

# STATE OF NEW YORK

1403--A

2023-2024 Regular Sessions

## IN SENATE

January 11, 2023

Introduced by Sens. MYRIE, BRESLIN, RAMOS, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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".  
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.

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

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1 Evictions are a significant cause of homelessness, both directly and  
2 indirectly. In New York City, 25 percent of shelter residents and 12  
3 percent of unsheltered individuals are homeless due to an eviction. The  
4 Department of Housing and Urban Development identified at least 91,271  
5 homeless individuals throughout New York State as of January 2020,  
6 including 77,943 individuals in New York City and 13,328 individuals  
7 throughout the rest of the State.

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

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

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

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

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

50 2. [The] Except as provided in section seven hundred forty-seven of  
51 this article, the tenant has defaulted in the payment of rent, pursuant  
52 to the agreement under which the premises are held, and a written demand  
53 of the rent has been made with at least fourteen days' notice requiring,  
54 in the alternative, the payment of the rent, or the possession of the  
55 premises, has been served upon him as prescribed in section seven  
56 hundred thirty-five of this article. Any person succeeding to the land-

1 lord's interest in the premises may proceed under this subdivision for  
2 rent due his predecessor in interest if he has a right thereto. Where a  
3 tenant dies during the term of the lease and rent due has not been paid  
4 and the apartment is occupied by a person with a claim to possession, a  
5 proceeding may be commenced naming the occupants of the apartment seek-  
6 ing a possessory judgment only as against the estate. Entry of such a  
7 judgment shall be without prejudice to the possessory claims of the  
8 occupants, and any warrant issued shall not be effective as against the  
9 occupants.

10 § 4. Section 741 of the real property actions and proceedings law is  
11 amended by adding a new subdivision 8 to read as follows:

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

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

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

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

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

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

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

51 § 753-a. Winter eviction moratorium in premises occupied for dwelling  
52 purposes. 1. The winter moratorium period shall commence at 12:00 AM on  
53 November first of a calendar year and end at 11:59 PM on April fifteenth  
54 of the subsequent calendar year.

55 (a) In a proceeding to recover possession of premises occupied for  
56 dwelling purposes, other than a room or rooms in a hotel occupied by a

1 transient occupant for less than thirty days, the court shall not issue  
2 a warrant pursuant to section seven hundred forty-nine of this article  
3 with an execution date during the winter moratorium period.

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

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

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

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

40 (b) A person against whom a judgment and warrant have been issued  
41 remains the "subject of an eviction proceeding" during the winter mora-  
42 torium period for the purposes of 68 RCNY 10-03(B). Such a person shall  
43 be considered "facing eviction" for the purposes of 18 NYCRR  
44 352.3(a)(ii) and (iii).

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

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

54 (b) [~~Such~~] For each violation of this section occurring between April  
55 sixteenth and October thirty-first of any calendar year, such person  
56 shall also be subject to a civil penalty of not less than one thousand

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

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

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

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