

TENANT SAFE HARBOR ACT

What is the Safe Harbor Act?

- **The Safe Harbor Act is a NYS law that was enacted (passed) on June 30th, 2020.** The law gives the possibility for tenants to have certain protections against eviction for unpaid rent.
- Tenants facing eviction for nonpayment of rent must **prove** financial hardship in court, and show that they experienced the hardship during the **“covered period”**.
- If a tenant successfully proves hardship, **they may be able to stay in their apartment.**
- A judge would decide in a nonpayment case – (1) whether the tenant has proven their financial hardship and (2) if that hardship sufficiently falls within the covered period.
- Tenants awarded the ability to stay in their apartment would still be responsible for rent debt. This unpaid rent would become a “non-possessory” judgment (explained below).

What is the time period, or “covered period”, for the Safe Harbor Act?

- The “Covered Period” BEGAN on March 7th, 2020.
- The END DATE for the covered period will be the date that the Governor’s “NYS ON PAUSE” executive orders are no longer in effect. No one knows when this will be.
- The Safe Harbor Act will **not** apply to rent due and owing **before** March 7, 2020. It will **stop applying** to rents that become due **after** the end of the covered period (no one knows when this will be).

How does the “financial hardship” aspect of the law really work?

- **Tenants petitioned to court for nonpayment must prove, with *entire* household income, that:**
 - They experienced the financial hardship DURING the covered period.
 - The financial hardship prevented them from paying rent due DURING the covered period.
- Showing unavoidable COVID-19 expenses (i.e. medical, hospital, and/or funeral expenses) **MIGHT** sway the court to recognize a “financial hardship”, even if the tenant’s income did not decrease.
- The law gives limited guidance on what constitutes a “financial hardship”. Factors listed include:
 - Tenant’s income BEFORE the “covered period”, and income DURING the “covered period”.
 - Tenant’s liquid assets (bank accounts, securities, retirement).
 - Tenant’s eligibility and/or receipt of public assistance, SNAP, Disability income, unemployment, or benefits under State and Federal law.

What is a “Possessory” vs a “Non-Possessory” judgment?

Possessory Judgment

- Most nonpayment of rent eviction hearings result in a “Possessory judgment”. This means that a judgment (**debt**) for **unpaid rent** becomes tied to the tenant’s right to stay in the apartment.
- The judgment/debt is tied to a warrant of eviction.
- A tenant’s inability to pay a possessory judgment debt results in an eviction. Sometimes the judgment has to be paid in 1 lump sum, sometimes it is a series of payments.

Non-Possessory Judgment

- A “Non-Possessory judgment” means that a debt for unpaid rent is granted to the landlord, but payment of the debt is not tied to the tenant’s right to stay in the apartment in that specific case. **The judgment does not need to correspond with a warrant of eviction.**
- Sometimes “Non-Possessory” judgments are referred to as “fair use and occupancy”. It is the type of judgment that is a debt, but is not tied to a warrant of eviction.



What are the consequences of a money judgment?

- Tenants who have money judgements against them frequently experience the following impacts, which are often long-lasting & devastating to the tenant and their family:
 - Low credit scores/difficulty building back credit
 - Income Executions on bank accounts, can cause freezes in bank accounts
 - Garnishments of wages, often around 10% of gross income
 - Sheriff or City Marshall fees added to collection amount on enforced judgments
 - Difficulty accessing future rental housing due to judgment or poor credit, can cause drawn-out stays in shelters or other homelessness situations. **This perpetuates homelessness.**
 - Landlord refusal to renew lease due to unpaid judgment (resulting in holdover)
 - Landlord termination of month-to-month tenancy due to unpaid judgment (holdover)
- Tenants with debt experience cyclic evictions and are forced into substandard & unsafe housing.
- Tenants have significantly less capacity to purchase homes, **frequently for the rest of their lives.**
 - This causes tenants to be unable to invest in their communities, to build equity, and to assert control over their housing through ownership.
- **Money judgments cause and exacerbate generational poverty. This occurs disproportionately among people of color.**
- Money judgments accrue interest at 9% and are valid for 20 years. If there is partial payment by the judgment debtor, the 20 years is renewed.
- Money judgments are treated as “less serious” or “non-emergency” by Social Service agencies and are less likely to be covered by public service grants or other forms of financial assistance.

What else should you know about the Safe Harbor Act?

- Tenants facing eviction for “holdover” are not covered by the Safe Harbor Act. “Holdovers” include:
 - Tenants who stay past the date of an expired lease or termination notice.
 - Month-to-month tenants who are terminated for no reason, or for any reason.
 - Tenants who have violated their lease.
- Tenants who are behind on their rent may still receive month-to-month or lease termination notices, for other reasons or for NO REASON, that may actually be motivated by unpaid rent.
 - Tenants experiencing financial hardship who face holdover evictions because of these notices, especially no-cause evictions, will be unprotected.
- The Safe Harbor Act is complicated. 95% of tenants in Albany City Court are unrepresented by an attorney and will have difficulties accessing these protections.

***The Safe Harbor Act is a policy measure that burdens & punishes people with debt who experienced hardships during COVID19, especially low-income people who were living without a safety net. ***

***The Safe Harbor Act forces renters into housing emergencies, and makes struggling tenants prove their financial struggles before a judge, in the middle of a court proceeding for eviction. ***

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