

BILL NUMBER S50001

Amends subpart A of part BB of Chapter 56 of the laws of 2021, which established ERAP

PART A- AMENDS SUBPART A OF PART BB OF CHAPTER 56 OF THE LAWS OF NEW YORK WHICH ESTABLISHED ERAP

HIGHLIGHTS

- Amends ERAP to allow residents in a municipality that chose not to participate in the statewide program (Onondaga and Monroe counties) to apply for ERAP funds from the state after municipality has distributed or obligated all of the municipality's available federal emergency rental assistance funds and the resident is eligible.
- Application process will now be offered on the phone to landlords and tenants
- ERAP application information will be shared with the OCA so the court can determine whether a litigant in the proceeding has applied for or been granted assistance from ERAP.
- If a tenant has applied for the ERAP or local program, regardless of whether being brought for a holdover for expired lease or nonpayment, no eviction shall be commenced until a determination of ineligibility is made. They have added the nuisance exception here.
- **Acceptance of money is an agreement to the following:**
 - Arrears covered by this payment are satisfied and will not be used as the basis of a nonpayment proceeding
 - No late fees will be paid on any arrears paid by ERAP
 - Cannot increase rent higher than at time of application for ERAP for one year from the date the rental assistance is received.
 - Cannot evict for expired lease or holdover for 12 months after rental assistance is received.
 - With the exception of a tenant who intentionally causes significant damage to the property or is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others provided (SEE SECTION 9-a BELOW):
 - If eviction is not pending-petitioner has to file an affidavit attesting to that the respondent **intentionally** caused **significant** damage to the property or is **persistently** infringes and unreasonably engaging in such behavior, with a specific description of the behavior alleged.

Section 9-a- EXPIRED LEASE OR HOLDOVER TENANT NUISANCE STANDARD

IF AN EVICTION IS NOT PENDING→ Petitioner shall file an affidavit under penalty of perjury with the petition attesting that the respondent intentionally caused significant damage to the property or is persistently and unreasonably engaging in such behavior with a specific description of the behavior alleged.

IF AN EVICTION IS PENDING→ If you did not previously allege that the tenant caused significant damage to the property or is persistently and unreasonably engaged in such behavior, then a new petition and compliance with all notice and service requirements is needed.

IF THE COURT HAS AWARDED A JUDGMENT AGAINST A TENANT PRIOR TO SEPTEMBER 2, 2021, ON THE BASIS OF OBJECTIONABLE OR NUISANCE BEHAVIOR, THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER THE TENANT IS CONTINUING TO INTENTIONALLY CAUSE A SIGNIFICANT DAMAGE TO THE PROPERTY OR PERSIST IN ENGAGING IN UNREASONABLE BEHAVIOR THAT SUBSTANTIALLY INFRINGES ON THE USE AND ENJOYMENT OF OTHER TENANTS OR OCCUPANTS OR CAUSES A SUBSTANTIAL SAFETY HAZARD TO OTHERS.

- **If a landlord fails to establish this standard and
 - **The tenant's application is still pending or if the landlord has accepted rent then the action will be dismissed.****
- **If a landlord establishes that a tenant has intentionally caused significant damage to the property or persistently and unreasonably engaged in such behavior, the proceedings may continue.**

PART C- RESIDENTIAL EVICTION PROTECTIONS – NEW HARDSHIP FORM AND REQUIREMENTS TO PROCEED WITH EVICTION ACTIONS

- **PRE-EVICTION NOTICES: Paragraph 2- Page 21 line 26 of the law**
 - Landlords need to include a hardship declaration in 14-point type, with every notice of default, notice to quit, notice to terminate, notice to non-renew under RPL 226-c.
 - In addition must include:
 - A notice with a mailing address, telephone number, and active email address that the tenant can use to contact the landlord and return the hardship;
 - List of service providers
- **REQUIRED AFFIDAVIT: Paragraph 3- Page 21 line 41 of the law**
 - At the time of filing, must file an affidavit of the petitioner or Petitioner's agent, demonstrating the manner in which the hardship declaration was reserved with the pre-eviction notice.
 - (a) Attesting at the time of filing that neither the petitioner or its agent has received a hardship declaration from the tenant or any other occupant
 - (b) attesting that the tenant or occupant has returned the hardship declaration but the Respondent is intentionally caused significant damage to the property or is persistently and unreasonably engaging in such behavior with a specific description of the behavior alleged or
 - **(c) attesting that the respondent or another occupant of the unit that is the subject of the proceeding has returned a hardship declaration but the petitioner believes in good faith that the hardship certified in the declaration does not exist.**
 - **If a petitioner submits the affidavit under (c) above, then the petition needs to include a cover letter**
 - **The cover letter must include the following statement**
 - NOTICE TO TENANT: PAGE 22 LINE 21
- **PENDING ACTIONS**

In any action where a warrant has not been issued, including those dating all the way back to March 7, 2020, if the tenant provides a hardship, the court shall stay the eviction until January 15, 2022.
- **DEFAULT JUDGMENTS**

- No court shall issue a default judgment authorizing a warrant of eviction against a respondent without holding a hearing after September 2, 2021, upon motion of the petitioner. The Petitioner needs to file a motion stating that the petitioner has served notice of the motion on the tenant including a copy of the notice. This includes all warrants issued from March 7, 2020. Defaults issued since August 13, 2021 will be vacated regardless of any motion and restored to the calendar upon the Respondent's written or oral request. An order to show cause will not be needed.
 - In any eviction where the warrant was issued including back to March 7, 2020, the warrant is not effective as against occupants unless it complied with RPAPL Section 749.
 - The warrant must state dates hardship was served
 - If alleging nuisance it must state specific facts.
- **REBUTTABLE PRESUMPTION- PAGE 24, SECTION 9, LINE 5**
 - Unless the court determines a tenant's claim invalid, it shall create a rebuttable presumption that the tenant is experiencing a hardship in any proceeding brought.
 - A stay will be granted through January 15, 2022.
 - Unless a motion is made by petitioner attesting in good faith that the respondent has not experienced a hardship with notice to the respondent and the court shall grant a hearing to determine whether to find the Respondent's hardship claim invalid.
 - After a hearing if the court finds the claim valid→ the stay is granted and if the tenant appears eligible shall be directed to apply for ERAP funds.
 - If the court finds that the claim is not valid→ then the proceedings shall continue on the merits.