

Summary from Rent Stabilization Association

The following is a brief outline of the Order issued today by the federal Centers for Disease Control "to temporarily halt residential evictions to prevent the further spread of COVID-19."

1. The Order is effective immediately and, unless rescinded, modified, or extended, runs through December 31, 2020.
2. The Order provides that a landlord "shall not evict any 'covered person' from any residential property in any jurisdiction to which this Order applies during the effective period of the Order." A "covered person" means any tenant who provides the landlord with the Declaration discussed further below.
3. The Order does **not** apply in any jurisdiction "with a moratorium on evictions that provides the same or greater level of public-health protections than the requirements listed in this Order."
4. The Order does not relieve any individual of any obligation to pay rent or comply with any other lease obligation.
5. The Order does not prohibit the charging or collecting of fees, penalties or interest as a result of the failure to pay rent on a timely basis.
6. The Order contains as an attachment a Declaration that tenants "must provide" to invoke the protections of the Order; that Declaration "should" be completed by [e]ach adult listed on the lease, rental agreement or housing contract."
7. The Declaration contains the following five elements:
 1. the individual has used best efforts to obtain all available government assistance
 2. the individual expects to earn no more than \$99,000 in 2020 or no more than \$198,000 if filing a joint return, or was not required to file a return in 2019, or received a CARES Act stimulus check,
 3. the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-off, or extraordinary out-of-pocket medical expenses,
 4. the individual is using best efforts to make timely partial payments that are as close to the full payment as the person's circumstances permit, and
 5. eviction would likely render the individual homeless or force the individual to move into and live in close quarters in a new congregate or shared housing setting because the individual has no other available housing option.
1. Evict" and "Eviction" means any action by a landlord "to remove or cause the removal" of a "covered person" from a residential property; this does not include foreclosure on a home mortgage.
2. Residential property means any property leased for residential purposes.

Invariably, there will be numerous questions in the days ahead regarding the legal and practical implications of the Order for property owners in New York. In the meantime, below are some points of information and questions relating to the Order.

First, unlike the eviction moratorium and other tenant protections contained in the now-expired CARES Act that were limited to properties which were federally-involved through Section 8, low-income tax credits or other programs, the Order applies to all residential properties and not only those involved with federal programs.

Second, unlike the State's Tenant Safe Harbor Act, which established an affirmative defense by a tenant that their circumstances were COVID-connected, the Order contains no such linkage. A tenant whose circumstances are unrelated to COVID, including for example a tenant whose

non-payment case commenced prior to the pandemic, appears to be covered by the Order's protections.

Third, given the existence of the Tenant Safe Harbor Act and, in addition, the Administrative Order by Chief Administrative Judge Lawrence Marks prohibiting evictions in New York until October 1, questions will be raised as to whether the Order is applicable in New York given that the Order excludes jurisdictions that provide "the same or greater level of public-health protection than the requirements listed in this Order."

Fourth, while the Order prohibits evictions, it does not appear to prohibit the commencement of new non-payment cases or the processing of pending non-payment cases so long as evictions are not executed.

I will keep you apprised of further developments.