

Real Estate Law: As eviction moratorium sunsets, new light for tenants, landlords



By **KARIANNE M. POLIMENI**

Perhaps the biggest lingering effect of the coronavirus pandemic in the world of real estate, for both tenants and landlords, is the issue of unpaid rent. New York State's eviction moratorium set forth in the Tenant Safe Harbor Act, the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020, and the COVID-19 Emergency Protect Our Small Businesses Act is set to expire on Aug. 31. Throughout the course of the COVID-19 pandemic, tenants and mortgagors across the state grew increasingly unable to meet their payment obligations to landlords and lenders. As the pandemic became both a health and economic crisis, the state began looking for ways to slow the pandemic, keep tenants housed, and support landlords.

New York, through a number of executive orders and legislation, enacted protective measures to support tenants unable to make payments due to COVID-19-related hardships. Beginning with Gov. Andrew Cuomo's Executive Order 202.8 in March 2020, and most recently set forth in the Protect Our Small Businesses Act, extended through August, the state placed a moratorium on residential and commercial evictions. The moratorium prohibited courts from issuing warrants of eviction or possessory judgment against tenants suffering from COVID-19-related financial hardship. Under the moratorium, landlords can still receive monetary judgments for rent due and owed, but they are unable to seek eviction as a remedy for nonpayment if eligible tenants raise financial hardship as an affirmative defense. While eligible tenants — those that meet certain criteria and

file declarations of hardship — cannot be evicted solely for nonpayment, they are still expected to pay back rent when the moratorium ends.

Absent any legislation to the contrary, landlords and tenants alike can expect the return of eviction proceedings after Aug. 31, with New York courts set to resume hearing claims to recover unpaid rent and to evict defaulting tenants.

With millions of Americans still struggling financially from the pandemic, many are likely still unable to pay the rent owed. Recognizing that a nationwide flood of evictions may ensue from the expiration of state and federal moratoriums, the federal government allocated funds under the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) and the Consolidated Appropriations Act for states to operate rental assistance programs. Among other things, the extension of New York's moratorium gave the state time to administer the funds to qualified tenants.

New York will be providing direct monetary assistance to eligible persons through the Emergency Rental Assistance Program (the "Program" or "ERAP"). The Program is specifically designed to assist with past-due rent and utility payments accrued since the pandemic began, particularly since March 13, 2020. Eligible tenants can receive up to 12 months of accrued back rent and utility payments if they meet certain criteria. For example, tenants who have suffered a financial hardship and make less than 80 percent of area median income may qualify. Tenants who spend more than 30 percent of household income on rent may also be eligible to have up to three months of future rent paid through the Program.

Rochester-area residents looking to take advantage of the Program should apply with the city of Rochester, as ERAP

funds and applications are directly administered by the city of Rochester and Monroe County.

Payments under ERAP will go directly to landlords and utility providers of eligible tenants and customers. These payments should provide some much-needed relief to landlords, particularly small-scale landlords who may have gone months without collecting rent. Landlords worried about their tenants' ability to make necessary back payments and those simply looking to avoid eviction proceedings should hopefully find some support under the Program.

The Program, however, is not without catches, as landlords must agree to several conditions in order to receive payments. Among other things, landlords must agree to waive late fees due on back rent covered by ERAP payments and to not increase monthly rent for a certain period of time after receipt of funds. They also cannot evict tenants for expired leases or holdover tenancies for a period of one year after receipt of payments through ERAP. These restrictions are meant to prevent evictions and to provide housing stability for lower-income households, while giving financial relief to landlords impacted by the moratorium.

With every sunset comes the dawn of a new day. For landlords who have dealt with dark days brought on by months of unpaid rent, the sunset of the eviction moratorium will bring long-awaited means to resolve tenant non-payment issues and disputes, either through ERAP or usual eviction remedies.

Karianne M. Polimeni is an associate in the Real Estate practice at Harter Secrest & Emery LLP. She can be reached at kpolimeni@hselaw.com. Niyobuhungiro Godfroid, a summer associate at the firm, contributed to this column.