



EQUAL JUSTICE FOR ALL

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WHAT WE KNOW ABOUT EVICTIONS IN NEW YORK STATE

The following information is current as of October 15, 2020.

NEW: Starting October 12, 2020, courts will begin hearing eviction cases once again. If you get court papers, DON'T IGNORE THEM. You can call Neighborhood Legal Services for help.

If you have not been able to pay your rent because of COVID, or your income decreased during the pandemic, your landlord should not be able to evict you for the back rent. Your landlord may still be able to evict you for lease violations. If you get court papers, call Neighborhood Legal Services immediately at (716) 847-0650.

If you lost income during the pandemic, you should let your landlord know by filling out the Renters Declaration form at the end of this information sheet. Give a copy of this form to your landlord as soon as possible.

NEW: If you are behind on your rent because you have been financially impacted by COVID-19, you may qualify for help through Erie County and the City of Buffalo (more information below). You can apply for assistance through 211 or by visiting www.211wny.org/resources/erie-county-covid-19-rent-relief.

The Governor signed an Executive Order on September 29, 2020 that expands the Tenant Safe Harbor Act (more information below). If a tenant was served with a warrant of eviction pre-COVID, but has not been put out yet, the tenant can raise a financial hardship defense under the Act.

Beginning October 1, 2020, you can apply for help to pay your rent. If you qualify, the money will be paid directly to your landlord. To qualify, you:

1. Must be a resident of Erie County; and
2. Must have lost income because of COVID-19, or has had someone in your household that was sick because of COVID; and
3. Must meet income requirements (see chart below).

Household Size	Income Limit
1	\$42,405
2	\$55,453
3	\$68,501
4	\$81,549
5	\$94,597
6	\$107,645
7	\$110,091
8 or more	\$112,538

To apply, you can call 211 or apply at www.211wny.org/resources/erie-county-covid-19-rent-relief/. You can also start a text-message conversation with 211 from 8:30-3:00, Monday-Friday, by texting your zip code to 898-211.

After you apply, you will have to get certain paperwork to 211.

- Everyone living in the household has to provide ID;
- Everyone over the age of 18 has to provide proof of income for the last two months. Income includes:
 - Employment income;
 - Pension and retirement;
 - Public benefits, such as SSI/SSD, TANF;
 - Child support and alimony; and
 - Unemployment benefits.
- You will have to provide proof of residence by submitting a current/original lease or a letter from their landlord.
- You will have to submit proof that you lost income due to COVID-19. Proof can include:
 - A layoff or furlough notice;
 - Pay stubs that shows that the tenant lost income;
 - Bank statements;
 - Proof that the tenant had to reduce hours or stop working to care for someone with COVID-10, or because the tenant had to care for children due to schools or daycare closing.

CDC Eviction Moratorium:

The Centers for Disease Control (CDC) issued a **temporary**, Federal moratorium (ban) on evictions. This ban goes from **September 4, 2020** through **December 31, 2020**.

- The ban on evictions does NOT mean that tenants do not have to pay rent. It also does not prevent landlords from charging late fees. Tenants should pay their rent if they can.
- If a tenant is causing a health or safety threat where they live, the ban does not protect the tenant.
- Landlords are not allowed to evict any “covered person”.
 - “Covered person” includes any tenant or resident who gives the required written statement (“declaration”) to their landlord or the person(s) with a legal right to bring an eviction.
 - The declaration is a written statement. The tenant and all affected household members meet these 5 requirements:
 1. The tenant has tried to get all available government assistance for rent;
 2. The tenant meets one of these income requirements:
 - a. The tenant doesn’t expect to earn \$99,000.00 or more in 2020 (or \$198,000.00 if the tenant is filing their taxes jointly); or
 - b. The tenant and their family did not have to report any income to the IRS in 2019. In other words, the tenant did not pay federal income tax last year; or
 - c. The tenant received a stimulus check under the federal CARES Act.

3. The tenant and their family can't pay the full rent because of:
 - a. A substantial loss in income because their hours at work were cut or because they lost their job; or
 - b. An extraordinary out-of-pocket medical expense.
4. The tenant has made best efforts to try to make some payment to the landlord. This is based on what the tenant can afford; and
5. If the tenant and their family are evicted, there would be a likelihood that they would have to live with family or friends, or be homeless.

Evictions in New York State:

- Eviction cases started before March 17, 2020 will be heard by the courts. This means that **if you had a court case scheduled before March 17, you may get a letter from the court telling you about your new court date.**
- Any cases that were started before March 17 have to have a status conference. This includes cases where the landlord got a warrant of eviction, but the tenant was not put out.
 - At the conference, the court and parties will discuss COVID-19 concerns as well as whether the tenant is protected under the New York Tenant Safe Harbor Act (see below).
 - **If you were served with a warrant of eviction before COVID, you will have another court date before you are put out.**
- Courts will begin to hear all eviction cases once again.
 - If you were facing an eviction before March 17, 2020 and later suffered financial hardship due to COVID-19, you may be able to use this as a defense to get more time to move.
 - If you were facing an eviction before March 17, 2020 and did not suffer financial hardship due to COVID-19, the court must still hold a status conference before you can be put out. If you do not attend the status conference, you could be put out.

New York's Tenant Safe Harbor Act:

- The Tenant Safe Harbor Act (TSHA) allows courts to give landlords a money judgment for rent that came due during COVID-19, but prevents a landlord from getting a warrant of eviction if the tenant has a defense under the Act.
 - The "covered period" begins March 7, 2020 and goes on until at least January 1, 2021.
 - Tenants may raise a financial hardship as a defense, and the court will examine several factors, such as the tenant's income prior to the covered period; the tenant's current income; the tenant's liquid assets (like cash on hand); and whether the tenant qualifies for or receives benefits like PA, TANF, SNAP, SSI, SSD, unemployment, and other Federal and state benefits.
 - **If a tenant has a defense under the Tenant Safe Harbor Act, the landlord might get a money judgment against the tenant, but the tenant cannot be ordered to vacate the unit until the covered period ends (January 2, 2021 at earliest).**
 - **If a tenant has not suffered a financial hardship during the covered period, the TSHA likely does not apply, and the tenant could be put out as soon as October 1, 2020.**

*New information continues to come in about how the eviction process is unfolding in New York State and in Buffalo. The guidance in this document is based on information from the CDC, the Attorney General, the Governor's Office, and the NYS Office of Court Administration, and is current through October 15, 2020. For more information, go to <https://ag.ny.gov/coronavirus#tenantrights>.

**[FORM] DECLARATION UNDER PENALTY OF PERJURY FOR
THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S TEMPORARY
HALT IN EVICTIONS TO PREVENT FURTHER SPREAD OF COVID-19**

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;¹
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary² out-of-pocket medical expenses;
- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;

¹ "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

² An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.³
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to state and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant

Date

³ “Available housing” means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate federal, state, or local occupancy standards and that would not result in an overall increase of housing cost to you.