

New York State
Landlord/Tenant
Law and Evictions
During the
COVID-19
Pandemic

MARISSA LUCHS
KINDLER

SENIOR STAFF
ATTORNEY

NASSAU
SUFFOLK LAW
SERVICES
COMMITTEE,
INC.

SEPTEMBER 25,
2020



Over 6,000 legal cases each year



Direct representation, phone consultations,



Brief service or referral



Offices in Hempstead, Islandia,
Riverhead



Case handling staff includes attorneys,
paralegals and social workers



Partnerships with Community
Agencies

About Nassau Suffolk Law Services



Legal Support Center for Advocates

Provide Technical
Support to
Advocates

“Advocates” include
legislative staff,
social workers,
outreach workers,
medical personnel,
and guidance
counselors

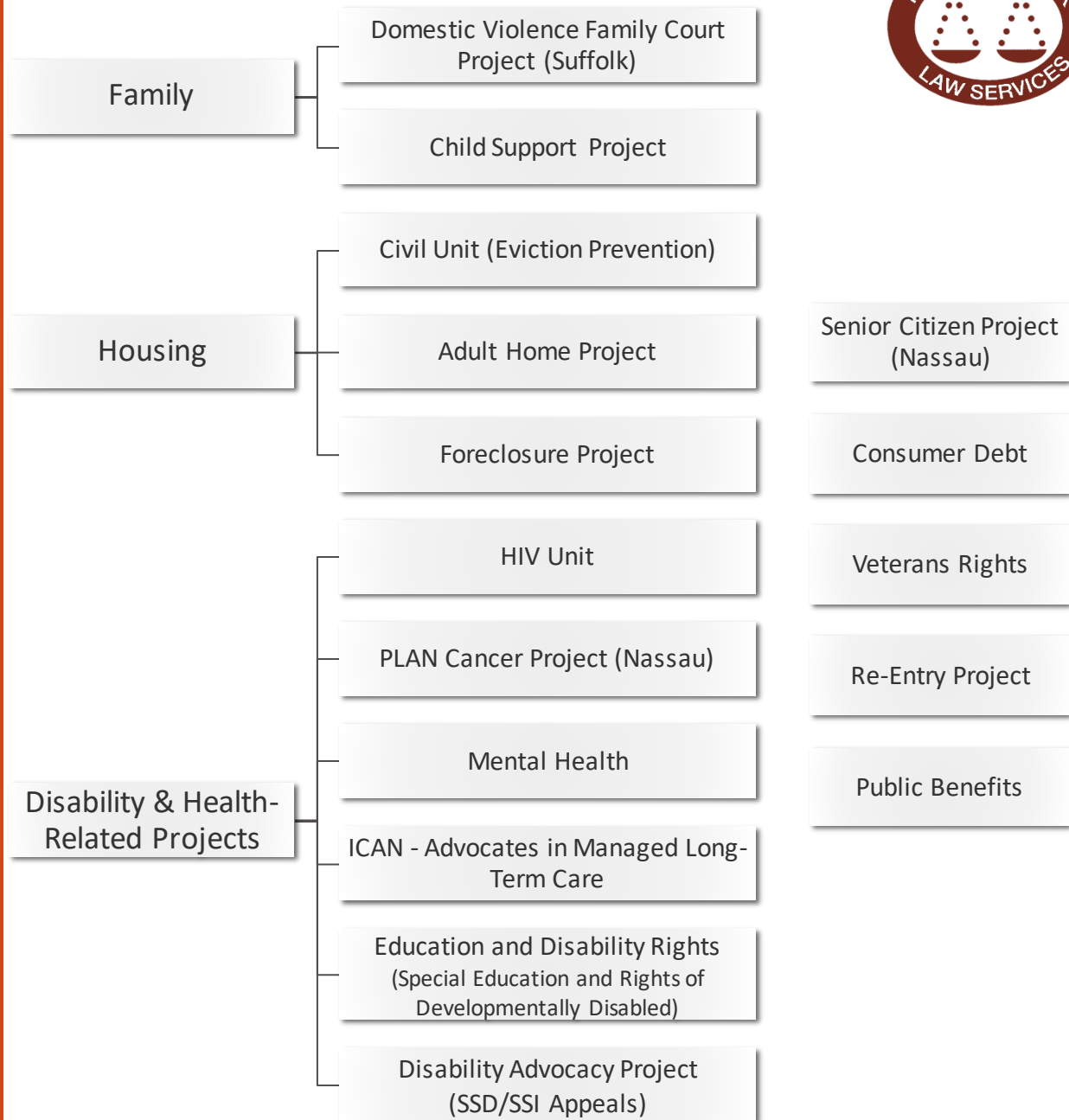
Host Community
Trainings

Publish Newsletters

Advocates call (631) 232-2400 for assistance:
Vivian Storm - x3309 **Cathy Lucidi - x3324**



Specialized Units





Nonpayment Proceedings

RPAPL 711 (2)

Premised upon the landlord-tenant relationship between the parties.

- Generally, if the tenant pays the outstanding rent, they are not evicted.
- Prior to commencing the proceeding, Landlord must:
 - Send tenant a notice by certified mail that the rent has not been received within 5 days of the due date ([RPL 235-e](#)); and
 - Serve 14-day rent demand with all the formality of a petition ([RPAPL 711 and 735](#))

Summary
Eviction
Proceedings
Non-payment
v. Holdover
Proceedings



Holdover Proceedings

Where a landlord/tenant relationship exists between the parties [RPAPL 711\(1\)](#)

- If lease has expired, or if there is a month-to-month tenancy, Landlord must give written notice of nonrenewal, based upon the length of time tenant has resided at the premises (RPL 226(c):
- 30 days if tenant has lived at the unit or has a lease for less than 1 year
- 60 days if the tenant has lived there between 1-2 years
- 90 days if the tenant has lived there more than 3 years

If premised on lease violation, then the terms of the lease would prevail as to the notice required.

Where a landlord/tenant relationship does not exist between the parties ([RPAPL 713](#))

- 10-day notice must be served prior to the commencement of the proceeding.
- Post-foreclosure proceedings [RPAPL 1305](#)
- (10 day notice or 90 days if the tenant resided at the premises as a bona fide tenant prior to the commencement of the foreclosure).

Summary Eviction Proceedings Non-payment v. Holdover Proceedings



Tenant Protections during the COVID-19 Pandemic

- Executive Orders 202.8; 202.28; 202.48; 202.55; 202.55.1; 202.60
- Tenant Safe Harbor Act (Laws of New York 2020, Chapter 127)

**New York
State**

- CARES Act (expired)
- Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19
CDC and HHS Order under
Section 361 of the Public Health
Services Act 42 U.S.C. 264 and 42
CFR 70.2

Federal



New York Tenant Safe Harbor Act

Not a blanket moratorium on evictions: Applicable only in very specific circumstances.

A court **cannot issue a warrant of eviction** for a judgment of possession against a residential tenant who has suffered financial hardship during the COVID-19 covered period for the nonpayment of rent that accrues or becomes due during the COVID-19 covered period.

The court **can award a money judgement** for the rent due regardless of the financial hardship.

Covered period is starts March 7, 2020 until the restrictions that shut down the jurisdiction are lifted.



New York Tenant Safe Harbor Act

The protections are not automatic.

A tenant can raise financial hardship during the covered period as a **defense** in a summary nonpayment proceeding.

In determining whether a tenant is protected under the law, a court may consider:

- The tenant's income before the COVID-19 covered period;
- The tenant's income during the COVID-19 covered period;
- The tenant's liquid assets;
- The tenant's eligibility for public assistance, SSI, disability, HEAP, or unemployment benefits.



CDC ORDER

Temporary Halt in Residential Evictions to Reduce the Spread of COVID-19

CDC and HHS Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2. Published in the federal register on September 4, 2020.

Effective September 4, 2020 through December 31, 2020.

Intent is to stop the spread of COVID-19.

Does not apply anyplace with a moratorium on evictions that provides the same or greater level of public-health protection.



CDC Order: Limitations

Tenants are still required to pay the rent and follow the other terms of their lease.

The order does not preclude evictions based on tenant:

- Engaging in criminal activity at the premises;
- Threatening the health and safety of other residents;
- Damaging or posing an immediate and significant risk of damage to the property;
- Violating building code, health ordinance or regulations relating to health and safety; or
- Violating any other contractual obligation.



The Declaration must be signed by all adults listed on the lease, rental agreement or housing contract.

The Declaration must be sent to the landlord, and not the CDC or Federal Government.

In the Declaration, the tenant swears under the penalty of perjury that:

1. Best efforts to obtain government assistance for rent or housing;
2. Expect to earn \$99,000 (\$198,000 for joint tax returns) in 2020, had no reportable income in 2019, or received a CARES Act Economic Impact Payment (stimulus check);
3. Unable to pay full rent due to
 - Loss of income;
 - Loss of work hours; or
 - Extraordinary medical expenses
4. Best efforts to make partial payments
5. If evicted would become homeless or move into shared housing.

CDC Order: Declaration



CDC Order:

Declaration
Continued

6. Understand they must pay rent or make a housing payment and comply with other tenant obligations.

7. Understand that they may be subject to fees, penalties, or interest for not paying rent on time.

8. Understand that on December 31, 2020 may be subject to eviction if rent is not paid in full.

False or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages or imprisonment.



CDC Order:

Penalties

Criminal Penalties for violating the order:

- Fine of no more than \$100,000 if the violation does not result in a death or 1 year in jail, or both.
- Fine of no more than \$250,000 if violation results in a death or one year in jail, or both, or as otherwise provided by law.

An organization violating this order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in death or as otherwise provided by law.

U.S. Department of Justice enforces.



Status of Residential Eviction Proceedings in N.Y.

AO/160/20
and
AO/160A/20
(corrected)

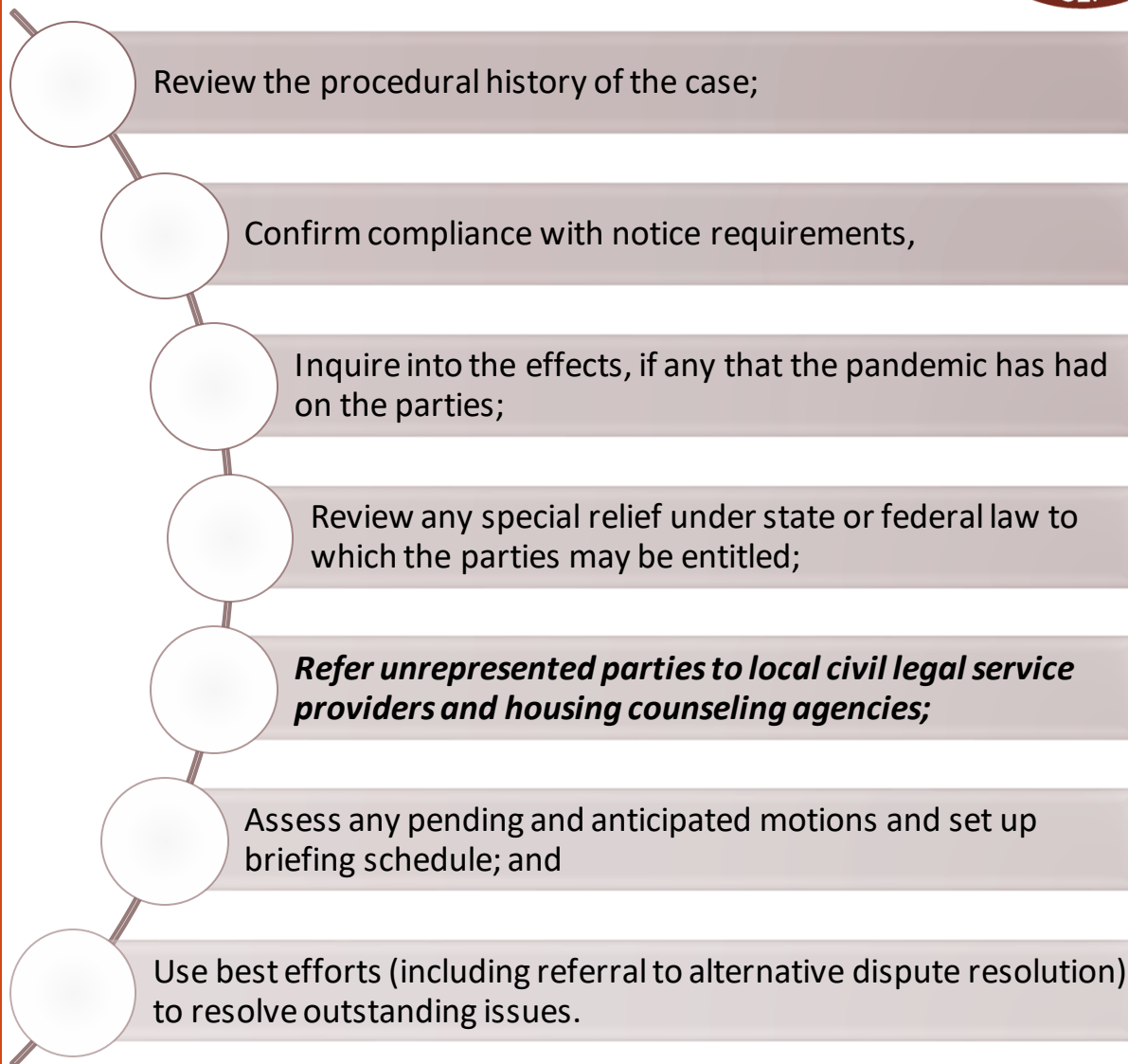
Administrative Order of Chief Administrative Judge, Hon. Lawrence K. Marks, dated August 13, 2020:

- New eviction proceedings for cases commenced on or after March 17, 2020 are ***suspended***.
- Cases commenced prior to March 17, 2020 are now being calendared as conferences.
- The courts are sending out notices to the parties. Some are virtual conferences, some are in person.



Cases
Commenced
Prior to
March 17,
2020

Court MUST
schedule a
conference
to:





Thank you for your attention.



If you have any questions,
please email me at
mluchs@nsls.legal or call at
516 292-8100 x3170.

Thank you
for
attending!