

Legal Alert: Governor Cuomo Signs into Law the COVID-19 Emergency Rental Assistance Program of 2021 (“ERAP”)

April 19, 2021

On Friday, Governor Cuomo signed into law the Covid-19 Emergency Rent Assistance Program of 2021, which is effective as of April 16, 2021. This bill will provide eligible tenants with payments to be applied towards rent arrears for up to 12 months, as long as the arrears accrued after March 13, 2020. In certain instances, however, the payments may cover up to three months of future rent as well. While this is overall a positive development, there are some potential downsides to landlords, so we suggest carefully reviewing the information below and contacting us with any questions you may have.

I. Tenant Eligibility Requirements: In order to qualify, a Tenant must have:

1. Qualified for unemployment, or
2. Experienced a reduction in household income, or incurred significant costs, or suffered financial hardship due to the pandemic;
3. A risk homelessness or housing instability; and
4. A household income at or below 80% of the area median income, adjusted for household size
 - a. Income To Be Considered in Determining Household Income:
 - i. The household's total income for 2020, and,
 - ii. The household's monthly income at the time of the submission of the application.
 - b. Note: Receipt of public assistance benefits does not affect a tenant's eligibility, however whether a tenant resides in federal or state subsidized housing does (unless there are funds remaining after providing funds to all other eligible tenants). Immigration status has no effect on eligibility.

II. Priority of Applicants: During the first 30 days of the program, the following applications will be given priority (and those that fall under categories 1 and/or 2 below will be given first priority):

1. Households whose income does not exceed 50% of the area median income adjusted for household size;
2. Households who have one or more unemployed individuals as of the date of the application and have not been employed for 90 days preceding such date;
3. Households which include one or more individuals from a vulnerable population, (including, but not limited to, victims of domestic violence, survivors of human trafficking or veterans);
4. Households with pending eviction cases;
5. Households in communities that were disproportionately impacted by the pandemic (to be determined by the Commissioner); or,
6. Households in a building/development of no more than 20 units owned by a "small landlord" (defined as any person or entity that owns a building of twenty or fewer units).

III. Applications:

- Applications will be made available on the website of the Office of Temporary and Disability Assistance ([Office of Temporary and Disability Assistance \(ny.gov\)](https://www.ny.gov/office-of-temporary-and-disability-assistance)) in various languages.
- Any eligible person or their designee, *including the landlord*, may initiate an application.
- The Commissioner will establish a means by which an application can be tracked by the landlord and tenant regardless of who submitted the application.

- Documentation of immigration status shall not be requested.

IV. Landlord's Obligations:

- Use any payments received under the program to satisfy the tenant's full rental obligation for the time period covered by the payment.
- Provide the Office of Temporary and Disability Assistance with information and documentation necessary to facilitate payment.
- Keep confidential all information/documentation from or about tenant/occupant acquired in the application process.

V. Effect of Landlord's Acceptance of Rent Arrears through this Program:

- **Arrears covered by payment are satisfied in full and cannot be sought in a non-payment proceeding.**
- **Late fees must be waived for those arrears paid pursuant to the program.**
- **Tenant's monthly rent cannot be increased if the increase would be greater than the amount that was due at the time of application to the program for any and all months for which rental assistance is received.**
- **Landlord cannot increase rent for one year after the first rental assistance payment is received.**
- **Landlord cannot evict for an expired lease or hold over tenancy for 12 months after receipt of first rental assistance payment.**
 - **Exception: in a building which contains no more than 4 units where a landlord seeks to take occupancy of an apartment for personal use or use by an immediate family member as their primary residence.**
- **Landlord must advise the tenant of the foregoing.**

VI. Restrictions on Evictions:

- No holdover or non-payment proceedings shall be commenced against an applicant unless or until a determination of ineligibility is made.
- If a tenant applies for assistance after a proceeding has been commenced, same shall be stayed pending a determination of eligibility.
- Landlord cannot evict for an expired lease or hold over tenancy for 12 months after receipt of first rental assistance payment.
 - Exception: in a building which contains no more than 4 units where a landlord seeks to take occupancy of an apartment for personal use or use by an immediate family member as their primary residence.

VII. Pending Eviction Proceedings: In any eviction proceeding pending as of the effective date of this legislation and any such proceeding commenced while applications for assistance are being accepted, the Court shall provide respondents with information regarding how they may apply for assistance under this program.

VIII. Payments:

- Payments shall be made for rent or utility arrears accruing on or after March 13, 2020.
- No more than 12 months of arrears will be paid for any eligible household.
- No more than 3 months of prospective rent will be paid for any eligible household.

- Only "rent burdened" households (a household whose monthly rent is more than 30% or more of the household's gross monthly income) are eligible for prospective (future) rent payments.
- Rent payments shall be made directly to the landlord and utility payments directly to the provider.
- Proof of payment received through this program will create a presumption that the tenant's rent obligation for the time covered by the payment has been fully satisfied.

IX. Landlord's Lack of Cooperation:

- Prior to determining eligibility, the Commissioner will attempt to obtain the landlord's cooperation to accept payments under the program by (a) mailing a request to the landlord or (b) making 3 attempts to contact the landlord by phone, text or email.
- If there is no response to the written request within 14 calendar days of mailing or no response within a ten-day period to a phone call, text or email, the attempt at obtaining cooperation will be deemed complete.
- If cooperation is not achieved, the funds for an eligible applicant will remain available for 180 days (upon a showing of "good cause" this time period may be extended).
- After notification of eligibility, the landlord will be given a final opportunity to participate in the program.
- If the landlord does not provide the required information/documentation to effectuate payment before the expiration of the 180 days, the funds shall be reallocated to another applicant.

X. Effect of Landlord's Lack of Cooperation:

- For a period of 12 months from the date a tenant is found eligible for assistance, the tenant may use the eligibility determination as an affirmative defense in any proceeding seeking a money judgment, including a non-payment proceeding, seeking payment for the same period covered by the approved payment.
- If the landlord has not accepted the payment within 12 months of the tenant's eligibility determination, it shall be deemed that the landlord waived the amount of rent covered by the approved payment and will be precluded from collecting on a judgment or from initiating any action or proceeding premised on the nonpayment of the amount of rent covered by the approved payment.

There is a lot to be aware of in this new law, so please review it carefully. The full text of the bill can be found here: [Bill Search and Legislative Information | New York State \(nyassembly.gov\)](#).

Should you have any questions about anything contained herein, please ask one of our attorneys. We will continue to provide you with more information as it becomes available.