

# New York: The Eviction Moratorium, New Eviction Cases and Pending Eviction Cases

*Last updated December 30, 2020 [Haz clic aquí para Español](#)*

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

## **PREVENTING EVICTIONS: STOPPING TENANTS FROM BEING PHYSICALLY EVICTED FROM THEIR HOMES**

**DUE TO LOT OF HARD WORK AND PRESSURE FROM THE TENANT MOVEMENT, ON DECEMBER 28TH, 2020 THE [COVID-19 EMERGENCY EVICTION AND FORECLOSURE PREVENTION ACT](#) PASSED. HERE'S WHAT IT DOES TO PREVENT EVICTIONS:**

- Stops all pending eviction cases for 60 days - at least until February 26, 2021. The only exception to this are pending cases involving allegations that the tenant's ongoing behavior disturbs other tenants or the tenant is creating a safety hazard.
- Tenants who submit a hardship declaration to the court or their landlord will be protected from eviction until May 1, 2021 (except in "nuisance" cases).
- The hardship declaration is a form the tenant will receive from the court or their landlord. It should be in the tenant's primary language. In the declaration the tenant must say:
  - (1) The tenant cannot pay rent or find alternative housing due to financial hardship because of lost income or increased expenses, AND (2) government assistance has not made up for the lost income or increased expenses.
  - OR
  - The tenant or someone in the household has an underlying condition, which would make moving to a new home a significant health risk. s
- In cases where there is already a pending eviction warrant, the landlord cannot evict the tenant. They must go to court for a case conference first. This gives the tenant a chance to submit a hardship declaration, which will pause their eviction until May 1, 2021.
- If a tenant does not submit a hardship declaration, after the 60 day pause is complete, their case and eviction may move forward. The tenant will still have a chance to submit the declaration after that.
- Warrants of eviction must say the tenant received the hardship declaration form and did not submit it, or else the marshall cannot perform the eviction.
- If there was a judgment against the tenant before December 28, 2020, because the tenant failed to answer their case, the tenant just needs to ask the court to put their case back on the court calendar, either by calling or writing to the court. The judgment against the tenant will be cancelled and the tenant will have a chance to submit a hardship declaration to have their case paused until May 1, 2021.

**HERE ARE OTHER PROTECTIONS AGAINST EVICTION TENANTS 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 the tenant for that debt, 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.
- 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 26, 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.
- The CDC created a protection from evictions for non-payment of rent until January 31, 2021. This protection 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 later on. See our [FAQ](#) for more info.

## **NEW LANDLORD LAWSUITS**

**AS OF JUNE 22, 2020 THE COURTS LET LANDLORDS FILE NEW EVICTION CASES, BUT THEN ON DECEMBER 28TH, 2020 THE COVID-19 EMERGENCY EVICTION AND FORECLOSURE PREVENTION ACT MADE SOME BIG CHANGES. THESE ARE THE NEW REQUIREMENTS LANDLORDS MUST MEET FOR ALL NEW EVICTION CASES:**

- Until May 1, 2021, landlords cannot file a new eviction case against a tenant who has submitted a hardship declaration form to the landlord (see above for more information on the hardship declaration form).
- If a landlord wants to sue a tenant in a new eviction case, they must first supply the tenant with a hardship declaration form (in the tenant's primary language). This should be delivered to the tenant both when the landlord delivers the warning notice or rent demand for the eviction case, and again when the landlord delivers the court papers.
- Landlords can file new eviction cases against tenants whose ongoing behavior disturbs other tenants or tenants who cause a substantial safety hazard.
- To file any new eviction case, a landlord must submit an affidavit:
  - Explaining how they delivered the hardship declaration form to the tenant and confirming they didn't receive a hardship declaration back from the tenant
  - OR
  - Saying the tenant engages in ongoing behavior that disturbs other tenants or the tenant is causing a safety hazard.
- Any new eviction case started by a landlord between December 28, 2020 and January 27, 2021, will be automatically paused for 60 days.

### **OTHER RULES REGARDING NEW EVICTION CASES:**

- Landlords with attorneys must file their cases using the courts "e-filing" system. 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.
- If a new eviction case is filed, the tenant will be asked to answer by phone. If the tenant does not answer in time, the court must hold a hearing before giving the landlord a default judgment (meaning a judgment saying the landlord wins just because the tenant didn't respond).
- 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. Here is how that protection works:
  - Tenants sued in non-payment cases before 11/4 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.

## PHYSICAL OPENING OF THE COURTS AND CONDUCTING COURT CASES

### **DUE TO THE COVID-19 EMERGENCY EVICTION AND FORECLOSURE PREVENTION ACT:**

- All pending eviction cases are suspended through February 26, 2021 at least. The only exception to this are pending cases involving allegations that the tenant's ongoing behavior disturbs other tenants or the tenant is creating a safety hazard.
- The courts must send a hardship declaration form to all tenants who are involved in pending eviction cases.
- In a pending case, if the court receives a hardship declaration form back from the tenant, the court must pause the case until at least May 1, 2021. The exception to this are pending cases involving allegations that the tenant's ongoing behavior disturbs other tenants or the tenant is creating a safety hazard.
- If a landlord receives a hardship declaration from a tenant in a pending eviction case, the landlord must quickly file it with the court, so the court can pause the case until at least May 1, 2021.
- In a pending case filed after December 28, 2020, if the court learns the tenant didn't get the hardship declaration from their landlord before the case was filed, they must give the tenant a copy of the declaration in their primary language and pause the case for at least 10 days so the tenant can submit it.
- Courts cannot issue default judgments or authorize warrants of eviction before May 1st, 2021 without first holding a hearing
- In a pending case, if a landlord now wants to allege that the tenant engaged in disturbing or hazardous conduct, they must bring a new case about that.

### **WHAT IS HAPPENING AT THE COURTHOUSES?**

- Court cases are happening on-line and via telephone.
- 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.
- Tenants will be given a phone number to call to respond to court papers, instead of going to court to answer in person.
- For eviction cases that do move forward, things should 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.
- Even though eviction cases are paused for 60 days and tenants can use the hardship declaration to get a further pause until May 1, 2021, it is still very important to connect with a lawyer if you have received court papers! Go to [evictionfreenyc.org](http://evictionfreenyc.org) for help finding a lawyer.

**We're calling on the Governor and the State Legislature to issue a REAL eviction moratorium for ALL tenants, to STOP landlords filing new eviction cases during this crisis, and to CANCEL RENT.**

**Call your state reps today: [bit.ly/evictionfreeny](http://bit.ly/evictionfreeny)**

To learn more and get involved: [www.righttocounselnyc.org](http://www.righttocounselnyc.org) or [www.housingjusticeforall.org](http://www.housingjusticeforall.org)

