

RESIDENTIAL EVICTIONS: WHAT TENANTS NEED TO KNOW

As of May 14, 2021

This document is for informational purposes only, is not intended as legal advice, and does not substitute for consulting with a lawyer about specific facts and circumstances. This document does not constitute a solicitation, and your use of this document does not create any attorney-client relationship between you and Lowenstein Sandler. Low-income tenants should contact their legal services offices for assistance, as Lowenstein Sandler accepts pro bono matters only through referrals from our legal services partners. The firm does not otherwise represent individual tenants in residential eviction matters.

LOCKOUTS

Can I be locked out of my home during the COVID-19 emergency?

No. Two different government orders prevent lockouts at this time.

1. The State Order

On March 19, 2020, New Jersey Governor Philip Murphy issued [Executive Order 106](#), which suspended evictions throughout the state. This is called an “eviction moratorium,” and it means that, except in rare circumstances, **no tenant may be removed from his or her home as a result of an eviction proceeding**. The state eviction moratorium will last until two months after Governor Murphy declares an end to the COVID-19 health crisis. The Governor has extended the official public health emergency several times, most recently through [Executive Order 240](#), which will expire on June 13, 2021. The Governor has [signaled](#) that he will allow the Public Health Emergency to expire on that date if the Legislature acts by then to end the emergency while ensuring that the Governor’s Office retains the necessary tools to manage the ongoing threat to the public health, as well as recovery and vaccination efforts. Unless the Governor extends the emergency again, or ends it early, the eviction moratorium will therefore last at least until **August 13, 2021**.

The state eviction moratorium does **not** affect what rent is due. **Tenants still owe the rent**. The moratorium also does not stop court proceedings; instead, it prevents lockouts and removals. The New Jersey Supreme Court controls court proceedings related to eviction. More information is below.

2. The Federal Order

On March 28, 2021, the federal Centers for Disease Control and Prevention (CDC) updated an [order](#) that prevents residential lockouts for some residential tenants through June 30, 2021. The CDC has issued [FAQs](#) interpreting the order. New Jersey tenants can generally ignore the CDC order for now because the state eviction moratorium, which is more protective than the CDC order, controls. For those who want to qualify for the federal moratorium, the CDC has provided an [Eviction Protection Declaration in many languages](#) for tenants to complete and provide to their landlords. Although a federal district court has held that the CDC moratorium is invalid, the Department of Justice has

appealed the decision and takes the position that the moratorium [remains in effect](#) as to all landlords other than the plaintiffs in the case.

What if a lockout notice or warrant of removal has already been issued?

The state moratorium applies to all pre-existing orders for removal. Any previously issued order for removal is suspended, and you cannot be removed from your home during the moratorium.

What if I live in a hotel/motel? Can I be evicted while the State Order is in place?

Maybe. The state order permits a hotel or motel to evict a “transient guest or seasonal tenant.” Longtime hotel and motel residents, along with many others, are not considered “transient” or “seasonal,” however, and therefore remain protected from eviction under the Order. In general, residents cannot be evicted if they “have no permanent housing to which they may safely or lawfully return and live at a hotel or motel on a continual basis.” Under Administrative Orders [2020-08](#) and [2020-09](#) (issued by the State Director of Emergency Management on April 4 and April 24, 2020), the following hotel and motel residents are generally protected from eviction:

- those who are part of state initiatives aimed at getting people out of group shelters;
- those supported by a governmental housing assistance program;
- health-care workers who need a temporary place to stay;
- homeless people;
- individuals affected by domestic violence; and
- those staying in hotels or motels in compliance with a court order.

Others may be protected as well. To discuss your individual circumstances, contact a legal services organization such as [Legal Services of New Jersey](#), [Volunteer Lawyers for Justice – New Jersey](#), [Community Health Law Project](#), [Essex County Legal Aid Association](#), or [City of Newark Office of Tenant Services](#).

What if my landlord locks me out illegally?

It is a crime for your landlord to lock you out. Under New Jersey law, only the courts can order evictions, and only government officials can remove you from your home. If your landlord locks you out, call the local police. They are required to help you get back into your home. The New Jersey Attorney General has issued [guidance to law enforcement](#) on their obligations in responding to illegal lockouts. You can show this to police who may not understand their role.

What happens when the eviction moratoria end?

Local officials will resume removing tenants who are subject to final court orders of eviction.

RENT PAYMENTS

Do I still need to pay my rent?

Yes. Rent is still due, and you should pay if you can. If you do not pay, your landlord can still demand the rent and file an action against you in court (see below). If you need guidance on how to address your rent situation with your landlord during this time, you can call the New Jersey Housing and Mortgage Finance Agency for free counseling over the phone. Visit <https://njhousing.gov/foreclosure> for a list of counselors by county.

If I can't afford to pay my rent and fall behind, will I still owe the money?

Yes. Any payments you miss now will become back-rent that you owe. One way or another, you will probably have to pay later whatever you cannot pay now, or you will ultimately face possible eviction. If you get assistance from the government or a nonprofit in paying the rent, you will not owe what is paid on your behalf.

Is rental assistance available?

Yes. The [Consolidated Appropriations Act of 2021](#) provided \$25 billion in federal emergency rental assistance, of which approximately \$589,000,000 was allocated to New Jersey residents. A summary of the section on emergency rental assistance is [here](#). The Federal government allocated these funds to the State of New Jersey, 14 New Jersey counties, and the cities of Newark and Jersey City for distribution to eligible households. Additional federal dollars ([approximately \\$466 million](#)) for rental assistance are coming to New Jersey under the [American Rescue Plan Act of 2021, enacted on March 11, 2021](#).

The State of New Jersey has recently released information on how it will spend the roughly \$353,000,000 allocated to the State (as opposed to the counties and cities) under the Consolidated Appropriations Act of 2021. This [site](#) has the most updated information on the program. Here are the basics:

Who is eligible? New Jersey households who:

- Qualify for unemployment or have experienced a significant reduction in household income, incurred significant costs, or experienced a financial hardship due directly or indirectly to COVID-19 outbreak; and
- Demonstrate a risk of experiencing homelessness or housing instability; and
- Have a household income at or below 80 percent of the area median.

Assistance is available to eligible households regardless of the immigration status of the household members, and such assistance will not create barriers for immigrants seeking to obtain legal status.

Who can apply? Tenants or landlords with tenants' consent.

When can I apply? Starting at 9 a.m. on Monday, March 22. The [website for submitting applications](#) will be open 24 hours a day after that date, until the State has received an adequate number of pre-applications to distribute all available funds. The State will publish a notice when the application period will close.

How do I apply? Go to <https://njdca.onlinepha.com> during the open enrollment period and follow the instructions on the home page to submit a pre-application. You must apply online at this site. No paper applications will be accepted. You must have an email address to apply. If you have a

disability, limited English proficiency, or limited internet access, you can call 609-490-4550 for help. A friend, family member, or organization can also help you apply. You may also be able to get help from certified HUD housing counselors through [Housing Help NJ](#).

What assistance is available? Rental assistance is available for up to 12 months, with a possible 3-month extension. Unpaid back-rent (retrospective to March 13, 2020) will be paid first, with the remainder available to cover future rent up to the 12-month (or in some cases 15-month) cap.

How will recipients be chosen? By computerized lottery. Every pre-application submitted during the open enrollment period will have an equal chance of being selected.

Can I apply if I have or have had other rental assistance? Yes, but it seems the State seeks to avoid duplication by permitting a household to receive only one type of assistance for any given month.

Can my landlord refuse to cooperate or accept the funds? No. It is a violation of NJ Law Against Discrimination for a landlord not to accept payments or complete the necessary paperwork.

What is Nan McKay & Associates? Nan McKay & Associates is the contractor working with the State to implement this program. If you receive communications from Nan McKay, respond!

Other rental assistance. In addition, the Department of Community Affairs (DCA) posts [summaries of rental assistance programs](#), and you can use the [DCAid portal](#) to see if you are eligible. The DCA website also offers [some general answers to questions about rental assistance](#). To get financial counseling on meeting your rental obligations, check the website of [New Jersey Housing and Mortgage Finance Agency](#), which lists free counselors in every county. If you fall behind on your rent payments, you can also try speaking with your landlord to work out a payment plan to avoid having an eviction action filed against you. For additional resources, try calling 2-1-1.

Can I use my security deposit to cover some of the rent I owe?

Yes. On April 24, 2020, Governor Murphy issued [Executive Order 128](#), which allows tenants to request in writing (including by email or text) that their landlords apply their security deposits to the rent they owe during the Public Health Emergency and for up to 60 days afterwards. The landlord must comply with such a request. If the tenant causes damage to the apartment (beyond ordinary wear and tear), the landlord may require the tenant to pay for that damage if and when the landlord would otherwise have been entitled to recoup the cost from the security deposit. If the lease is renewed, the landlord may also require the tenant to post a new security deposit either six months after the end of the Public Health Emergency or when the lease is renewed, whichever is later.

Can my landlord increase my rent during the COVID crisis?

Maybe. So far, the state government has not banned rent increases during the crisis. In the absence of statewide protection, tenants retain whatever protections may already have applied, including lease provisions and rent control ordinances, which normally permit rent increases only once a year.

In addition, some tenants have special protections:

- On April 16, 2020, [Governor Murphy announced](#) that the New Jersey Housing and Mortgage Finance Agency (NJHMFA) had voted to prohibit rent increases for the duration of the Public

Health Emergency in the 36,000 rental units the agency oversees. After the emergency ends, landlords in NJHMFA-regulated properties may raise rents up to 1.4% on 30 days' notice to tenants.

- On May 18, 2020, Newark's Mayor Baraka announced a [temporary moratorium on all rent increases](#) for tenants living in properties covered by the [Newark Rent Control Ordinance](#). Newark's prohibition on rent increases is retroactive to April 1 and will last up to two months following the end of Newark's declared State of Emergency.

COURT HEARINGS

What about court? Is the court holding eviction trials?

Only in emergency cases. On July 24, 2020, the [New Jersey Supreme Court ordered](#) that most trials in landlord-tenant court continue to be "suspended until further notice." The order makes clear, however, that trials may proceed when the court determines that there is an emergency. Under the order, nonpayment of rent does not constitute an emergency "except in the case of the death of the tenant." The Administrative Office of the Courts issued a [directive](#) on July 28 that includes model papers for emergency landlord-tenant filings. Check the [New Jersey Courts website](#) for further updates.

Are the courts accepting cases that landlords file against tenants?

Yes. The [July 24 order](#) allows landlords to file eviction complaints against tenants, even though trials will be held only in emergencies at this time. You may therefore receive an eviction complaint in the mail and/or posted at your residence.

Are the courts holding proceedings other than trials?

Yes. The [July 24 order](#) instructs the landlord-tenant courts to schedule remote "intake and pretrial/settlement conferences." The [July 28 directive](#) instructs the courts on how to implement this process. You may receive a notice from the court directing you to appear at a "Pretrial/Settlement Conference," by telephone or video, to discuss settlement of a case your landlord has filed against you. If you get a notice like this, you should:

- Contact a legal services organization such as [Legal Services of New Jersey](#), [Volunteer Lawyers for Justice – New Jersey](#), [Community Health Law Project](#), [Essex County Legal Aid Association](#), or [City of Newark Office of Tenant Services](#).
- Share the complaint you received with any organization or lawyer who agrees to help you. If you did not receive a complaint, let your lawyer and the court know that.
- Remember that **you do not have to settle your case!** If you do not settle, your case will be scheduled for trial when the courts start holding eviction trials again. But you cannot be locked out and removed from your home until two months after the Governor declares an end to the public health emergency.

Does federal law prevent my landlord from filing an eviction case against me?

Maybe. The federal [CARES Act](#) prohibited covered landlords (see below) from filing an eviction complaint for nonpayment of rent, or charging fees related to nonpayment of rent, between March 27 and July 25, 2020. If a landlord covered by the CARES Act filed such an eviction complaint during this period, the tenant can request that the case be dismissed. A dismissal will not stop the landlord from filing a new complaint, but the landlord must first give the tenant 30 days' notice.

Landlords covered by the CARES Act include:

- Those who hold a federally backed mortgage, such as a mortgage from Fannie Mae, Freddie Mac, or the Federal Housing Administration.
- Those who rent to federally subsidized tenants, including tenants who:
 - live in public housing,
 - have a Section 8 Housing Choice voucher,
 - live in Section 8 project-based housing, or
 - live in other types of federally funded housing, including, among others, certain housing programs for seniors, people with disabilities, people with HIV/AIDS, and people at risk of homelessness.
- The National Low Income Housing Coalition has constructed a [searchable database](#) of many (but not all) of the properties covered by the CARES Act.

The CARES Act gives tenants additional protection if they live in a building with five or more units and the owner got permission to delay payments on a federally backed mortgage loan. In that case, the owner may not file an eviction action for nonpayment of rent, or charge late fees related to nonpayment of rent, during the period when the owner is allowed to delay making mortgage payments. When this period ends, the owner must give tenants 30 days' notice before taking the tenant to court to get an order requiring the tenant to vacate the property (but the lockout cannot happen in any case until the moratorium under the [state order](#) is lifted).

The state Supreme Court has required landlords to [certify their compliance with the CARES Act](#), and the Administrative Office of the Courts issued a form certification as Attachment 6 to its [July 28 directive](#).

What if my landlord has already started an eviction proceeding against me in housing court and I have an upcoming court date?

While landlord-tenant court is suspended, you should not go to court, and you will not be penalized for not going to court. The court may still send you a notice to appear at a telephone- or video-conference, however (see above).

Can I still get emergency repairs in my apartment?

You always have a right to [safe and decent housing](#). If you have concerns about issues such as inadequate heat, exposure to lead, infestations, leaks, crumbling walls and ceilings, or other hazardous conditions, you should ask your landlord in writing to make repairs (keep a copy). If repairs are not made quickly, you can call 2-1-1, contact the state [Bureau of Housing Inspection](#), or call your municipality to

report the problem. Due to closures, enforcement agencies may be working with limited staff and it may take longer to get repairs or inspections. As an alternative, if you can manage the repairs on your own, and your landlord fails to respond to your requests for repairs, you can make them or pay someone to make them. You can then withhold the money you spent on repairs from your rent (save all receipts for the repairs!).

SUBSIDIZED TENANTS

Can my landlord file an eviction action against me if I live in public housing or have a Section 8 Voucher?

Generally, yes. Your landlord can file an eviction action unless your building has five or more units and the owner has permission to delay payments on a federally backed mortgage loan. See discussion of the federal [CARES Act, above](#). Even if your landlord files an eviction action, however, the case will not go to trial except in unusual circumstances. See discussion of court filings, above.

ELECTRICITY, GAS, WATER

Can my utilities, water, phone, and internet be shut off during the COVID-19 crisis?

No. As of March 13, 2020, New Jersey's electric and gas utilities [voluntarily suspended utility shut-offs](#). On March 3, 2021, the Governor's Office issued [Executive Order 229](#). This Order suspends residential utility and water shutoffs until **June 30, 2021**, and forbids the imposition of late fees arising during the emergency period. In addition, the Order requires cable and telecommunications providers to offer specified payment plans to their customers and forbids the companies from cutting customers off so long as they are making timely payments under such plans. Moreover, internet providers must check with existing customers to see if school-aged children are using the internet service for educational purposes. If so, the provider may not terminate the service until **June 30, 2021**. If internet services have previously been cut off, and a school-aged child later needs to use the account for educational purposes, the provider must immediately restore service.

Do I still have to pay for utilities, water, phone, and internet?

Yes. You still have to pay whatever electric, gas, water, phone, or internet bills you normally pay. If you cannot pay now, you will have to pay later. DCA offers low-income tenants [assistance with some utility bills](#); you can call the customer service number on your utility bill, or look up the number [here](#), to try to work out a payment plan; or you can check the [website](#) of the Board of Public Utilities for a list of agencies that offer assistance.