

Legal Alert: Eviction Moratorium Law Extended to January 15, 2022

September 2, 2021

Governor Hochul signed legislation today that amends certain laws relating to residential and commercial eviction proceedings, including extending the eviction moratorium to January 15, 2022. A summary of the amendments can be found below.

Emergency Rental Assistance Program ("ERAP")

- The acceptance of payment for rent from the ERAP program, and the restriction it places on evictions, has been modified as follows, effective immediately:
 - Landlords who accept ERAP payments on behalf of a tenant/occupant continue to agree to not evict a household for reason of expired lease or holdover tenancy for the period of one year from the date of the first ERAP payment received. However, Landlords may evict if the tenant/occupant is creating a nuisance deemed to be intentional and which infringes on the use and enjoyment of other tenants.
 - Landlords who have obtained a judgment based solely on nuisance allegations against a tenant/occupant prior to September 2, 2021 who accept ERAP funds will be entitled to a hearing to determine if the nuisance behavior is continuing and an eviction is warranted.

COVID-19 Emergency Eviction and Foreclosure Prevention Act ("CEEFFPA") & COVID-19 Emergency Protect Our Small Businesses Act ("CEPOSBA")

The legislative framework behind CEEFFPA, which addresses residential eviction proceedings, and CEPOSBA, which addresses commercial eviction proceedings, were similarly modified in the following ways:

- The stay associated with submitting a hardship declaration is extended to January 15, 2022, subject to the below restrictions.
- Landlords may now challenge the validity of the tenant's hardship declaration based upon a good faith belief that the hardship claimed by the tenant is invalid. This challenge must be made by motion wherein the Court will hold a hearing to determine the validity of the tenant's hardship declaration. If the Court determines the hardship declaration is invalid, the proceeding will continue in the ordinary course and the Landlord can continue to seek an eviction. If the hardship declaration is found to be valid, the proceeding will be stayed until January 15, 2022 and, for residential proceedings, the Court will direct the tenant to apply for ERAP funds.
- In situations where a hardship declaration was filed by a tenant prior to the filing of a Petition (after receiving a rent demand or holdover notice), Landlords may continue to

proceed by filing Petitions and challenging the validity of the hardship declaration based upon a good faith belief that the hardship declaration is invalid. The Landlord will have to make a motion to request the hearing to challenge the validity of the hardship declaration.

- The language of the hardship declaration and required notices to tenants were modified. We will send a link to the official documents once they are made available by the Court.
- The Court is required to hold a status conference before proceeding on any case where a Petitioner has been awarded a judgment of possession or warrant and is seeking to execute on the warrant.
- In residential proceedings, default judgments obtained between August 13, 2021 and September 2, 2021 can be vacated upon oral or written request by the tenant.
- Landlords seeking a default judgment and warrant based upon the tenant's failure to file an answer must continue to make a motion to seek this relief.

Tenant Safe Harbor Act ("TSHA")

The legislative framework behind the TSHA, which addresses residential eviction proceedings, was modified in the following way:

- The defined covered period is extended to January 15, 2022. Thus, a Landlord will not be granted a judgment of possession for any rental arrears accruing from March 7, 2020 through January 15, 2022 if the tenant can prove that they suffered financial hardship as a result of COVID-19.
- A tenant's eligibility for ERAP was added as a factor in determining whether a tenant suffered a financial hardship.

We will continue to keep you apprised of any additional changes to the law or guidance as it becomes available. As always, our attorneys are available to answer any questions you may have about the items discussed herein.