

State of New York,
Unified Court System



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Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

January 17, 2022

To: Hon. Norman St. George
Hon. Deborah A. Kaplan
Hon. Edwina G. Mendelson

From: Lawrence K. Marks *LM*

Subject: Corrected Copy: Residential and Commercial Eviction Proceedings Upon the Expiration of Chapter 417 of the Laws of 2021

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On January 15, 2022, Chapter 417 of the Laws of 2021 ["Act" (effective September 2, 2021)], which reinstated many COVID-19 related protections for tenants in residential and commercial proceedings following the United States Supreme Court decision granting injunctive relief in *Chrysaftis v. Marks*, 594 U.S. ____ (2021), expired and was repealed.

Guidance regarding the conduct of eviction proceedings moving forward is set forth in Administrative Order AO/34/22 [Exh. A]. Additional guidance related to eviction proceedings is set forth in prior Administrative Orders [AO/244/21, AO/245/21 and AO/267/20] and as follows:

A. No Automatic Stay of Eviction Proceedings, or Tolling of Commencement of Proceedings, Upon Submission of a Tenant's Hardship Declaration: The expiration of the Act eliminates the statutory requirement that when a tenant delivers a Hardship Declaration to a landlord, a landlord's agent, or the court (in a pending matter), a proceeding must be stayed or tolled.

B. Court Practice Upon Commencement of a New Proceeding: The court is no longer prohibited from accepting a new residential eviction proceeding filing without both: (1) an affidavit of service of the Hardship Declaration, and (2) an affidavit from the landlord stating that no Hardship Declaration has been received from the tenant or that the Nuisance Exception applies. In addition, service of the notice of petition with a Hardship Declaration is no longer required. The directive to reject such non-compliant new filings is withdrawn immediately.

The court should commence restoring stayed proceedings to active calendars, keeping in mind the Tenant Safe Harbor Act (TSHA) or a stay pending a COVID-19 Emergency Rental Assistance (ERAP) application may still apply. Proceedings where a tenant has counsel may be restored by individual resolution parts to their own calendars, where applicable. Where applicable, proceedings in which a tenant does not have counsel should be restored to the calendar for assignment of counsel. Motions by petitioners to restore proceedings to the calendar should be handled expeditiously and, where applicable, in the assigned resolution parts if a tenant has counsel.

The court must continue to expeditiously determine if a proceeding continues to be stayed pursuant to existing state statutes below.

a. **Tenant Safe Harbor Act (TSHA):** Chapter 127 of 2020, otherwise known as the “Tenant Safe Harbor Act” (“TSHA”), continues to remain in effect in residential eviction proceedings. The TSHA extends the moratorium on evictions of residential tenants with a COVID-19 related hardship during the “COVID-19 covered period”. The Act extended the COVID-19 covered period from March 7, 2020 until January 15, 2022. (Act, Subpart D, Part D, §1). As such, no court shall issue a warrant of eviction or other possessory judgment against a residential tenant that has suffered a financial hardship during the COVID-19 covered period for non-payment of rent. A tenant may raise financial hardship as an affirmative defense in any summary proceeding under Article 7 of the RPAPL. The TSHA does not prohibit any court from awarding a money judgment for the rent due and owed to a successful petitioner in a RPAPL Article 7 summary proceeding.

b. **COVID-19 Emergency Rental Assistance Program (ERAP):** Part BB, Subpart A, §8 of Chapter 56 of the Laws of 2021, as modified by L. 2021, c. 417, otherwise known as the COVID-19 Emergency Rental Assistance Program (ERAP), continues to remain in effect and is not affected by the expiration of the Act. Eviction matters with a related pending ERAP application continue to be stayed until a final determination of eligibility for rental assistance is issued by the Office of Temporary and Disability Assistance (OTDA). If ERAP applicants avail themselves of the application appeals process, final determinations is not made until the conclusion of the appeals process with OTDA. Landlords must submit notice of a known ERAP application to the court where the eviction proceeding is pending in accordance with prior Administrative Order AO/244/21. OTDA will continue to share with and update applicant data to the courts to help identify if a tenant has submitted an ERAP application and to determine application status. ERAP does not apply if a tenant intentionally causes damage to the property or persistently and unreasonably engages in objectionable or nuisance behavior. If the judgment on the basis of such objectionable or nuisance behavior was awarded prior to September 2, 2021, the court shall continue to hold

a hearing to determine whether the tenant intentionally caused significant damage to the property or persistently and unreasonably engaged in such behavior. The hearing is to determine whether the tenant is continuing the nuisance behavior.

C. Previously Filed Hardship Declaration as Prima Facie Evidence of Hardship: Despite the expiration of the Act, a Hardship Declaration shall serve as prima facie evidence establishing a rebuttable presumption that a tenant is experiencing financial hardship in a proceeding as a defense under any, local or state law, including but not limited to the TSHA, federal or state executive order, or other regulation limiting the eviction of a tenant suffering financial hardship due to COVID-19. If a court has determined that the tenant’s hardship claim is invalid, the Hardship Declaration does not create a rebuttable presumption of the tenant’s financial hardship. However, the absence of a Hardship Declaration does not create a presumption that no hardship is present. (Act, Part B, Subpart A, §9; Act, Part C, Subpart A, §9).

D. Warrants in Residential and Commercial Eviction Proceedings: The provisions of the Act requiring a different form of warrant are no longer in effect. Petitioners should make a motion to vacate the stay in proceedings where the judge has already issued an order to stay the execution of a warrant through January 15, 2022. The conference requirement for execution of warrants of eviction issued prior to March 17, 2020, remains in effect pursuant to AO/245/21 and DRP 217, as the courts have required conferencing of pre-pandemic warrants prior to the Act; however, the warrant no longer must be in the form as required by the Act.

E. Default Judgments in Residential Eviction Matters: The expiration of the Act further removes the requirement that the court must first hold a hearing upon motion of the petitioner before issuing a default judgment authorizing an eviction in a residential eviction matter or authorizing the enforcement of an eviction pursuant to a default judgment. No judgment or warrant shall be issued on default without a motion to the court by the petitioner.

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Please distribute this memorandum and attachments to judges and non-judicial staff as you deem appropriate. Questions on the subject may be addressed to Jessica Cherry of Counsel’s Office (jcherry@nycourts.gov).

cc: Hon. Carolyn Walker-Diallo
Hon. Jean Schneider