



TENTH AMENDED ADMINISTRATIVE ORDER THIRD JUDICIAL DISTRICT

Pursuant to the authority vested in me, and in accordance with the operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System, I hereby order that effective immediately the following rules be put into effect in the Third Judicial District until rescinded.

Hereinafter, "Assigned Judge" refers to the judge assigned to hear the case. "Designated Judge" refers to the judge assigned to hear the case pursuant to this Order (See Attachment A - Schedule S). "Essential Staff" refers to chambers staff of Designated Judges, chambers staff of additional judges as designated by the Administrative Judge and non-judicial staff as designated by the District Executive. "Essential Proceedings" refers to those matters listed in Exhibit A attached to Administrative Order 78/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020 and as amended by Administrative Order 99/20 signed by the Chief Administrative Judge of the Courts on May 15, 2020.

A. General matters and matters applicable to more than one case type

1. Until further Administrative Order or Executive Order, residential and commercial evictions are governed by Chief Administrative Judge Lawrence Marks' Administrative Order AO/127/20, as modified by Chief Administrative Judge Lawrence Marks' Administrative Order AO/143/20, Chapter 127 of the 2020 Laws of the State of New York (the "Safe Homes Act"), and Section 4024 of the Cares Act;
2. Until further Administrative Order or Executive Order, no default judgments shall be granted where, pursuant to CPLR 3215, the default occurred after March 16, 2020. Furthermore, no default judgment requiring the defendant's notice pursuant to CPLR 3215(g) shall be granted, unless the application was heard prior to March 17, 2020 and proper notice was given;
3. All Family Court and all County Court Judges are cross-assigned to the County and Family Courts in all counties of the District;
4. The Return to In-Person Operations Plan ("RIOP") (Phase I) implemented on May 18, 2020 in Schoharie County, on May 26, 2020 in Albany, Greene, Columbia and Rensselaer Counties and on May 28, 2020 in Ulster and Sullivan Counties, the RIOP (Phase II) implemented on June 11, 2020, the RIOP (Phase III) implemented on June 25, 2020, the RIOP (Phase IV) implemented on July 9, 2020, and any RIOP plans for

any subsequent phase are incorporated herein and all provisions of this Administrative Order shall be read in conjunction with the RIOP;

5. The Virtual Courtroom Protocol enacted by Third Judicial District Administrative Order No. AO-3JD-20-52 signed on April 3, 2020 to the extent not inconsistent with the RIOP, remains in full force and effect and all provisions of this Administrative Order shall be read in conjunction with the Virtual Courtroom Protocol and any subsequent amendments thereto;
6. All courtrooms, public spaces, waiting areas, hallways and conference rooms have been marked with decals at 6' intervals to ensure social distancing. Occupancy will be limited by space and facility by the maximum capacity to safely social distance;
7. Naturalization Ceremonies, wherever they occur, shall comply with the room occupancy limits stated herein;
8. Staffing may expand but shall not exceed 80% of standard operations;
9. All Temporary Orders of Protection issued in any criminal or civil matter that have expired or are due to expire on or after March 19, 2020 "shall be extended under the same terms and conditions until the date the matter is re-calendared, unless the order is sooner terminated or modified by a judge or justice of the court that issued the order" pursuant to Administrative Order AO/73/20 signed by the Chief Administrative Judge of the Courts on March 19, 2020.

B. RETURN TO IN-PERSON OPERATIONS PLAN ("RIOP") – PHASE IV

1. Phase IV of the RIOP commenced on July 9, 2020 and applies to all courts within the Third Judicial District as detailed herein. Masks continue to be required by all persons entering court facilities. Face shields are available for court employees, and the public upon request, and when required pursuant to OCA directives. The temperature of court users will be taken at entrances pursuant to OCA directives commencing July 6, 2020;
2. In-Person Court Proceedings:

While the following matters are permitted to be held in-person, virtual handling of matters is still encouraged to the extent possible to limit foot traffic within court facilities and maintain a maximum 50% courtroom usage at any given time.

- A. Essential Court Proceedings pursuant to Chief Administrative Judge Lawrence Marks' Administrative Order AO/78/20, Chief Administrative Judge Lawrence Marks' Administrative Order AO/99/20, or the Third Judicial District's Seventh Amended Administrative Order;
- B. Bench Trials;
- C. Oral argument on motions;

- D. Grand Jury Empanelment:
 - 1. Prospective jurors shall be brought in on staggered shifts abiding by social distancing guidelines;
 - 2. Empaneled jurors shall appear for half day sessions only;
- E. Treatment Court:
 - 1. Appearances for individual participants on matters deemed essential by the presiding judge;
 - 2. Regular drug court sessions with a limit of 5 participants at any one time;
- F. Arraignments of defendants accused of a violation of any provision of Article 31 of the VTL;
- G. Arraignments of defendants not in custody;
- H. Criminal hearings:
 - 1. Incarcerated defendants must appear virtually unless the presiding judge orders otherwise and after the appropriate application is made;
- I. Waivers of Indictment, pleas and sentences for defendants not in custody unless exception is made by the assigned justice for defendants in custody;
- J. Civil hearings;
- K. Article 10 consents, admissions and surrenders;
- L. Inquests;
- M. Appearance ticket arraignments;
- N. Small claims cases;
- O. Permanency hearings;
- P. Child support proceedings;
- Q. Adoptions;
- R. Naturalization Ceremonies.

3. Virtual Court Proceedings:

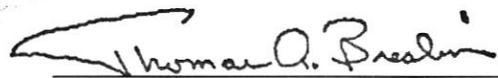
- A. Non-essential matters;
- B. All conferences;
- C. Oral argument on motions;
- D. MHL proceedings;
- E. ADR proceedings;
- F. Criminal proceedings including arraignments, pleas, sentences and hearings, upon receipt of oral and written consent of defendant and defense counsel;
- G. Waivers of Indictment, pleas and sentences for all defendants in custody upon receipt of oral and written consent from defendant and defense counsel;
- H. Juvenile Delinquency proceedings;
- I. PINS;
- J. Adoptions;
- K. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program;

- L. Small claims assessment review proceedings;
- M. All other proceedings not listed above that can be legally heard virtually.

4. Town and Village Courts

- A. In-person arraignments 24/7, including on appearance tickets – scheduled one at a time (virtual arraignments may continue for those that were previously approved, only if all parties consent);
- B. In-person small claims proceedings – scheduled one at a time (not virtual)
- C. In-person civil proceedings, except summary proceedings– scheduled one at a time (not virtual);
- D. In-person dangerous dog proceedings – scheduled one at a time (not virtual)
- E. In-person preliminary hearings and pre-trial hearings - scheduled one at a time (not virtual);
- F. Limited in-person criminal matters - scheduled one at a time (max six per hour) (Conferences may be virtual if approved and on consent);
- G. In-person Town or Village Code violation proceedings – scheduled one at a time (not virtual);
- H. Guilty pleas, reduced pleas and fine assessments by mail on vehicle and traffic matters;
- I. Limited in-person Vehicle and Traffic matters – scheduled one at a time (max twelve per hour);
- J. Decide motions and other matters that may be decided on papers, except summary proceedings;
- K. Processing payments, issuing receipts, lifting suspensions, depositing monies, submitting CDR's and TSLED reports, preparation and submission of the monthly Comptroller's Report, accepting summary proceedings for filing with return dates after August 20, 2020.

Dated: July 17, 2020
Castleton-on-Hudson, New York



Hon. Thomas A. Breslin
Administrative Judge
Third Judicial District

A0/3JD/20/92

Distribution:
Hon. Vito C. Caruso
3JD Justices and Judges
3JD Chief Clerks
3JD District Attorneys
3JD Public Defenders
3JD Sheriff's Departments
3JD Police Departments
Mental Hygiene Legal Service
Third Judicial District Administrative Office

ATTACHMENT A

SCHEDULE S

The following are the Designated Judges for each county in the Third Judicial District from July 20, 2020 through July 24, 2020:

Albany County

Hon. Peter Lynch, Supreme Court
Hon. William A. Carter, County Court
Hon. Richard Rivera, Youth Part, County Court
Hon. Susan Kushner, Family Court
Hon. Stacy Pettit, Surrogate's Court
Hon. Holly Trexler, City Court
Hon. Joshua Farrell, City Court
Hon. John Reilly, City Court
Hon. Thomas E. Lamb, City Court
Hon. Susan Reinfurt, City Court
Hon. Eric Galarneau, City Court

Columbia County

Hon. Richard Mott, Supreme Court
Hon. Jonathan D. Nichols, Supreme Court (Acting), County, Surrogate's and Family Courts
Hon. Brian Herman, City Court

Greene County

Hon. Lisa M. Fisher, Supreme Court
Hon. Charles M. Tailleux, County, Surrogate's and Family Courts

Rensselaer County

Hon. Richard J. McNally, Jr., Supreme Court
Hon. Catherine Cholakis, Family Court
Hon. Jill Kehn, Family Court
Hon. Debra J. Young, Acting Supreme Court
Hon. Jennifer Sober, County Court
Hon. Paul V. Morgan, Jr., Surrogate's Court
Hon. Christopher T. Maier, City Court
Hon. Matthew J. Turner, City Court
Hon. Kathleen Leahey Robichaud, City Court
Hon. Linda Blom Johnson, City Court

Schoharie County

Hon. George R. Bartlett, III, Supreme Court (Acting), County, Surrogate's and Family Courts

Sullivan County

Hon. Stephan Schick, Supreme Court

Hon. Mark M. Meddaugh, Supreme Court (Acting), Family Court

Hon. James R. Farrell, County Court, Surrogate's Court

Ulster County

Hon. Christopher Cahill, Supreme Court

Hon. Anthony McGinty, Family Court, Youth Part – County Court

Hon. Marianne Mizel, Family Court

Hon. Keri Savona, Family Court

Hon. Sara W. McGinty, Surrogate's Court

Hon. Bryan Rounds, County Court

Hon. Lawrence E. Ball, City Court

Hon. Philip W. Kirschner, City Court



Memorandum

TO: Hon. Vito C. Caruso, Deputy Chief Administrative Judge for Courts Outside of New York City

FROM: Jessica M. Cherry, Assistant Deputy Counsel

SUBJECT: Status of Eviction and Foreclosure Matters

DATE: July 10, 2020

The following sets forth the current status of residential and commercial evictions and foreclosures pursuant to the most recent statewide gubernatorial executive orders, OCA administrative orders and statutes.

I. Current Toll on Statutory Timelines Through August 5th

EO 202.48 extended the toll on statutes of limitations, first set forth in EO 202.8 on March 20, 2020, through August 5, 2020 (previously extended by 202.38, 202.28, and 202.14). Therefore, in conjunction with AO/68/20, further hearing of eviction or foreclosure matters are stayed until the gubernatorial EO suspending statutory timelines for legal matters and AO/68/20 are lifted.

- The only current exception in **eviction** matters is-
 - Eviction matters are eligible for calendaring a virtual settlement conference if all parties are represented by counsel. (AO/127/20)

- The only current exceptions in **foreclosure** matters are:
 - Foreclosure matters in which all parties are represented by counsel are eligible for calendaring initial and follow-up virtual settlement conferences if all parties are represented by counsel
 - Lenders may move for a judgment or foreclosure and sale of a vacant or abandoned property
 - Note: no judgement of foreclosure may be issued for any matter other than to address a vacant or abandoned property
 - Lenders can move to discontinue a pending case
 - Note: no motions other than motions to discontinue a pending case shall be entertained or decided

II. Landlord Tenant

Pursuant to AO/143/20, residential and commercial eviction proceedings no longer require a form petitioner's attorney affirmation or petitioner's affidavit indicating counsel has reviewed various state and federal mandates on eviction proceedings and has a good faith understanding that the eviction proceeding does not conflict, as was previously required by AO/127/20.¹

However, a form notice to respondent-tenant informing them that they may be eligible for an extension of time to respond to the petition given COVID-19 related legal directives and directing them to a number and/or website for more information is still required given that EO 202.48 continued the suspension of SOLs, statutory/rule proceeding schedules

a. Residential Evictions

Pursuant to Chapter 127 of 2020, otherwise known as the "Safe Homes Act", the moratorium on evictions of residential tenants with a COVID-19 related hardship now goes beyond the original August 20, 2020 date previously set forth in EO 202.28.

Section 1 of the new law defines the "COVID-19 covered period" as from March 7, 2020 until such date when all Executive Orders have been expired or rescinded and none of the provisions that closed or otherwise restricted public or private business or all non-essential gatherings in the county of the tenant's or lawful occupants residence.

Section 2 of the law states that during the COVID-19 covered period, as defined by Section 1, no court shall issue a warrant of eviction or other possessory judgment against a residential tenant that has suffered a financial hardship during the COVID-19 covered period for the non-payment of rent during the COVID-19 covered period. A tenant may raise financial hardship as an affirmative defense in a summary proceeding under Article 7 of the RPAPL. In determining a financial hardship, the court must consider certain relevant factors:

1. Tenant's income prior to the COVID-19 covered period
2. Tenant's income during the COVID-10 covered period
3. Tenant's liquid assets

¹ The affirmation/affidavit requirement was largely based on the prohibition against the initiation of proceedings under certain circumstances, rooted in language in Executive Order 202.28 (which the affirmation quoted at length). Since the Legislature had the opportunity but apparently chose not to address initiation of matters in its subsequent legislation, and EO 202.48 expressly narrowed the application of the earlier EO – and with the expansion of court operations into Phase 3 and Phase 4 -- we no longer had a reasonable basis to limit initiations, and thought it best to remove the requirement. We could have left it in for commercial matters, but that split seemed confusing, and the primary concern had always been residential proceedings.

4. Tenant's eligibility and receipt of cash assistance, nutrition assistance, supplemental security income, NYS disability, home energy assistance program, or unemployment insurance benefits under State or Federal law.

The act does NOT prohibit any court from awarding a money judgment for the rent due and owed to a successful petitioner in a RPAPL Article 7 summary proceeding.

b. Commercial Evictions

Commercial evictions were not included in Chapter 127 of 2020, otherwise known as the "Safe Homes Act", which only addresses residential evictions. However, Governor's EO 202.48, issued on July 6, 2020, clarified that EO 202.28 continues to cover commercial evictions, and therefore a moratorium on commercial evictions for tenants with a COVID-19 related hardship is continued through August 20, 2020.

III. Foreclosures

Pursuant to AO/143/20, residential and commercial foreclosure proceedings no longer require a form petitioner's attorney affirmation or petitioner's affidavit indicating counsel has reviewed various state and federal mandates on eviction proceedings and has a good faith understanding that the eviction proceeding does not conflict, as was previously required by AO/131/20.

However, a form notice to respondent-tenant informing them that they may be eligible for an extension of time to respond to the petition given COVID-19 related legal directives and directing them to a number and/or website for more information is still required given that EO 202.48 continued the suspension of SOLs, statutory/rule proceeding schedules.

a. Residential Foreclosures

Pursuant to Chapter 112 of 2020, subsequently amended by Chapter 126 of 2020, the moratorium on residential foreclosures for mortgagors who demonstrate a financial hardship as a result of COVID-19 now goes beyond the original August 20th date previously set forth in EO 202.28.

Section 1 of the new law defines the "COVID-19 covered period" as from March 7, 2020 until such date when all Executive Orders have been expired or rescinded and none of the provisions that closed or otherwise restricted public or private business or all non-essential gatherings in the county of the qualified mortgagor's residence, whose primary residence is located in New York.

Section 2 of the law requires New York state-chartered banks and state-regulated mortgage services to grant 180 days of mortgage payment forbearance, plus an additional 180 day extension if needed, of all monthly payments due with respect to a mortgage on a primary residence in New York, to residential mortgagors who are in arrears, on a trial plan, or have

applied for loss mitigation and can demonstrate a COVID-19 related hardship. Mortgagors must submit an application for such forbearance. The forbearance of monthly payment and any extension is subject to the mortgagor demonstrating continued financial hardship. The law allows a mortgagor who is granted forbearance the option to:

1. Extend the term of the loan for the length of the forbearance (not charge additional interest or late fees or penalties of the forborne payment);
2. Arrears accumulated during the forbearance period payable on a monthly basis for the remaining term of the loan (without being subject to penalties or late fees incurred as a result of forbearance);
3. Mortgagor shall have the option to negotiate a loan modification or any other option that meets the changes circumstances of the qualified mortgagor;
4. If the mortgagor is unable to make payments due to their demonstrated hardship and the mortgagor and lender cannot agree on a mutually acceptable loan modification, the mortgagor can defer arrears accumulated during the forbearance as a non-interest bearing balloon payment payable at the maturity of the loan or when the loan is satisfied (any late fees accumulated as a result of the forbearance are waived).

Failure to comply with the forbearance provisions of the law can raise that as a defense in a foreclosure action. Regulated institutions are given a mechanism to notify the Department of Financial Services within 5-days of determining that they are unable to offer relief pursuant to the statute and provide information regarding the financial condition of the institution and any other information required by the department. They must notify the mortgagor immediately of this action and advise them their application for relief was denied to that they may file a complaint with DFS if they believe they were wrongly denied.

b. Commercial Foreclosures

Commercial foreclosures were not included in Chapter 112 or 126 of 2020, both of which only addressed residential foreclosures. However, Governor's EO 202.48, issued on July 6, 2020, clarified that EO 202.28 continues to cover commercial evictions, and therefore a moratorium on commercial evictions for tenants with a COVID-19 related hardship is continued through August 20, 2020.

IV. Federal CARES ACT

Another restriction to be aware of is the federal CARES Act that was signed into law on March 27, 2020. The CARES Act places a moratorium on certain covered properties, as defined by the statute, through August 31, 2020.

a. Evictions under the CARES Act

Section 4024 of the CARES Act provides a moratorium on evictions for residential tenants occupying a Covered Property (defined as any property that (A) participates in (i) a

covered housing program as defined in Section 41411(a) of the Violence Against Women Act of 1994; or (ii) the rural housing voucher program under section 542 of the Housing Act of 1949; or (B) has a Federally backed mortgage loan or a Federally backed multifamily mortgage loan). The key provisions are: (1) it provides eviction protections for residential tenants occupying a Covered Property; (2) a landlord of a Covered Property cannot file a new eviction proceeding for nonpayment of rent for 120 days beginning on March 27, 2020 (**through August 31, 2020**), (3) eviction proceedings that have already been filed are not affected, (3) during the moratorium period, landlords may not charge fees, penalties, or other charges for nonpayment of rent, and (4) after the moratorium period, the landlord may not evict a tenant unless the landlord provides 30 days' notice.

Foreclosures under the CARES Act

The CARES Act also provides foreclosure protections for borrowers with property secured by federally backed mortgage loans.

Section 4022 of the CARES Act provides a moratorium on residential foreclosures for borrowers with federally backed mortgage loans. It provides foreclosure protections for borrowers with real property secured by federally backed mortgage loans. Borrowers who affirm they are experiencing a COVID-19 related hardship can request a forbearance from their loan servicer of up to 180 days, which can be extended for an additional period of up to 180 days. Except with respect to a vacant or abandoned property, servicers may not initiate a foreclosure, move for judgment, or order a sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020.