

Legal Alert: The New York State COVID-19 Emergency Eviction & Foreclosure Prevention Act of 2020 (“CEEFPFA”)

December 28, 2020

We anticipate the New York State legislature will pass a bill that will drastically impact the commencement and enforcement of proceedings in Housing Court. Below is an outline of the key elements of the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020, which will take effect immediately upon passage. Click [here](#) to view the bill.

A. Sixty day stay on all non-payment proceedings pending on the effective date of the Act and those commenced within 30 days of the effective date. The purpose of the stay is to afford the court the opportunity to fulfill its requirements under the Act, i.e. posting on its' website a sample "Declaration of Hardship" and mailing the Declaration to Respondents.

B. Landlord's obligation to serve Declaration of Hardship with all notices. The Declaration of Hardship (a sample of which is contained in Section 1(4) of Part A of the Bill) must be served with the rent demand; notices to cure; notices to terminate; and the petition. It must be served both in English and in a tenant's primary language. The court will post on its website the 6 most common languages, however, the translation to the tenant's primary language is ultimately the Landlord's responsibility. The notice must include, the Landlord's mailing address; telephone number and email address as well as a list of all not-for-profit legal service providers in the county in which the subject premises is located. This information will also be posted on the court's website.

C. Effect of Declaration of Hardship on non-payment proceedings. (1) If there is no pending eviction proceeding and you receive a Declaration of Hardship, no proceeding can be commenced until, at the earliest, May 1, 2021. (2) If a proceeding is pending, but a warrant **has not** issued (including those cases filed on or before March 7, 2020) and you receive a Declaration of Hardship, that proceeding is stayed until, at least May 1, 2021. (3) In cases where a warrant has issued prior to the effective date of this Act, execution must be stayed, at least, until the court has held a conference with the parties.

D. What to do upon receipt of Declaration of Hardship. If there is a pending proceeding, the Declaration of Hardship must be filed with the court. If there is no pending proceeding, the Declaration of Hardship should be retained in the tenant's file.

E. Default Judgments in both non-payment and holdover proceedings. No judgment authorizing the issuance or execution of a warrant of eviction on default shall be enforced prior to May 1, 2021 without the court holding a hearing upon motion of the Petitioner.

F. Effect on Holdover Proceedings. The only holdover proceedings that can be commenced or continued through May 1, 2021 are those that are based upon nuisance allegations. Specifically, the tenant must be "persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants/occupants" or causes a "substantial safety hazard to others." The notices must be fact specific, general allegations of nuisance will not sustain the proceeding.

G. Pending Nuisance Holdover Proceedings. (1) If a nuisance holdover proceeding, pending on the effective date of the Act, does not allege the tenant persistently and unreasonably engaged in behavior that substantially infringes on the use and enjoyment of other tenants/occupants, the proceeding will be dismissed. (2) If a judgment was issued prior to the effective date of the Act on the basis of objectionable conduct or nuisance, the court will hold a hearing to determine if the conduct is continuing. (3) It will be necessary that any witness have fact specific, personal knowledge of the conduct upon which the proceeding is based. (4) If the petitioner establishes the tenant persistently and unreasonably engaged in the complained of behavior **or** the tenant fails to provide a Declaration of Hardship, the proceeding shall continue. (5) If the petitioner **fails** to establish the tenant persistently and unreasonably engaged in the complained of behavior **and** the tenant provides a Declaration of Hardship, the proceeding shall be stayed until May 1, 2021.

We anticipate the Court will issue guidelines for the implementation of the Bill which we will pass on to you as soon as they are received. Our office will be available to prepare, serve, receive and file with the Court those responses to the Declaration of Hardship that must be sent to the tenants before the commencement of any proceedings and possibly to those proceedings previously commenced. As always, we are available to answer any of your questions and/or address your concerns.