

Legal Alert: Housing Court Updates on Commencement of Proceedings During Pandemic

June 17, 2020

As restrictions related to the COVID-19 pandemic begin to ease around the state, we wanted to advise you of the latest Housing Court updates.

Courts have recently opened for judges and court personnel, however, there is currently no word when physical appearances by litigants will resume. Until then, we are continuing to review cases and schedule virtual conferences on existing cases with the Court.

Evictions remain on hold until August 20, 2020, pursuant to Governor Cuomo's May 7, 2020 Executive Order (EO 202.28), along with the ban on commencing new eviction proceedings against any tenant eligible for unemployment benefits under state or federal law, or any tenant facing financial hardships due to the COVID-19 pandemic through August 20, 2020.

On June 12, 2020, the Administrative Judge of the NYC Civil Courts issued three (3) directives concerning the commencement of new non-payment proceedings and applications for warrants of eviction, as follows:

1. To commence a new nonpayment proceeding, a landlord must file, along with the petition, an affidavit by a person with knowledge of the facts, stating that the petitioner has made a good faith effort to ascertain whether the respondent is a person eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic, and that the respondent is not such a person. (DRP 209 [Amended]).
2. To apply for a default judgment based upon the respondent's failure to answer in a summary proceeding for nonpayment of rent, a petitioner shall submit, as part of such application, an affidavit by a person with personal knowledge of the facts, stating that the petitioner has made a good faith effort to ascertain whether the respondent is a person eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic, and that the respondent is not such a person. (DRP 210 [Amended]).
3. To enforce a warrant of eviction that was awarded before March 20, 2020 based upon the nonpayment of rent, a petitioner must first seek leave of court to enforce the warrant by filing a motion, on notice. The motion seeking leave to enforce shall include an affidavit by a person with personal knowledge of the facts stating that petitioner has made a good faith effort to ascertain whether the respondent is a person eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic, and that the respondent is not such a person. (DRP 211 [Amended]).

Despite the fact that the courts are not accepting filings of new petitions at this time, and that the Department of Consumer Affairs has not yet lifted its restriction on process servers, we would like to be proactive and believe that we can begin sending Five-Day Rent Delinquency Letters to those tenants in arrears as of this Monday, June 22, 2020.

As you are aware, prior to the pandemic, we were encouraging our clients to send such notices to tenants themselves. However, due to the new requirements discussed above, we recommend that our office prepare and mail the delinquency letter on your behalf. This letter shall include a questionnaire for the tenant to fill out regarding any financial hardship they suffered due to COVID-19, which they will be instructed to submit to our office either by using the new e-mail address COVID19@hwrpc.com, or by mailing it back to our office via regular mail.

When we are eventually permitted to file a nonpayment petition, we will then be able to include an affidavit showing that a good faith effort was made to ascertain whether the respondent has been affected financially by the COVID-19 pandemic.

Additionally, it is important to remember that the CARES Act, passed by Congress on March 27, 2020, prohibits landlords of certain "covered dwellings" from initiating eviction proceedings or "charging fees, penalties, or other charges" against a tenant for the nonpayment of rent. These protections extend through July 27, 2020.

The CARES Act further requires such landlords to provide tenants with at least 30 days' notice before they must vacate the property, whether on nonpayment or holdover grounds. This means that a landlord subject to the CARES Act cannot commence any type of eviction proceeding until first serving a 30-day rent demand or termination notice after July 27, 2020 (allowing for commencement of an action on or after August 24, 2020).

If you are unsure whether any of your properties are subject to the CARES Act, the Act defines "covered dwellings" as rental units in properties that either participate in federal assistance programs (i.e., Section 8 assistance, Housing Choice Vouchers, LIHTC, housing grant programs) or that are subject to a "federally-backed mortgage loan" or "federally-backed multifamily mortgage loan" (i.e., a mortgage owned or securitized by Fannie Mae or Freddie Mac or insured/assisted by the federal government). Please contact one of our attorneys for further clarification, if needed.

As we are expecting further clarifications and/or changes in the upcoming days, we will continue to keep you informed. If you have any questions, please contact us at your convenience.