

Real Estate Law: Eviction moratorium, rental assistance programs settle in for extended stay



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New York's eviction moratorium and rental assistance programs, created in the early days of the pandemic to combat the health and economic consequences that accompany evictions, homelessness, and unpaid rent, will be sticking around a bit longer, but not without some changes. On Aug. 12, 2021, the United States Supreme Court enjoined the enforcement of New York's residential eviction moratorium, the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ("CEEPPA"). The court's ruling in *Chrysaflis v. Marks* took aim at the CEEPPA's procedure that prevented landlords

from evicting tenants who filed a hardship declaration stating they suffered an economic setback as a result of the pandemic. Tenants could bypass the court system because the law did not require applicants to submit evidence to support their claim. Once a tenant completed and submitted the declaration that attested to their pandemic-related hardships, they were able to prevent an impending eviction. Landlord advocacy groups argued, and the Supreme Court ultimately agreed, that the self-certifying procedure violated landlords' constitutional rights to due process.

In September, Gov. Kathy Hochul extended the Tenant Safe Harbor Act's eviction moratorium to Jan. 15, 2022. The legislation includes provisions that address the Supreme Court's concerns, and extends protections to commercial tenants, homeowners, and localities,

like Monroe County, who opted out of the state-run relief program.

To address the Supreme Court's concerns, the revised hardship declaration procedure includes due process protections for landlords. Under the new procedure, landlords can challenge their tenant's hardship declaration by requesting a court hearing, which allows the court to assess the hardship declaration's validity to determine if the asserted hardship is sufficient to warrant staying an eviction. If not, the case will proceed to a determination on the merits. Any eviction that is stayed will be effective until the end of the moratorium on Jan. 15. In addition to implementing hearings, landlords will also be able to evict a tenant who is creating health hazards for other tenants, intentionally damaging property, and any tenant who fails to submit a hardship declaration.

The legislation also offers protection to more than just residential tenants. Commercial tenants and homeowners will now be able to file hardship declarations to prevent eviction, or a mortgage or tax foreclosure. These hardship declarations will be subject to the same process outlined above.

The state will also continue to administer financial assistance to those in need through the federally funded Emergency Rental Assistance Program ("ERAP"). Under the moratorium extension, ERAP applicants will receive automatic eviction protections while their application is reviewed by the state. If the applicant qualifies for financial aid, the state will pay their landlord up to 12 months of past-due rent and electric or gas bill payments, up to three months of future rent, and the tenant will receive eviction protections for an additional year. Lawmakers also allocated \$25 million from the federal ERAP funding to support tenant legal defense efforts.

Protections under the state-run ERAP program will also extend to renters in Monroe County, where officials originally opted

to administer federal funds through a locally-run program. This could prove crucial for Monroe County applicants facing a program with dwindling money. As of Aug. 13, Monroe County's rental assistance program paid \$13,500,018 to tenants in need. However, the demand from residents has outpaced the county's funding. At the beginning of August, the county program approved a total of 2,502 applications, denied 1,484 applications, and had 6,626 applications still pending. Residents with applications on the pending list will now have access to the more expansive state program if the county is unable to provide monetary assistance.

One of the biggest challenges these programs face is their ability to quickly administer funds to those in need. In a census analysis of New York State conducted from late June to early July, the National Equity Atlas estimated that more than 830,000 households were behind on rent with a total estimated debt of more than \$3.2 billion. According to the state, need far exceeds available funding. Currently, more than 65% of ERAP funding has been paid to landlords, or temporarily set aside on behalf of qualified tenants. Diminishing funds, outpaced need, and the spread of the Delta variant have all pushed the Governor to request more federal funding.

While New York boasts some of the strongest tenant protections in the country, the need for both continuous funding, and an application process which ensures that landlords do not go months with unpaid rent, are critical to protecting both sides of the landlord-tenant relationship.

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