

# RSA Reporter

WE HOUSE NEW YORK

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## Housing Court and the Expiration of the Statewide Eviction Moratorium

The statewide eviction moratorium officially expired on January 15, 2022, putting an end to one of the many tenant protections that have kept cases in Housing Court stalled for over 22 months.

However, Housing Court operations are nowhere near where they were pre-pandemic and there are still a number of stays in place that may affect your ability to bring or maintain an action in Housing Court. For instance, the Court has issued new court directives (DRPs) and administrative memos that require motion practice for the issuance of default judgments, as well as for the issuance of all warrants based on judgments awarded prior to September 2, 2021. Additionally, prior to executing on a warrant issued before September 2, 2021, a motion must be made seeking leave from the Court to do so. This added motion requirement will put strain on an already overly-burdened Housing Court calendar, which was already struggling to calendar cases that were filed during the pandemic and must also now schedule roughly 30,000 cases that were stayed by the eviction moratorium.

If a tenant or occupant has applied for Emergency Rental Assistance (ERAP) and their application has yet to be decided, any case against them would continue to be stayed until the State Office of Temporary and Disability Assistance (OTDA) processes the application and issues a determination. Prior to January 25<sup>th</sup>, this also applied to all new applications submitted following the re-opening of the ERAP portal on January 11<sup>th</sup>. At the time, OTDA had stated that it would not be reviewing any new applications submitted, meaning that any tenant who submitted an application after the portal re-opened on January 11<sup>th</sup> would receive this stay protection indefinitely, regardless of eligibility or even likelihood of their application being denied. However, OTDA ultimately accepted RSA's recommendation to

immediately determine a tenant's eligibility upon application (*see page 4 for more information*).

Aside from ERAP applicants, tenants who can show that they have suffered financial hardship during the pandemic period (defined by law as the period between March 2020 and January 2022) cannot be evicted for any arrears accruing during that time, pursuant to the **Tenant Safe Harbor Act**. For example, let's say there is a tenant who owes a total of \$15,000 in rent (\$5,000 of which accrued before March 2020) and the remainder having accrued after March 2020 (but before January 2022). If the tenant can show that they suffered financial hardship during the pandemic period, then a building owner would only be able to get a possessory judgment for the \$5,000 amount, and a monetary judgment only for the \$10,000 balance. In other words, the tenant may not be evicted for their inability to pay the \$10,000 balance. If a tenant filed a hardship declaration with the Court, then this hardship declaration serves as prima facie evidence that a hardship exists, which means that the owner must prove in Court that the financial hardship does not exist in order to be awarded a possessory judgment for those arrears against the tenant. RSA has also put together a detailed list of the most common scenarios that owners and tenants may face for the foreseeable future (*please see page 5*).

Housing Court will continue to operate mostly on a virtual basis for the time being, with in-person appearances reserved mostly for intakes and some trials. There has also been a new housing part created for small property owners effective January 17, 2022; any matter where the property involved is in a 1, 2, or 3-family home is to be assigned to this newly created "Small Property Part". ■

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# PRESIDENT'S MESSAGE



Joseph Strasburg

## Our Next Battle Begins

Over the last few months, we have prepared our membership for the biggest battle our industry would face in 2022: **Good Cause Eviction**.

Knowing that the statewide eviction moratorium was set to expire in the middle of January, the State Senate held a hearing on the bill shortly after the new year as the bill's sponsor, Senator Julia Salazar, and other anti-owner lawmakers, attempted to expedite the bill's passage.

RSA submitted thorough testimony for the hearing, which ultimately turned out to be a full-blown tenant advocacy charade that berated small, hardworking property owners. Fortunately, many of RSA's allies in the Senate, as well as a handful of RSA members who testified during the hearing, were able to successfully rebuke many of the outlandish claims made by these anti-owner participants. Ultimately, members of both Senate committees who held the virtual hearing left with more concerns over the proposed Good Cause Eviction bill instead of giving their full commitment to supporting it.

The result of this hearing was a positive one for the rental housing industry as Good Cause Eviction currently does not have the support it needs to make its way to Governor Kathy Hochul's desk to be signed into law. However, this does not mean in any way that we have defeated this bill. Tenant advocates and anti-owner State lawmakers have made it known that passing this bill is their top priority this year. As a result, our war against Good Cause Eviction has just begun.

As promised, RSA and other property owner advocacy groups throughout New York have teamed up to launch one of the most robust public relations campaigns in the history of our industry (see page 3). The biggest issue with Good Cause Eviction is that the vast majority of New York State's population is not even aware of its existence, let alone the negative implications that it would have on housing of all sizes. This campaign aims to do two things: educate the public and get them to push their local Senator and Assembly Member to refuse any support of the bill.

This public relations campaign is designed, at a minimum, to carry our efforts through the end of June when the Legislature ends their session for the first half of 2022. Please be advised that even if we prevent Good Cause Eviction from passing this session, that

does not mean it will go away forever. The radical lawmakers of the State truly believe that this bill is the ultimate solution that will protect tenants and we can all but guarantee that they will keep hopes of passing it alive for the foreseeable future. Our job is to make sure that all New Yorkers, especially tenants and single-family homeowners, understand that this proposal will only do harm to existing rental housing and will do nothing to help income-burdened tenants pay their rent.

## More ERAP Money is Needed

The court decision that forced the State to reopen the Emergency Rental Assistance Program (ERAP) despite there being no available money is alarming to say the least (*see page 4*).

Tenant advocates hailed this decision by the court and are encouraging tenants to submit applications for rent relief simply so that they can obtain the eviction protections outlined by the state law. Sure enough, within four days of the portal reopening, thousands of new applications had been submitted to the Office of Temporary and Disability Assistance (OTDA). Unless more money is pumped into the program, it will be property owners who ultimately pay the price.

No matter where the money comes from, replenishing ERAP must be Governor Hochul's biggest priority. Although the Governor and other governors from throughout the country have pressed the U.S. Treasury Department to provide New York with additional money, simply writing letters to the federal government just isn't enough.

RSA and our industrywide partners have taken action and have pressed New York Senators Chuck Schumer and Kristen Gillibrand and the entire New York Congressional Delegation to take immediate action on securing more federal money for our rent relief program. Our state lawmakers who are constantly swayed by the tenant advocacy clearly do not understand the dangerous consequences of keeping a depleted portal open, so perhaps our federal representatives will.

From the onset of the pandemic, RSA said that the only solution for building owners and tenants impacted by COVID-19 was to subsidize all unpaid rents. It's time for our elected officials on all levels to step up and finally realize the magnitude of the impact of the pandemic. If not, New York's existing and aging affordable housing will pay the price for years to come. ■

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## Good Cause Eviction Public Relations Campaign Off to the Races

*Major Effort Officially Launched at the End of January*

In conjunction with other real estate lobbying groups throughout the State, RSA launched one of our largest public relations campaigns in organization history at the end of January to fight Good Cause Eviction.

Over the last two months, RSA notified our membership that we were working on a unique campaign with the goal of educating the public about the consequences that the intentionally mislabeled Good Cause Eviction bill would have on housing of all sizes throughout the State. That effort began in late 2021 with polling throughout various regions of New York State. The results of these polling efforts ultimately determined the targeted messaging needed to educate the residents of those areas about the many negative impact that Good Cause Eviction would have on their communities.

Now, RSA and various statewide industry leaders have formed a unique coalition known as **Homeowners for an Affordable New York (HFAANY)**. This coalition will spearhead the public relations effort for at least the next six months as we fight against Good Cause Eviction. Should we need to continue this effort beyond the end of legislative session in June, our coalition is prepared to do that. This portion of the campaign will include digital and radio ads, direct mailing to homeowners and voters, and patch-through live calls that will allow the caller to connect the constituent directly to their state representatives and urge them not to support the Good Cause Eviction bill.

These overall efforts will also be supplemented with a robust social media campaign on Facebook and Twitter. As you may recall, RSA led a major social media effort against Good Cause Eviction in early 2020 shortly before the COVID-19 pandemic began. RSA will also continue individual advocacy efforts through op-ed articles in various New York publications, as well as well appearances on housing panels throughout the state.

During the week of January 24<sup>th</sup>, the digital portion of the campaign began airing in five New York State regions: New York City, Long Island, Western New York, the Hudson Valley, and the Albany region. Each digital ad was strategically designed with messages that would resonate with the target audience in each region. These ads will air live on local television networks and radio stations and

will all conclude the tagline “Good Cause Eviction: Bad for Us, Bad for New York.”

The mailings were also sent out the same week to various neighborhoods in New York City, Long Island, and the Hudson Valley. Each mailing also has targeted messaging based on the



*The primary logo for Homeowners for an Affordable New York.*

location, as well as a QR code that smartphone users can scan. Once mailing recipients scan the code, they will be directed towards the HFAANY website where they will be able to access a “Call Your Senator” and “Call Your Assembly Member” portal so that they can access contact information for their local representatives. If you are not familiar with who your local Senator or Assembly Member is, we also encourage you to access these portals on our coalition’s website, which can be accessed at [www.HFAANY.com](http://www.HFAANY.com).

Furthermore, we have been asked by many of our members if RSA will be launching a **VoterVoice** campaign designed specifically for Good Cause Eviction. Although it has not been made live yet, we will in fact be sending out a VoterVoice initiative to supplement our public relations effort. As you may recall, VoterVoice has been an incredibly useful tool for RSA members to directly contact their local elected officials and voice their concerns over proposed legislation. In fact, VoterVoice was a major reason why RSA was able to defeat the controversial criminal background check bill at the City Council last year.

Although Good Cause Eviction is arguably the most important piece of legislation that we will be fighting against in 2022, the bill currently does not have the momentum or support it needs to progress through the Legislature. However, this could change at any given time. Our VoterVoice efforts are better utilized when we have to put the utmost pressure on lawmakers to either withdraw support or voice opposition to proposed bills and that time will soon come. You will be notified via email blast and through a subsequent issue of the *RSA Reporter* once the Good Cause Eviction VoterVoice campaign goes live.

We will keep you apprised of all updates and developments with regard to Good Cause Eviction and our public relations efforts. ■

### **RSA MEMBERSHIP MEETING ONLINE VIA ZOOM**

**Wednesday, February 23, 2022 | 2:15PM–4:00PM**

**Join us for our next virtual membership meeting!** The Membership Meeting is an opportunity for owners to learn about political, legal and regulatory updates as well as to raise questions and concerns. All paid RSA members are welcome to attend. Please call **212-214-9243** or via email at [mrodriguez@rsanyc.org](mailto:mrodriguez@rsanyc.org) to register. Once you have registered with your RSA member number, the Zoom meeting ID and password will be sent to you via email. Please be advised that this is a private meeting for RSA members **ONLY**.

Do not share meeting credentials with anyone else.

## State Reopens ERAP Portal After Court Order

*Tenants Continue to Apply Despite Depleted Funds*

In a surprising decision, the New York State Supreme Court ruled in early January that the State Office of Temporary and Disability Assistance (OTDA) must reopen the Emergency Rental Assistance Program (ERAP) portal and accept new applications.

After deciding not to appeal the decision, OTDA subsequently reopened the portal on January 11<sup>th</sup> despite all \$2.7 billion in allocated rent relief funds either already distributed to property owners or set aside for approved tenant applications pending owner verification. Furthermore, OTDA put a disclaimer on the website landing page that says that applications will not be reviewed unless additional funding becomes available. However, if a tenant simply submits an application, regardless of whether or not they may get approved pending new funding availability, that tenant will still obtain eviction protections despite the statewide moratorium expiring on January 15<sup>th</sup>.

By way of background, OTDA closed its portal in mid-November 2021 as a result of depleted funding and stopped receiving new applications for ERAP. The Legal Aid Society filed a lawsuit in early December seeking to force OTDA to reopen the portal. OTDA argued that it had run out of funds and that even if additional funds were to be reallocated to New York State from the U.S. Treasury Department, such funds would most likely be depleted by its currently pending applications that have yet to be fully processed. New York was subsequently granted a miniscule \$27 million in reallocated funds and this additional money will not come close to covering any large portion of pending applications.

Back when the portal closed in November, RSA publicly argued that it would be irresponsible for the State to continue accepting applications if there were no guarantees that tenants would be able to obtain rent relief funds. A tenant would continue to receive protections outlined by State law while building owners would not receive any money to cover arrears accrued during the COVID-19 pandemic.

Despite these valid arguments, Judge Lynn R. Kotler ordered that OTDA reopen the portal within three days of notice of entry of the order, finding that its decision to close the portal to new applications was arbitrary and without basis in law. It is important to note that if an application is submitted to OTDA, then any Housing Court case brought against the tenant is stayed pending the resolution of the application. With the reopening of the portal, a large number of these new applications submitted will most likely not be granted due to a lack of funds, yet will enjoy the protection of the statute and be stayed.

Because of this, Legal Aid Society irresponsibly encouraged tenants to submit applications for ERAP as the moratorium was days away from expiring on January 15<sup>th</sup>. As a result, within nine days of the portal reopening, OTDA received approximately 9,000 new applications that would remain unlooked at unless more rent relief money is provided to New York.

Soon after the ERAP began accepting applications again on January 11<sup>th</sup>, RSA President Joseph Strasburg sent a letter to OTDA Acting Commissioner Daniel Tietz. The letter requested that the agency reconsider its policy to hold all newly submitted applications abeyance and review the newly filed applications to immediately weed out clearly ineligible applicants. This course of action would not only prevent ineligible tenants from receiving eviction protections, but would also allow OTDA to better document the number of pending legitimate applications to the federal government, which would support New York State's request for additional federal funding.

On January 25<sup>th</sup>, RSA received a response from OTDA Acting Commissioner Daniel Tietz, who stated that the agency **has accepted RSA's recommendation** and will begin to review all newly filed ERAP applications to determine whether the applicants meet federal or state-funded income thresholds (income above 120% of the Area Median Income). If OTDA determines that the applicant is ineligible for ERAP based on income, the application will be immediately denied. ERAP applications will also be denied where, after outreach, the applicant fails to provide necessary information or documentation. This is an important policy revision that ensures that all future rent relief funds and protections are only provided to those who are actually eligible.

RSA also learned from a late-December report issued by the U.S. Treasury Department that showed that New York was issued a substantially-lower amount in reallocated rent relief funds compared to other states such as New Jersey and California.

According to the Treasury Department, the funds were distributed nationally, *"prioritizing grantees that had substantially completed their spending of ERA1, with grantees that made more rapid progress on the expenditure of their ERA2 funding weighted more heavily."* As New York has expended only \$28.6 million out of \$1.273 billion of ERA2 funding (approximately 2%), this more than likely hurt New York in this round of reallocation and led to the small \$27 million award. In comparison, California received \$50 million having spent 18% and New Jersey was awarded \$43 million after spending 24%.

The Legislature and former Governor Andrew Cuomo dragged their feet in early 2021, failing to get the ERAP program up and running in a timely manner and making New York State the last in the entire country to begin accepting applications and distributing rent relief money. The incompetence of these lawmakers has now placed building owners in this incredibly delicate position. As we went to press, we had no updates as to whether or not the U.S. Treasury Department or Congress will respond to RSA and Governor Kathy Hochul's requests for the immediate replenishing of rent relief funds. ■

## The Eviction Moratorium Expired: What's Next for You and Your Tenants?

Although the statewide eviction moratorium officially expired on January 15<sup>th</sup>, there are still stay protections in place for certain tenants. The obvious question now exists: *what do you, as a building owner, do next?*

As a follow-up to our front-page article, RSA has compiled a list of the most common scenarios that building owners and tenants could face in light of the expiration of the moratorium and the reopening of the ERAP portal:

### Your Tenant Received Emergency Rental Assistance (ERAP)

- You cannot file for eviction for one year after the ERAP payment was received based on lease termination/expiration (most holdovers) or nonpayment for those arrears paid by OTDA.
- You can file an eviction action for certain ongoing nuisance.
- You can file an action to collect past due and post due rent not covered by ERAP payments.
- You cannot raise rents under any circumstance, including stabilized lease increases provided by **City Rent Guidelines Board (RGB) Order 53**, for a period of one year from when payment was received.

### Your Tenant Filed for ERAP and has an Application Pending

- If you file an eviction proceeding for nonpayment or holdover it will be stayed.
- You can file an eviction action for certain ongoing nuisance.
- You can collect rent increases while the ERAP application is pending but must revert to rent at time of application if approved.

### Your Tenant Was Denied ERAP

- You can file any action. You should note ERAP denial in any papers filed.
- The **Tenant Safe Harbor Act** may apply. The tenant can raise a defense for nonpayment of financial hardship during the period from March 13, 2020 through January 15, 2022. Tenant still owes this rent, but this cannot be the basis for an eviction.

### Your Tenant Has Not Filed For ERAP

- You can file any action.
- The **Tenant Safe Harbor Act** applies. The tenant can raise a defense for nonpayment of financial hardship during the period from March 13, 2020 through January 15, 2022. Tenant still owes this rent, but this cannot be the basis for an eviction.

### Your Tenant Files for ERAP After You Initiate an Eviction Proceeding

- Your court proceeding for nonpayment, holdover or lease expiration will be stayed pending ERAP determination.
- You can file an eviction action for certain ongoing nuisance.
- You can collect rent increases while the ERAP application is pending.

As always, if you have any questions, please contact RSA at **(212) 214-9200**. ■



## 2022 Annual Safety Notice Service

*It's Not Too Late to Comply With the Law!*



- Did you know that the Fire Department has updated their required notices for 2022?
- Did you know that the Fire Department has a new resident certification requirement?
- How can you keep track of the constant changes in notice requirements?
- Don't tie up your own staff or rely on profit-driven vendors who require contracts and raise prices on renewal.
- RSA is the only organization that helps you meet your compliance needs and fights on your behalf to make compliance as easy as possible.

*Easy compliance with increased tenant response rates.*

Call us at **212-214-9200** or log on to **www.rsanyc.org** today!