

## COVID-19 Emergency Orders Affecting Real Estate New York

*Last updated May 15, 2020*

### MORTGAGE ENFORCEMENT LIMITATIONS

#### **May 7, 2020 - New York State Executive Order**

- Governor Cuomo signs Executive Order 202.28 which, among other things, prohibits the initiation of a proceeding or enforcement of 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. This moratorium is in addition to the 90 day moratorium provided for in Executive Order 202.8 (March 20, 2020) described below.

<https://www.governor.ny.gov/news/no-20228-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

#### **March 24, 2020 - New York State Department of Financial Services Emergency Regulation**

- The New York Department of Financial Services promulgated Part 119 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York which (i) mandated a 90 day forbearance period in furtherance of Executive Order 202.9 that declared that the failure to grant such a forbearance to any person or business who has a financial hardship as a result of the COVID-19 pandemic would be an unsafe and unsound business practice, (ii) specified that the forbearance requirement applied to residential mortgages only, (iii) specified that the regulation is not applicable to, and does not affect any mortgage loans made, insured, or securitized by any agency or instrumentality of the United States, any Government Sponsored Enterprise, or a Federal Home Loan Bank, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association and (iv) defined the scope of affected regulated institutions as any New York regulated banking organizations as defined under New York Banking Law and any New York regulated mortgage servicer entity subject to the authority of the Department of Financial Services.

[https://www.dfs.ny.gov/system/files/documents/2020/03/re\\_new\\_pt119\\_nycrr3\\_text.pdf](https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf)

#### **March 21, 2020 – New York State Executive Order**

- Governor Cuomo signs Executive Order 202.9 which, among other things, provides (i) that it shall be deemed an unsafe and unsound business practice if, in response to the COVID-19 pandemic, any bank which is subject to the jurisdiction of the Department of Financial Services shall not grant a forbearance to any person or business who has a financial hardship as a result of the COVID-19 pandemic for a period of ninety days and (ii) that the Superintendent of the Department of Financial Services shall ensure under reasonable and prudent circumstances that any licensed or regulated entities provide to any consumer in the State of New York an opportunity for a forbearance of payments for a mortgage for any person or entity facing a financial hardship due to the COVID-19 pandemic.

<https://www.governor.ny.gov/news/no-2029-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

#### **March 20, 2020 – New York State Executive Order**

- Governor Cuomo signs Executive Order 202.8 which, among other things, prohibits residential and commercial mortgage foreclosures for 90 days.

<https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

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## LANDLORD/TENANT ENFORCEMENT LIMITATIONS

#### **May 7, 2020 - New York State Executive Order**

- Governor Cuomo signs Executive Order 202.28 which, among other things:
  - Suspends or modifies – from the date of the Executive Order until June 6, 2020 - Sections 7-103, 7-107 and 7-108 of the General Obligations Law to the extent necessary to provide that:
    - Landlords and tenants or licensees of residential properties may, upon the consent of the tenant or licensee, 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. If the amount of the deposit represents less than a full month rent payment, this consent does not constitute a waiver of the remaining rent due and owing for that month. Execution in counterpart by email will constitute sufficient execution for consent;
    - Landlords shall provide such relief to tenants or licensees 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;
    - It shall be at the tenant or licensee's option to enter into such an agreement and landlords shall not harass, threaten or engage in any harmful act to compel such agreement;

- Any security deposit used as a payment of rent shall be replenished by the tenant or licensee, to be paid at the rate of 1/12 the amount used as rent per month. The payments to replenish the security deposit shall become due and owing no less than 90 days from the date of the usage of the security deposit as rent. The tenant or licensee may, at their sole option, retain insurance that provides relief for the landlord in lieu of the monthly security deposit replenishment, which the landlord, must accept such insurance as replenishment.
- Suspends or modifies – from the date of the Executive Order until June 6, 2020 - Subdivision 2 of section 238-a of the Real Property Law [applicable to residential leases] to provide that no landlord, lessor, sub-lessor or grantor shall demand or be entitled to any payment, fee or charge for late payment of rent occurring during the time period from March 20, 2020, through August 20, 2020.
- Issues a directive for the period from the date of Executive Order until June 6, 2020 that there shall be no initiation of a proceeding or enforcement of an eviction of any residential or commercial tenant, for nonpayment of rent 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

<https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

#### **April 12, 2020 – New York State Executive Order**

- Governor Cuomo signs Executive Order 202.16 which, among other things, provides that Section 711 of the Real Property and Proceedings Law, Section 232-a of the Real Property Law, and subdivisions 8 and 9 of section 4 of the Multiple Dwelling Law, and any other law or regulation are suspended and modified through May 12, 2020 to the extent that such laws would otherwise create a landlord tenant relationship between any individual assisting with the response to COVID-19 or any individual that has been displaced due to COVID-19, and any individual or entity, including but not limited to any hotel owner, hospital, not-for-profit housing provider, hospital, or any other temporary housing provider who provides temporary housing for a period of thirty days or more solely for purposes of assisting in the response to COVID-19. Executive Order extended until June 7, 2020 pursuant to Executive Order 202.29.

<https://www.governor.ny.gov/news/no-20216-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

#### **March 20, 2020 – New York State Executive Order**

- Governor Cuomo signs Executive Order 202.8 which, among other things, prohibits eviction of residential and commercial tenants for 90 days.

<https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

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## NON-ESSENTIAL BUSINESS RESTRICTIONS

### **May 14, 2020 –New York State Executive Order**

- Governor Cuomo signs Executive Order 202.31 which, among other things:
  - Continued the provisions of Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13, and 202.14 which each closed or otherwise restricted public or private businesses or places of public accommodation, and which required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason (e.g. parties, celebrations, games, meetings or other social events), which together constitute New York On PAUSE, until 11:59 p.m. on May 28, 2020, unless later amended or extended by a future Executive Order; provided, however, that effective at 12:01 a.m. on May 15, 2020 the reductions and restrictions on the in-person workforce at non-essential businesses or other entities shall no longer apply to Phase One industries outline in the New York Forward reopening plan noted below (Construction, Agriculture, Forestry, Fishing and Hunting, Retail - (Limited to curbside or in-store pickup or drop off), Manufacturing and Wholesale Trade) in a region that meets the prescribed public health and safety metrics described in the New York Forward reopening plan, as determined by the Department of Health but such businesses or entities must be operated subject to the guidance promulgated by the Department of Health;
  - Confirmed that as of May 14, 2020 the five of the ten regions satisfied the criteria for reopening Phase 1 Industries: Finger Lakes, Central New York, Mohawk Valley, Southern Tier and the North Country regions comprising the counties of: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates Cayuga, Cortland, Madison, Onondaga, Oswego, Fulton, Herkimer, Montgomery, Oneida, Otsego, Schoharie, Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga, Tompkins Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, and St. Lawrence;
  - Provided that any additional regions that meet the criteria after the date of this Executive Order will be deemed to be incorporated into this Executive Order without further revision and will be permitted to re-open Phase One industries, subject to the same terms and conditions;
  - Provided that all enforcement mechanisms by state or local governments shall continue to be in full force an effect until June 13, 2020 unless later extended or amended by a future Executive Order; and
  - Modified the directive contained in Executive Order 202.3 which closed movie theaters until further notice and was later extended by Executive Order 202.14 and EO 202.28, to provide that a drive-in movie theater, shall not be required to close, but shall be treated as any other business per Executive Order 202.6, which designated certain

businesses as essential or non-essential and subjected such businesses to in-person presence restrictions in the workplace.

#### **May 11, 2020 – New York Forward**

- Governor Cuomo releases the New York Forward phased reopening plan for the reopening of non-essential businesses on a regional and industry basis. Each region that satisfies the seven metrics for reopening non-essential businesses will reopen businesses in phases, with at least two weeks in between each phase to allow state and local leaders to monitor the effects of the reopening and ensure hospitalization and infection rates are not increasing. The phase-in plan prioritizes businesses that the state has determined have a greater economic impact and inherently low risks of infection for the workers and customers, followed by other businesses the state considers to have less economic impact, and those that present a higher risk of infection spread. The phased-in reopening of non-essential businesses will not permit the regions to authorize the opening of attractions or businesses that would draw a large number of visitors from outside the local area.

<https://forward.ny.gov/industries-reopening-phase>

#### **May 8, 2020 – New York State Executive Order**

- Governor Cuomo signs Executive Order 202.29 which, among other things extended the authority for restrictions on non-essential businesses, public accommodations and public gatherings in prior Executive Orders until June 7, 2020.

<https://www.governor.ny.gov/news/no-20228-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

- The following clarification was issued by the Governor's office on May 9, 2020:

"NY ON PAUSE was not extended to June 6.

"Yesterday's Executive Order extended the underlying legal authority for the Emergency Order, but did not change the text of any of the directives in NY ON PAUSE and so the expiration date of May 15 still stands until further notice. At that time, new guidance will be issued for regions based on the metrics outlined by Governor Cuomo earlier this week."

#### **April 16, 2020 – New York State Executive Order**

- Governor Cuomo signs Executive Order 202.18 which, among other things, extended the restrictions on non-essential businesses, public accommodations and public gatherings in prior Executive Orders until May 15, 2020 (extended in part to May 28, 2020 by Executive Order 202.31).

<https://www.governor.ny.gov/news/no-20218-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

#### **April 12, 2020 – New York State Executive Order**

- Governor Cuomo signs Executive Order 202.16 which, among other things, provides that for all essential businesses or entities, any employees who are present in the workplace shall be provided and shall wear face coverings when in direct contact with customers or members of the public. Businesses must provide, at their expense, such face coverings for their employees. This provision may be enforced by local governments or local law enforcement as if it were an order pursuant to section 12 or 12-b of the Public Health Law. This requirement shall be effective commencing Wednesday, April 15 at 8 p.m. Executive Order extended until June 7, 2020 pursuant to Executive Order 202.29 issued on May 8, 2020.

<https://www.governor.ny.gov/news/no-20216-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

#### **April 7, 2020 – New York State Executive Order**

- Governor Cuomo signs Executive Order 202.14 which, among other things, extended the restrictions on non-essential businesses, public accommodations and public gatherings in prior Executive Orders until April 29, 2020 (extended to May 15, 2020 by Executive Order 202.18 and further extended in part to May 28, 2020 by Executive Order 202.31).

<https://www.governor.ny.gov/news/no-20214-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

#### **March 30, 2020 – New York State Executive Order**

- Governor Cuomo signs Executive Order 202.13 which, among other things, confirmed that only certain construction specified by the Empire State Development Corporation shall qualify as an essential service. Extended until June 6, 2020 by Executive Order 202.28 issued on May 7, 2020.

<https://www.governor.ny.gov/news/no-20213-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

#### **March 20, 2020 – New York State Executive Order**

- Governor Cuomo signs Executive Order 202.8 that, among other things, requires that all businesses and not-for-profit entities in the state (other than essential businesses and entities) utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize and that each employer reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m. through the date specified in the Order (revised to May 15, 2020 pursuant to Executive Order 202.18 and extended in part to May 28, 2020 by Executive Order 202.31).

<https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

### **March 19, 2020 – (and thereafter updated) – New York State Empire State Development Corporation**

- Pursuant to Executive Order 202.6, the Empire State Development Corporation published the list of essential businesses and essential services which, among other things, significantly limited the scope of construction work that may be continued during the period of the Executive Order.

<https://esd.ny.gov/guidance-executive-order-2026>

### **March 18, 2020 – New York State Executive Order**

Governor Cuomo signs Executive Order 202.6 that, among other things, provides that:

- Effective on March 20 at 8 p.m. (through May 15, 2020 pursuant to Executive Order 202.18 and extended in part until May 28, 2020 by Executive Order 202.31) all businesses and not-for-profit entities in the state (other than essential businesses and entities) must utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize and each employer must reduce the in-person workforce at any work locations by 50% (modified by Executive Order 202.8)
- Any other business may be deemed essential after requesting an opinion from the Empire State Development Corporation, which shall review and grant such request, should it determine that it is in the best interest of the state to have the workforce continue at full capacity in order to properly respond to this disaster. No later than 5 p.m. on March 19, 2020, Empire State Development Corporation shall issue guidance as to which businesses are determined to be essential.

### **March 18, 2020 – New York State Executive Order**

Governor Cuomo signs Executive Order 202.5 that, among other things, provides that:

- Notwithstanding section 24 of the Executive Law, no locality or political subdivision shall issue any local emergency order or executive order with respect to response of COVID-19 without the approval of the State Department of Health.

<https://www.governor.ny.gov/news/no-2026-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

### **March 16, 2020 – New York State Executive Order**

Governor Cuomo signs Executive Order 202.3 that, among other things, provides the following directives and suspensions and modifications for the period from the date of this Executive Order through April 15, 2020 (extended to May 15, 2020 by Executive Order 202.18 and further extended until May 28, 2020 by Executive Order 202.31):

- The directive requiring large gatherings and events to be cancelled or postponed if they had anticipated attendance in excess of 500 people by virtue of Executive Order 202.1 dated March 12, 2020, is hereby amended and modified to require that any large gathering or event (concert, conference, worship service, performance before a large audience, etc.) shall be cancelled or

postponed if more than fifty persons are expected in attendance, at any location in New York State until further notice.

- Any restaurant or bar in the state of New York shall cease serving patrons food or beverage on-premises effective at 8 pm on March 16, 2020, and until further notice shall only serve food or beverage for off-premises consumption. Notwithstanding any provision of the alcohol and beverage control law, a retail on-premises licensee shall be authorized for the duration of this Executive Order to sell alcohol for off-premises consumption, which shall include either take-out or delivery, subject to reasonable limitations set by the State Liquor Authority.
- Any facility authorized to conduct video lottery gaming, or casino gaming shall cease operation effective at 8 pm on March 16, 2020, and until further notice. For a Class III Tribal Gaming enterprise or Class II Tribal Gaming enterprise, any facility should also close to the public until further notice.
- Any gym, fitness centers or classes, and movie theaters (exception for drive-in theaters pursuant to Executive Order 202.31) shall also cease operation effective at 8 pm on March 16, 2020 until further notice.
- No local government or political subdivision shall issue any local emergency order or declaration of emergency or disaster inconsistent with, conflicting with or superseding the foregoing directives, or any other executive order issued under Section 24 of the Executive Law and any local emergency order or any local administrative codes, charters, laws, rules or regulations, are hereby suspended with respect to any such order issued under such authority different or in conflict with Executive directives.

#### **New York City Office of the Mayor Emergency Executive Orders**

<https://www1.nyc.gov/office-of-the-mayor/news.page#page-1>

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## CONDOMINIUM/COOPERATIVE

### **April 16, 2020- New York State Executive Order**

Governor Cuomo signs Executive Order 202.18 which, among other things, temporarily suspends or modifies, for the period from the date of this Executive Order through May 16, 2020 (extended until June 7, 2020 by Executive Order 202.29 issued on May 8, 2020):

- Section 352-eeee(2)(a) of the General Business Law [Conversions to cooperative or condominium ownership in the city of New York], and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires that an offering statement or prospectus become effective within fifteen months from filing or from the date of issue of the letter of the attorney general stating that the offering statement or prospectus has been accepted for filing, and any such fifteen month period, shall be tolled during the duration of the Executive Order.



- Section 352-e(7)(a) of the General Business Law [Real estate syndication offerings], and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires certain filing fees be made at the time of submission and filing of each offering statement or prospectus, shall be exempted during the duration of the Executive Order. Such filing fees are required to be remitted in full to the Department of Law within 90 days from the expiration of the Executive Order.
- 13 NYCRR §§ 18.3(g)(1) [occupied cooperatives], 20.3(h)(1) [newly constructed, vacant or non-residential condominiums], 23.3(h)(1) [occupied condominiums], and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires sponsor to set forth a budget for the first year of condominium operation, the requirements with respect to any such projected first year of condominium operation are tolled for the duration of the Executive Order. Sponsor must update the first year of operation, as necessary, within 30 days from the expiration of the Executive Order and is not required to offer rescission, to the extent such budget for the first year of operation does not increase by 25 percent or more during the pendency of the state of disaster emergency.
- 13 NYCRR § 20.3(o)(12) [condominium offering plan], and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires sponsor to offer rescission if the first closing of a unit does not occur within the first year of operation projected in schedule B, is hereby tolled for the duration of the executive order. Sponsor must update the first year of operation, as necessary, within 30 days from the expiration of the Executive Order.

<https://www.governor.ny.gov/news/no-20218-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

#### **April 12, 2020- New York State Executive Order**

Governor Cuomo signs Executive Order 202.16 which, among other things, issues the following directive for the period from the date of this Executive Order through May 12, 2020 (extended until June 7, 2020 by Executive Order 202.29 issued on May 8, 2020):

- The New York City Department of Law shall issue no-action or no-filing letters received during the duration of this executive order within 45 days from submission of such no-action or no-filing application made to the department of law for essential projects involving affordable housing and homeless shelters. For each application granted by the department of law which permits the applicant to solicit public interest or public funds preliminary to the filing of an offering statement or for the issuance of a "no-filing required" letter. The New York City Department of Finance shall process and record condominium declarations for essential projects involving hospitals or health care facilities, affordable housing, and homeless shelters within 30 days of receipt of such filing.

<https://www.governor.ny.gov/news/no-20216-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

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## **COURT ACCESS /JUDICIAL PROCESS LIMITATIONS**

## **State**

- See following links for information about COVID-19 related orders applicable to proceedings in state courts:

COVID-19 website: <https://www.nycourts.gov/whatsnew/covid.shtml>

<http://www.nycourts.gov/whatsnew/pdf/AO-78-2020.pdf>

## **Federal**

- See following links for information about COVID-19 related orders applicable to proceedings in Federal courts:

<https://www.uscourts.gov/news/2020/03/12/judiciary-preparedness-coronavirus-covid-19>

<https://www.uscourts.gov/about-federal-courts/court-website-links/court-orders-and-updates-during-covid19-pandemic>

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## RECORDING/FILING OFFICE LIMITATIONS

- Below is a link to relevant information about recording offices prepared by the American Land Title Association.

<https://www.alta.org/business-tools/county-status.cfm?state=NY>

- Below are links to relevant information about filing offices prepared by CT Corporation System and Corporation Service Company

<https://ct.wolterskluwer.com/covid-19-status?v=794331>

<https://www.cscglobal.com/blog/covid-19-state-closings/>

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## REMOTE NOTARIZATION

### **April 7, 2020- New York State Executive Order**

- Governor Cuomo signs Executive Order 202.14 which, among other things, authorized the act of witnessing that is required under Estates Powers and Trusts Law (EPTL) 3-2.1(a)(2), EPTL 3-2.1(a)(4), Public Health Law 2981(2)(a), Public Health Law 4201(3), Article 9 of the Real Property Law, General Obligations Law 5-1514(9)(b), and EPTL 7-1.17, to be performed utilizing audio-video technology and specified the requirements for witnessing by such means. Extended until June 6, 2020 by Executive Order 202.28 issued on May 7, 2020.

<https://www.governor.ny.gov/news/no-20214-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

**March 19, 2020- New York State Executive Order**

- Governor Cuomo signs Executive Order 202.7 which, among other things, authorizes any notarial act that is required under New York State law to be performed utilizing audio-video technology and specifying the requirements for notarization by this means. Extended until June 6, 2020 by Executive Order 202.28 issued on May 7, 2020.

<https://www.governor.ny.gov/news/no-2027-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>