PROTECTIONS AGAINST EVICTIONS. THERE IS NO FULL EVICTION MORATORIUM TO PROTECT ALL TENANTS IN NY FROM EVICTIONS.

HERE IS WHAT WE DO HAVE:

- Under the Safe Harbor Act (aka the Tenant Debt Collection Act), tenants can raise COVID-19 financial hardship as a defense in court. For tenants who are sued for rent owed between March 7, 2020 until we enter stage 4 of the reopening (will vary county by county), if the court decides the tenant proved their financial hardship, the landlord would not be able to evict but can win a money judgement.
 - ◇ Tenants who owe rent from **before March 7, 2020** or after Phase 4 begins are **not** protected from eviction by the original Safe Harbor Act.
- On September 29th Governor Cuomo issued an Executive Order to expand the Safe Harbor Act to cover tenants who had non-payment cases or warrants from before March 7, 2020:
 - ◇ Tenants who can show the court that they suffered COVID-19 financial hardship during the pandemic will be protected from eviction until January 1, 2021.
 - ◇ Tenants who are in holdover cases should also argue that this Executive Order protects them from eviction - the language of the Executive Order is not clear, so it is good to make this argument and some tenants have been successful in persuading judges.
 - ◇ Note: Cuomo's Executive Order only delays evictions for tenants who qualify. It does not stop the court from ordering a tenant's eviction.
- Marshals/sheriffs will be able to evict tenants in holdover cases and in non-payment cases where the tenant can't show COVID-19 financial hardship.
- The CDC introduced a national moratorium on evictions for non-payment of rent until December 31, 2020. This moratorium does not cover all tenants and eligible tenants must submit a sworn declaration to their landlords. **All tenants** should get legal advice **before** submitting this declaration, because it could have legal consequences after the moratorium lifts. See our [FAQ](#) for more info.
- All pre-COVID Notices of Eviction have expired. For tenants who have existing pre-COVID warrants, landlords will continue to have to attend a court date (and in NYC get court permission) to move forward. See below for more info.

NEW LANDLORD LAWSUITS

- As of June 22, 2020 the courts let landlords file new eviction cases.
- Landlords with attorneys must file their cases using the courts "e-filing" system, if their court has that set up, or if not, by mail. Landlords without attorneys can file in person. If a landlord attorney asks you to consent to e-filing, you do not have to consent if you don't have a lawyer.
- Once a new eviction case is filed, tenants will be asked to answer by phone.

- Until December 3rd, a [Cuomo Executive Order](#) gives some tenants protection if they don't respond to a non-payment case in time. This means their landlord will not get a default judgment (meaning the landlord will not win the case, just because the tenant didn't respond). Here is how that protection works:
 - ◇ Tenants sued in non-payment cases before 11/4 now have an extra 60 days to answer.
 - ◇ Cuomo's Order is not clear on when this grace period of 60 days begins, so the judge in each individual case will decide the exact deadline.
 - ◇ Tenants who received court papers more than 60 days ago, should answer right away to avoid any risk of eviction. All other tenants should answer as soon as possible.
 - ◇ The Cuomo Order says the 60-day grace period applies to cases filed before 11/4. So, any tenant who receives court papers for a case their landlord started after 11/3, should file an answer with the court within 10 days by phone.

PHYSICAL OPENING OF THE COURTS AND CONDUCTING COURT CASES

- Courts are open to a limited extent - for people without attorneys to file new cases, including for tenants to file cases for all kinds of repairs. Courts are also doing some in-person trials.
- Tenants will be given a phone number to call to respond to court papers, instead of going to court to answer in person.
- As of October 12, all eviction cases will be moving forward:
 - ◇ BUT things will move slowly because the courts need to do cases virtually as much as possible and also ensure social distancing in the courthouses. This means the courts can only hear a limited number of cases each day, resulting in delays when scheduling new court dates.
- Through December 3, many tenants will have extra time to respond in non-payment cases. See above for more info on these protections.
- Here is what will happen in eviction cases that were started before March 17th:
 - ◇ All cases must have a court date before a judge before anything else can happen (including cases where there is already a warrant of eviction). All cases should proceed virtually.
 - ◇ At the court date, the judge must review COVID-19 impact on the tenant and possible relief, refer tenants to a legal services organization, and try to resolve the case.
 - ◇ After the court date, the court can take all steps that ordinarily happen in a court case, including adjourning the case, scheduling a trial or ordering an eviction. The court must take into account any protections against eviction the tenant has under state or federal law.
 - ◇ NYC ONLY: Landlords who want to move forward with pre-existing eviction warrants or get new warrants, will have to get the court's permission. This means a new court date. Tenants will be notified about the new court date, have the right to an attorney, & can contest the landlord's case.
 - ◇ If the court schedules a court date (virtual or in-person), and tenants don't attend, the tenant could be held in contempt and even have an eviction order issued against them when they're not there. It's very important to respond to court papers and connect with a lawyer!!



We're calling on the Governor and the State Legislature to issue a REAL extension of the eviction moratorium for ALL tenants and to STOP landlords filing new eviction cases for as long as the crisis lasts.

Call your state reps today: bit.ly/evictionfreeny

To learn more and get involved: www.righttocounselnyc.org or www.housingjusticeforall.org

