

Legal Alert: Housing Court Update Moving Forward After the Enactment of the COVID-19 Emergency Eviction & Foreclosure Prevention Act of 2020

February 24, 2021

Since the stay imposed by the passage of the NYS COVID-19 Emergency Eviction & Foreclosure Prevention Act of 2020 (hereafter the "Act") will expire as of February 26, 2021, we would like to update you on the status of new proceedings and existing proceedings against tenants who have not filed a Hardship Declaration.

1. Commencement of New Proceedings. All new notices served must include a blank Hardship Declaration. If a completed Hardship Declaration is received from the tenant after the service of any notice, the proceeding will be stayed until May 1, 2021, unless the proceeding is a nuisance holdover. If you receive a Hardship Declaration, it must be forwarded to our office immediately.

2. Conferences. For those cases that had a conference date scheduled at the time that the Act went into effect on December 28, 2020, we have sporadically been receiving new dates for such cases. As those dates are received, we will notify you. Based upon our discussions with Court personnel, we anticipate that as of March 1, 2021, the Court will begin to schedule virtual conferences on the following types of cases if no Hardship Declaration has been received:

- (i) cases in which both sides are represented by counsel;
- (ii) cases filed before March 17, 2020 where Court has contact information for Respondent(s); and
- (iii) cases filed after June 22, 2020 where the Court has contact information for the Respondent(s).

With respect to categories (ii) and (iii) above, we anticipate that the first conference will be designed to connect the Respondent(s) with a legal service provider and/or a representative of Human Resources Administration so that they may obtain assistance with respect to the arrears. Notably, these conferences are in addition to conferences that are being scheduled on nuisance holdovers, which are also being initiated by the Court. We will update you when we receive conference dates on all cases, including nuisance proceedings.

3. Nuisance Proceedings Where Judgment Was Entered. If you had previously commenced a nuisance holdover proceeding which was settled with a judgment or was tried and resulted in the entry of a judgment, and the complained of conduct is continuing, please notify our office as we are required to attend a hearing to prove that the conduct underlying the judgment is ongoing.

4. Breached Stipulations. Based on our conversations with Court personnel and interpretation of the Act, sometime after March 1, 2021 we will be permitted to file a motion on cases where a Respondent previously entered into a stipulation and is now in default in order to seek the appropriate relief. The Court has yet to provide specific guidance on when it will accept these motions and what the time frame for a return date will be. If you have a tenant who is in breach of a previously entered stipulation please reach out to us so that we may proceed accordingly.

5. Defaults. We are still awaiting guidance from the Court as to when default judgments for failure to answer or after inquest may move forward, and how we are able to obtain those default judgments from the Court. It is our belief that we will be required to make a motion in order to obtain a default judgment

once we are permitted to do so. As the Court provides us with additional information regarding this process, we will continue to keep you apprised of it.

6. Previously Filed Cases. As stated above, we are hopeful that as of March 1, 2021, cases commenced prior to December 28, 2020 will be calendared by the Court if no Hardship Declaration has been filed. Please take note, however, that we have been informed by Court personnel that the Court will not amend petitions to include subsequent months rental arrears at the scheduled court appearance. Therefore, if you believe that the Respondent(s) has satisfied the Petition but still remains in arrears, you should contact us to discuss the most prudent course of action, including the commencement of a new proceeding.

7. Tenant Contact Information. If you have not done so already, please provide us with email addresses and telephone numbers for all tenants and/or occupants named in pending cases so that we can furnish this information to the Court. This will assist the Court in calendaring cases and advising tenants of upcoming virtual conference dates, which will hopefully alleviate adjournments and/or delays.

8. Commercial Cases. While commercial cases are not subject to the Act, there currently remains a stay in effect on all commercial nonpayment proceedings until March 16, 2021, pursuant to previous Executive Orders issued by Governor Cuomo. Alternatively, commercial holdover proceedings may still be commenced in the ordinary course.

If you have any questions or concerns about anything discussed herein, please feel free to contact any of our attorneys at your convenience.