State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

November 17, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso
Hon. Anthony Cannataro

From: Lawrence K. Marks LM

Subject: Revised Procedure for Addressing Eviction Proceedings

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As you may recall, in light of the coronavirus pandemic, Governor Cuomo suspended statutes of limitations in a wide range of legal matters from mid-March through November 3, 2020. That general suspension lapsed under the terms of Executive Order 202.67 (Attachment A). In addition, by the terms of Executive Order 202.72 (Attachment B, dated November 3, 2020), the Governor granted respondents in pending nonpayment eviction matters an additional 60 days (until January 2, 2021) to file answers to the petition.

Consistent with these Executive Orders, attached please find a copy of AO/268/20 (Attachment C) which (1) amends the notices required to be served with newly-issued petitions in eviction matters; (2) directs that those notices be printed on colored paper, to enhance their distinctiveness and effectiveness; and (3) directs that methods of filing and service in eviction matters, previously altered in various respects for pandemic-related reasons, shall return to normal practice.

You may further recall that my memorandum of October 9, 2020 addressing eviction proceedings (Exh. D) included a general admonition that courts should not issue default judgments in eviction matters while the general suspension of statutes of limitation continued. In light of EO 202.67, that broad admonition is no longer valid: default judgments may now again be entered in eviction matters where otherwise appropriate.

Finally, please note that we will be posting additional information about pandemic-related relief in eviction matters on the UCS website in the near future.

Please distribute this memorandum and attachments to judges and non-judicial staff as you deem appropriate.

Attachments

c: Administrative Judges

Attachment A

State of New York

Executive Chamber

No. 202.67

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find that a disaster continues to exist for which affected state agencies and local governments are unable to respond adequately. Therefore, pursuant to the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, I hereby continue the declaration of the State Disaster Emergency effective March 7, 2020, as set forth in Executive Order 202. This Executive order shall remain in effect until November 3, 2020.

IN ADDITION, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, or to provide any directive necessary to respond to the disaster, do hereby continue the suspensions and modifications of law, and any directives not superseded by a subsequent directive contained in Executive Orders 202 up to and including 202.21, and 202.27, 202.28, 202.29, 202.30, 202.38, 202.39, 202.40, 202.48, 202.49, 202.50, 202.55 and 202.55.1, as extended, and Executive Order 202.60 for another thirty days through November 3, 2020, except:

- Subdivision 1 of Section 491 of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a non-driver identification card, shall no longer be suspended or modified as of November 3, 2020;

- Sections 401, 410, 2222, 2251, 2251, and 2282(4) of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a registration certificate or number plate for a motor vehicle or trailer, a motorcycle, a snowmobile, a vessel, a limited use vehicle, and an all-terrain vehicle, shall no longer be suspended or modified as of November 3, 2020;

- Section 420-a of the Vehicle and Traffic law, to the extent that it provides an expiration for temporary registration documents issued by auto dealers shall no longer be suspended or modified as of November 3, 2020; and

- The suspension in Executive Order 202.8, as modified and extended in subsequent Executive Orders, that tolled any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any statute, local law, ordinance, order, rule,

or regulation, or part thereof, is hereby continued, as modified by prior executive orders, provided however, for any civil case, such suspension is only effective until November 3, 2020, and after such date any such time limit will no longer be tolled, and provided further:

- The suspension and modification of Section 30.30 of the criminal procedure law, as continued and modified in EO 202.60, is hereby no longer in effect, except for felony charges entered in the counties of New York, Kings, Queens, Bronx, and Richmond, where such suspension and modification continues to be effective through October 19, 2020; thereafter for these named counties the suspension is no longer effective on such date or upon the defendant's arraignment on an indictment, whichever is later, for indicted felony matters, otherwise for these named counties the suspension and modification of Section 30.30 of the criminal procedure law for all criminal actions proceeding on the basis of a felony complaint shall no longer be effective, irrespective, 90 days from the signing of this Executive order on January 2, 2021.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this fourth day of October in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

Attachment B

State of New York

Executive Chamber

No. 202.72

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find that a disaster continues to exist for which affected state agencies and local governments are unable to respond adequately. Therefore, pursuant to the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, I hereby continue for thirty days the declaration of the State Disaster Emergency effective March 7, 2020, as set forth in Executive Order 202. This Executive order shall remain in effect through December 3, 2020.

IN ADDITION, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, or to provide any directive necessary to respond to the disaster, do hereby continue the suspensions and modifications of law, and any directives not superseded by a subsequent directive, contained in Executive Orders 202 up to and including 202.21, and 202.27, 202.28, 202.29, 202.30, 202.31, 202.38, 202.39, 202.40, 202.41, 202.42, 202.43, 202.48, 202.49, 202.50, 202.51, 202.52, 202.55, 202.55.1, 202.56, 202.60, 202.61, 202.62, 202.63, as continued and contained in Executive Orders 202.67 and 202.68 for another thirty days through December 3, 2020, except:

- Subdivision (a) of Section 301 of the Vehicle and Traffic Law, to the extent that it requires annual safety inspections and at least biennial emissions inspections, shall no longer be suspended or modified, and provided no penalty shall attach to the failure to obtain such inspection until December 1, 2020;

- Subdivision 1 of Section 491 of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a non-driver identification card, shall no longer be suspended or modified;

- Sections 401, 410, 2222, 2251, 2251, and 2282(4) of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a registration certificate or number plate for a motor vehicle or trailer, a motorcycle, a snowmobile, a vessel, a limited use vehicle, and an all-terrain vehicle, shall no longer be suspended or modified, but provided that no penalty shall attach to the failure to extend such registration until December 1, 2020;

- Section 420-a of the Vehicle and Traffic law, to the extent that it provides an expiration for temporary registration documents issued by auto dealers shall no longer be suspended or modified;

- Pursuant to Executive Order 202.67, the suspension for civil cases in Executive Order 202.8, as modified and extended in subsequent Executive Orders, that tolled any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state, including but not limited to the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby no longer in effect as of November 4, 2020, provided any criminal procedure law suspension remains in effect and provided that all suspensions of the Family Court Act remain in effect until November 18, 2020 and thereafter continue to remain in effect for those juvenile delinquency matters not involving a detained youth and for those child neglect proceedings not involving foster care.

- To the extent Executive Order 202.61 modified subdivision 1 of section 579 of the Public Health Law to require reporting of COVID-19 and influenza test results by additional clinical laboratories within 3 hours, such modification is continued and amended to permit such laboratories to report results to the Department within 24 hours, provided the Department may require more frequent reporting if deemed necessary;

IN ADDITION, I hereby temporarily suspend or modify the following from the date of this Executive Order through December 3, 2020:

- Sections 732 and 743 of the Real Property Actions and Proceedings Law are modified to the extent necessary to provide that the time to answer in any summary eviction proceeding for nonpayment of rent that is pending on the date of the issuance of this Executive Order will be sixty days.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives through December 3, 2020:

- The directive contained in Executive Order 202.61, along with implementing guidance, requiring clinical laboratories and licensed professionals authorized by the Department of Health Physician Office Laboratory Evaluation Program to administer a test for COVID-19 or influenza to report results of COVID-19 and influenza tests to the Department within three hours, is hereby modified to permit clinical laboratories and those licensed professionals with reporting requirements to report results to the Department within 24 hours, provided the Department may require more frequent reporting if deemed necessary.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this third day of November in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

Attachment C

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and in light of the ongoing public health and commercial concerns raised by the COVID-19 health emergency, I hereby direct that:

(1) petitions in eviction proceedings pursuant to Article 7 of the Real Property Actions and Proceedings Law shall include a Notice to Respondent Tenant in the form attached as Exh. 1 (if filing within the City of New York) or Exh. 2 (if filing outside the City of New York), printed on colored paper to enhance its distinctiveness and effectiveness; and

(2) filing and service of process in eviction proceedings shall be governed by AO/267/20.

This order shall take effect immediately, and shall supersede the provisions of any prior administrative order inconsistent with its terms.

Chief Administrative Judge

Dated: November 17, 2020

AO/268/20

EXHIBIT 1

NOTICE TO RESPONDENT TENANT

DURING THE CORONAVIRUS EMERGENCY, YOU MIGHT BE ENTITLED BY LAW TO SPECIAL DEFENSES AND PROTECTIONS RELATING TO EVICTIONS.

PLEASE CONTACT YOUR ATTORNEY IMMEDIATELY FOR MORE INFORMATION.

IF YOU DON'T HAVE AN ATTORNEY, PLEASE CALL

718-557-1379

OR VISIT

www.nycourts.gov/evictions/nyc/

AVISO A INQUILINO DEMANDADO

DURANTE LA EMERGENCIA POR CORONA VIRUS, PUEDA QUE POR LEY USTED TENGA DERECHO A DEFENSAS Y PROTECCIONES ESPECIALES RELACIONADAS CON DESALOJOS.

POR FAVOR COMUNIQUESE CON SU ABOGADO INMEDIATAMENTE PARA OBTENER MAS INFORMACIÓN.

SI NO TIENE ABOGADO, LLAME AL

718-557-1379

O VISITE

www.nycourts.gov/evictions/nyc/

EXHIBIT 2

NOTICE TO RESPONDENT TENANT

DURING THE CORONAVIRUS EMERGENCY, YOU MIGHT BE ENTITLED BY LAW TO SPECIAL DEFENSES AND PROTECTIONS RELATING TO EVICTIONS.

PLEASE CONTACT YOUR ATTORNEY IMMEDIATELY FOR MORE INFORMATION.

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VISIT

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DURANTE LA EMERGENCIA POR CORONA VIRUS, PUEDA QUE POR LEY USTED TENGA DERECHO A DEFENSAS Y PROTECCIONES ESPECIALES RELACIONADAS CON DESALOJOS.

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SI NO TIENE ABOGADO, VISITE

www.nycourts.gov/evictions/outside-nyc/

Attachment D

State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

October 9, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso
Hon. Anthony Cannataro

From: Lawrence K. Marks

Subject: Revised Procedure for Addressing Residential Eviction Proceedings

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Continuing our progress towards the fuller resumption of court operations, attached please find a copy of AO/231/20 (Attachment A), which amends the protocol for handling residential eviction proceedings in several significant respects.

1. Effective October 12, 2020, all residential eviction matters – nonpayment and holdover, without regard to the date of commencement – may resume statewide, with certain important caveats:

   (a) Suspension of Statutory Time Limits: At this time, all proceedings continue to be governed by the suspension of "any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as described by the procedural laws of the state," set forth in Executive Orders 202.8, 202.14, 202.28, 202.38, 202.48, 202.55, 202.60, and 202.67 (Attachment B).[1] So long as this suspension of time limits continues, no default judgment may be entered upon the failure of a respondent to answer a petition in an eviction matter.

   (b) Scheduling Once Issue Has Been Joined: Once a matter has been filed and answered, the further hearing of an eviction proceeding remains subject to local court circumstances and health/safety assessments for courthouse use. The safety of judges, non-judicial personnel, and court visitors remains the paramount concern in all court operations. Given the ongoing need to restrict foot traffic in courthouses for reasons of health and safety, we anticipate that the scheduling, hearing and issuance of decisions in

[1] Executive Order 202.67 extended this suspension to November 3, 2020.

eviction matters will often require far lengthier time periods than anticipated in statutes and prevalent under pre-COVID conditions.

(c) Pre-March 17 Residential Matters: The requirement of a status or settlement conference set forth in AO/160A/20 remains in effect for residential eviction matters commenced prior to March 17 – including matters in which judgments and warrants of eviction have issued and been delivered to enforcement agents (but not yet executed). Post-March 16 eviction matters are to be handled in the normal course.

(d) Alternative Dispute Resolution: While mediation of eviction matters can be a highly useful practice and is strongly encouraged, it may be inadvisable in cases where one party is represented by counsel and another (generally the tenant) is unrepresented.

(e) Remedies- Prohibition of Evictions – State Law and Executive Order: Evictions of residential tenants who meet criteria set forth in the Tenant Safe Harbor Act (L. 2020, c. 127), as modified by Executive Order 202.66 (Attachment C), are prohibited through January 1, 2021 (the date specified in EO 202.66). This prohibition now bars the execution or enforcement of residential warrants of eviction or judgments of possession without regard to their date of issuance.

Two aspects of the Executive Order's modification of the Act are noteworthy: the scope of the Tenant Safe Harbor Act is limited to nonpayment cases, while EO 202.66 applies to "any residential tenant;" and the Act prohibits issuance of warrants of eviction and judgments of possession, while the EO prohibits "execution or enforcement" of such judgments and warrants. This terminology may require future judicial interpretation.

(f) Remedies - Prohibition of Evictions – CDC Order: The Centers for Disease Control order of September 4, 2020 (Attachment D) prohibits eviction of any "covered person" from residential property for nonpayment of rent through December 31, 2020. The CDC order defines covered persons as tenants or residents who file a declaration with their landlord affirming that they meet specified income limits and other financial and COVID-related requirements. The order allows eviction for reasons other than nonpayment, including damaging the premises, threatening the health and safety of others, violating building codes, and the like.

3. Filing and service of documents in eviction proceedings continue to be governed by AO/121/20. Consequently, initiating documents by represented petitioners must be filed through NYSCEF or mail only at this time. (Unrepresented parties may file papers in person.)

4. Commencement papers in residential eviction proceedings must continue to include a notice indicating that respondent-tenants may be eligible for an extension of time to respond to the complaint (Attachment A, Exh. 1).

Please distribute this memorandum and attachments to judges and non-judicial staff as you deem appropriate.

Attachments

c: Administrative Judges