

# STATE OF NEW YORK

4093

2023-2024 Regular Sessions

## IN ASSEMBLY

February 9, 2023

Introduced by M. of A. KELLES, CUNNINGHAM, RAGA -- read once and referred to the Committee on Housing

AN ACT to amend the real property actions and proceedings law and the real property law, in relation to prohibiting residential evictions during the winter months

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short Title. This act shall be known and may be cited as  
2 the "winter moratorium on evictions act of 2023".

3 § 2. Legislative findings and declaration of emergency. The legisla-  
4 ture hereby finds and declares all of the following:

5 The serious public emergency regarding the scarcity of affordable  
6 housing across New York State continues to exist, and such emergency  
7 puts families and individuals at a heightened risk of eviction,  
8 displacement, and homelessness.

9 The legislature recognizes that evictions trigger long-lasting and  
10 irreparable harm to public health and safety. Evictions are linked to  
11 all-cause mortality and lead to an array of negative mental and physical  
12 health outcomes including higher rates of emergency room utilization,  
13 mental health hospitalizations, suicide, children's hospitalization, and  
14 depression. Evictions directly result in job loss and disruption to a  
15 child's education. Those who have experienced an eviction are more like-  
16 ly to live in substandard housing and have greater residential precarity  
17 and are less likely to secure safe and affordable housing in the long  
18 term. These consequences are disproportionately felt by Black and Latinx  
19 households, who face the highest rates of eviction.

20 Evictions are a significant cause of homelessness, both directly and  
21 indirectly. In New York City, 25 percent of shelter residents and 12  
22 percent of unsheltered individuals are homeless due to an eviction. The  
23 Department of Housing and Urban Development identified at least 91,271  
24 homeless individuals throughout New York State as of January 2020,

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 including 77,943 individuals in New York City and 13,328 individuals  
2 throughout the rest of the State.

3 The well-documented and devastating consequences of homelessness are  
4 exacerbated by cold weather. Unsheltered individuals have an increased  
5 risk of developing exposure-related health problems, particularly in  
6 cold weather. NYC Department of Homeless Services reported that 613  
7 homeless individuals died between July 2019 and June 2020 in New York  
8 City. Individuals experiencing homelessness accounted for at least 25  
9 percent of all cold-related hospitalizations between 2003 and 2015.

10 The legislature further recognizes that the statewide stock of shelter  
11 accommodations fails to ameliorate the threat to public health and safe-  
12 ty posed by eviction and homelessness. A 2020 audit by the New York  
13 State Comptroller found unsafe conditions, including structural damage,  
14 vermin infestations, and mold, in 60 percent of shelters. In 2020, the  
15 New York City Comptroller found widespread hazardous conditions jeopard-  
16 izing infants' health and safety in City shelters. Incidents of  
17 violence, theft, and police presence are pervasive in City shelters; 38  
18 percent of New York City residents experiencing street homelessness  
19 choose not to return to the shelter system and become street-homeless  
20 because of personal safety concerns. Convoluted and punitive rules and  
21 procedures, loss of personal agency, inadequate resources and staff  
22 training, and a systemic failure to accommodate disabilities are further  
23 deterrents.

24 The legislature further recognizes that, pursuant to Article XVII of  
25 the New York State Constitution, the "aid, care, and support of the  
26 needy are public concerns and shall be provided by the state." Such  
27 obligation extends to the State's homeless population, whose needs are  
28 heightened during winter months. The Executive Department has found that  
29 inclement winter weather presents a threat to the life, health, and  
30 safety of the State's homeless citizens in particular, and defines  
31 "inclement winter weather" as air temperatures at or below 32 degrees  
32 Fahrenheit, including National Weather Service calculations for wind  
33 chill. According to National Weather Service data, inclement winter  
34 weather falls within the normal temperature ranges in all or parts of  
35 New York State from November through April.

36 The legislature therefore finds and declares that in order to prevent  
37 death, hardship, and other negative health outcomes to New York State  
38 residents, the provisions of this act are necessary to protect public  
39 health, safety, and general welfare. The necessity in the public inter-  
40 est for the provisions hereinafter enacted is hereby declared as a  
41 matter of legislative determination.

42 § 3. Subdivision 2 of section 711 of the real property actions and  
43 proceedings law, as amended by section 12 of part M of chapter 36 of the  
44 laws 2019, is amended to read as follows:

45 2. [~~The~~] Except as provided in section seven hundred forty-seven of  
46 this article, the tenant has defaulted in the payment of rent, pursuant  
47 to the agreement under which the premises are held, and a written demand  
48 of the rent has been made with at least fourteen days' notice requiring,  
49 in the alternative, the payment of the rent, or the possession of the  
50 premises, has been served upon him as prescribed in section seven  
51 hundred thirty-five of this article. Any person succeeding to the land-  
52 lord's interest in the premises may proceed under this subdivision for  
53 rent due his predecessor in interest if he has a right thereto. Where a  
54 tenant dies during the term of the lease and rent due has not been paid  
55 and the apartment is occupied by a person with a claim to possession, a  
56 proceeding may be commenced naming the occupants of the apartment seek-

1 ing a possessory judgment only as against the estate. Entry of such a  
2 judgment shall be without prejudice to the possessory claims of the  
3 occupants, and any warrant issued shall not be effective as against the  
4 occupants.

5 § 4. Section 741 of the real property actions and proceedings law is  
6 amended by adding a new subdivision 7 to read as follows:

7 7. State that a warrant of eviction may only be executed between April  
8 sixteenth and October thirty-first of any calendar year.

9 § 5. Section 747 of the real property actions and proceedings law is  
10 amended by adding two new subdivisions 5 and 6 to read as follows:

11 5. In any case for nonpayment of rent in which a judgment has been  
12 entered, the party maintaining the proceeding, or their heirs or succes-  
13 sor, shall move by order to show cause to vacate such judgment within  
14 thirty days of receiving a payment amount satisfying the judgment.  
15 Unless such judgment has been vacated pursuant to subdivision six of  
16 this section or pursuant to a lawful written agreement between the  
17 parties filed with the court in which the judgment was issued, failure  
18 to comply with this subdivision shall prohibit a party from commencing a  
19 subsequent proceeding for nonpayment of rent against any person covered  
20 by such judgment until such judgment has been vacated.

21 6. In any case for nonpayment of rent in which a judgment has been  
22 entered, any person covered by such judgment may move by order to show  
23 cause at any time to have such judgment vacated. Within sixty days of  
24 the effective date of this subdivision, the office of court adminis-  
25 tration shall promulgate a pro se order to show cause and affidavit to  
26 support the vacatur of such judgment, which shall be provided at the  
27 time the judgment is entered to all respondents who are named or  
28 appeared in the proceeding.

29 § 6. Subdivision 1 of section 749 of the real property actions and  
30 proceedings law, as amended by section 19 of part M of chapter 36 of the  
31 laws of 2019, is amended to read as follows:

32 1. Upon rendering a final judgment for petitioner, the court shall  
33 issue a warrant directed to the sheriff of the county or to any constable  
34 or marshal of the city in which the property, or a portion thereof,  
35 is situated, or, if it is not situated in a city, to any constable of  
36 any town in the county, describing the property, stating the earliest  
37 date upon which execution may occur pursuant to the order of the court,  
38 and commanding the officer to remove all persons named in the proceed-  
39 ing, provided upon a showing of good cause, the court may issue a stay  
40 of re-letting or renovation of the premises for a reasonable period of  
41 time. Pursuant to section seven hundred fifty-three-a of this article,  
42 the earliest date upon which execution may occur shall fall between  
43 April sixteenth and October thirty-first of any given calendar year.

44 § 7. The real property actions and proceedings law is amended by  
45 adding a new section 753-a to read as follows:

46 § 753-a. Winter eviction moratorium in premises occupied for dwelling  
47 purposes. 1. The winter moratorium period shall commence at 12:00 AM on  
48 November first of a calendar year and end at 11:59 PM on April fifteenth  
49 of the subsequent calendar year.

50 (a) In a proceeding to recover possession of premises occupied for  
51 dwelling purposes, other than a room or rooms in a hotel occupied by a  
52 transient occupant for less than thirty days, the court shall not issue  
53 a warrant pursuant to section seven hundred forty-nine of this article  
54 with an execution date during the winter moratorium period.

1 (b) At the commencement of the winter moratorium period, all pending  
2 unexecuted judgments and warrants shall automatically be stayed through  
3 the end of the winter moratorium period.

4 2. (a) During the winter moratorium period, a person maintaining a  
5 proceeding shall maintain the same legal rights and obligations with  
6 respect to the tenant that were held prior to the issuance of the judg-  
7 ment and warrant including, but not limited to, the obligations to keep  
8 the premises in livable, safe, and sanitary condition, to not discrimi-  
9 nate, harass, or retaliate, and to keep the premises in good repair  
10 pursuant to federal, state, and local housing maintenance standards.  
11 Such person shall maintain the right to collect rent for use and occu-  
12 pancy during the winter moratorium period without prejudice to the judg-  
13 ment stayed except as provided in subdivision four of this section. For  
14 the purposes of this section, "person maintaining a proceeding" shall  
15 mean a person who may maintain proceeding pursuant to section seven  
16 hundred twenty-one of this article.

17 (b) During the winter moratorium period, a tenant against whom a judg-  
18 ment and warrant have been issued shall maintain the same rights and  
19 obligations as were held prior to the issuance of the judgment and  
20 warrant. Such obligations shall include the obligation to tender rent  
21 for use and occupancy at the last lawful rate previously agreed to by  
22 the parties or set by the court, subject to any abatement, offset, or  
23 reduction to which the tenant is lawfully entitled. Such rights shall  
24 include, but are not limited to, the right to livable, safe, and sani-  
25 tary premises, the right to be free from discrimination, harassment, and  
26 retaliation, the right to bring legal action in any appropriate forum  
27 with respect to the violation of such rights, and all other rights and  
28 protections afforded to tenants and occupants by local, state, and  
29 federal law. For the purposes of this section, "tenant" shall have the  
30 same meaning as provided in section seven hundred eleven of this arti-  
31 cle.

32 3. (a) During the winter moratorium period, any proceeding, judgment,  
33 and warrant, stayed pursuant to this section shall be sufficient for the  
34 purposes of establishing an "emergency" under 18 NYCRR 397.1(b), 18  
35 NYCRR 372.4, and/or section three hundred fifty-j of the social services  
36 law.

37 (b) A person against whom a judgment and warrant have been issued  
38 remains the "subject of an eviction proceeding" during the winter mora-  
39 torium period for the purposes of 68 RCNY 10-03(B). Such a person shall  
40 be considered "facing eviction" for the purposes of 18 NYCRR  
41 352.3(a)(ii) and (iii).

42 4. During the winter moratorium period, all monies tendered to a  
43 person maintaining a proceeding shall be presumed to apply to the earli-  
44 est period for which rent for use and occupancy is owed pursuant to the  
45 judgment, unless such payment is earmarked by the payer as being for a  
46 specific purpose. Any agreement to the contrary shall be deemed null and  
47 void.

48 § 8. Paragraph (b) of subdivision 2 of section 768 of the real proper-  
49 ty actions and proceedings law, as added by section 24 of part M of  
50 chapter 36 of the laws of 2019, is amended to read as follows:

51 (b) [~~Such~~] For each violation of this section occurring between April  
52 sixteenth and October thirty-first of any calendar year, such person  
53 shall also be subject to a civil penalty of not less than one thousand  
54 nor more than ten thousand dollars for each violation. For each  
55 violation of this section occurring between January first and April  
56 fifteenth, or from November first to December thirty-first of any calen-

1 dar year, such person shall also be subject to a civil penalty of not  
2 less than five thousand dollars nor more than fifty thousand dollars for  
3 each violation. Each such violation shall be a separate and distinct  
4 offense. In the case of a failure to take all reasonable and necessary  
5 action to restore an occupant pursuant to paragraph (b) of subdivision  
6 one of this section, such person shall be subject to an additional civil  
7 penalty of not more than one hundred dollars per day from the date on  
8 which restoration to occupancy is requested until the date on which  
9 restoration occurs, provided, however, that such period shall not exceed  
10 [~~six~~] twelve months.

11 § 9. The real property law is amended by adding a new section 235-j to  
12 read as follows:

13 § 235-j. Credit of payment of rent. Upon the receipt of the payment of  
14 rent for residential premises, it shall be the duty of the lessor, or  
15 any agent of the lessor, to immediately credit such payment to the  
16 rental account of the tenant, which shall be reflected on any rent  
17 statement, ledger, or bill provided to the tenant.

18 § 10. This act shall take effect on the sixtieth day after it shall  
19 have become a law and shall apply to all proceedings commenced on or  
20 after such date.