

Landlord Tenant Law Update

Elder Law Fair
May 13, 2021

VOLUNTEER
LAWYERS PROJECT
OF ONONDAGA COUNTY, INC.

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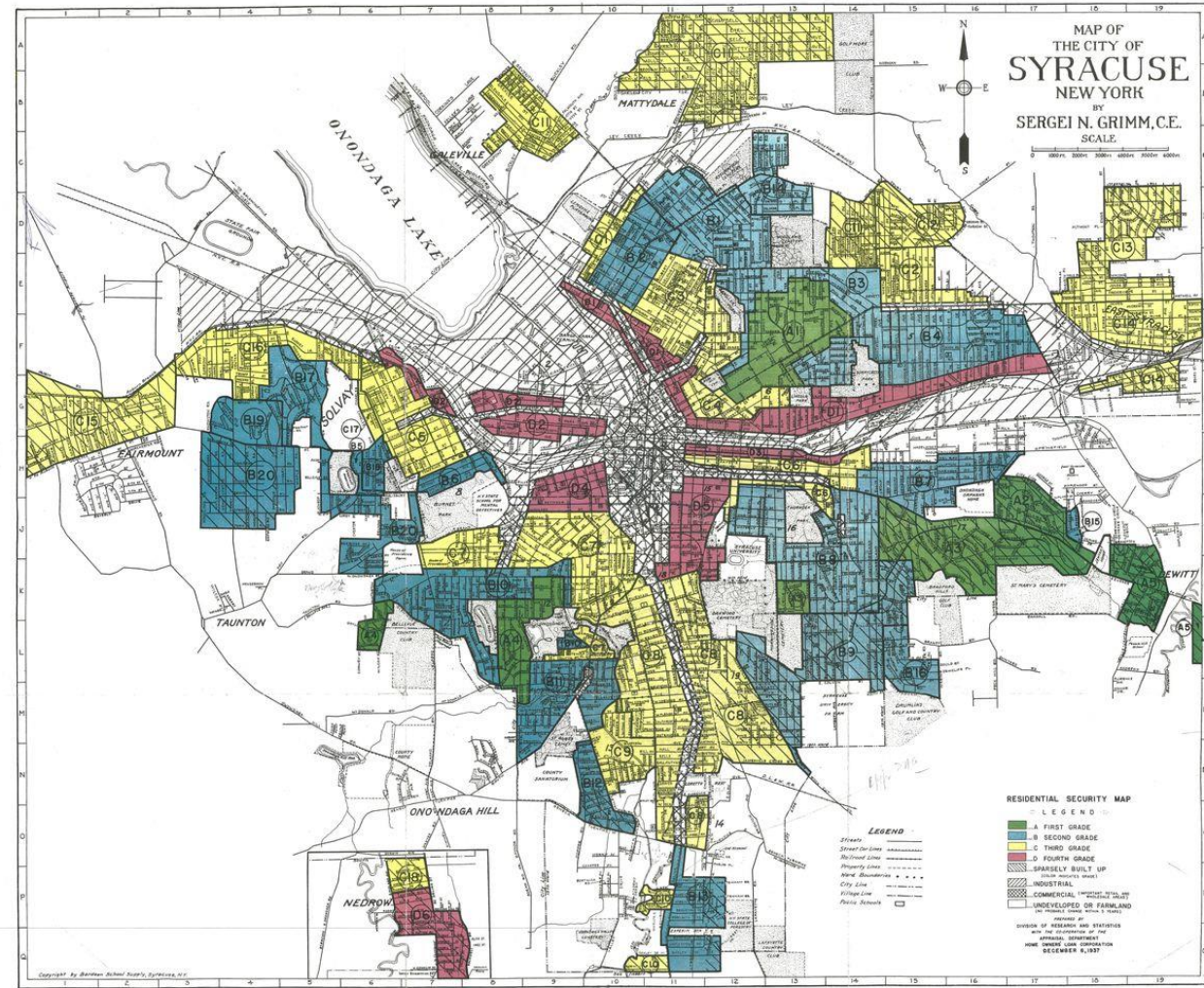
No Attorney-Client Relationship Created:

- × This material was created to assist the public and share general information about the law in New York State. The information provided relates only to general issues and not specific situations, and, as such, does not replace the legal advice or representation of an attorney.
- × Because of this and possible unanticipated changes in the law, if you are seeking advice or information about a specific legal issue, you should contact an attorney licensed to practice in New York State.
- × The Volunteer Lawyers Project generally only represents tenants who are facing eviction. Our office does not usually provide situation-specific advice and counsel or representation to landlords.
- × Nothing said or discussed at this basic Know Your Rights presentation in any way constitutes representation or creates an attorney-client relationship.

What to Expect Today

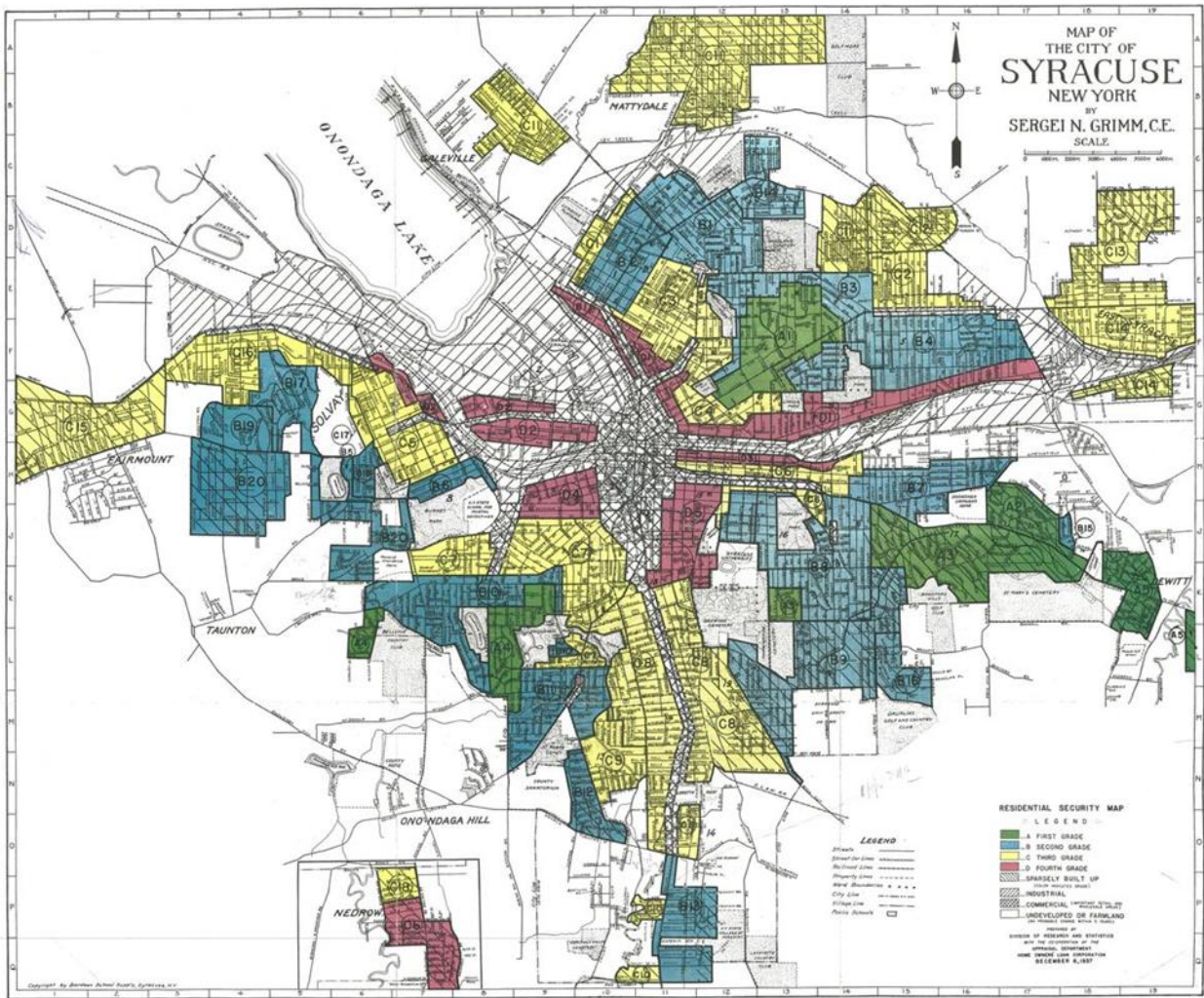
- Why and how we do what we do
- How evictions happen—overview
- COVID-19 Responses
- Where things stand TODAY
- Tenant Hardship Declaration Form

Redlining in
Syracuse:
a long history
of racial and
economic
inequality

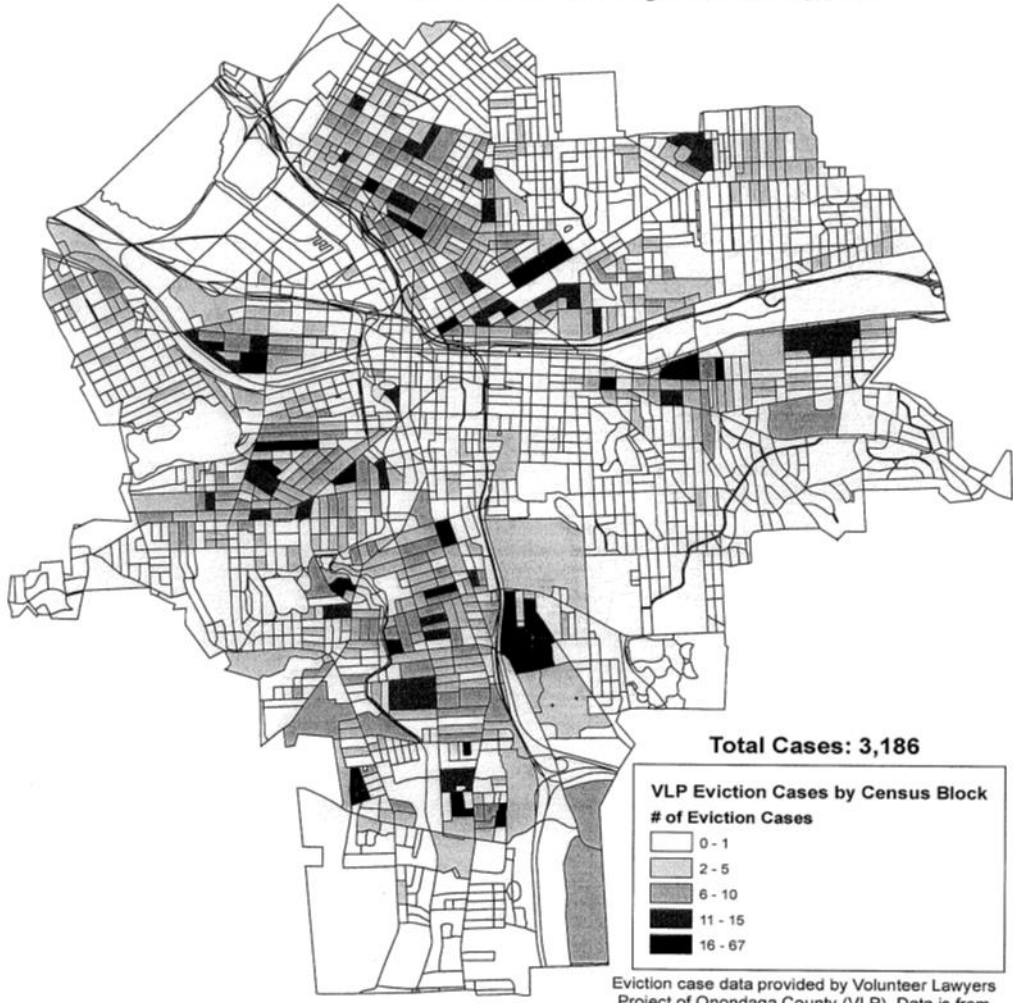


[FOR MORE see:](#)
[Syracuse The Map: Segregated Syracuse | News, Weather, Sports, Breaking News | WSTM \(cnycentral.com\)](#)

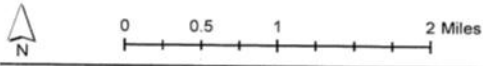
Redlining in Syracuse—effects seen decades later...



VLP Eviction Cases by Census Block
10/17/2012 - 12/1/2016 in Syracuse, NY



Eviction case data provided by Volunteer Lawyers Project of Onondaga County (VLP). Data is from October 17, 2012 - December 1, 2016 and only contains evictions that VLP received. The original dataset contained 3,445 cases. 259 cases were deleted because they either did not have a street address or were located outside of the City of Syracuse, resulting in a total of 3,186 cases mapped.



Program Goals— VLP Eviction Defense Program

- VLP's Mission: *Providing access to justice through engaging the legal community in volunteer service to those in need*
- Our program works by leveraging the power of volunteer attorneys to help as many tenants as possible:

- Avoid or delay eviction
- Reduce judgments
- Better understand rights and responsibilities

We also work to help

- improve the quality of housing
- improve landlord/tenant relationships
- fix systemic inequities whenever possible

- **Annually VLP represents 800-1000+ tenants in court and provides assistance to hundreds more**



Renting is a
CYCLE, Begin
with the end in
mind

What must a Landlord Provide?

- A safe, sanitary place to live
- Free of vermin/insect infestations
- Locks and Privacy (quiet enjoyment)
- Working Electrical
- Working Plumbing
- Working heating, ventilation systems
- Working appliances (when provided)
- Smoke and Carbon Monoxide Detectors
- Disclosure of known hazards-including lead

Landlords may
not discriminate

CNY Fair Housing:
(315) 471-0420

- They cannot treat people differently because of:
 - Race
 - Color
 - Religion
 - National Origin
 - Age
 - Marital Status
 - Military Status
 - Disability
 - Sex/Gender/Sexual preference or identity
 - Having Children
- *SOURCE OF INCOME—new April 2019**

Before you move in:

- Do a walkthrough: Take Pictures
 - Get any promised repairs IN WRITING
- Review your lease! Know what you're agreeing to—
- Start with the end in mind:
 - Know your term: Month to Month or full year?
 - WHO is signing—what are responsibilities?
 - What if a roommate doesn't follow through?
 - Fees? Security or other Deposits?
 - (now security = Value of One month's rent)
 - MAXIMUM application fee of \$20 or actual cost of background/credit check
 - How will the tenancy end? Notice requirements?



PLACE ONE SMOKE ALARM ON EVERY FLOOR AND SLEEPING ROOM

MULTI-STORY



SINGLE LEVEL





Working
SMOKE ALARMS
SAVE LIVES

Change Your Clock, Change Your Battery

"Dedicated To Life Safety"

How to be a Great Tenant



“My fleas don’t pay any rent and they have loud parties that keep me awake all night. I want to have them evicted!”





RECEIPT	date ____ / ____ / ____ No. 123456	
	received from _____ \$ _____	
	_____dollars	
	for payment of _____	
	<input type="radio"/> cash <input type="radio"/> money order <input type="radio"/> credit card <input type="radio"/> check # _____	
amount due	_____	from _____ to _____
amount paid	_____	
balance	_____	
signature _____		DC2501WS

TIP: ALWAYS GET A RENT RECEIPT!



Housing Quality Issues-some tips

- Implied Warranty of Habitability—in every residential tenancy
 - * "Dangerous, Hazardous, or detrimental to life, health, or safety"
- IF you withhold rent, KEEP IT! Do NOT spend it!
- Do not withhold rent unless you have communicated with landlord and they have refused to act
- Seek legal advice BEFORE withholding rent
- Contact City for Codes Enforcement-- 315-448-8695
 - **A landlord may NOT retaliate against a tenant for calling Codes**

Lease
termination
allowed for
Seniors who
need to move
for care—
RPL 227-A

- IMPLIED COVENANT in ALL residential lease agreements
- Any agreement waiving or modifying these rights shall be void as contrary to public policy.
- NEW facility, owner or lessor MUST provide NOTICE of right to terminate existing lease and requirements

NOTICE OF RESIDENTIAL LEASE TERMINATION

SECTION 227-a OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK ALLOWS FOR THE TERMINATION OF A RESIDENTIAL LEASE BY SENIOR CITIZENS OR INDIVIDUALS WITH A DISABILITY MOVING TO A RESIDENCE OF A FAMILY MEMBER OR ENTERING CERTAIN HEALTH CARE FACILITIES, ADULT CARE FACILITIES OR HOUSING PROJECTS.

Rpl 227-A

How to terminate lease to move into care facility

- in writing
- no earlier than thirty days after the date on which the next rental payment (after the notice is delivered) is due and payable.
- The notice is deemed delivered five days after being mailed.
- The written notice must include documentation of admission or pending admission to one of the above mentioned facilities.

RPL 227-A

What are the responsibilities of the rental property owner?

- When the tenant gives notice of his or her opportunity to move into one of the above facilities the landlord must allow:
 - A. for the termination of the lease or rental agreement, and
 - B. the release of the tenant from any liability to pay rent or other payments in lieu of rent from the termination of the lease in accordance with section 227-a of the real property law, to the time of the original termination date, and
 - C. to adjust any payments made in advance or payments which have accrued by the terms of such lease or rental agreement.
- * if anyone interferes with the removal of property from the premises they will be guilty of a misdemeanor and will be either imprisoned for up to one year or fined up to \$1000.00 or both.

227-A: Who is Eligible?

- Any lessee or tenant who is age sixty-two years or older,
- or who will attain such age during the term of the lease or rental agreement,
- or an individual with a "disability", as defined in subdivision 21 of section 292 of the executive law,
- or a spouse or dependent of such person residing with him or her.

RPL 227-a: What kind of facilities does this apply to?

- This law will apply if the senior citizen or individual with a disability is relocating to:
 - A. An adult care facility;
 - B. A residential health care facility;
 - C. Subsidized low income housing;
 - D. Senior citizen housing; or
 - E. A residence of a family member.

What to Know when it's Time to Go:

- × Review lease to see what kinds of NOTICES are required to end
- × If no lease or month to month, at least 30 days is required from Tenant—Landlord must give 30, 60, or 90 days
- × LL must allow walkthrough 14 days before end of lease to note any required repairs and allow time to fix
- × Clean before you go... AGAIN, Take Pictures, do walkthrough
- × Security deposits are NOT rent, Landlord need not accept in place of rent
- × In NY a Landlord must give security deposit back within 14 days after you leave, or give reasons why not.
- × IF they don't, remedy is small claims court.
- × Guide:

<http://www.nycourts.gov/courthelp/pdfs/SmallClaimsHandbook.pdf>

- × NY State Attorney General's office mediation program:

<https://ag.ny.gov/consumer-frauds/housing-issues>

How do evictions
happen?

Two Types of eviction cases

- **HOLDOVER**
 - Gave Notice to end rental or
 - Claimed lease violations
- **NONPAYMENT**
 - Always cured by payment in full

BOTH REQUIRE DUE PROCESS

DUE
PROCESS:
NOTICES
required
before
Summary
Proceedings

In non-payment proceeding:

- Demand for rent must now be a **written, 14-day notice** (RPAPL § 711)
 - Served properly as per RPAPL § 735
 - Oral demands for rent are now impermissible
- * must also send certified letter of notice that rent was not received “5 day late letter” or is affirmative defense



HOLDOVERS: Landlords May Not Increase Rent or Terminate A Lease Without Proper Notice

As of OCTOBER 12, 2019 :

RPL 226-c requires written notices
for any nonrenewal or rent
increase over 5%

*Proper Notice is required before can
bring Holdover eviction case*

Notices may not be given in retaliation for a
tenant's attempts to protect their rights

Now Notice is based on length of occupancy:

- ❖ **30 days** if tenant there less than one year
- ❖ **60 days** if tenant there from 1-2 years
- ❖ **90 days** if tenant has there over 2 years

MRE 302-a and Rental Registry

- MRE 302-a is a state law that all properties with 3 or more units must have valid Certificate of Occupancy to collect rent and to evict for nonpayment of rent
- In Syracuse, as of November 15, 2020 for single or 2-family non owner occupied homes, if not on RR and no Certificate of compliance, may not collect rent or evict for nonpayment of rent—may still get \$ Judgment for “Use and Occupancy”

Warrant — RPAPL § 749

Upon final judgment, court will issue warrant directed to sheriff or marshal, stating the **earliest possible date on which execution may occur**

Court must vacate if Judgment paid at any time prior to execution

Effective **only** against persons named in proceeding

Officer shall give at least **14 days notice** (previously 72 hours)

Execute warrant on a **business day between sunrise and sunset**

Stay of Warrant —RPAPL § 753

Courts may grant discretionary stays in both non-payment and holdover proceedings

Court may stay warrant **up to one year** where tenant requests in good faith, has extreme hardship, and pays ongoing use and occupancy. (Factors to be considered)

Where proceeding is based on breach of lease, court shall grant a **30 day cure period** before issuing a warrant (except in objectionable tenancy)

COVID-19 Eviction Moratoriums



The main
problem with
moratoriums—

people
misunderstood
and thought
rent wasn't
due...



but rent has NOT been waived!



Nationally... expecting an Eviction **Tsunami**

CDC Order

September 4,
2020, NOW
EXTENDED to
June 30

- TEMPORARY HALT ON EVICTIONS
- If statement of financial hardship and best efforts to pay and seek assistance
- **Tenants must present signed form to landlord under penalty of perjury**
- Rent is still due, no waiver!
- **SOME evictions still expressly allowed**
- <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>
- **NOT VERY IMPORTANT IN NY!**

NEW YORK:

COVID 19 Emergency Eviction and Foreclosure Prevention Act of 2020

- Tenant Hardship Declaration Form: prohibits eviction until at least May 1. (**EXTENDED to AUGUST 31!**)
- narrow exception if alleges persistent behavior that “substantially infringes upon the use and enjoyment of other tenants or occupants, or causes a substantial safety hazard to others.”
- A copy is available on our website and will be linked in our tenant rights clinic volunteer materials.

Tenant Hardship Declaration Form

- [HardshipDeclaration.pdf](#)
[\(nycourts.gov\)](#)
- [Coronavirus and the N.Y. State Courts - Latest AO \(nycourts.gov\)](#)
(Multiple translations available)
- Also on our website at
www.onvlp.org

**Check off A,
B, or both,
sign, keep
copy, give
copy to
Landlord,
court,
attorney**

- A.
- 1. Significant loss of household income.
- 2. Increase in necessary out-of-pocket expenses.
- 3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member
- 4. Moving expenses and difficulty I have securing alternative housing
- 5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.
- **To the extent that I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.**

Part B

- B. Vacating the premises and moving into new permanent housing would pose a significant health risk because I or one or more members of my household have an increased risk for severe illness or death from COVID-19 due to being over the age of sixty-five, having a disability or having an underlying medical condition, which may include but is not limited to being immunocompromised.
- I understand that I must comply with all other lawful terms under my tenancy, lease agreement or similar contract. I further understand that lawful fees, penalties or interest for not having paid rent in full or met other financial obligations as required by my tenancy, lease agreement or similar contract may still be charged or collected and may result in a monetary judgment against me. I further understand that my landlord may be able to seek eviction after May 1, 2021, and that the law may provide certain protections at that time that are separate from those available through this declaration.

The NY Tenant Safe Harbor Act



What does Tenant Safe Harbor Act Actually Provide?

- No warrants of eviction for nonpayment:
 - That occurred during the COVID-19 covered period
 - against a residential tenant or other lawful occupant
 - that has **suffered a financial hardship** during the COVID-19 covered period
 - (**factors** relating to income, receipt of benefits)
- *Tenant must present this in court as defense—**MUST SHOW UP!!** Get an attorney as early as possible!*
- *Landlord MAY still get judgment for rent due*
- **Still should be in effect after August 31**

Moratorium on Utility Terminations S-8113A

No utility, water works, telephone company or municipality may discontinue utility, water, or telephone service due to non-payment by any residential customer for the duration of the State of emergency

Moratorium includes an additional 180 days where the residential customer suffered a COVID related financial hardship

Current Status 05/13/2021

- Courts are scheduling hearings for currently pending cases where no Tenant Hardship Declaration is in place—DEFAULT hearings being held!
- **If someone doesn't show up the eviction warrant will issue!!**
- Virtual proceedings and “conferences” by TEAMS, some courts are in person
- **Tenants with proof of hardship in the file will not face eviction until at least AUGUST 31**
- **Tenants and landlords should apply for rent relief!**
- **TENANT SAFE HARBOR ACT should still apply**
- **THDF acts as REBUTTABLE PRESUMPTION of hardship—should be defense against eviction**

Emergency Rental Assistance

- \$24 Million in Federal funds for Covid rental relief to Onondaga County
 - Onondaga County Residents may NOT apply through the NY State process—ONLY THE COUNTY
 - Online Application only
 - Landlords and tenants can apply, but tenants must qualify
 - Payment directly to landlord unless not cooperative
 - Mediation services offered
 - Up to 12 months back rent, 3 months future if unaffordable
 - Qualifying if under 80% AMI, preference to 50%
-
- www.OnGovRentHelp.com

Self Help Eviction Actions are now a crime

RPAPL 768

- **Any person** can be found guilty, not just the landlord or owner
- Protections for anyone who lawfully lived there for over 30 days or has signed lease
- **Penalties:**
 - **up to a year in jail and**
 - **\$1,000 to \$10,000 in fines for every act,**
 - Additional daily fines for continued noncompliance
- Attorney General Guidance for law enforcement agencies:
https://ag.ny.gov/sites/default/files/guidance_to_law_enforcement_on_illegal_lockouts.pdf

Self Help Eviction Actions are now a CRIME (slide 2)

-RPAPL 768

Actions that may be considered a Criminal Class A Misdemeanor:

- Using or threatening the use of force;
- Interrupting or discontinuing essential services (ie: heat, water, electric);
- Removing the occupant's possessions from the dwelling unit;
- Removing the entrance door;
- Removing, plugging or rendering entrance door lock inoperable;
- Changing the lock on an entrance door without supplying a key;
- failing to take all reasonable and necessary action to restore occupancy when occupant deprived of such in violation of these provisions
- Any other action which prevents or is intended to prevent lawful occupancy, interfere with use, or induce the occupant to vacate.
- For example:
 - Repeatedly calling the occupant at all hours;
 - Yelling at the tenant;
 - Repeated demands to get out;
 - Repeatedly banging on the doors

QUESTIONS?

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