

COVID-19 Emergency Orders and Other Legislation Affecting Real Estate New York

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MORTGAGE ENFORCEMENT LIMITATIONS

1. Commercial Mortgage Foreclosure Moratorium:

- New York State prohibits the foreclosure of any mortgage secured by commercial real property for nonpayment of such mortgage through January 31, 2021 (subject to further extension), provided that the borrower has faced financial hardship due to the COVID-19 pandemic.
 - Executive Order 202.8 (3/20/20), as affected by Ch. 112 and Ch. 126 of the Laws of New York, 2020 (6/17/20), and as extended by Executive Orders 202.48 (7/6/20), 202.55 (8/5/20), 202.60 (9/4/20), 202.67 (10/5/20), 202.72 (11/3/20), 202.79 (12/2/20) and 202.87 (12/30/20)
 - Executive Order 202.28 (5/7/20), as modified and/or extended by Executive Orders 202.48 (7/6/20), 202.57 (8/20/20), 202.64 (9/18/20), 202.70 (10/20/20), 202.72 (11/3/20), 202.79 (12/2/20), 202.81 (12/11/20) and 202.87 (12/30/20)
- Although the COVID-19 Emergency Eviction and Foreclosure Prevention Act (passed on 12/28/20) primarily applies to residential owners/tenants, this Act also prohibits foreclosures (through May 1, 2021) on a borrower that (i) owns 10 or fewer residential dwellings and (ii) has submitted a financial hardship declaration with the mortgage lender.

2. Residential Mortgage Forbearance Requirements and Foreclosure Limitations:

- **Foreclosures of Residential Mortgages:** The COVID-19 Emergency Eviction and Foreclosure Prevention Act (passed on 12/28/20) prohibits the foreclosure (through May 1, 2021) on any residential borrower that (i) owns 10 or fewer residential dwellings and (ii) has submitted a financial hardship declaration with the mortgage lender. The prohibitions under this Act also apply to tax lien foreclosures on residential property owners.
- **Forbearance Under Residential Mortgage Loans:** Ch. 112 and Ch. 126 of the Laws of New York, 2020 (6/17/20) and Executive Order 202.9 (3/21/20), as affected by Part 119 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York promulgated by the New York State Department of Financial Services (3/24/20): Each “regulated institution” (i.e. a New York regulated bank and any New York regulated mortgage

servicer subject to supervision of the Department of Financial Services) shall (i) make applications for forbearance of any payment due on a residential mortgage of a property located in New York widely available to any “qualified mortgagor” (i.e. an individual (1) whose primary residence is located in New York and (2) who demonstrates financial hardship as a result of COVID-19) who is in arrears or on a “trial period plan” or who has applied for loss mitigation during the “covered period” (i.e. the period from March 7, 2020 until the date that none of the provisions that closed or otherwise restricted businesses, places of public accommodation or non-essential gatherings in various Executive Orders continue to apply in the county of the qualified mortgagor’s residence), and (ii) grant such forbearance of all monthly payments due for up to 180 days, with the option to extend such forbearance for up to an additional 180 days provided that the mortgagor demonstrates continued financial hardship. The mortgagor shall have the option to (a) extend the term of the loan by the length of the forbearance period (and the regulated institution may not charge additional interest, late fees or penalties on the forborne payment), (b) repay the accumulated arrears on a monthly basis for the remaining term of the loan and/or (c) request a loan modification for different repayment terms. If the parties cannot reasonably agree on a loan modification, the regulated institution is required to offer to defer the arrears (without interest) until the maturity date (or earlier refinancing or repayment).

- Limitations: The forbearance requirements above do not apply to any mortgage loans made, insured, purchased or securitized by any agency or instrumentality of the United States, any government sponsored enterprise, or a federal home loan bank or a corporate governmental agency of the state constituted as a political subdivision and public benefit corporation, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association. The obligation of a regulated institution to grant forbearance relief is subject to the regulated institution having sufficient capital and liquidity to meet its obligations and to operate in a safe and sound manner.

LANDLORD/TENANT ENFORCEMENT LIMITATIONS

1. **New York State Moratorium on Evictions of Commercial Tenants:**

- New York State prohibits the initiation of a proceeding or enforcement of an eviction of any commercial tenant for nonpayment of rent through January 31, 2021 (subject to further extension), provided that the tenant has faced financial hardship due to the COVID-19 pandemic
 - Executive Orders 202.8 (3/20/20) and 202.28 (5/7/20), as modified and/or extended by Executive Orders 202.48 (7/6/20), 202.57 (8/20/20), 202.64 (9/18/20), 202.70 (10/20/20), 202.72 (11/3/20), 202.81 (12/11/20) and 202.87 (12/30/20)
- **Note:** Although evictions are currently prohibited, New York Courts have rejected commercial tenants’ arguments that the doctrines of frustration of purpose and impossibility should excuse such tenant’s obligation to pay rent during the pandemic. See 35 E. 75th St. Corp. v Christian

Louboutin L.L.C., 2020 N.Y. Slip Op 34063(U) (N.Y. Sup. Ct. Dec. 9, 2020) and 1140 Broadway LLC v Bold Food, LLC, 2020 N.Y. Slip. Op. 340178(U) (N.Y. Sup. Ct. Dec. 3, 2020).

2. **New York City Local Laws Re: Commercial Leases:**

- **Guaranties of NYC Commercial Leases:** City Council bill (Int. No, 1932-A/ Local Law No. 2020/055) (5/26/20, as amended on 9/23/20) states that the provisions of certain New York City commercial leases (and/or in the related guaranties of such leases) that make a natural person guarantor (that is not the named tenant under the lease) personally liable for payment of rent, utility expenses, taxes, building maintenance and other charges owed by the tenant under the lease shall not be enforceable against such natural person guarantor if both of the following two conditions are satisfied:
 - (1) The tenant satisfies any of the following conditions: (a) the tenant was required to cease serving patrons food or beverages for on-premises consumption or to cease operation of its gym, fitness center or classes, movie theaters or video lottery or casino gaming under Executive Order 202.3 issued by the Governor on March 16, 2020, or (b) the tenant is a non-essential retail establishment that was subject to in-person limitations under guidance issued by the New York State Department of Economic Development pursuant to Executive Order 202.6 issued by the Governor on March 18, 2020, or (c) the tenant is a barbershop, hair salon, tattoo or piercing parlor or other provider of personal care services that was required to close to members of the public under Executive Order 202.7 issued by the Governor on March 19, 2020; AND
 - (2) The default or other event causing such natural person guarantor(s) to become wholly or partially personally liable for the applicable tenant obligation occurred between March 7, 2020 and March 31, 2021.
 - Note: This law was recently upheld in the cases of Melendez et al v. The City of New York, et al, (S.D.N.Y. Nov. 25, 2020) and in 204 East 38th LLC vs. Sons of Thunder LLC, John Kim, ABC Corp (NY Sup Ct., Nov. 20, 2020)
- **Enforcement of Commercial Leases:** City Council bill (Int. No, 1914-A/Local Law No. 2020/053) amended Paragraph 11 of subdivision a of Section 22-902 of the New York City Administrative Code added by Local Law No. 2019/185 to prohibit “threatening a commercial tenant” based up, among other things, “the commercial tenant’s status as a person or business impacted by COVID-19, or the commercial tenant’s receipt of a rent concession or forbearance for any rent owed during the COVID-19 period” (i.e. the period from March 7, 2020 through the end of the first month that commences after the later of (a) the expiration of the moratorium on enforcement of evictions of any tenant, residential or commercial, set forth in Executive Order 202.8 (as extended) and (b) the expiration of the moratorium on certain residential evictions set forth in section 4024 of the coronavirus aid, relief, and economic security, or CARES, act and any subsequent amendments to such section). For purposes of the foregoing, a business is deemed “impacted by COVID-19” if “(i) it was subject to seating, occupancy or on-premises service limitations pursuant to an executive order issue by the governor or mayor during the COVID-19 period or (ii) its revenues during any three-month period within the COVID-19 period were less than 50 percent of its revenues for the same three-month period in 2019 or less than

50 percent of its aggregate revenues for the months of December 2019, January 2020, and February 2020 and such revenue loss was the direct result of the COVID-19 state disaster emergency.” The local law additionally contains a definition of “impacted by COVID-19” with respect to natural persons.

3. New York State Moratorium on Evictions of Residential Tenants:

- COVID-19 Emergency Eviction and Foreclosure Prevention Act (passed on 12/28/20): Prohibits evictions (through May 1, 2021) of any residential tenant that has submitted a financial hardship declaration with his or her landlord.
- Senate Bill 8192 (Laws of New York, 2020, Ch. 127) (6/30/20) provides that no court shall issue a warrant of eviction or judgment of possession against a residential tenant or other lawful occupant that has suffered financial hardship during the COVID-19 “covered period” (i.e. the period from March 7, 2020 until the date that none of the provisions that closed or otherwise restricted businesses, places of public accommodation or non-essential gatherings in various Executive Orders continue to apply in the county of the tenant’s or lawful occupant’s residence) for the non-payment of rent that accrues or becomes due during the COVID-19 covered period. This act does not prohibit any court from awarding a judgment for the rent due and owing to a successful petitioner in a summary proceeding under Article 7 of the Real Property Actions and Proceedings Law.
- New York State prohibits the execution or enforcement of a judgment or warrant (including those cases where a judgment or warrant of eviction for a residential property was granted prior to March 7, 2020) against a residential tenant suffering financial hardship during the COVID-19 state disaster emergency declared by Executive Order 202 (subject to further extension).
 - Executive Order 202.66 (9/29/20), as extended and/or modified by Executive Orders 202.71 (10/29/20), 202.78 (11/27/20) and 202.85 (12/27/20)

4. Additional New York State Protections for Residential Tenants:

- Forbearance: Landlords shall provide such relief to residential 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. 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.
- Security Deposits: 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, such consent will not constitute a waiver of the remaining rent due and owing for that month. Any security deposit used as a payment of rent shall be replenished by the tenant, 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.

- Executive Order 202.28 (5/7/20), as extended and/or modified by various Executive Orders, including 202.72 (11/3/20) and 202.87 (12/30/20)

5. **Landlord/Tenant Relationship Under New York State Law:**

- 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 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 202.16 (4/12/20), as extended and/or amended by Executive Orders 202.29 and 202.39, and reinstated by Executive Order 202.55 (8/5/20) and as further extended and/or amended by Executive Orders 202.72, 202.79 and 202.87

NON-ESSENTIAL BUSINESS RESTRICTIONS

1. **New York State Non-Essential Business Restrictions by Zone:**

- The non-essential business restrictions that apply to a geographical area in New York State depend on whether such area is designated as a red zone, orange zone or yellow zone by the Department of Health.
 - In red zone areas, non-essential gatherings of any size shall be postponed or cancelled; all non-essential businesses, as determined by the Empire State Development Corporation based upon published guidance, shall reduce in-person workforce by 100%; houses of worship shall be subject to a capacity limit of 25% of maximum occupancy or 10 people, whichever is fewer; any restaurant or tavern shall cease serving patrons food or beverage on-premises and may be open for takeout or delivery only; and the local Department of Health shall direct closure of all schools for in-person instruction, except as otherwise provided in an Executive Order.
 - In moderate severity warning areas or orange zones, non-essential gatherings shall be limited to 10 people; certain non-essential businesses, for which there is a higher risk associated with the transmission of the COVID-19 virus, including gyms, fitness centers or classes, barbers, hair salons, spas, tattoo or piercing parlors, nail technicians and nail salons, cosmetologists, estheticians, the provision of laser hair removal and electrolysis, and all other personal care services shall reduce in-person workforce by 100%; houses of worship shall be subject to a maximum capacity limit of the lesser of 33% of maximum occupancy or 25 people, whichever is fewer; any restaurant or tavern shall cease serving

patrons food or beverage inside on-premises but may provide outdoor service, and may be open for takeout or delivery, provided however, any one seated group or party shall not exceed 4 people; and the local Department of Health shall direct closure of all schools for in-person instruction, except as otherwise provided in an Executive Order.

- Under Executive Order 202.81 (12/11/20), (i) gyms and fitness centers or classes located within “orange zones” may operate at 25% capacity subject to strict adherence to Department of Health guidance and (ii) barbers, hair salons, spas, tattoo or piercing parlors and all other personal care services located within “orange zones” may operate, subject to strict adherence to Department of Health guidance, provided that employees performing such services directly on, or to, customers receive diagnostic testing for COVID-19 on a weekly basis, and no employee provides any such services at a re-opened business without first obtaining a negative COVID-19 test result within the preceding 7 days of providing such service.
- In precautionary or yellow zones, non-essential gatherings shall be limited to no more than 25 people; houses of worship shall be subject to a capacity limit of 50% of its maximum occupancy and shall adhere to Department of Health guidance; any restaurant or tavern must limit any one seated group or party size to 4 people; and the Department of Health shall issue guidance by October 9, 2020 regarding mandatory testing of students and school personnel, and schools shall adhere to such guidance.
- Indoor dining in New York City has been suspended pursuant to Executive Order 202.81 (12/11/20)
- Executive Order 202.68 (10/6/20), as extended and/or amended by Executive Orders 202.81 (12/11/20) and 202.87 (12/30/20)
- Related guidance issued by the New York State Department of Economic Development d/b/a Empire State Development (ESD), in consultation with the Department of Health: <https://esd.ny.gov/ny-cluster-action-initiative-guidance>.

OTHER NEW YORK STATE REGULATIONS:

1. **Condominium/Cooperatives:**

- Various time requirements under New York condominium/cooperative rules and regulations (including those applicable to declaring an offering statement effective, treating tenants in occupancy as non-purchasing tenants, offering rescission rights to purchasers if the first closing of a unit does not occur within twelve months after the projected date for such closing in the offering plan, budget requirements and the payment of filing fees) have been tolled and extended for a period equal to, in the aggregate, the duration of Executive Order 202.55 (as extended) plus an additional 120 days.

- Executive Order 202.55 (8/5/20), as extended and/or modified by Executive Orders 202.60, 202.67, 202.72 and 202.79
- Executive Orders 202.18 (4/16/20) and 202.16 (4/12/20), as extended and/or modified by Executive Orders 202.29, 202.39, 202.49, 202.55, 202.60, 202.67, 202.72 and 202.87

2. Statute of Limitations:

- With the exception of a narrow set of specified actions, time limits for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, were tolled until November 3, 2020.
 - Executive Order 202.8 (3/20/20), as modified and/or extended by Executive Orders 202.14, 202.28, 202.38, 202.48, 202.55, 202.60, 202.67, 202.72 and 202.87
- Sections 732 and 743 of the Real Property Actions and Proceedings Law have been modified to the extent necessary to provide that the time to answer in any summary eviction proceeding for nonpayment of rent that was pending as of 11/3/20 shall be sixty days
 - Executive Order 202.72 (11/3/20), as modified and/or extended by Executive Order 202.87 (12/30/20)

3. Notarizations:

- 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, may be performed utilizing audio-video technology and specified the requirements for witnessing by such means.
- Any notarial act that is required under New York State law may be performed utilizing audio-video technology and specifying the requirements for notarization by this means.
- Executive Orders 202.7 and 202.14, as extended and/or modified by Executive Orders 202.28, 202.38, 202.48, 202.55, 202.60, 202.67, and 202.87

4. Recording Offices and Judicial Process Limitations:

- For information about various recording/filing offices prepared by the American Land Title Association and CT Corporation, follow these links:
 - <https://www.alta.org/business-tools/county-status.cfm?state=NY>
 - <https://ct.wolterskluwer.com/covid-19-status?v=794331>

- <https://www.cscglobal.com/blog/covid-19-state-closings/>
 - For information about COVID-19 related orders applicable to proceedings in NY State courts follow this link: <https://www.nycourts.gov/whatsnew/covid.shtml>
 - For information about COVID-19 related orders applicable to proceedings in Federal courts, follow these links:
 - <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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