

LANDLORD LEGAL SURVIVAL

ROBERT FRIEDMAN, Attorney
JUSTIN R. FRIEDMAN, Attorney

1955 *66* years 2021
FRIEDMAN
RANZENHOFER
ATTORNEYS AT LAW

I. NY TENANT PROTECTION ACT OF 2019

- A. Notice by certified mail when residential rent is past due 5 days and **14-day notice** (instead of three-day notice).
- B. Notice of petition and petition must be served **10-17 days** (instead of 5 to 12 days) before the court date.
- C. Either party can request an adjournment of at least **14 days**.
- D. Attorney's fees cannot be awarded if the tenant defaults.
- E. Warrants give the tenant **14 days** (instead of 72 hours) notice to vacate. The tenant can terminate the proceedings by paying all rent due before the warrant is executed.
- F. The warrant can be stayed up to **one year** in hardship cases.

- G. Late fees are limited to the lesser of **\$50 or 5%** of the monthly rent beginning the sixth day after rent is due.
- H. Application fees cannot be charged, and credit report charges cannot exceed **\$20**.
- I. Duty to mitigate their damages.

- J. Presumption of retaliatory eviction expanded to include when a tenant complains about conditions to landlord.
- K. Residential notices of nonrenewal or termination of a month-to-month tenancy: less than one year on **30 days'** notice; more than one year but less than 2 years on **60 days'** notice and more than 2 years on **90 days'** notice.
- L. Rent for purposes of an eviction is does not include late charges, interest or other fees.
- M. Move-In/Move Out Inspection.
- N. Security deposit must be returned within **14 days** after tenant vacates.

II. EVICTIONS MORATORIUM UPDATE

- A.** Governor's Executive Orders, NY Courts Administrative Orders, NY Legislation, Individual Court Policies, CDC Order and U.S. CARES ACT.

B. Landlord's ability to evict a tenant will depend on whether:

1. The property is commercial or residential.
2. The eviction grounds are nonpayment or holdover.
3. The tenant is suffering financial hardship.
4. When an eviction action has been started.
5. The dates for which the rent was due.
6. The tenant's behavior causes a nuisance to others.
7. The court is accepting filing of notices of petition and petitions; and/or
8. The mortgage is backed by Fannie Mae or Freddie Mac.



C. Court Protocol for Commercial & Residential Evictions

1. Affidavit that proceeding is consistent with eviction restrictions.

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Exh. 1a

[Court]
COUNTY OF _____

Petitioner (Landlord)

v.

Respondent (Tenant)

Address:

Index No. L&T _____

AFFIRMATION

Please note: As a result of the COVID-19 pandemic, the commencement and prosecution of eviction proceedings were stayed under various provisions of law, including but not limited to Governor Cuomo's Executive Order 202.8 and Executive Order 202.28, Chief Administrative Judge Marks's Administrative Orders AO/68/20, AO/121/20, and AO/127/20, and the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (Public Law 116-136). This affirmation is designed to advance the purpose of these federal and state directives, and to avoid unnecessary in-person appearances of parties and others in courthouses.

[____], Esq., pursuant to CPLR §2106 and under the penalties of perjury, affirms as follows:

1. I am an attorney at law duly licensed to practice in the state of New York and am affiliated with the law firm of _____, attorneys for Petitioner in the above-captioned eviction proceeding pursuant to RPAPL §732. As such, I am fully aware of the underlying action, as well as the proceedings had herein.

2. I am aware that, as a result of the COVID-19 pandemic, various state and federal authorities have issued statutes and executive orders regulating the time and manner of commencement and prosecution of eviction proceedings. These include (without limitation), gubernatorial Executive Orders EO-202.8 (March 20, 2020), EO-202.14 (April 7, 2020), EO-202.28 (May 7, 2020), and EO 202.38 (June 6, 2020); Chief Administrative Judge Administrative Orders AO/68/20 (March 16, 2020), AO/121/20 (June 9, 2020), and AO/127/20

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(June 18, 2020), and federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act, enacted on March 27, 2020).

3. I have reviewed these authorities, have consulted with my client, and affirm that, to the best of my knowledge, information, and belief, the petition and other papers filed or submitted to the Court in this matter comport with the requirements of those state and federal directives -- including the directive, set forth in Executive Order 202.28, that "[t]here shall be no initiation of a proceeding or enforcement of ... an eviction of any residential or commercial tenant, for nonpayment of rent ... by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020."

4. I am aware of my obligations under New York Rules of Professional Conduct (22 NYCRR Part 1200) and 22 NYCRR Part 130.

DATED:

Please note: Counsel may augment this affirmation to provide explanatory details, and may file supplemental affirmations or affidavits for the same purpose.

Exh. 1b

[Court]
COUNTY OF _____

Petitioner (Landlord)

Index No. L&T _____

PETITIONER'S AFFIDAVIT

v.

Respondent (Tenant)

Address:

Please note: As a result of the COVID-19 pandemic, the commencement and prosecution of eviction proceedings were stayed under various provisions of law, including but not limited to Governor Cuomo's Executive Order 202.8 and Executive Order 202.28, Chief Administrative Judge Marks's Administrative Orders AO/68/20, AO/121/20, and AO/127/20, and the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (Public Law 116-136). This affidavit, to be filed by petitioners who are self-represented in eviction matters, is designed to advance the purpose of these federal and state directives, and to avoid unnecessary in-person appearances of parties and others in courthouses.

STATE OF NEW YORK)
)ss.
COUNTY OF _____)

_____, being duly sworn, says:

1. I am the petitioner in this eviction proceeding, and am not represented by counsel. I have personal knowledge of the facts stated in the petition.

2. I am aware that, as a result of the COVID-19 pandemic, various state and federal authorities have issued statutes and orders regulating the bringing of eviction proceedings. These include (without limitation), Governor Cuomo's Executive Orders EO-202.8 (March 20, 2020), EO-202.14 (April 7, 2020), EO-202.28 (May 7, 2020), and EO 202.38 (June 6, 2020) (<https://www.governor.ny.gov/executiveorders>); Chief Administrative Judge Administrative

Orders AO/68/20 (March 16, 2020), AO/121/20 (June 9, 2020), and AO/127/20 (June 18, 2020) (<https://www.nycourts.gov/latest-AO.shtml>), and section 4024 of the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act, enacted on March 27, 2020) (see, e.g. <https://crsreports.congress.gov/product/pdf/IN/IN11320>).

3. I have reviewed these authorities, and declare that, to the best of my knowledge, information, and belief, the petition and other papers filed in this matter meet the requirements of those state and federal directives -- including the requirement contained in Executive Order 202.28, that "[i]here shall be no initiation of a proceeding or enforcement of ... an eviction of any residential or commercial tenant, for nonpayment of rent ... by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020."

Petitioner's Full Name

Sworn to before me this
____ day of _____, 20__

Public Notary

2. Notice that tenant may be eligible for an extension of time to respond.

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Exh. 2b

NOTICE TO RESPONDENT TENANT

DURING THE CORONAVIRUS EMERGENCY, YOU
MIGHT BE ENTITLED BY LAW TO TAKE ADDITIONAL
DAYS OR WEEKS TO FILE AN ANSWER TO THIS
PETITION.

PLEASE CONTACT YOUR ATTORNEY FOR MORE
INFORMATION.

IF YOU DON'T HAVE AN ATTORNEY, PLEASE
VISIT

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

FOR MORE INFORMATION.

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AVISO A INQUILINO DEMANDADO

DURANTE LA EMERGENCIA DEL CORONAVIRUS,
ES POSIBLE QUE USTED TENGA DERECHO POR LEY
A TOMAR DÍAS O SEMANAS ADICIONALES
PARA PRESENTAR UNA RESPUESTA
A ESTA PETICIÓN

POR FAVOR CONTACTE A SU ABOGADO PARA MAS
INFORMACIÓN.

SI USTED NO TIENE UN ABOGADO, VISITE
www.nycourts.gov/evictions/outside-nyc/

D. NY Pandemic Eviction Moratoriums & Defenses

1. Tenant Safe Harbor Act (June 30, 2020) Residential tenants who experienced financial hardship for nonpayment of rent that accrues between March 7, 2020 and when all COVID-related restrictions are lifted.



2. The COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020

a) Effective 12/28/20.

b) Hardship Declarations (“HD”) submitted by tenants reporting financial hardship during or due to the COVID-19 pandemic stays proceedings and Actions until at least August 31, 2021.



NOTICE TO TENANT:

If you have lost income or had increased costs during the COVID-19 pandemic, or moving would pose a significant health risk for you or a member of your household due to an increased risk for severe illness or death from COVID-19 due to an underlying medical condition, and you sign and deliver this hardship declaration form to your landlord, you cannot be evicted until at least May 1, 2021 for nonpayment of rent or for holding over after the expiration of your lease. You may still be evicted for violating your lease by 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.

If your landlord has provided you with this form, your landlord must also provide you with a mailing address and e-mail address to which you can return this form. If your landlord has already started an eviction proceeding against you, you can return this form to either your landlord, the court, or both at any time. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid rent to your landlord. You should also keep careful track of what you have paid and any amount you still owe.

For more information about legal resources that may be available to you, go to www.nycourts.gov/evictions/nyc/ or call 718-557-1379 if you live in New York City or go to www.nycourts.gov/evictions/outside-nyc/ or call a local bar association or legal services provider if you live outside of New York City. Rent relief may be available to you, and you should contact your local housing assistance office.



Index Number (if known/applicable): _____

County and Court (if known/applicable): _____

**TENANT'S DECLARATION OF HARDSHIP
DURING THE COVID-19 PANDEMIC**

I am a tenant, lawful occupant, or other person responsible for paying rent, use and occupancy, or any other financial obligation under a lease or tenancy agreement at (address of dwelling unit):

YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY SELECTING OPTION "A" OR "B", OR BOTH.

- A. I am experiencing financial hardship, and I am unable to pay my rent or other financial obligations under the lease in full or obtain alternative suitable permanent housing because of one or more of the following:
 1. Significant loss of household income during the COVID-19 pandemic.
 2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
 3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
 4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.

- 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.

- 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.

Signed: _____

Printed name: _____

Date signed: _____

NOTICE: You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false.

c) List of Legal Service Providers.



ID



EVICCTIONS - FREE ASSISTANCE PROVIDED BY LEGAL SERVICE PROVIDERS

The Eighth Judicial District Access to Justice Program has coordinated closely with a number of legal service providers to help Western New Yorkers find free legal assistance with Landlord Tenant/Housing Proceedings. The links below provide listings of services available:

ALLEGANY COUNTY

Legal Assistance of Western New York, Inc. – LawNY – Bath Office

16 West William Street
PO Box 272
Bath, New York 14810
(607) 776-4126

Services are provided for All Town and Village Justice Courts in Allegany County

[Website](#)



Child & Family Services Center for Resolution and Justice

2495 Main St., Suite 357
Buffalo, New York 14214

(716) 362-2323 or email: mediate@cfsbnv.org

[Website](#)

Mediation to resolve disputes between landlords and tenants

Service are provided for All Town and Village Justice Court in Allegany County



CATTARAUGUS COUNTY

Legal Assistance of Western New York, Inc. – LawNY – Olean Office

103 South Barry Street
Olean, New York 14760
(716) 373-4701

Services are provided for Olean City Court, Salamanca City Court and All Town and Village Justice Courts in Cattaraugus County

[Website](#)



Child & Family Services Center for Resolution and Justice

2495 Main St., Suite 357

Buffalo, New York 14214

(716) 362-2323 or email: mediate@cfsbnv.org

[Website](#)

Mediation to resolve disputes between landlords and tenants

Services are provided for Olean City Court, Salamanca City Court and All Town and Village Justice Courts in Cattaraugus County



CHAUTAUQUA COUNTY

Legal Assistance of Western New York, Inc. – LawNY – Jamestown Office

115 East Third Street
Jamestown, New York 14701

(716) 664-4535

Services are provided for Dunkirk City Court, Jamestown City Court and All Town and Village Justice Courts in Chautauqua County

[Website](#)



Center for Elder Law and Justice

438 Main Street, Suite 1200
Buffalo, New York 14202

(716) 853-3087

Services are provided for Dunkirk City Court and

All Town and Village Justice Courts in Chautauqua County

[Website](#)



Child & Family Services Center for Resolution and Justice

2495 Main St., Suite 357

Buffalo, New York 14214

(716) 362-2323 or email: mediate@cfsbnv.org

[Website](#)

Mediation to resolve disputes between landlords and tenants

Services are provided for Dunkirk City Court and Jamestown City Court and All Town and Village Justice Courts in Chautauqua County



ERIE COUNTY

Neighborhood Legal Services
237 Main Street, Suite 400
Buffalo, New York 14203
(716) 847-0650



Services are provided for Buffalo City Court, Lackawanna City Court, Tonawanda City Court and All Town and Village Justice Courts in Erie County

[Website](#)

ECBA – Volunteer Lawyers Project
438 Main St. 7th Floor
Buffalo, New York 14202
(716) 828-8460



Services are provided for Buffalo City Court, Lackawanna City Court

[Website](#)

Legal Aid Bureau
290 Main Street Suite 400
Buffalo, New York 14202
(716) 853-9555 x453



Services are provided for Buffalo City Court, Amherst Town Justice Court and Cheektowaga Town Justice Court

[Website](#)

Center for Elder Law and Justice
438 Main Street, Suite 1200
Buffalo, New York 14202
(716) 853-3087



Services are provided for Buffalo City Court, Lackawanna City Court, Tonawanda City Court All Town and Village Justice Courts in Erie County

[Website](#)

Child & Family Services Center for Resolution and Justice
2495 Main St., Suite 357
Buffalo, New York 14214
(716) 362-2323 or email: mediate@cfsbny.org



[Website](#)

Mediation to resolve disputes between landlords and tenants

Services are provided for Buffalo City Court, Lackawanna Falls City Court, Tonawanda City Court All Town and Village Justice Courts in Erie County

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GENESEE COUNTY

Neighborhood Legal Services
45 Main Street
Batavia, New York 14020
(585) 343-6460



Services are provided for Batavia City Court and All Town and Village Justice Courts in Genesee County

[Website](#)

Center for Elder Law and Justice
438 Main Street, Suite 1200
Buffalo, New York 14202
(716) 853-3087



(Age 60 and Older) - Services are provided for Batavia City Court and All Town and Village Justice Courts in Genesee County

[Website](#)

Child & Family Services Center for Resolution and Justice
2495 Main St., Suite 357
Buffalo, New York 14214
(716) 362-2323 or email: mediate@cfsbny.org



[Website](#)

Mediation to resolve disputes between landlords and tenants
Services are provided for Batavia City Court and All Town and Village Justice Courts in Genesee County

NIAGARA COUNTY

Neighborhood Legal Services
225 Old Falls Street 3rd Floor
Niagara Falls, New York 14302
(716) 847-0650



Services are provided for Lockport City Court, Niagara Falls City Court, North Tonawanda City Court and All Town and Village Justice Courts in Niagara County

[Website](#)

Center for Elder Law and Justice
438 Main Street, Suite 1200
Buffalo, New York 14202
(716) 853-3087



Services are provided for Lockport City Court, Niagara Falls City Court, North Tonawanda City Court All Town and Village Justice Courts in Niagara County

[Website](#)

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Child & Family Services Center for Resolution and Justice

2495 Main St., Suite 357

Buffalo, New York 14214

(716) 362-2323 or email: mediate@cfsbny.org

Website

Mediation to resolve disputes between landlords and tenants

Services are provided for Lockport City Court, Niagara Falls City Court, North Tonawanda City Court

All Town and Village Justice Courts in Niagara County



ORLEANS COUNTY

Neighborhood Legal Services

45 Main Street

Batavia, New York 14020

(585) 343-5450

Services are provided for All Town and Village Justice Courts in Orleans County

Website



Center for Elder Law and Justice

438 Main Street, Suite 1200

Buffalo, New York 14202

(716) 853-3087

(Age 60 and Older) - Services are provided for All Town and Village

Justice Courts in Orleans County

Website



Child & Family Services Center for Resolution and Justice

2495 Main St., Suite 357

Buffalo, New York 14214

(716) 362-2323 or email: mediate@cfsbny.org

Website

Mediation to resolve disputes between landlords and tenants

Services are provided All Town and Village Justice Courts in Orleans County



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WYOMING COUNTY

Neighborhood Legal Services

45 Main Street

Batavia, New York 14020

(585) 343-5450

Services are provided for All Town and Village Justice Courts in Wyoming County

Website



Center for Elder Law and Justice

438 Main Street, Suite 1200

Buffalo, New York 14202

(716) 853-3087

(Age 60 and Older) - Services are provided for All Town and Village

Justice Courts in Wyoming County

Website



Child & Family Services Center for Resolution and Justice

2495 Main St., Suite 357

Buffalo, New York 14214

(716) 362-2323 or email: mediate@cfsbny.org

Website

Mediation to resolve disputes between landlords and tenants

Services are provided All Town and Village Justice Courts in Wyoming County



FREE LEGAL HELP FOR TENANTS FACING EVICTION

Are you a tenant with limited income
scheduled for an eviction case in Buffalo City Court?

You may qualify for FREE legal help.

Call (844) 230-7376

You will receive a call back
from one of the free legal services providers listed below.



NEIGHBORHOOD
LEGAL SERVICES, INC.

**LEGAL
AID
BUREAU**
of Buffalo, Inc.



ECBA
**VOLUNTEER
LAWYERS
PROJECT**

CENTER FOR
ELDER
LAW &
JUSTICE

AYUDA LEGAL GRATUITA PARA INQUILINOS QUE ENFRENTAN EL DESALOJO

¿Es usted un inquilino con ingresos limitados?
programado para un caso de desalojo en el Tribunal de la ciudad de
Buffalo?

Puede calificar para recibir ayuda legal GRATUITA.

Llamar (844) 230-7376

Recibirá una llamada de vuelta
de uno de los proveedores de servicios legales gratuitos que se
enumeran a continuación.

Servicios Legales de Vecindad



NEIGHBORHOOD
LEGAL SERVICES, INC.

Oficina de asistencia jurídica

**LEGAL
AID
BUREAU**
of Buffalo, Inc.

Colegio de Abogados del Condado de Erie
Proyecto de Abogados Voluntarios



ECBA
**VOLUNTEER
LAWYERS
PROJECT**

Centro de Derecho y Justicia
para Personas Mayores

CENTER FOR
ELDER
LAW &
JUSTICE

D. NY Pandemic Eviction Moratoriums & Defenses

1. Tenant Safe Harbor Act (June 30, 2020) Residential tenants who experienced financial hardship for nonpayment of rent that accrues between March 7, 2020 and when all COVID-related restrictions are lifted.



2. The COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020

a) Effective 12/28/20.

b) Hardship Declarations (“HD”) submitted by tenants reporting financial hardship during or due to the COVID-19 pandemic stays proceedings and Actions until at least August 31, 2021.



c) Serve HD & List with Petition and Notices.

d) Affidavit of Service of HD.

e) Landlord's Affidavit that no HD received from tenant or Nuisance Exception applies.

3. Warrants of Eviction.

a) Warrants must state: (i) The tenant has not submitted the HD, was properly served with the HD and a list of dates the tenant was served with the HD by the landlord and the court; or (ii) The tenant is ineligible for a stay because of bad behavior or causes a substantial safety hazards, with a specific description of the behavior.

b) If the tenant provides a HD to the landlord, marshal or the court, prior to the execution of the warrant, the execution shall be stayed until at least September 1, 2021.

G. US Pandemic Eviction Moratoriums

- 1) CDC July 31, 2021.
 - a) CFPB Disclosure
 - b) USSC
- 2) CARES ACT

III. COVID-19 EMERGENCY RENTAL ASSISTANCE PROGRAM OF 2021

- A. Online application starting 6/1/21 for 180 days.
- B. Eligibility
- C. Priorities
- D. Limitations on College Students
- E. Landlords Can Apply
- F. Total Subsidy Amount
- G. Disadvantages for Landlords



***IV. HOW TO SUCCESSFULLY COLLECT
RENT & DAMAGES***

A. MOVE IN/MOVE OUT CHECKLIST

- 1. Photos/Videos**
- 2. 2019 Tenant Protection Act**

B. LEASE

- 1. Guarantors**
- 2. Added Rent**
- 3. Late Charges**
- 4. Attorney's Fees**
- 5. Utility Increase**
- 6. Security Deposits**
- 7. Confession of Judgment**
- 8. Power of Attorney**



C. RENT RECEIPTS

D. DEATH OF TENANT

E. TENANT'S DEFENSES

1. Breach of Warranty of Habitability

F. EVICTION JUDGMENT

1. Transcript of Judgment

G. SMALL CLAIMS COURT

- 1. Commercial Claims**
- 2. City Courts: \$5,000**
- 3. Town/Village Courts: \$3,000**



***H. SKIP TRACING-RENTAL
APPLICATION***

I. INFORMATION SUBPOENA

J. EXECUTIONS

- 1. Property Execution**
- 2. Income Execution**
- 3. Execution with Notice**
- 4. Restraint**

WNY-Lawyers.com