
NEW YORK LAW SCHOOL



Housing Law and Policy in the Time of COVID-19

**Professor Andrew Scherer, New York Law School
June 1, 2020**

CLE Agenda and Materials

AGENDA

Program

2:00 – 3:00 p.m.

Welcome

2:00 - 2:05 p.m.

Anthony W. Crowell, Dean and President New York Law School

Session

2:05 – 2:50 p.m.

Andrew Scherer, Policy Director, Impact Center for Public Interest Law; Visiting Associate Professor of Law, New York Law School

- Introduction
 - Subject: Housing, not Real Estate, not specifically Landlord-Tenant Law
 - Will address the question of what does or doesn't get done via policy and law to enable people to have homes
- Brief History of Landlord-Tenant Law in NY and how it evolved
 - Major developments in regulation of landlord-tenant relations have been in response to crises; often health
 - Today, more than ever – Housing = Healthcare
 - From the advent of summary eviction proceedings in 1820 to the adoption of HSTPA in 2019
- Right to Counsel for tenants and its significance
- Current state of affairs
 - Looming housing crisis beyond anything we've ever seen
 - Very fluid Response
 - Eviction Moratorium
 - Closing of the courts
- Specific select COVID-related legal issues:
 - Other than the moratorium on evictions and closing of the courts, nothing in law has changed – the practicalities, however, have all changed.
 - Termination of leases / mitigation of damages
 - Subletting
 - Temporary rentals/Airbnb
 - Rent and affordability

- RENT
 - Cancel rent movement
 - Rent relief
 - Legislative options so far, federal and state
- Reopening of the courts
- What next? What will NYC and state look like?
- Some proposed guiding principles

Q & A with the audience

2:50 – 3:00 p.m.

CLE Materials

Federal legislation:

- Summary of CARES Act Eviction Moratorium provisions: <https://www.nhlp.org/wp-content/uploads/2020.03.27-NHLP-CARES-Act-Eviction-Moratorium-Summary.pdf>
- Summary of HEROES Act Rent Relief proposals: <https://www.americanactionforum.org/insight/expanded-housing-assistance-in-the-heroes-act/>

State legislation:

- Kavanaugh, Emergency Rent Relief Act of 2020 - <https://www.nysenate.gov/legislation/bills/2019/s8419>
- Summary of Some of the NYS Legislative Rent Cancellation/Rent Relief Proposals (attached)

Court Documents:

- COVID-19-Related Administrative Orders Regarding Expansion of Court Operations, Electronic Filing and Virtual Operations: <https://www.nycourts.gov/limited-filings.shtml>
- Additional Statewide COVID-19-Related Administrative Orders: <https://www.nycourts.gov/latest-AO.shtml>
- COVID-19-Related Administrative Orders Affecting Local Jurisdictions: <https://www.nycourts.gov/latest-local-AO.shtml>
- Memo from Hon. Jean Schneider, Supervising Judge of the NYC Housing Court to All Members of the Housing Court Bar, April 14, 2020 (attached)
- 3 separate NYC Civil Court Directives on the opening of Housing Court, May 22, 2020:
 - DRP-209 re filings: <https://www.nycourts.gov/courts/nyc/SSI/directives/DRP/DRP209.pdf>
 - DRP-210 re issuance of default judgments: <https://www.nycourts.gov/courts/nyc/SSI/directives/DRP/DRP210.pdf>
 - DRP-211 re issuance of warrants: <https://www.nycourts.gov/courts/NYC/SSI/directives/DRP/DRP211.pdf>

Summary of Some of the NYS Legislative Proposals to Address Rent Cancellation and Relief*

S8125A (Gianaris)

Summary:

- Waives residential and commercial rents for 90 days
 - Rent would never have to be paid
 - No late fees can be applied or collected during this time
 - Applies to individuals & businesses that have lost income or been forced to close because of government-ordered restrictions
- Automatic renewal at current rent of any lease that expires during the 90 days
- Owners facing financial hardship as a result of loss of rents get forgiveness on mortgage payments to help make up the difference
 - Forgiven mortgage payments are never owed

S8139 (Gianaris)

Summary:

- Residential & commercial tenants who have lost income or had to close because of government restrictions pay their existing rent or 30% of current income, whichever is less, for 90 days
 - Tenant has to provide landlord with a written, signed statement stating their actual income for the 30 days leading up to rent being due
 - No late fees or penalties can be collected for rent owed during the state of emergency
 - Payments based on this new rule can be used as a defense in a non-payment case. If landlord disputes tenant's income, tenant has to show evidence
 - Late or reduced rent during the state of emergency cannot be the basis for a holdover for chronic nonpayment
 - Tenants whose leases expire during the state of emergency have the option to extend their lease under the old terms & rent for up to 90 days past the end of the state of emergency
 - Landlords who lose income based on this law and aren't otherwise compensated by government assistance can apply to DHCR for relief
 - DHCR has discretion to grant the relief, & will write rules & regulations for how to do that
 - Establishes a fund for relief to landlords due to loss of rental income

S8140A (Kavanagh)

Summary:

- Creates a new Emergency Voucher program. Tenants are eligible if they have:
 - Substantial loss of income
 - Rent is more than 30% of current adjusted income
 - Commissioner may set limits on assets
 - Limit of 3 months of assistance per household, with possibility of extension
 - Voucher payments are made directly to landlords
 - Voucher recipients pay 30% of adjusted income
 - Utility payments may also be covered
 - Tenants have to submit documents verifying income and assets

Hoylman/Dinowitz

- Extends the eviction moratorium for an additional 90 days
- Creates a new special proceeding in housing court for a money judgement
- Landlords can't evict for rent owed during the moratorium, they can get money judgements vs possessory judgements

S8190/A10318 (Salazar/Lentol)

- Provides rent abatement for anyone who can show they lost income because of the stay at home order or because their work complied with the order and closed. Tenant must demonstrate loss of income in court or to HCR by documents or testimony.
- Allows landlords to replace lost rent through tax abatements or withholding mortgage payments or construction loan payments.
- If an affordable housing providers has lost 25% or greater rental income and can show it was because of COVID 19, providers can immediately replace lost income.

***With thanks to the Right to Counsel NYC Coalition – this summary adapted from their materials**

To: All Members of the Housing Court Bar
From: Hon. Jean Schneider
Date: April 14, 2020

My greetings to all of you. I know that some members of our community have been ill during these difficult weeks, some have lost loved ones, and some have lost their lives. I grieve with all of you, and I hope that you and your families are doing everything you can to stay safe and well as we face an uncertain future.

I am sure you are all aware that since March 17, 2020 the Housing Court has been hearing only cases considered to be essential. These have included post-eviction motions, alleged illegal lockout proceedings, and HP actions in which emergency conditions are alleged. Since March 30, 2020 we have been hearing these cases remotely, with judges, attorneys and litigants appearing via Skype for Business, and all proceedings recorded on our FTR system. We have also loosened our procedures to make it easier for litigants and attorneys to file papers in these emergency cases by email.

The court system's administrative orders, and the Governor's emergency orders continue to stay all eviction proceedings and bar all evictions statewide. Within this major limitation, we are looking for ways to move cases along where we can.

Today, we are ready to begin to hear and resolve some non-essential matters. At the present time we do not have the ability to make a formal record of appearances in these non-essential cases. We will therefore limit our non-essential activities to appearances where a formal record is not legally required. In Housing Court, this means all parties must be represented by counsel and both counsel must be prepared to appear without a formal record.

We are asking the members of our bar to review their case inventories, reach out to their adversaries, and identify two attorney cases in which a motion is pending, all papers on the motion have already been submitted, and the motion is ready to be argued or submitted. We also ask that you identify two attorney cases in which both counsel believe that a conference with the court is likely to result in resolution of the case.

Once you have reached out to your adversary and are in agreement that the motion can be heard or the case can be conferenced, counsel should contact the relevant supervising judge by e-mail. All appearances will take place by Skype for Business.

We thank you all for your cooperation in moving our cases forward where that is possible. We believe that this will help us all to better manage what we expect will be, under the best of circumstances, a substantial backlog once we reopen.