



COVID-19 EDITION

# RENTERS AND EVICTIONS

## NASSAU AND SUFFOLK COUNTIES

Last updated January 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 January 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 Protection 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. You can complete the Hardship Declaration if you lost income because of COVID or if you have higher expenses because of COVID. You can only complete the Hardship Declaration if the public assistance you received did not make up for income loss or increased expenses. You can also complete the 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 A HARDSHIP DECLARATION, YOUR RENT IS STILL DUE, AND YOU SHOULD DO YOUR BEST TO PAY.**

You must complete a Hardship Declaration and give it to your landlord to be protected by the Eviction Protection Act. Be sure to keep a copy of the Hardship Declaration and proof of sending it to your landlord. You can get a copy of the form here: [Hardship Declaration.pdf \(nycourts.gov\)](#).

[Eviction cases that were already filed will be stayed \(or put on hold\) until February 26, 2021 to give people time to learn about the new law and complete the Declaration, if it applies to them.](#)

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 once eviction proceedings are heard again. If the court finds that a residential tenant or lawful occupant suffered financial hardship due to the pandemic, the court cannot 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.

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

- (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. Tenants who cannot pay rent during COVID because of financial

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hardship and facing eviction because the landlord has terminated a month-to-month tenancy or is refusing to renew an expiring lease should contact NSLS.

### **Federal Eviction Protections**

There have also been several federal eviction moratoria. First, the Center for Disease Control (CDC) order prohibits any action from removing covered tenants through January 31, 2021. Covered tenants are those who have delivered a declaration to their landlord stating: (1) they are unable to pay rent due to the substantial loss of household income, (2) they have used best efforts to make partial payments; (3) sought all available government assistance, and (4) they are likely to become homeless if evicted. The Declaration tenants need to fill out for the CDC Moratorium is different than the NY Hardship Declaration. The CDC Moratorium seems to prohibit a landlord from starting an eviction proceeding. Still, it remains to be seen how the courts in New York will rule on this question.

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 January 31, 2021.

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?**

A 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 202.79) prohibits landlords from charging for late fees starting from March 20, 2020, through January 29, 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 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 nonpayment 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, suppose you missed your rental payments for April through September, but start paying your rent again in October. 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.

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**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 [NY Hardship Waiver](#) at this time. If your landlord attempts to evict you for non-payment of rent after the NY Eviction Protection Act expires, you will 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 Hardship Declaration. The court should not accept any new eviction proceeding unless the landlord submits an affidavit stating the tenant did not deliver the 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. Eviction cases started before January 27, 2021 will also be automatically stayed for 60 days.

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

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**I HAD A PENDING EVICTION PROCEEDING IN DECEMBER 2020****What should I expect if I have a pending eviction proceeding?**

All eviction proceedings pending as of December 28, 2020, will be stayed for at least 60 days, to allow tenants to deliver the NY Hardship Declaration to the landlord or the court. The court will mail a Hardship Declaration form for the tenant to complete. The tenant will be able to deliver the hardship declaration to either the landlord or the court. If the tenant delivers the Hardship Declaration to the landlord or the court, the eviction proceeding will be stayed until at least May 1, 2021. 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.

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

If the landlord alleges that the tenant's behavior is 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 these allegations to a judge. Even if the court previously found that the tenant should be evicted because of their behavior, the court will hold a new hearing to determine whether the tenant's behavior has continued.

## I WAS ALREADY FACING EVICTION BEFORE THE PANDEMIC



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

Cases pending before March 17, 2020, have been put on hold until February 26, 2021 unless the landlord alleges that the tenant is engaging in "nuisance" behavior. If you complete the hardship declaration, you will be entitled to a stay until May 1, 2021. You should send one copy of the Declaration to your landlord and another copy to the court.

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. 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 also hold a status conference before you can be evicted. During this period, tenants will be given a hardship declaration form to fill out if he or she can meet criteria, that should stay the eviction until at least May 1, 2021. Even if you were being evicted based on "nuisance" behavior, the court must hold a hearing to find out whether your behavior is still a problem.

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## ALL TENANTS



**Are all evictions suspended until May 2021?**

**No** - if you do not complete the 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 May 2021.