



COVID-19 EDITION

RENTERS AND EVICTIONS

NASSAU AND SUFFOLK COUNTIES

Last updated April 6, 2021. The situation is changing rapidly.
Please check our [website](#) for the latest updates.

I WAS CURRENT ON MY RENT AND WASN'T FACING EVICTION UNTIL THE PANDEMIC



What if I cannot pay my rent?

Rent is still due during the COVID-19 state of emergency. However, there are federal and state moratoria on starting or completing an eviction. The most important protections in place as of March 2021 are: (1) the NY COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020; and (2) the New York State Safe Harbor Act. The CDC Moratorium and CARES Act Moratorium are also important protections for renters.

NY COVID-19 Eviction Prevention Act

The NY COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 gives tenants who are experiencing financial hardship until May 1, 2021, before eviction proceedings can go forward against them unless the landlord alleges that the tenant is creating a nuisance. The COVID-19 Eviction Prevention Act applies to all lawful occupants, including anyone responsible for paying rent, use and occupancy, or any other financial obligation. The Act applies whether the rental agreement is oral or in writing. It also applies if your landlord does not have a rental permit or you are renting a room. It does not protect people who are trespassers or squatters though. Please contact Nassau Suffolk Law Services or other lawyers if you are not sure whether you are a tenant or lawful occupant protected by the Act.

You must complete the New York State Hardship Declaration and give it to your landlord or the court if eviction proceeding is pending to be protected by the Eviction Protection Act. You can complete the New York State Hardship Declaration if you lost income because of COVID or if you have higher expenses because of COVID. You can also complete the New York State Hardship Declaration if moving would put you at risk because someone in your household is over 65 or at increased risk from COVID because of a disability or other illness. **EVEN IF YOU COMPLETE THE NEW YORK STATE HARDSHIP DECLARATION, YOUR RENT IS STILL DUE, AND YOU SHOULD DO YOUR BEST TO PAY.**

Be sure to keep a copy of the New York State Hardship Declaration and proof of sending it to your landlord. You can get a copy of the form here: [Hardship Declaration.pdf \(nycourts.gov\)](#).

Read more about the Eviction Prevention Act here: [Coronavirus and the NY. State Courts - Latest AO \(nycourts.gov\)](#)

NY Tenant Safe Harbor Act

The New York Tenant Safe Harbor Act created a special COVID defense that tenants can raise in court. If the court finds that a residential tenant or lawful occupant suffered financial hardship due to the pandemic, the court may not issue a warrant of eviction or judgment of possession for nonpayment of rent during the COVID-19 covered period. The law defines that period as March 7, 2020, until the date on which the provisions that closed or otherwise restricted businesses in the County of residence are lifted.

The Safe Harbor Act does not prevent a landlord from starting an eviction proceeding. But a tenant or lawful occupant can raise financial hardship due to the COVID-19 pandemic as a defense to being evicted. However, the rent is still due, and a court may award the landlord a money judgment for the amount owed. You can also be evicted based on rent owed before the COVID-19 pandemic, or for reasons other than non-payment.

If you complete the New York State Hardship Declaration and claim on that form that you are experiencing a financial hardship, the court will "presume" that the Tenant Safe Harbor Act applies to you. However, after May 1 your landlord

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can present evidence to show that you are NOT experiencing a financial hardship. The tenant ultimately has the burden to show that they experienced a financial hardship as a result of the pandemic.

If you do not complete the New York State Hardship Declaration or your landlord presents evidence that you are not experiencing a financial hardship, the court may consider the following factors to determine whether the Safe Harbor Act applies to you:

- (1) their income before March 7, 2020;
- (2) their income during the COVID-19 covered period;
- (3) their liquid assets; and
- (4) their eligibility for and receipt of various public benefits under state or federal law.

It is unclear if the Safe Harbor Act will protect tenants whose landlords refuse to renew a lease or extend a month-to-month tenancy because the tenant was unable to pay the rent.

Federal Eviction Protections

There have also been several federal eviction moratoria. First, the Center for Disease Control (CDC) order prohibits a landlord from taking any action to remove covered tenants through June 30, 2021.

To be covered by the CDC moratorium, you must deliver a declaration to your landlord stating:

- (1) you are unable to pay rent due to the substantial loss of household income;
- (2) you have used your best efforts to make partial payments; and
- (3) you sought all available government assistance; and
- (4) you would likely become homeless or move into shared housing if evicted.

This declaration is different than the New York State Hardship Declaration. It is available here: [Eviction Protection Declaration \(cdc.gov\)](https://www.cdc.gov/housing/hardship-declaration/)

We encourage all tenants to speak with an attorney before completing the CDC Hardship Declaration. It remains to be seen whether the courts in New York will allow landlords to start eviction proceedings before June 30 if the tenant delivered the CDC Hardship Declaration to the landlord. The New York courts may find that the CDC Hardship Declaration only prevents the tenant from being removed from the property before June 30. This should become more clear after the NY Eviction Prevention Act expires.

Second, until August 24, 2020, the Federal CARES Act prohibited new eviction filings in federally covered properties. This includes federally subsidized housing programs administered by the United States Department of Housing and Urban Development (HUD), properties with Low Income Housing Tax Credits (LIHTC), and those with federally backed mortgages. While the CARES Act moratorium has expired, HUD and FHFA have issued guidance suspending evictions in properties with federally-backed mortgages, including those insured, guaranteed, or owned by FHA, the VA, Fannie Mae or Freddie Mac through June 30, 2021. The CARES Act requirement that the landlords give tenants in federally subsidized housing a 30-day notice to vacate before starting an eviction proceeding, remains in place. The landlord cannot start new eviction proceedings until the end of the 30-day notice period.

The eviction moratoria are complicated and how landlords and the courts will apply them remain uncertain. If you have any questions as to how this affects you, please contact Nassau/Suffolk Law Services at (631) 232-2400 (Suffolk) or (516) 292-8100 (Nassau). You can also continue to check our website for further updates.



Can my landlord charge late fees?

A New York State law passed in 2019 prohibits landlords from seeking late fees in eviction proceedings, though they may sue for late fees in a separate litigation if the written lease expressly allows it. The

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Governor's Executive Order 202.28 (as extended by 202.96) prohibits landlords from charging for late fees starting from March 20, 2020, through April 25, 2021.



What if I can pay the rent now but can't get caught up on payments that I missed during the pandemic?

As explained in more detail above, the Tenant Safe Harbor Act says that tenants who prove that they missed rent payments during the COVID-19 pandemic because of a financial hardship face a money judgment for rent owed during these months. Tenants who establish a financial hardship, should not be evicted for rent owed during the pandemic covered period. However, a tenant can be evicted for nonpayment of rent for the period prior to the pandemic covered period, or after the COVID state of emergency is lifted.

Landlords may try to apply rent payments to the earliest month of rent owed. For example, suppose you missed your rental payments for April through December, but start paying your rent again in January. In that case, your landlord may try to apply that payment to your April rent.

Tenants who were unable to pay rent during the state of emergency may want to " earmark" future payments for the month in which they are made.

- If you pay your rent by check, note that the payment is for the current month in the check's memo line.
- If you pay in cash, you should get a receipt with the month you paid for noted on the receipt. If the landlord won't provide a receipt, then you should not pay in cash.
- If you pay by money order, you should keep a copy of the actual money order you give to your landlord (not just the receipt stub), which shows that the money order was earmarked for the current month.

This will clarify that the tenant only missed rent payments during the state of emergency, but it is also possible that your landlord will refuse to accept earmarked payments. If that happens you should speak to an attorney about your options.



What should I do if my landlord asks me to prove that I am experiencing a financial hardship?

You are not required to do anything more than complete the New York State or CDC hardship Declaration at this time. If your landlord attempts to evict you for non-payment of rent after the NY Eviction Prevention Act expires on May 1, you may need to prove that you are experiencing financial hardship to the court. You should keep copies of any documents showing that you lost income or had higher expenses because of COVID.



Can new eviction cases be started in court?

Yes, but there are new rules and the timeline will be different than normal. The landlord must include the NY Hardship Declaration form with all required pre-eviction notices, including the written demand for rent and notices required under the rental agreement. The landlord must also give the tenant a mailing address, telephone number, and active email address to deliver the completed New York State Hardship Declaration. The court should not accept any new eviction proceeding unless the landlord submits an affidavit stating the tenant did not deliver the New York State Hardship Declaration, or that the tenant is persistently and unreasonably causing a safety hazard or interfering with other tenants' use of the property. The landlord must also provide the tenant with a list of all groups that provide free legal services in housing matters. It is unclear at this point what the NY courts will do after May 1 in cases where the tenant delivered a CDC Hardship Declaration to their landlord.

Contact Nassau Suffolk Law Services to see if you are eligible for additional assistance or visit our website for more information.

I HAD A PENDING EVICTION PROCEEDING IN DECEMBER 2020



What should I expect if I have a pending eviction proceeding?

If you deliver the New York State Hardship Declaration to the landlord or the court, the eviction proceeding will be stayed until at least May 1, 2021. If you did not return the New York State Hardship Declaration, then your case may proceed unless you also delivered the CDC Hardship Declaration to your landlord. It is unclear at this point what the NY courts will do after May 1 in cases where the tenant delivered a CDC Hardship Declaration to their landlord. If you are scheduled for a virtual or in-person proceeding contact Nassau Suffolk Law Services or another attorney. If you are not sure whether your case is stayed, contact the Clerk's Office.



What will happen if I missed a court date in my eviction case in 2020?

If you missed a court date in your eviction case in 2020, a default judgment may have been entered against you. If a default judgment was issued against you between March 17, 2020 and December 28, 2020, you may ask the court to vacate that default judgment. Please contact NSLS if you believe a default judgment may have been entered against you.



Does the New York Hardship Declaration stay all eviction proceedings until at least May 1, 2021?

If the landlord started the eviction proceeding based on allegations that the tenant's behavior was causing a safety hazard or interfering with other tenant's use of the property, an eviction proceeding may go forward, but the landlord will need to prove to a judge that the alleged behavior is currently continuing. Even if the court previously found that the tenant should be evicted because of their behavior, the court must hold a new hearing to determine whether the tenant's behavior is continuing.

I WAS ALREADY FACING EVICTION BEFORE THE PANDEMIC



My eviction proceeding began before the courts suspended eviction proceedings. What is happening in those cases?

The NY Eviction Prevention Act also applies to cases filed before March 17, 2020. If you complete the New York State Hardship Declaration, you will be entitled to a stay until May 1, 2021. You should send one copy of the New York State Declaration to your landlord and another copy to the court. Make sure to keep another copy for yourself as well. Tenants who have delivered the CDC Hardship declaration to landlords should bring a copy to any scheduled court appearance between May 1 and June 30, 2021.

You can check for the next scheduled court date on the [e-courts website](#). Click on the links to look up your case (by name or preferably by index number). If your case does not appear on e-courts call the clerk's office or Nassau Suffolk Law Services.

Most eviction proceedings on Long Island are in the District Courts. However, some are in Village, Justice, or Town courts, primarily on the eastern end of Suffolk County. If you have an eviction case in a Village, Justice, or Town Court, please **call the court** or Nassau Suffolk Law Services if you have questions about your case's status.



I received a 14-day eviction notice from the Sheriff before the statewide shutdown in March 2020. When will the Sheriff evict me from my home?

Even if you received a 14-day notice from the Sheriff before March 17, 2020, the court must hold a new status conference before you can be evicted. During this conference, tenants will be given a New York State Hardship Declaration form to fill out that should stay the eviction until at least May 1, 2021. Even if you were being evicted

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based on "nuisance" behavior, the court must hold a hearing to find out whether your behavior is still a problem. A new 14-day notice from the Sheriff should be served.

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ALL TENANTS



Are all evictions suspended until June 2021?

No - if you do not deliver a signed NY Financial Hardship Declaration or if your landlord proves that you are creating a safety hazard or nuisance in your home, it is possible that you could be evicted before June 2021.