



IF YOU THOUGHT THERE WERE TOO MANY COOKS IN THE KITCHEN BEFORE...

To Our Valued Clients:

As if keeping up with the Governor and his Executive Orders, the Courts with the Administrative Orders of Judge Marks, and the various laws passed by the NYS Legislature and the City Council were not enough, late yesterday, the United States Centers for Disease Control and Prevention (CDC) issued [a national eviction moratorium Order](#) "to temporarily halt residential evictions to prevent the further spread of COVID-19." This Order is set to take effect on September 4, 2020 upon being published in the Federal Register.

The following is a summary of the Order:

- The Order runs through December 31, 2020 unless extended or modified.
- The Order provides that a landlord "shall not evict any 'covered person' from any residential property in any jurisdiction to which this Order applies during the effective period of the Order."
- A "covered person" means any tenant who provides the landlord with a Declaration that tenants "must provide" to invoke the protections of the Order. This Declaration (which is an exhibit to the Order) "should" be completed by [e]ach adult listed on the lease, rental

agreement or housing contract" and contains the following representations by the person seeking coverage:

- the individual has used best efforts to obtain all available government assistance;
 - the individual expects to earn no more than \$99,000 in 2020 or no more than \$198,000 if filing a joint return, or was not required to file a return in 2019, or received a CARES Act stimulus check;
 - the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-off, or extraordinary out-of-pocket medical expenses;
 - the individual is using best efforts to make timely partial payments that are as close to the full payment as the person's circumstances permit; and
 - an eviction would likely render the individual homeless or force the individual to move into and live in close quarters in a new congregate or shared housing setting because the individual has no other available housing option.
- The Order does not relieve any individual of any obligation to pay rent or comply with any other lease obligation and does not prohibit the charging or collecting of fees, penalties or interest as a result of the failure to pay rent on a timely basis.
 - The Order does **not** apply in any jurisdiction "with a moratorium on evictions that provides the same or greater level of public-health protections than the requirements listed in this Order."
 - Evict" and "Eviction" means any action by a landlord "to remove or cause the removal" of a "covered person" from a residential property; this does not include foreclosure on a home mortgage.

This Order raises myriad issues for New York property owners and managers such as:

- Does this Order even apply in New York? The Order states that it will not take effect in jurisdictions where the government has acted and has provided protections that equal or exceed that of this Order. On one hand one may say that this Order provides better coverage as there are no evictions through December 31, 2020, while currently under Judge Mark's AO there are no evictions until October 1, 2020. On the other hand one could argue that in this Order the rent and additional rent of late fees continue to accrue until the end of the moratorium where the landlord can then seek to evict upon the entire arrears; but under the NY Safe Harbor Law – the rent arrears that accumulates during the COVID period of someone who is COVID effected are relegated to a non-possessory judgment and as such that person can never be evicted for such sums. Thus, clearly one could argue that NY has superior protection and the Order would not apply.

- Assuming it applies, how will this law interact with the Safe Harbor Act and the various EO's and AO's, e.g. is there a time limit on when the tenant can serve the Declaration upon the landlord or can the tenant sit back and simply assert it in the context of a non-payment proceeding such as the defenses in the Safe Harbor Law? The Order is silent on this.
- Does this Order apply to pre-COVID arrears where there is no connection to COVID? There does not appear to be any distinction under the Order.
- Can we still commence cases? While the Order prohibits evictions, it does not appear to prohibit the commencement of new non-payment cases or the processing of pending non-payment cases so long as evictions are not executed. It further does not appear to bar holdovers for lease violations other than the non-payment of rent.

With that said, clearly, things are still in flux and we will update you as soon as we hear from the courts.

Should you have any questions on the above, please do not hesitate to contact us.

Stay tuned and stay well,

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