

Governor Cuomo signed into law the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (CEEFPa or the Act) on December 28, 2020 which was made effective immediately.

Most eviction proceedings in New York State, including nonpayment cases and holdovers are affected by the Act. The only residential eviction proceedings that are not stayed are those commenced on the grounds of nuisance.

This Act has no effect on commercial eviction proceedings, but there is an expectation that there will be another Executive Order extending the stay on commercial cases beyond January 31, 2021.

While we expect a DRP to be issued in the coming days, which may confirm, modify and/or clarify this explanation, below is our present analysis of this new law:

HARDSHIP DECLARATION

This section is possibly the most significant part of the Act.

Tenants are permitted to submit the Hardship Declaration at any time by sending the forms to the court, the landlord, management or the landlord's counsel.

Under the new law, if a tenant submits a Hardship Declaration, any eviction proceeding will be stayed through May 1, 2021.

The law provides that no residential eviction proceeding can move forward until the tenant has been provided a Hardship Declaration.

For cases filed in court prior to December 28, 2020, it is the court's responsibility to send the tenant a Hardship Declaration.

For all cases not filed in court prior to December 28, 2020, the landlord will have to serve the Hardship Declaration with all notices, including the Landlord's Letter of Default, Rent Demand and the Notice of Petition and Petition.

In order to submit a valid Hardship Declaration, the tenant must either be "experiencing a financial hardship" or be unable to move due to "increased risk for severe illness". While the form sets forth loose criteria for qualification, the criteria is extremely vague and the tenant is not required to provide any proof or supporting documentation.

While purportedly submitted "under the penalty of law", there is no penalty provided for making a false statement. As such, there is no doubt that some tenants will find some basis to submit the Hardship Declaration even though they do not qualify.

The Hardship Declaration Forms must be provided in English and the resident's principal language for all preliminary notices to eviction proceedings.

If a tenant files a Hardship Declaration, the landlord/owner cannot commence an eviction proceeding before May 1, 2021, regardless of the merits or validity of the Hardship Declaration. We suggest that you set up a dedicated email address and mailing address to receive these forms. We also ask that you

immediately forward a copy of the forms that you receive to us as we are required to file them with the court.

The effects of the new Law and Hardship Declarations can be separated into 3 categories:

PENDING CASES – Category #1

The act immediately stays all pending proceedings for at least sixty (60) days, until February 26, 2021. In addition, any new cases filed within thirty (30) days of the new law (prior to January 27, 2021), will also be stayed for sixty (60) days.

The stay does not apply to nuisance cases with ongoing nuisance claims. However, before allowing an eviction in a nuisance holdover, the court must hold a hearing wherein the landlord must prove that the occupant is still persisting in improper conduct.

- a. Cases commenced prior to March 16, 2020 where a judgement was entered prior to the court closure in March were part of the group of cases where we made motions to seek to issue and/or execute a warrant of eviction, pursuant to DRP 213. Those cases were returnable in the HMP Part and most, if not all, have been on the virtual calendar since October 6, 2020. Many of those cases we were able to enter into stipulations and many have led to payment of arrears. Any cases on the virtual calendar prior to December 28, 2020 have been adjourned to dates in March 2021.
- b. Cases which were commenced prior to March 16, 2020 where a judgement was not entered prior to the court closure in March, were not restored to the courts virtual calendars since then and were the next cases in line to be placed on the calendar prior to the Act being signed and, as of this email, we have not been advised when they will be placed on the calendar. As many of you are aware, for several of these cases, based upon our advice at the times, you already started new cases in September – December 2020.
- c. Cases which were commenced since July 27, 2020 and the time to answer has expired or is about to expire – as a result of the Act there is a 60 days stay, which effectively extended the time to answer. If the tenant has not answered by the time the stay expires, the Act requires us to make a motion to place the case on the calendar to seek the default judgment after February 26, 2021.

CASES WHERE ONLY A DEFAULT LETTER AND/OR RENT DEMAND WERE DONE – Category #2

If we did not purchase an index number to file a petition prior to December 28, 2020, then the case must be restarted and the predicate notices/demands must be re-served with the Hardship Declaration attached.

The Act explicitly requires that the clerk review all petitions filed after December 28, 2020 to confirm that the Hardship Declaration was served with all Notices.

Because no predicate notice served prior the December 28, 2020 included a Hardship Declaration, those notices must now be reserved before a new Petition can be filed.

INITIATION OF NEW CASES – Category #3

We have the most recent Hardship Declaration approved by the court and the List of Service Providers which must be included with all notices, in both non-payments and holdovers – so we can continue starting new cases, including those in Category #2 above, and you are advised to continue to process new cases without delay.

In order to request a new start, or to continue with a start falling into category 2 above, you must provide our office:

1. An Address, Email, and Phone number at which you will accept Hardship Declarations
2. The primary language spoken by the tenant, if other than English.

It is our recommendation that you set up a dedicated email address (hardship@yourcompany.com) and have an auto forward to us at hardship@rosenblumbianco.com.

The stay applies to any case commenced (index # purchased) before January 27, 2021, so we will not be filing any new Petitions until after that date.

However, because new predicate notices and demands will be required on all new cases, most cases will not be ready for Petition prior to January 27, 2021.

SERVICE AND FILING OF NEW PETITIONS (DISPOS)

A summary proceeding cannot be commenced without including an affidavit setting forth the manner of service upon the resident of the blank Hardship Declaration(s) and a sworn statement that the landlord/owner had not received a filled out Hardship Declaration from the resident.

In summary proceedings, a landlord must utilize “due diligence” to effect service of the Petition and Notice of Petition by placing them in the hand of the actual respondent.

Unlike previously, substitute service or “nail and mail” service is not sufficient until the process server has made at least three (3) attempts to serve the pleadings by personal service.

This is an incredible burden and will cause us to increase the cost of a petition. While the landlord’s default letter and rent demand must contain copies of the Hardship Declaration, the new service requirements are limited to the Petition.

CONCLUSION

The Act gives broad protections to all lawful occupants of housing accommodations, big or small, regulated or unregulated, in and outside of New York City, and severely hampers your rights to collect rent if not voluntarily paid by the tenant.

The goal of the Legislature was to prevent evictions proceedings, except in the most extreme circumstances, until at least May 1, 2021.

It is our goal to maximize your rent collections by guiding you through the maze that this Act has created.