

Real Estate Law Alert: New York Extends Moratorium on Evictions and Mortgage Foreclosures to August 20, 2020

Amidst the ongoing COVID-19 pandemic, Governor Cuomo recently issued Executive Order 202.28 which, among other provisions, extends the moratorium on new evictions and mortgage foreclosure filings to August 20. Specifically, the Order provides, where relevant, that “[t]here shall be no initiation of a proceeding of enforcement of either an eviction of any residential or commercial tenant, for nonpayment of rent or a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, owned or rented 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.” The moratorium was initially set to expire on June 20.

As a result of this language, landlords and lenders alike remain precluded from pursuing enforcement remedies brought on by a default by a tenant or borrower during the moratorium period. This Order, however, explicitly applies to renters and borrowers who qualify for unemployment benefits or are otherwise unable to make their payments due to COVID-19. That language was absent from prior Executive Orders placing a moratorium on evictions and mortgage foreclosure filings. As such, it would appear that at least as of June 20, the burden is on renters or borrowers to prove that they have been financially impacted by the pandemic and, as a result, are unable to make their regular payments. This language is critical, for the Order does not otherwise cancel rent or mortgage payments and, absent further order by the Governor, tenants and borrowers remain legally obligated to make regular payments on their respective leases and mortgages throughout the moratorium period. Late fees, however, may not be applied to any missed payments during the moratorium period.

The Order gives additional relief to renters of residential properties, providing that landlords and tenants of such properties “may, upon the consent of tenant[,] enter into a written agreement by which the security deposit and any interest accrued thereof, shall be used to pay rent that is in arrears or will become due.” Alleviating concerns related to physically signing such an agreement to effectuate these measures, the Order further provides that “[e]xecution in counterpart by email will constitute sufficient execution for consent[.]” The option of entering into such an agreement remains solely with the tenant, and the landlord must comply with the tenant’s request to enter into such agreements, as the Order explicitly states that landlords “shall provide such relief to tenants . . . who so request it that are eligible for unemployment insurance or benefits under state or federal law or are otherwise facing financial hardship due to the COVID-19 pandemic.” Where such an agreement is entered into, however, the Order requires the tenant to replenish the security deposit via monthly payments of 1/12 the amount of the security deposit used by the tenant to pay rent. These monthly payments shall become due, per the Order, no sooner than ninety days after the date upon which the security deposit is used by the tenant to pay rent.

In light of the changes brought on by the Order, it would be prudent for landlords and lenders alike to maintain open communication with their tenants and borrowers, respectively, in an attempt to alleviate

concerns brought on by the now-extended moratorium and avoid confrontational – and costly – court proceedings once the moratorium period has lapsed. Our real property attorneys stand ready to provide legal advice and guidance every step of the way to effectuate these measures.

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