



COVID-19 EDITION

RENTERS AND EVICTIONS

NASSAU AND SUFFOLK COUNTIES

Last updated August 27, 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. Additionally, the New York State Safe Harbor Act may prevent evictions for nonpayment of rent in certain cases, until the jurisdiction that the tenant resides in is fully open as it was prior to the COVID-19 pandemic. Most importantly, on August 12, 2020 Justice Marks, New York States' Chief Administrative Law Judge, ordered that no eviction can take place prior to October 1, 2020.

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

Eviction proceedings that started prior to March 17, 2020, including cases where a warrant of eviction has been issued but not executed, may proceed. However, the court must hold a conference with the parties to discuss the case, including Covid-19 concerns. Even if the court were to order an eviction, it cannot take place prior to October 1, 2020.

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/lawful occupant in a summary **nonpayment** proceeding for 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. At the present time, this provision has been extended until at least September, 2020.

The Safe Harbor Act does not prevent a landlord from starting a nonpayment 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 can issue a money judgement for that amount against the tenant.

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.

What the Safe Harbor Act seems to provide is that a tenant or lawful occupant cannot be evicted for nonpayment of rent that accrued after March 7, 2020 if they can prove that they suffered financial hardship due to the COVID-19 pandemic. It is unclear whether this law will benefit those who were unable to pay their rent prior to March 7, 2020 or tenants whose landlords refuse to renew a lease or extend a month-to-month tenancy because the tenant was unable to pay the rent.

The federal CARES Act prohibited new eviction filings for non-payment of rent in federally covered properties prior to August 2020. This includes federally subsidized housing programs administered by the United States Department of Housing and Urban Development (HUD), those with Low Income Housing Tax Credits (LIHTC), and those with federally backed mortgages. The [federal moratorium](#) requires the landlord to give the tenant a 30-day notice to vacate. The landlord cannot give the 30-day notice until after July 24, 2020 and cannot start new eviction proceedings until the end of the 30-day notice period. In addition to these prohibitions, landlords must comply with existing New York State Law governing eviction proceedings, including providing tenants with a 14-day demand for rent before starting a non-payment proceeding. In addition, federal agencies that back mortgages may also prohibit evictions for a longer period of time than the CARES Act in some situations.

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 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 Orders prohibit landlords from charging for late fees starting from March 20, 2020 through September 4, 2020.



What if I am able to 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 were unable to pay rent during the COVID-19 pandemic because of a financial hardship face a money judgment for rent owed during these months, but 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 July, but start paying your rent again in August, 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 that 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?

Whether you received papers starting an eviction proceeding prior to the courts shutting down in March or more recently, all court deadlines in eviction cases were suspended until at least September 4, 2020. However, conferences can take place in cases filed before March 17, 2020. These proceedings will take place by phone or internet to the extent necessary to protect public health.

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?

All eviction cases pending when the suspension order was issued were adjourned by the Court until the end of August, 2020. These cases may now proceed. However, the court must first hold a conference to discuss COVID-19 related issues and the status of the case. The court should refer any unrepresented defendants to legal services providers like Nassau Suffolk Law Services.

You can check for the next, tentatively 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 the status of your case.

The courts' website may not immediately update the new court date. Don't worry if it is still showing the court appearance on a date that has passed.



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?

Justice Lawrence K. Marks, issued a memorandum order on August 12, 2020, stating that no residential evictions may take place before October 1, 2020. 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. If you receive a 14 day notice from the Sheriff and believe that you are entitled to a stay of that eviction due to the 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 (Executive Order 202.38 and 202.55) extended this rule until September 4, 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 October 2020?

Yes - Per Justice Marks’ order, no evictions may take place prior to October 1, 2020.