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Chief Administrative Judge

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MEMORANDUM

December 30, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso

From: Lawrence K. Marks *LM*

Subject: Residential Eviction Proceedings Under the COVID-19 Emergency Eviction
and Foreclosure Prevention Act of 2020 (Ch. 381, L. 2020)

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Earlier this week Governor Cuomo signed into law chapter 381 of the Laws of 2020 (the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ["Act" (effective December 28, 2020); Exh. A]), which, *inter alia*, provides substantial COVID-related protections through May 1, 2021 for respondents in residential eviction matters. **In brief: the Act immediately stays pending residential eviction proceedings for sixty days, and provides that, where a tenant submits to the landlord or the court a declaration attesting to hardship arising from or during the COVID-19 pandemic, proceedings will be further stayed (or commencement tolled) until May 1, 2021.** Additional highlights of the Act are as follows:

1. Stay of Pending Residential Eviction Matters; Exception: The Act immediately stays all pending residential eviction matters, including matters commenced on or before March 7, 2020, for sixty days (i.e., through February 26, 2021), and stays matters commenced between December 28, 2020 and January 27, 2021, for sixty days from filing (Act, Part A, §2). An administrative order effectuating this stay (AO/340/20) is attached as Exh. B.

Exception: A pending or newly-filed proceeding alleging that a tenant has persistently and unreasonably engaged in behavior that substantially infringes upon the use and enjoyment of other tenants or occupants, or causes a substantial safety hazard to others, may continue to be heard, with certain qualifications discussed in paragraph 7 below (Act, Part A, §§9, 9[5])) ("Nuisance Exception").

2. Additional Stays: The Act imposes several additional stays or novel hearing requirements that may be immediately relevant in a pending proceeding:

a. Default Judgments: It provides that, prior to May 1, 2021, no court shall issue a default judgment authorizing an eviction in a residential eviction matter, or authorizing the enforcement of an eviction pursuant to a default judgment, without first holding a hearing upon motion of the petitioner (Act, Part A, §7). If a default judgment was issued on or before December 28, 2020, it must be “removed” (i.e. vacated), and the matter restored to the calendar, upon the respondent tenant’s written or oral request to the court before or during that hearing (id.).

b. Stay of Execution of Warrants in Residential Eviction Proceedings: The Act provides that, in any residential eviction proceeding in which a warrant of eviction has been issued but has not yet been executed, execution of the warrant shall be stayed until the court has held a status conference with the parties (Act, Part A, §8[a][i]).

c. Prior Judgments Based on Objectionable or Nuisance Behavior: The Act provides that if a court has awarded judgment against a respondent on or before December 28, 2020 on the basis of objectionable or nuisance behavior, prior to permitting an eviction the court shall hold a hearing to determine whether the tenant is persisting in such conduct (“unreasonable behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes substantial safety hazard to others”) (Act, Part A, §9[2]).

3. Notice to Tenants and Hardship Declaration – Publication and Translation; List of Not-for-Profit Legal Services Providers: The Act contains a Notice to Tenant and a tenant’s Hardship Declaration (collectively, “Hardship Declaration”; Exh. C), to be provided in blank format to respondent tenants in eviction proceedings, setting forth various grounds by which tenants might be adversely affected by the COVID-19 pandemic (Act, Part A, §1[4]). It further directs the Office of Court Administration to make available on its website by January 11, 2021 translations of the Hardship Declaration into Spanish and the six other most common (non-English) languages in New York City, and to make other translations thereafter as practicable (Act, Part A, §2). In addition, it directs OCA to maintain upon its website an updated listing of not-for-profit legal services providers actively handling housing matters in the county where the subject premises are located (“List”).

4. Mailing of Hardship Declaration in Pending Matters: The Act directs the UCS to mail the Hardship Declaration (in English and, to the extent practicable, the tenant’s primary language) to all tenant respondents in pending matters. Our Division of Technology is currently exploring an economical method of delivering the Declaration to all residential eviction respondents in English and Spanish, with reference to the UCS website for translations in other languages.

5. Further Stay of Eviction Proceedings, or Tolling of Commencement of Proceedings, Upon Submission of a Tenant's Hardship Declaration: **Where a tenant delivers a Hardship Declaration to a landlord, a landlord's agent, or the court (in a pending matter), the Act requires that a proceeding be stayed until at least May 1, 2021, or that its commencement be tolled until May 1, 2021 (unless the Nuisance Exception applies) (Act, Part A, §§4, 6). Where no Hardship Declaration is submitted, the matter may proceed in the normal course following expiration of the stay or the holding of the appropriate status conference or hearing.**

6. Court Practice Upon Commencement of a New Proceeding: The court cannot accept a new residential eviction proceeding filing unless it is accompanied by both (1) an affidavit of service of the Hardship Declaration,¹ and (2) an affidavit from the landlord stating that no Hardship Declaration has been received from the tenant or that the Nuisance Exception applies (see paragraph 7) (Act, Part A, §5[1]). In review of proposed petitions, the court must determine that the petition contains a blank copy of the hardship declaration in English and, where practicable, the tenant's primary language. Personal service of the notice of petition and Hardship Declaration is required, unless such service cannot be made with due diligence, in which case alternative service may be pursued.

The court must expediently seek confirmation by the tenant, on the record or in writing, that the tenant has received the blank Declaration and has not submitted a completed Declaration to petitioner-landlord, an agent of the petitioner-landlord or the court. If the court determines a respondent-tenant has not yet received a Declaration, it must stay further proceedings for no less than 10 business days and provide the tenant-respondent with a copy of a blank Declaration in both English and the tenant's primary language (Act, Part A, §5[2]). **In any case where a Hardship Declaration is submitted to a landlord, a landlord's agent, or the court, the matter must be stayed until at least May 1, 2021 (unless the Nuisance Exception applies). Where these procedures have been followed and no Hardship Declaration is submitted, the matter may proceed in the normal course.**

7. Nuisance Exception: Where a pending or new petition alleges "unreasonable behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes substantial safety hazard to others," the stay provisions of the Act do not apply: the matter may be reviewed in the normal course and a warrant of eviction may issue (Act, Part A, §9). However, in any pending proceeding where a nuisance holdover has not been previously pleaded, the landlord must submit a new petition containing those allegations. If nuisance is not proven, and the tenant has submitted a Hardship Declaration, the court must stay the eviction until at least May 1, 2021 (Act, Part A, §9[4]).

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¹ Petitioners are required to serve a blank copy of the Hardship Declaration and the List with all future pre-eviction notices (Act, Part A, §3).

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).

c: Hon. Anthony Cannataro