



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF SOCIAL JUSTICE
HOUSING PROTECTION UNIT

To: New York State Sheriffs

From: New York State Office of the Attorney General

Date: December 29, 2020

Re: The COVID-19 Emergency Evictions and Foreclosure Prevention Act of 2020

The COVID-19 Emergency Evictions and Foreclosure Prevention Act (EEFPA) of 2020

Summary:

On December 28, 2020, the COVID-19 Emergency Evictions and Foreclosure Prevention Act (EEFPA) of 2020 was signed into law and took immediate effect. The Act comprehensively addresses the impending threat to hundreds of thousands of New Yorkers of eviction and foreclosures related to job loss and financial hardship stemming from necessary closures of businesses and schools to prevent the spread of COVID-19. It provides a limited and temporary stay of evictions and foreclosures as a public health and safety measure to allow people impacted by the unprecedented circumstances of COVID-19 to stay in their homes.

This memorandum is intended to provide an overview of the new legislation and impacts for Sheriffs' and other law enforcement offices throughout New York State charged with carrying out evictions. The EEFPA applies to any court or administrative eviction proceeding, including all Article 7 summary proceedings under the NYS Real Property Actions and Proceedings Law.

The EEFPA stays the execution of most evictions as well as the commencement of new eviction cases, with some narrow exceptions, until May 1, 2021. Tenants and occupants are given the opportunity to submit hardship declaration forms to their landlords, to the courts and even at the point of execution of a warrant, to a Sheriff, Constable or Marshal to immediately stop their eviction or prevent an eviction case from being filed against them.

Sheriffs, constables and marshals are specifically stayed from executing any outstanding warrants of eviction obtained by default judgment until and unless the court holds a hearing to review the default.

Officers charged with carrying out evictions will need to pay careful attention to whether warrants of eviction from the courts contain the necessary language to ensure that the eviction can be legally conducted.

The Office of the New York State Attorney General is available to assist local Sheriffs and Constable departments as they familiarize themselves with the applicable provisions of the new law which they are charged with enforcing. Below is a summary of the major provisions of the EEFPA.

Eviction Moratorium:

- **No tenant or lawful occupant who signs and delivers a hardship declaration form to their landlord, the courts or sheriffs, city constables or marshals, can be evicted until at least May 1, 2021.**
- **There is an exception to this eviction moratorium for nuisance holdover cases that result in a possessory judgment and where a post EEFPA enactment court conference has been held to determine whether nuisance conduct continues. The court's warrant must specifically describe that the tenant is not eligible for a stay of eviction pursuant to a hardship declaration because of persistent nuisance behavior. That behavior must be specifically described in the warrant of eviction presented to the sheriff, constable or marshal. Without this detailed description, the warrant may not be executed.**

No new Eviction cases may be filed if tenant provides Hardship Declaration:

- Landlords may not sue any tenant or occupant for their eviction due to non-payment of rent or holding over after lease expiration or tenancy expiration, by providing a hardship declaration to their landlord. The declaration should state that they have either had an income loss, increased costs related to essential work or health impacts (including from being unable to secure moving expenses); inability to obtain employment or earn income due to responsibilities to care for children or elderly, disabled or sick family members or financial hardship during the COVID-19 pandemic. Additionally, hardship may include that the tenant or someone in their household, will suffer a significant health risk of becoming ill from COVID-19 due to an underlying medical condition, if forced to move from their home.
- A “significant health risk” related to contracting COVID-19 for a tenant or occupant is defined under the law as being over aged 65 years, having a disability or having an underlying medical condition, which may include, but is not limited to, being immunocompromised.
- If a tenant provides the above hardship declaration to the landlord or its agent, then the landlord or agent is prohibited from initiating an eviction proceeding against the tenant until May 1, 2021. (Statutes of limitation for claims are tolled accordingly.)

Exception for filing of Nuisance cases or where no Hardship Declaration made:

- If a tenant or occupant has violated their lease by persistently and unreasonably engaging in nuisance behavior that substantially infringes on the use and enjoyment of other tenants or occupants and causes a substantial safety hazard to others, their landlord may commence a new nuisance holdover proceeding despite the prohibition on initiating new proceedings in the EEFPA. The landlord may not, however, simply add new nuisance claims to cases pending before the EEFPA's enactment, brought under different claims. Landlords who sue tenants for nuisance conduct will be required to file an affidavit of service with the petition attesting under penalty of perjury, to the manner of their service of a pre-eviction tenant hardship declaration form in English and the tenant's primary language (if other than English) upon the tenant and whether or not the hardship declaration was returned. The affidavit must also include a specific description of the alleged nuisance conduct.
- A new case may also be commenced if a tenant has not delivered a Hardship Declaration to their landlord. Similarly, the landlord will be required to file an affidavit attesting to the manner of their service of a pre-eviction tenant hardship declaration form upon the tenant and that the landlord/agent has not received a hardship declaration back from the tenant or occupant before commencing the eviction case.
- The landlord's pre-eviction notice to tenants must also include a mailing address, telephone number and active email address that the tenant can use to contact the landlord and return the hardship declaration, as well as a list of local non-profit legal services providers handling housing cases.
- If the Court later confirms that the tenant or occupant has not received the hardship declaration form, it shall stay the proceeding for at least 10 days, shall provide the form to the tenant and shall ensure that the tenant has received and fully considered whether to submit the declaration.

Pending eviction cases in court:

- All eviction cases, including those filed before March 7, 2020, pending on the date of the EEFPA's enactment and those filed within 30 days from enactment of the EEFPA, will be additionally stayed in court for at least the next 60 days or longer (if the chief administrative judge determines a later date is necessary). This stay allows the courts to prepare to conduct proceedings that comply with the EEFPA and gives tenants time to deliver hardship declarations. The landlord is affirmatively responsible for filing any tenant hardship declaration received by them with the court under the appropriate index number. Courts will promptly issue orders staying pending proceedings.
- In any eviction proceeding in which an eviction warrant has not been issued, including cases filed on or before March 7, 2020, if the tenant provides a hardship declaration to the landlord, the court or an agent of the landlord or the court, the proceeding shall be stayed until May 1, 2021.

Default Judgments:

- No default judgments authorizing a warrant shall be issued nor shall enforcement of an existing default judgment through eviction be authorized prior to May 1, 2021, without the court holding a hearing after the effective date of the EEFPA that the landlord must request by filing a motion. The landlord who seeks enforcement through a warrant of eviction, will be required to provide an affidavit that it has notified the tenant or occupant of the time, date and place of the hearing to review the default, including a copy of that notice.
- Tenants or occupants may have defaults that were issued before the EEFPA's passage removed, upon their written request or oral request before or at the hearing to restore the matter to the calendar. There is no requirement that the tenant file this request as an Order to Show Cause to vacate the default judgment requiring the tenant to demonstrate why they defaulted originally.

Pending Warrants of Eviction that have issued but have not yet executed:

- Execution of any pending warrants of eviction that have been issued but not yet executed (including in proceedings filed on or before March 7, 2020) shall be stayed until the courts hold a status conference with the parties.
- The tenant or occupant's filing of a hardship declaration or the filing by the landlord of that declaration pursuant to their obligation to do so, will stay the eviction through May 1, 2021 (unless found to have engaged in nuisance conduct). If the judgment leading to the warrant was issued for nuisance, the court must determine in a hearing if the nuisance conduct continues.
- **All Warrants issued after the above conference must state that the tenant has not submitted a hardship declaration and was served including the dates and times of service or that the tenant was ineligible for a stay because the Court found the tenant engaged in nuisance behavior that is specifically described. No warrant shall be issued by the courts to any sheriff of the county or to any constable or marshal of the city or constable of the town in the county in which the property or a portion thereof is located that does not comply with the requirements to make these statements.**
- **No officer to whom the warrant is directed shall execute a warrant for eviction issued that does not comply with the above specificity.**
- **A tenant or occupant may still stop their eviction at the point of execution, by giving a hardship declaration to the Sheriff, City Constable or Marshal, unless the warrant states that the Court found that the tenant engaged in nuisance behavior and the**

conduct is specifically described. The hardship declaration may be made in the tenant's language if other than English.

- **If the officer receives a hardship declaration and there is no language in the warrant issued by the court indicating that the tenant is ineligible due to nuisance behavior, the officer shall not perform the eviction and shall instead, return the hardship form to the court indicating the case or index number with which to associate the form.**