

Legal Alert: NYS Bar Associations' COVID-19 Recovery Task Force & FAQ on EO 202.28

May 13, 2020

On May 11, 2020, the New York State Bar Association ("NYSBA") formed a landlord-tenant working group to assist the State's courts with an anticipated surge in landlord-tenant disputes once the courts reopen.

The group, presently consisting of 12 members, will be part of NYSBA's COVID-19 Recovery Task Force, and will work under the Unified Court System and Governor Andrew M. Cuomo in order to settle landlord-tenant disputes quickly and efficiently, and assist landlords in obtaining rent payments from those tenants suffering from financial hardship as a consequence of the pandemic.

We are pleased to advise you that Philip A. Rosen, Esq. has been appointed as a member of this prestigious group. The NYSBA's press release announcement about the group may be accessed by clicking [here](#).

Additionally, a number of questions have been raised stemming from Governor Cuomo's May 8, 2020 Executive Order (which was the subject of our recent alert). The Rent Stabilization Association ("RSA") has set forth the following FAQs which we believe may be of assistance:

Q. How does the EO address non-payment proceedings?

A. The EO specifically prohibits non-payment proceedings against any residential or commercial tenant who "is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic." That language, while prohibiting non-payment cases against COVID-affected tenants and not others, does not address or specify whether owners are obligated to plead whether, in a particular case, the tenant is not affected by the pandemic or tenants are obligated to plead that they are affected. The subject of rent demands is also not addressed. With the housing courts closed for the foreseeable future, no non-payment cases can be commenced at this time, regardless of the COVID-19 status of the tenant.

Q. Does the EO allow the commencement of holdover proceedings?

A. The EO explicitly prohibits only the commencement of non-payments against COVID-19-affected tenants; the EO does not prohibit or otherwise address the commencement of holdover proceedings. Again, the housing courts remain closed, holdover proceedings cannot be commenced until they re-open.

Q. Does the EO permit the enforcement of warrants against tenants who are not adversely affected by the pandemic?

A. The EO prohibits the enforcement of a warrant if the tenant "is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic." There are many aspects of this issue for which there are no available answers. For example, it is unclear how this provision will be applied by marshals to warrants issued before the pandemic. Also, we do not know what directions, if any, marshals will receive from the Department of Investigation or the courts. In addition, even if authorized to proceed in some instances, we do not know whether marshals will actually proceed with an eviction given the uncertainty as to whether someone in the tenant's

household is COVID-19 positive, regardless of whether the warrant was issued prior to the pandemic. Further, it is unclear how the marshal would know, prior to enforcement, whether a tenant is "eligible for unemployment insurance or benefits under state or federal law" or is "facing financial hardship due to the COVID-19 pandemic"; none of those terms are defined in the EO. Given these issues, it is unlikely that the enforcement of any warrants will be occurring anytime soon.

Q. Are there any issues with regard to the security deposit provision of the EO?

A. The EO sets forth various requirements with regard to the use of security deposits for residential rent. However, numerous questions have arisen. For example, the EO provides that, at the tenant's option, the tenant can either purchase security deposit insurance or replenish the security deposit using a re-payment plan. That plan provides that the tenant, beginning no earlier than three months after the security deposit is used, is required to replenish the security deposit each month over the next 12 months. The EO does not address whether the replenishment can be calculated differently if there are fewer months left on the lease than the 15 months required for the waiting period and the replenishment period. The EO also does not address the criteria to be used by the landlord to determine whether the residential tenant is "eligible for unemployment insurance or benefits under state or federal law or are otherwise facing financial hardship due to the COVID-19 pandemic" or define those terms. The EO also does not address the use of security deposits in the context of commercial leases.

Q. What is happening with cases that were pending in housing court when the courts were closed due to the pandemic?

A. While OCA reports that thousands of court cases have been conferenced and settled during this time, that is not the case in housing court. Recently, in an effort to try to address the backlog of pending housing court cases, the court announced that motions for pending cases can be filed and served using a new electronic document delivery system known as EDDS. However, the court will not decide any motions or issue any judgments, even in two-attorney cases, where the adversary does not submit opposition papers, thereby enabling attorneys to ignore this process. To address that problem with pending non-payment cases, in conjunction with the housing court, efforts are now underway in two-attorney cases to attempt to schedule settlement conferences. While participation in these settlement conferences is not mandatory as of now, the hope is that OCA's heightened interest in addressing these pending cases prior to the commencement of the significant number of new matters when the moratorium ends will result in participation by tenants' attorneys.

Q. When will housing court re-open so that new non-payment and holdover cases can be brought?

A. The moratorium on the commencement of new cases is in effect through August 20, 2020. To begin to address the anticipated avalanche of cases expected when the courts do re-open and the unprecedented logistical issues relating to social distancing, OCA and the New York State Bar Association announced, on May 11th that a landlord-tenant working group has been formed. With the housing courts closed and the moratorium continuing in effect, the working group was formed to devise a system to efficiently and effectively address the high volume of cases outside of the housing court.

If you have any additional questions about any issues addressed herein, please contact one of our attorneys. We will keep you posted on any and all developments as they arise.