



COVID-19 EDITION

RENTERS AND EVICTIONS

NASSAU AND SUFFOLK COUNTIES

Last updated October 1, 2020. 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 New York State Safe Harbor Act and Executive Order 202.66 protect tenants from eviction if they suffered financial hardship during the COVID 19 emergency, from March 7, 2020, until at least January 1, 2021.

The NY courts suspended eviction proceedings in March 2020. The NY courts started accepting new eviction filings on June 22, 2020. **However, eviction cases that were started after March 17, 2020, have been suspended indefinitely.**

The New York Tenant Safe Harbor Act provides that a court cannot issue a warrant of eviction or judgment of possession against a residential tenant or lawful occupant for non-payment of rent that became due during the "COVID-19 covered period." The law defines that period as "March 7, 2020, until the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reasons" as set forth in Governor Cuomo's Executive Orders.

The Safe Harbor Act does not prevent a landlord from starting a non-payment 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.

To determine whether the tenant or lawful occupant is covered under this law, the court shall consider:

- (1) their income prior to 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.

Executive Order 202.66 extended the Safe Harbor Act to delay the eviction of any tenant who experienced financial hardship during the state of emergency until at least January 1, 2021.

There have also been several federal eviction moratoria. However, they have limited effect in New York. First, the CDC issued a moratorium on evictions for non-payment of rent for people who experienced financial hardship during the pandemic. However, Executive Order 202.66 largely duplicates the CDC order.

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, it still requires the landlord to give the tenant a 30-day notice to vacate. The landlord cannot start new eviction proceedings until the end of the 30-day notice period.

In addition, federal agencies that regulate federally backed mortgages have issued directives effectively extending the CARES Act moratorium on evictions in those properties to December 31, 2020.

We make every effort to keep referral information, legal educational materials, and related forms up-to-date. However, the situation is rapidly evolving, and we do not maintain materials on external sites. We cannot guarantee the accuracy of this information, nor are we responsible for any legal advice, information or assistance that you may obtain from external sources. They are provided for general information only.

The eviction moratoria are complicated and there are still unanswered questions about how landlords and the courts will apply them. 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?

New York State law passed last year prohibits landlords from seeking late fees in eviction proceedings. Late fees are only allowed where a written lease expressly allows it. The Governor's Executive Order 202.28 (as extended by 202.34, 202.45, and 202.64) prohibits landlords from charging for late fees starting from March 20, 2020 through October 18, 2020.



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 new 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. But, these tenants should not be evicted. However, a tenant can be evicted for non-payment of rent that occurs after the COVID state of emergency is lifted.

Landlords may try to apply rent payments to the earliest month of rent owed. For example, if you missed your rental payments for April through September, but start paying your rent again in October, 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, just note that the payment is for the current month in the memo line of the check.
- If you pay in cash, you should get a receipt with the month that you are paying 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.



My landlord served me with an eviction petition. What should I expect?

As of September 30, 2020, all new eviction proceedings remained suspended indefinitely. If you received a new eviction petition, contact Nassau Suffolk Law Services or the court to confirm that your case remains suspended.

However, court conferences are taking place in cases filed before March 17, 2020. If you are experiencing a COVID-19 related hardship you may be able to present this to the court as a defense against eviction under the NY eviction moratorium and the New York State Safe Harbor Act. Gather evidence of your hardship to show the court once your case is scheduled. That evidence should include:

- Proof of your household income prior to March 7, 2020, and your household income after March 7, 2020,
- Any unemployment benefits you and other members of your household are receiving,
- Banks statements and any other financial records indicating assets,
- Documentation that you or other members are receiving public assistance (I.e.: SNAP, HEAP or cash assistance from DSS), SSI, SSD or New York State Disability payments.

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



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

[Please see this detailed FAQ from the Met Council on Housing.](#)

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I WAS ALREADY FACING EVICTION BEFORE THE PANDEMIC



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

Cases pending before March 17, 2020 may now proceed. However, the court must first hold a conference to discuss COVID-19 related issues and the status of the case. If the court finds that the tenant experienced a financial hardship during the COVID-19 state of emergency, then the eviction cannot be executed until January 1, 2021. It is unclear whether the Tenant Safe Harbor Act will benefit those who were unable to pay their rent prior to March 7, 2020. However, Executive Order 202.66 provides that people who experienced a financial hardship during the COVID-19 pandemic cannot be evicted until January 1, 2021, even if they were behind on their rent prior to the pandemic. The court should refer any unrepresented defendants to legal services providers like Nassau Suffolk Law Services.

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).

Most eviction proceedings on Long Island are in the District Courts, though 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 be able to evict me from my home?

Even if you received a 14-day notice from the Sheriff prior to March 17, 2020, the court must also hold a new conference before you can be evicted. During that conference, you can raise financial hardship during the pandemic as a reason why your eviction should be delayed. If you receive a 14-day notice from the Sheriff and believe that you are entitled to a stay of that eviction due to Executive Order 202.66 or another eviction moratorium, you may file an Order to Show Cause with the court seeking a stay of eviction until that time.

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.

ALL TENANTS



Can my landlord just use my security deposit to pay my rent?

Normally your landlord does not have to use your security deposit if you cannot pay your rent. On May 7, 2020 Governor Cuomo ordered that a landlord must allow you to use your security deposit to pay rent if you ask to do so and are experiencing financial hardship because of COVID-19. (Executive Order 202.28) We are aware that some landlords have argued that the executive order expired June 6, 2020, but it is unclear whether different Executive Orders extended this rule until October 18, 2020.

You may still ask your landlord to apply your security deposit to pay rent, but it is unclear whether they are required to agree. If you reach an agreement with the landlord about this, the agreement must be in writing, but an email will be enough. A landlord may not harass or threaten a tenant to enter into such an agreement.

If the landlord uses the security deposit for outstanding rent, you must repay the security deposit at a rate of 1/12 the amount used per month. You must start repaying your security deposit 90 days after the landlord uses it for rent. In other words, a tenant will have one year to pay back the security deposit to the landlord, in 12 equal monthly installments starting 90 days after the landlord uses the security. Therefore, this does not give a tenant any right "to live out their security." If a landlord agrees to use the security toward any outstanding rent, the tenant is still obligated to replenish the security used.



Are all evictions suspended until January 2021?

No - if you are not able to prove to the court that you experienced a financial hardship during the COVID pandemic, it is possible that you could be evicted prior to January 2021. It is also unclear whether courts will apply the protections in EO 202.66 in eviction proceedings based on issues other than failing to pay rent.