



COVID-19 EDITION

RENTERS AND EVICTIONS

NASSAU AND SUFFOLK COUNTIES

Last updated September 16, 2021. The situation is changing rapidly.
Please check our [website](#) for the latest updates.



What if I cannot pay my rent?

Rent is still due during the COVID-19 state of emergency and you should do your best to pay. But there are federal and state moratoriums on evicting people who are experiencing a hardship because of the pandemic. The most important protections are:

- (1) The New York COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020; and
- (2) the New York Tenant Safe Harbor Act.

New York Emergency Rental Assistance Program (ERAP)

Tenants who experienced financial hardship because of the pandemic may qualify for up to 12 months of help with unpaid rent and 3 additional months of future rent payments. You do not have to be facing eviction to apply.

Applications for the program are now available for all Long Islanders except residents of Oyster Bay.

- Town of Islip Residents: Call 631-647-5683 or visit www.islipny.gov to apply.
- Town of Hempstead Residents: [Town of Hempstead Emergency Rental Assistance Program \(lihp.org\)](http://Town of Hempstead Emergency Rental Assistance Program (lihp.org))
- Town of Oyster Bay Residents: <https://oysterbaytown.com/rentalassistance/>
- Residents of the rest of Long Island: [Emergency Rental Assistance Program | OTDA \(ny.gov\)](http://Emergency Rental Assistance Program | OTDA (ny.gov))

If you apply for ERAP, any eviction pending against you will be paused (“stayed”) until your application is approved or denied. If your landlord refuses to accept ERAP funds, you may be able to use that as a defense if they try to evict you for not paying rent.

[Visit LawHelpNY for a list of tech tips before you begin the ERAP application that may help you complete the online application.](#)

New York COVID-19 Eviction Prevention Act

Under the New York COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020, tenants experiencing a hardship cannot be evicted until January 15, 2022. That protection does not apply if a proprietor proves that a tenant is creating a nuisance. The COVID-19 Eviction Prevention Act applies:

- To all lawful occupants of a residence;
- To people with oral or written lease agreements;
- Even if your landlord does not have a rental permit;
- Even if you are only renting a room.

Contact Nassau Suffolk Law Services or another attorney if you are not sure if you are protected by the Act.

To be protected by the Act in a pending eviction, you must complete the New York State Hardship Declaration and give it to your landlord. You can complete this declaration if:

- You lost income during the pandemic;
- You have higher expenses because of the pandemic;
- If other circumstances caused by the pandemic have negatively affected your finances;
- If you cannot afford to move; or

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- If moving would put anyone in your household at increased risk from Covid-19 because of age, disability, or illness.

EVEN IF YOU COMPLETE THE HARDSHIP DECLARATION, YOUR RENT IS STILL DUE AND YOU SHOULD DO YOUR BEST TO PAY.

Make sure you keep a copy of the Hardship Declaration and proof that you sent it to your landlord. You can [access the form here](#).

[You can read more about the Eviction Prevention Act here.](#)

New York Tenant Safe Harbor Act

The New York Tenant Safe Harbor Act created a special Covid-19 defense that tenants can raise in court. If you are a residential tenant or lawful occupant and an eviction case is brought against you, a court cannot evict you for failure to pay rent if you suffered financial hardship because of the pandemic. This defense can only be used if you failed to pay rent between March 7, 2020 until government restrictions that closed or limited businesses where you live are lifted.

The Safe Harbor Act does not keep landlords from starting an eviction proceeding. **Even if a tenant raises financial hardship due to the pandemic as a defense in court, their rent is still due.** Courts can award a landlord a money judgment for unpaid rent. Tenants can also be evicted for rent owed before the pandemic or reasons other than failure to pay rent.

If you complete the New York State Hardship Declaration and claim on that form that you are experiencing financial hardship, a court will presume that the Act applies to you. However, your landlord can request a hearing if he/she has a good-faith basis that the hardship certified by the tenant does not exist. This means that as the tenant, you will have to prove you experienced financial hardship because of the pandemic.

If you do not complete the Hardship Declaration or your landlord presents evidence that you are not experiencing financial hardship, a court may consider the following factors to determine whether the Safe Harbor Act applies to you:

- 1) your income before March 7, 2020
- 2) your income between March 7, 2020 and when government restrictions on business activity in your county of residence are lifted
- 3) your liquid assets
- 4) whether you qualify for and receive public benefits under state or federal law

If it not yet clear if the Safe Harbor Act protects tenants whose landlords refuse to renew a lease or extend a month-to-month tenancy because the tenant was unable to pay rent.

Federal Eviction Protections

In addition to state protections, there have been several federal eviction moratoriums. The Centers for Disease Control (CDC) moratorium ended on August 26, 2021.

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In addition, the Federal CARES Act prohibited new eviction filings in federally covered properties until July 24, 2020. The Act applies to:

- federally subsidized housing programs overseen by the Department of Housing and Urban Development (HUD)
- properties with Low Income Housing Tax Credits (LIHTC)
- properties with federally backed mortgages

The CARES Act Moratorium has expired. But HUD and the Federal Housing Finance Agency (FHFA) have suspended evictions until June 30, 2021 in properties with federally backed mortgages, including properties insured, guaranteed, or owned by the Federal Housing Administration (FHA), the VA, Fannie Mae, or Freddie MAC. Under the CARES Act, landlords must give tenants of federally subsidized housing a 30-day notice to vacate before starting an eviction proceeding. The landlord cannot start an eviction proceeding until the end of the 30-day notice period.

The eviction moratoriums are complicated. How landlords and courts will apply them remains uncertain. If you have any questions about how this affects you, please contact Nassau Suffolk Law Services.



Can my landlord charge late fees?

Landlords cannot seek late fees in eviction proceedings. But they can sue for late fees if a written lease agreement allows it. Governor Cuomo issued an executive order that prohibits landlords from charging late fees from March 20, 2020 to June 24, 2021.



What if I can pay the rent now, but cannot get caught up on payments that I missed during the pandemic?

As explained above, tenants can still face a money judgment for rent owed during the pandemic. Tenants cannot be evicted for rent owed during the pandemic. They can be evicted for not paying rent prior to the pandemic.

Landlords may try to apply rent payments to the earliest month of rent owed. As an example, if you missed rent payments from April to December 2020, but start paying rent again in January 2021, your landlord could try to apply the January payment to your April rent.

Tenants who could not pay rent during the pandemic may wish to “ earmark ” future payments for the month in which they are made.

- If you pay by check, note that the payment is for the current month in the check’s memo line.
- If you pay in cash, you should get a receipt with the month you paid for noted on the receipt. If your landlord will not provide a receipt, you should not pay in cash.
- If you pay by money order, you should keep a copy of the money order (not just the receipt stub), which shows that it was earmarked for the current month.

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Earmarking a rent payment will clarify that you only missed payments during the pandemic. But it is possible that your landlord will not accept earmarked payments. If that happens, you should contact an attorney about your options.



What should I do if my landlord asks me to prove that I am experiencing financial hardship?

You are not required to do anything more than complete the New York State Hardship Declaration at this time. However, your landlord can request a hearing if he/she has a good faith basis that the hardship certified by a tenant does not exist. You should keep copies of any documents showing that you lost income or had higher expenses because of the pandemic.



Can new eviction cases be started in court?

Yes, but there are new rules, and the timeline will be different than normal. Your landlord cannot start a new eviction proceeding if you are waiting on a decision on an ERAP application. Your landlord must include a New York Hardship Declaration form with all required pre-eviction notices. Pre-eviction notices include demands for rent and any notices required in your lease agreement. Your landlord must also give you a mailing address, phone number, and active email address where you can send the completed Hardship Declaration.

A court should not accept a new eviction proceeding unless your landlord submits an affidavit that you did not deliver a Hardship Declaration form, or that you are causing a safety hazard, or interfering with other tenants' use of the property. Your landlord must also provide you with a list of all groups that provide free legal services in housing matters.

Contact Nassau Suffolk Law Services to see if you qualify for additional assistance.



What should I expect if I have a pending eviction proceeding?

If you deliver the New York State Hardship Declaration to your landlord or a court, the eviction proceeding will be paused until at least January 15, 2022. [Check here for information on how to deliver the declaration to a court.](#) If you submit an application for the ERAP program, any eviction action pending against you will be paused until you get a decision on your application.

If you are scheduled for a virtual or in-person proceeding, contact Nassau Suffolk Law Services or another attorney. Contact the court clerk's office to determine if your case is paused.



What will happen if I missed a court date in my eviction case in 2020?

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If you missed a court date in your eviction case in 2020, a default judgment might have been entered against you. If a default judgment was issued against you between March 17, 2020 and December 28, 2020 or August 13, 2021 and September 2, 2021, you can ask the court to void that judgment.

Contact Nassau Suffolk Law Services if you believe a default judgment was entered against you.



Does the New York Hardship Declaration pause all eviction proceedings until January 15, 2022?

If your landlord started an eviction proceeding based on allegations that you caused a safety hazard or interfered with other tenants' use of property, that case may go forward. Your landlord will need to prove that the alleged behavior is still occurring. Even if the court previously found that you should be evicted because of the behavior, it must hold a new hearing to decide if the behavior is still occurring.

I WAS ALREADY FACING EVICTION BEFORE THE PANDEMIC



My eviction proceeding began before courts suspended eviction proceedings in March 2020. What is happening in those cases?

The New York Eviction Prevention Act applies to cases filed before March 17, 2020. If you complete the New York Hardship Declaration, you will be entitled to a pause until January 15, 2022. You should send one copy of your completed declaration to your landlord and another to the court. Make sure you keep a copy for your records as well.

Tenants who have completed the New York hardship declaration should bring a copy to any scheduled court appearance.

You can check for the next scheduled court date on the [e-courts website](#). Click on the links to look up your case. If your case does not appear on e-courts, call the court clerk's office. You can also contact Nassau Suffolk Law Services for assistance.

Most eviction proceedings on Long Island are in the District Courts. But some are in Village, Justice, or Town courts, primarily on the East End. If you have an eviction case in a Village, Justice, or Town Court, **call the court** or Nassau Suffolk Law Services if you have questions about your case's status.



I received a 14-day eviction notice from the Sheriff before the statewide shutdown in March 2020. When will the Sheriff evict me from my home?

Even if you received a 14-day notice from the Sheriff before March 17, 2020, the court must hold a status conference in 2021 before you can be evicted. During that conference, you will be given a New York State Hardship Declaration form to fill out. If you complete the Declaration Form, the court should reschedule the eviction for after January 15, 2022. Even if you were being evicted because of "nuisance" behavior, the court must hold a

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hearing to determine if your behavior is still a problem. If the court decides your behavior is still a problem, the sheriff should serve you a new 14-day notice.

If you have questions on how this affects you, please contact Nassau Suffolk Law Services.

ALL TENANTS



Are all evictions suspended until January 2022?

No. If you do not deliver a signed New York Hardship Declaration or if your landlord proves that you are creating a safety hazard or nuisance in your home, it is possible you could be evicted before January 2022.

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