

# US COVID-19 Real Estate Legal Developments Federal, California, Florida, Illinois, New York

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<b>Federal</b>	<p><b>Lease Related Developments (namely rent relief)</b></p> <p>The CARES Act, signed into law on March 27, 2020, created the Paycheck Protection Program (“PPP”) which expands the U.S. Small Business Administration’s (“SBA”) loan program. The program provides for loan forgiveness during the eight week period following loan origination if 75% of the funds are used for payroll costs. The remaining 25% may be used for payment of certain expenses, such as mortgage interest, rent and utilities. The initial \$350 billion in funding was exhausted by April 17, 2020, and an additional \$310 billion in PPP funding was approved on April 24, 2020.</p> <p>The CARES Act also modified the Economic Injury Disaster Loan program operated by the SBA which provides for Emergency Economic Injury Grants of up to \$10,000 which are emergency advances that can be issued by the SBA within three days of a completed application by a qualifying business. The advance does not need to be repaid and may be used to pay rent and mortgage payments.</p> <p><a href="#">Anecdotes</a></p> <p><b>Landlord/Tenant Positions</b></p> <ul style="list-style-type: none"><li>• Generally: Some landlords are providing 2-3 months of rent deferral (as opposed to rent abatement), and asking tenants to repay deferred rent by YE 2021; other landlords are offering to allow tenants to defer rent and extend the term by the number of months of deferral.</li></ul>
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- Supporting Documentation: Most landlords are requesting that tenants provide documentation supporting their request for a deferral/abatement (e.g., financial statements and business plan).
- Transparency: As a general rule, landlords and tenants are disclosing access to funds from different sources (e.g., insurance, government assistance, etc.), and sometimes offering to pay abated amounts upon receipt of assistance.
- Specific Landlords:
  - Federal Realty Investment Trust: Sent letters telling tenants that they expect them to pay rent;
  - The Irvine Company: Allowing tenants to defer rent for April, May and June, and to repay it without interest by YE 2021;
  - Kimco: Working with tenants;
  - Related: Announced that 75% of retail tenants at Hudson Yards did not pay rent for the month of April;
  - McNellis Partners: April rent suspended for mom-and-pop businesses that demonstrate virus-related business reduction;
  - Bedrock Detroit: Rent forgiven for months of April, May and June.
- Specific Tenants That Reportedly Did Not Pay All of a Portion of April Rent for Some or All Stores:
  - Burlington Stores (600+ stores);
  - Dick's Sporting Goods (800+ stores);
  - Gap (3.3k stores);
  - Mattress Firm (2.4k US stores);
  - Petco Animal Supplies (1.5k stores);
  - Staples (300+ stores);
  - Subway (20k US stores);
  - The Cheesecake Factory (200+ stores);
  - Urban Outfitters (200+ stores).

	<p><b>Eviction Moratoriums</b></p> <p>The CARES Act imposed a 120-day moratorium on tenant evictions if a property owner’s mortgaged property is insured, guaranteed, supplemented, protected, or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program or the Violence Against Women Act of 1994. The moratorium expired July 24, 2020, allowing property owners to issue 30 days’ notice for tenants to vacate properties.</p> <p>On September 4, 2020, the Department of Health and Human Services/Centers for Disease Control and Prevention declared a temporary halt in residential evictions through December 31, 2020 (although this declaration does not include evictions resulting from mortgage foreclosures). Tenants are required to provide their landlord with a signed declaration attesting to certain information regarding their circumstances. Rent is not waived.</p> <p><b>Foreclosure Moratoriums</b></p> <p>Under the CARES Act, for at least 60 days beginning on March 18, 2020 a servicer of a federally-backed mortgage loan may not initiate, seek or execute any foreclosure. The Federal Housing Finance Agency has extended foreclosure moratoriums through December 31, 2020.</p> <p><b>Loan Related Developments</b></p> <p>The CARES Act allows multifamily property owners (designed for occupancy of 5 or more families) with federally-backed mortgages to request forbearance of up to 90 days on the condition that they suspend all evictions for renters unable to pay rent due to COVID-19. Residential property owners (for properties designed for occupancy of fewer than 5 families) with federally-backed mortgages can request forbearance of up to 180 days.</p> <p><b>Construction Related Developments</b></p> <p>None.</p> <p><b>General Real Estate News of Note</b></p> <p>The CARES Act also revises certain property depreciation, loss limitation, credit and deduction provisions for taxpayers.</p>
<p><b>California</b></p>	<p><b>Lease Related Developments (namely rent relief)</b></p> <ul style="list-style-type: none"> <li>Los Angeles: On March 30, 2020, the Mayor halted rent increases on occupied rental units that are subject to the City’s Rent Stabilization Ordinance (RSO).</li> </ul>

- An “Urgency Order” is in place in Concord, which imposes a moratorium on evictions for residential and commercial tenants who are experiencing a substantial decrease in income caused by COVID-19 and a moratorium on rent increases. These moratoriums are set to expire on September 30, 2020.
- Rent increases are capped at 3.5% in Oakland.
- A rent freeze is in place in Glendale through the expiration of the emergency order. The rent freeze applies to single family homes, condominiums or townhomes, and rental units that received a Certificate of Occupancy on or after February 1, 1995.

Several cities (including Anaheim, Long Beach, Pasadena, Riverside, San Diego, Santa Ana and Santa Monica) that have enacted eviction moratoriums for non-payment of rent due to COVID-19 (see section below) are also prohibiting landlords from charging or collecting any late fees for missed rental payments during the applicable period; these eviction moratoriums have been extended through September 30, 2020.

## Eviction Moratoriums

### Legislative Action

On August 31, 2020, Governor Newsom signed Assembly Bill 3088 which (i) provides protection against *residential* eviction for unpaid rent for the period from March 1, 2020 to August 31, 2020 due to COVID-19-related financial distress, and (ii) provides protection against residential eviction for a five-month period (from September 1, 2020 to January 31, 2021) to tenants impacted by COVID-19 who pay at least 25% of their rent during this five-month period. Tenants who fail to meet this requirement can be evicted commencing on February 1, 2021. To qualify for the extension, tenants must sign a declaration affirming COVID-19 hardship.

Assembly Bill 3088 does not apply to commercial tenants and landlords.

Moreover, the protection against eviction set forth in Assembly Bill 3088 does not apply to an eviction that would result from a foreclosure. Nevertheless, homeowners (and some small commercial landlords) are provided certain protections as set forth below.

### Executive Orders and Judicial Rules

Executive Order N-28-20, issued on March 16, 2020, removes state law restrictions (e.g., Civil Code Sec. 1940 et. seq. or 1954 et. seq.) on local government's ability to impose limitations on residential or commercial evictions when the grounds for eviction is non-payment of rent due to a documented substantial decrease in income or increase in expenditures due to COVID-19, or government emergency orders related to COVID-19; this order was extended pursuant to Executive Orders N-66-22 and N-71-20 to September 30, 2020.

In April, 2020, the California Judicial Council enacted emergency rules which suspend enforcement of evictions (other than those necessary to protect public health and safety) and judicial foreclosures until 90 days after the state of emergency is lifted or until the emergency rule is amended or repealed by the Judicial Council.

On August 13, 2020, the Judicial Council voted to lift the moratorium on enforcement of evictions and judicial foreclosures beginning on September 1, 2020. This action by the Judicial Council prompted the enactment of Assembly Bill 3088 (see above).

## **Foreclosure Moratoriums**

### [Legislative Action](#)

Assembly Bill 3088 (signed by Governor Newsom on August 31, 2020) does not protect owner-occupants from foreclosures; however, the California Homeowner Bill of Rights does provide some protections. Assembly Bill 3088 also does not protect landlords from foreclosures. It does, however, extend anti-foreclosure protections that are part of the California Homeowner Bill of Rights to small landlords who own rental properties of up to four units. These protections for small landlords are in place until January 1, 2023.

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## **Loan Related Developments**

Effective as of March 25, 2020, Governor Newsom has requested that financial institutions offer mortgage payment forbearances for up to 90 days to borrowers impacted by COVID-19. Additionally, financial institutions will waive or refund mortgage-related late fees and other fees including early CD withdrawals for at least 90 days for borrowers who have requested assistance.

- Citigroup, JP Morgan Chase, US Bank, Wells Fargo, and approximately 200 state-chartered banks, credit unions and mortgage lenders and servicers have agreed to Governor Newsom's requests.
- Bank of America has agreed to waive payments, but only for 30 days.
- Credit scores of borrowers who apply for mortgage relief will not be negatively affected.

### **Construction Related Developments**

The State of California and certain municipalities have established inconsistent guidelines as to whether construction is an essential service exempt from the statewide shelter in place order. Governor Newsom did not explicitly address construction in the executive order, but the California State Public Health Officer issued a list on the State of California's website which designated "construction of critical or strategic infrastructure," "construction material supplier[s]," and "construction workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)" as "essential workforce." Such designations potentially conflict with municipal city executive orders. As an example, San Francisco's Order of the Health Officer No. C19-07 states that only public works construction and construction of housing (i.e., affordable housing or housing for individuals experiencing homelessness) are considered to be essential services.

### **Execution of Real Estate Documents and Notary Requirements**

California has yet to allow for remote online notarizations, but notary services at shipping/packaging stores as well as mobile notary services are deemed to be critical infrastructure and are exempt from the State's mandate to remain at home. Additionally, Section 1189(b) of the California Civil Code provides that any acknowledgment taken in another location is sufficient in California if taken in accordance with the law of the place where the acknowledgment is made, so a remote notarization performed in a state that permits it could be valid in California.

### **Recording of Documents**

- Over-the-counter and walk-in document recording services are suspended until further notice.
- In most larger counties, it is possible to record documents through e-filing. The following counties allow e-recording: Butte, Calaveras, Contra Costa, El Dorado, Fresno, Kern, Los Angeles, Madera, Marin, Merced, Modoc, Mono, Monterey, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sonoma, Tehama, Tulare, Ventura, and Yuba.
- Certain counties are also accepting recordings via drop box or mail.

### **General Real Estate News of Note**

Residential and commercial real estate services, including settlement services, are considered part of the "essential critical infrastructure."

## Florida

### **Lease Related Developments (namely rent relief)**

On June 25, 2020, Governor Ron DeSantis announced \$250 Million in CARES Act funding for rental and mortgage assistance for Florida families that have been negatively impacted by COVID-19.

### **Eviction Moratoriums**

#### **Executive Orders**

On April 3, 2020, Governor DeSantis issued Executive Order No. 20-94, which suspended and tolled all mortgage foreclosures and evictions for 45 days. This order has been extended multiple times with the last extension occurring on August 31, 2020 (EO No. 20-211), which extended the eviction moratorium until October 1, 2020. When the eviction moratorium was extended on July 29, 2020 (EO No. 20-180) it was amended to apply only to single family mortgagors and residential tenants adversely affected by the COVID-19 emergency.

Leon County Sherriff has resumed serving eviction notices as of August 5, 2020.

Miami-Dade Police Department will not enforce Writs of Possession until further notice. (This remains in effect as of August 19, 2020)

### **Foreclosure Moratoriums**

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Miami-Dade County has cancelled all foreclosure sales until further notice. (This remains in effect as of August 19, 2020)

Palm Beach County resumed all foreclosure sales on June 2, 2020.

### **Loan Related Developments**

On June 25, 2020, Governor Ron DeSantis announced \$250 Million in CARES Act funding for rental and mortgage assistance for Florida families that have been negatively impacted by COVID-19.

	<p><b>Construction Related Developments</b></p> <p>Construction has generally been deemed “essential business” in statewide and local orders – including architectural, engineering and land surveying services.</p> <p><b>Execution of Real Estate Documents and Notary Requirements</b></p> <p>Remote notarizations became legal in Florida on January 1, 2020.</p> <p><b>Recording of Documents</b></p> <ul style="list-style-type: none"> <li>• Broward County Recorder’s Offices are closed until further notice; e-recording remains available.</li> <li>• Collier County Clerk’s Office reopened to the public on May 4, 2020.</li> <li>• Dade County Recorder’s Office is closed until further notice; e-recording remains available through third-party vendors.</li> <li>• Hillsborough County has closed some Clerk’s offices and left others open with reduced hours until further notice.</li> <li>• Leon County has suspended all Tax Deed sales until further notice.</li> <li>• Orange County Clerk’s Office reopened on a limited basis by appointment on June 1, 2020; e-recording remains available.</li> <li>• Palm Beach County Clerk’s office reopened to the public as of May 11, 2020.</li> <li>• Pinellas County Clerk’s office reopened to the public as of May 12, 2020.</li> </ul> <p><b>General Real Estate News of Note</b></p> <p>Miami-Dade County Department of Regulatory and Economic Resources temporarily moved its permitting and inspection center to a virtual service model and the offices remain closed to the public. All services can now be accessed online.</p>
<p><b>Illinois</b></p>	<p><b>Lease Related Developments (namely rent relief)</b></p> <p>None.</p>



## Eviction Moratoriums

### Illinois Supreme Court Order

On March 17, 2020, the Illinois Supreme Court ordered that, “[a] non-essential court matters and proceedings should be continued or, where possible, conducted remotely via telephone or video or other electronic means.” Although the order does not specifically address eviction or foreclosure proceedings, it is likely to delay them. Effective June 1, 2020, the Court’s order of March 17, 2020, was modified so that each circuit could return to hearing court matters, whether in person or remotely, according to a schedule to be adopted for each county by the chief judge in each circuit. The circuit courts are required to continue, to the extent possible, to allow for appropriate social distancing and attempt to reduce the number of persons appearing personally for court appearances.

### Executive Orders

On March 20, 2020, the Governor issued an Executive Order (Executive Order 2020-30, as amended) which (i) provides that a residential eviction action may not be commenced unless the tenant poses a direct threat to the health and safety of other tenants, an immediate and severe risk to property, or a violation of any applicable building code, health ordinance or similar regulation, and (ii) suspends the enforcement of orders of eviction for residential premises, unless the tenant has been found to pose a direct threat to the health and safety of other tenants, an immediate and severe risk to property or a violation of any applicable building code, health ordinance or similar regulation. Nothing in the Executive Order, as amended, is to be construed as relieving any individual or entity of the obligation to pay rent, to make mortgage payments, or to comply with any other obligation that an individual or entity may have pursuant to a lease, a rental agreement or a mortgage. The Executive Order is in effect through September 19, 2020.

Note that initially non-residential premises were covered by the foregoing Executive Order, but they are no longer covered.

### Additional Guidance

On March 30, 2020, the Illinois Department of Financial Regulation, Division of Banking and Division of Financial Institutions (Department), issued guidance to Illinois-licensed mortgage servicers and exempt mortgage servicers urging support for borrowers impacted by Covid-19. The Department urges all servicers of nonconforming and private mortgages to implement policies at least as helpful to borrowers as those offered for conforming loans, including, among others: (i) forbearing mortgage payments for at least 90 days without incurring additional interest or fees; (ii) refraining from reporting late payments to credit rating agencies and, when payments are deferred or modified, coding those payments as deferred with the applicable disaster order; (iii) offering loss mitigation options to borrowers; and (iv) waiving late payment fees and online payments fees; and (v) postponing foreclosures and evictions for at least 90 days. It appears the guidance pertains to all mortgages, not just residential mortgages.

### Cook County

Pursuant to a General Administrative Order (2020-01, as amended by 2020-02) entered by the Chief Judge of the Circuit Court of Cook County on August 21, 2020, (i) the Sheriff of Cook County is prohibited from enforcing eviction orders relating to residential real estate until September 21, 2020 or further order of the court, and (ii) there is a moratorium on final judgments and execution of judgments in mortgage foreclosure proceedings, which includes a stay of all foreclosure actions, foreclosure sales and evictions,

which expires on September 21, 2020. The order with respect to mortgage foreclosure proceedings does not distinguish between commercial and residential properties.

## **Foreclosure Moratoriums**

### [Illinois Supreme Court Order](#)

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### [Cook County](#)

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## **Loan Related Developments**

City of Chicago has established a \$100M Chicago Small Business Resiliency Fund to provide small businesses and non-profits with emergency cash flow in the form of low-interest loans. Applications for this program are no longer being accepted.

Cook County Board President Toni Preckwinkle announced the creation of the Community Recovery Fund, a new loan program for small businesses and independent contractors. The loans will be one time, zero interest loans to suburban small businesses with up

to 25 employees and residents who make up more than half of their income from independent contracting. The fund will give loans of up to \$20,000 for small businesses and \$10,000 for independent contractors.

The state is making loans of up to \$50,000 available through its Illinois Small Business Emergency Loan Fund, but that program is available only to businesses outside Chicago. Its terms resemble those of the Chicago program for the state's other small-business owners.

The Business Invest – Illinois Small Business COVID-19 Relief Program is an impact investment loan program under which the Illinois treasurer's office has made up to \$500 million in deposits available to banks and credit unions throughout the state, at near-zero rates, to assist Illinois small business and non-profits negatively affected by the COVID-19 pandemic. The purpose of this funding is to provide vital economic support to small businesses and non-profits throughout Illinois to help overcome the loss of revenue they are experiencing. This program is administered through the office of the Illinois State Treasurer. It was initially funded in late March with an allocation of \$250 million. That amount has been almost entirely distributed. On April 27, another \$250 million has been set aside for this program.

### **Construction Related Developments**

Pursuant to Executive Order 2020-10, signed by Governor Pritzker on March 20, 2020, non-essential businesses were required to cease all activities. "Essential Infrastructure" is carved out of the order due to the fact that such work is deemed essential. Essential Infrastructure includes a number of items, including, but not limited to, construction, building management and maintenance. In addition, "Critical Trades" are deemed essential; these include, but are not limited to, plumbers, electricians, exterminators, cleaning and janitorial staff and security.

### **Execution of Real Estate Documents and Notary Requirements**

- During the duration of the Gubernatorial Disaster Proclamation related to the outbreak of COVID-19, any act of notarization or witnessing required by Illinois law may be completed remotely via two-way audio-video communication technology, provided that the acts follow specific guidelines set forth in Executive Order 2020-14.

### **Recording of documents**

- Cook County is closed for all in-person real estate document recording; mail and e-recording are permitted.
- DuPage County is closed for all in-person real estate document recording; mail-in and e-recording are permitted.
- McHenry County is open for all in-person real estate document recording; mail-in and e-recording are also permitted.
- Will County is open for all in-person real estate document recording; mail-in and e-recording are also permitted.

	<ul style="list-style-type: none"> <li>• Lake County is open for all in-person real estate document recording; mail-in and e-recording are also permitted.</li> </ul> <p><b>General Real Estate News of Note</b></p> <p>Title companies are essential businesses, along with lenders and appraisers.</p> <p>With respect to real estate taxes, each county in Illinois will independently decide whether to extend the due date for payment of taxes and whether to waive late fees.</p>
<p><b>New York</b></p>	<p><b>Lease Related Developments (namely rent relief)</b></p> <p><a href="#">Legislative Proposals</a></p> <p>Two bills have been introduced in the New York Senate (SB 8125) and New York Assembly (AB 10224) that would waive rent for residential and small business commercial tenants for a 90-day period following the effective date of the act. Landlords of qualifying commercial and residential tenants would be granted mortgage relief. Any tenant whose lease expires during this period would get an automatic renewal at the then current rental rate. Both bills are currently in committee.</p> <p>The New York City Council passed two bills intended to protect renters during the COVID-19 pandemic, INT. No. 1932-A and INT. No. 1914-A.</p> <p>Pursuant to INT. No. 1932-A, a new section 22-1005 has been added to Title 22, Chapter 9 of the Administrative Code of New York (the “<b>Code</b>”) making certain personal guaranties unenforceable. Pursuant to Code Section 22-1005, “a provision in a commercial lease or other rental agreement involving real property located within the city that provides for one or more natural persons who are not the tenant under such agreement to become, upon the occurrence of a default or other event, wholly or partially personally liable for payment of rent, utility expenses or taxes owed by the tenant under such agreement, or fees and charges relating to routine building maintenance owed by the tenant under such agreement, shall not be enforceable against such natural persons” if the following conditions are satisfied:</p> <ul style="list-style-type: none"> <li>• A tenant meets one of the following criteria: <ul style="list-style-type: none"> <li>• The tenant was required to cease serving food or beverage on premises or to cease operations pursuant to Executive Order 202.3;</li> <li>• The tenant was a non-essential retail establishment subject to in-person limitations pursuant to Executive Order 202.6; or</li> <li>• The tenant was required to close to members of the public under Executive Order 202.7.</li> </ul> </li> </ul>

- The default or event causing such person to be wholly or partially personally liable occurred between March 7, 2020 and September 30, 2020.

Because the new conditions apply to provisions “in a commercial lease or other rental agreement,” the new Code section does not, on its face, appear to apply to stand-alone personal guaranties. In addition to potential judicial interpretation issues, it is expected that the new law will be challenged as unconstitutional at both the state and federal levels.

Title 22, Chapter 9, Section 22-902 of the New York City Administrative Code was amended by both INT. No. 1932-A and INT. No. 1914-A. The amendments generally expand prohibited landlord activities that constitute “commercial tenant harassment,” to include: (i) threatening a tenant based on the commercial tenant’s status as a person or business “impacted by COVID-19” (as defined below), or the tenant’s receipt of a rent concession or forbearance for any rent owed during the “COVID-19 Period” (as defined below) and (ii) attempting to enforce personal liability under a guaranty that landlord knows or reasonably should know is not enforceable pursuant to Title 22, Chapter 9, Section 22-1005 (discussed immediately above).

“COVID-19 Period” is defined in the Code as the period beginning March 7, 2020 through the later of (i) the end of the first month that commences after the expiration of the moratorium on enforcement of evictions of any tenant, residential or commercial, set forth in Executive Order 202.8 (as amended), (ii) the end of the first month that commences after the expiration of the moratorium on certain residential evictions set forth in section 4024 of the CARES Act (as amended) or (iii) September 30, 2020, inclusive.

The defined term “impacted by COVID-19” consists of a broad set of provisions whereby a person or business may be determined to have been impacted by the COVID-19 pandemic, including, but not limited to, a person experiencing symptoms of COVID-19 and seeking a medical diagnosis or caring for family or household members diagnosed with COVID-19 or a business that has been subject to seating, occupancy or on premises service limitations as a result of any executive order issued by the governor or mayor during the COVID-19 Period.

## **Eviction Moratoriums**

### [New York State Court Response](#)

Pursuant to a memorandum from the Chief Administrative Judge of the State of New York Unified Court System dated August 12, 2020, the courts have revised their COVID-19 response protocol to accommodate updated procedures for handling eviction matters in New York. The new protocol, AO/160/20, is attached as Exhibit A to the court’s memo.

Although any eviction proceedings commenced on or after March 17, 2020, continue to be suspended, beginning August 13, 2020, any eviction proceedings commenced prior to March 17, 2020 may be resumed subject to certain caveats, discussed below. Any eviction proceedings will be conducted remotely whenever the court determines it is appropriate for the health, safety and convenience of the parties.

- **Commercial and Residential Matters:** Further proceedings may continue to be governed by the suspension of “any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as described in the procedural laws of the state” set forth in Executive Orders 202.8, 202.14, 202.28, 202.38, 202.48 and 202.55.
- **Commercial Matters:** Executive Order 202.28 (discussed in further detail below) remains in effect through September 5, 2020 with respect to commercial tenants.
- **Residential Matters:** Prior to any further action in a residential eviction proceeding commenced prior to March 17, 2020 (regardless of the stage of the eviction process), the court must hold a status or settlement conference to address the effects that COVID-19 has had on the parties and review any special relief under state or federal law to which parties may be entitled. Furthermore, no residential eviction may take place prior to October 1, 2020, or such later date as set forth by law.

#### Executive Orders

All eviction orders were halted for 90 days (i.e., until June 20, 2020) pursuant to Executive Order 202.8 signed by Governor Cuomo on March 20, 2020.

Pursuant to Executive Order 202.28, signed by Governor Cuomo on May 7, 2020, beginning on June 20, 2020 and through August 19, 2020, there shall be no initiation of a proceeding or enforcement action 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 COVID-19.

Pursuant to Executive Order 202.55, signed by Governor Cuomo on August 5, 2020, Executive Order 202.28 was extended for an additional 30 days to September 5, 2020; however, Executive Order 202.55 only extended Executive Order 202.28 with respect to commercial tenants or commercial mortgages, as Executive Order 202.28 has been superseded with respect to residential tenants and mortgages by the Safe Harbor Tenant Act, discussed in further detail below.

Executive Order 202.28 was subsequently extended by Executive Order 202.60 to October 4, 2020.

#### Legislation

The Tenant Safe Harbor Act (the “**Act**”) was passed on June 30, 2020 to supersede Executive Orders 202.8 and 202.28 with respect to residential tenant evictions. The legislation requires that no residential tenant suffering from COVID-19 hardship may be evicted while the state of emergency is continuing as a result of the non-payment of rent accruing or due during such time.

## **Foreclosure Moratoriums**

### [Executive Orders](#)

Refer to the discussion of Executive Orders 202.8 and 202.28 immediately above for additional updates on the foreclosure moratorium.

## **Rent Relief**

### [Executive Orders](#)

Executive Order 202.28 amends Section 238-A.2 of the New York Real Property Law (relating to limitation on fees for residential dwelling units) such that no landlord, lessor, sublessor or grantor may 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 19, 2020. As discussed above, Executive Order 202.28 was extended to October 4, 2020 pursuant to Executive Order 202.60.

## **Loan Related Developments**

### [Executive Orders](#)

Executive Order 202.9 was issued on March 21, 2020.

Executive Order 202.9 generally amended New York Banking Law on a temporary basis to provide that it is an “unsafe and unsound business practice” if “any bank which is subject to the jurisdiction of the [New York 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.”

Furthermore, the New York Department of Financial Services (“**DFS**”) was directed to “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” and to “promulgate emergency regulations to require that the application for such forbearance be made widely available for consumers, and such application shall be granted in all reasonable and prudent circumstances solely for the period of such emergency.” DFS quickly released emergency regulations on March 24, 2020, which addressed the impact of Executive Order 202.9 on consumer mortgage transactions.

Executive Order 202.9, and, effectively, the emergency regulations promulgated by DFS, were discontinued as of July 7, 2020 by Executive Order 202.48, signed by Governor Cuomo on July 6, 2020, as legislation, discussed immediately below, was passed to address mortgage relief.

## Legislation

New Section 9-X of the New York Banking Laws was enacted as of June 17, 2020 pursuant to Senate Bill 8243C (creating the new section) and Senate Bill 8428 (amending the new section). The new law applies to regulated banking organizations and regulated mortgage servicer entities subject to supervision by DFS, but does not apply to 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.

To the extent applicable, banks are required (i) to 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” whose primary residence is in New York for the “covered period,” and (ii) to grant qualified mortgagors forbearance with respect to monthly mortgage payments with respect to any mortgage secured by qualified mortgagor’s primary residence in New York, for a period of 180 days, with the option to extend forbearance for an additional 180 days if the mortgagor demonstrates continued financial hardship. The new law also imposes requirements on the form of such forbearance agreements, including granting qualified mortgagors the right to extend the term of the loan, adjust the timing of forbearance payments, and make other modifications to the loan. These rights, if elected by a qualified mortgagor, cannot result in negative reporting to a credit bureau. Any violation of the new law may be used as a defense in any foreclosure action.

A “qualified mortgagor” means (A) an individual (i) whose primary residence is located in New York and is encumbered by a home loan pursuant to Section 1304(6)(a) of the real property actions and proceedings law, or (ii) whose primary residence is located in New York and is a co-operative unit whose shares are encumbered by any loan otherwise meeting the requirements of a home loan Section 1304(6)(a) of the real property actions and proceedings law; and (B) who demonstrates financial hardship as a result of COVID-19 during the covered period. The “covered period” generally means the period from March 7, 2020 until the date on which the emergency orders related to closing or restricting businesses in certain orders have ceased to apply to the county in which such primary residence is located.

## Construction Related Developments

### Executive Orders

- Pursuant to Executive Order 202.6, signed by Governor Cuomo on March 18, 2020, businesses in the State of New York are required to reduce in-person workforces by 50% and utilize telecommunications to the maximum extent possible; provided, however, that any essential business or entity providing essential services or functions is not subject to the in-person restrictions, and “construction” is included as an essential business.
- Pursuant to Executive Order 202.8, Executive Order 202.6 was modified so that employers are required to reduce the number of employees working at any location by 100%.
- Executive Order 202.6 was further modified by Executive Order 202.13, signed by Governor Cuomo on March 29, 2020. The order clarifies that only certain construction is considered an essential service not subject to the in-person work restrictions.



Furthermore, the order authorizes the Empire State Development Corporation to determine which construction projects will be deemed essential. Lastly, the order provides that all construction projects are required to utilize best practices to avoid transmission of COVID-19.

- Executive Order 202.31, signed by Governor Cuomo on May 14, 2021, states that the restrictions for certain phase one industries, which includes construction, will expire at 12:01 am on May 15, 2020, provided that such businesses must be operated subject to guidance promulgated by the Department of Health and such businesses must be in certain regions that meet the prescribed public health and safety metrics, as determined by the Department of Health, eligible for reopening. To the extent additional regions meet the criteria for reopening after the date of Executive Order 202.31, they will be deemed incorporated into the order and will be permitted to re-open phase one industries.

All regions of the state of New York (including New York City) have entered Phase 1 of reopening. The Department of Health guidance for construction work is discussed in further detail below.

#### Additional Guidance on Essential Construction Work

The Empire State Development Corporation (“**ESD**”) has issued additional guidance (last updated June 29, 2020) interpreting what construction constitutes an “essential business” under Executive Order 202.6, as follows:

- All non-essential construction is limited to only staging activities in regions that are not yet within the Phase 1 reopening plan except emergency construction (e.g. a project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow it to remain undone until it is safe to shut the site).
- Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters. At every site, regardless of whether the construction is essential or emergency non-essential construction, parties must adhere to appropriate protocols. This includes maintaining social distance, including for purposes of elevators/meals/entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments. This will include fines of up to \$10,000 per violation.

Associated General Contractors of New York State has published unofficial guidance from ESD stating that “construction in support of essential businesses is permissible, but only with appropriate social distancing and cleaning/disinfecting precautions. If those cannot be met, the project should be postponed.”

**Department of Health Guidance** <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-reopening-construction-guidance.pdf>

The Department of Health has issued “Interim Guidance for Construction Activities During the COVID-19 Public Health Emergency,” last updated on June 26, 2020, which provides guidelines for minimum requirements for employers based on the “best-known public health practices at the time of Phase 1 of the State’s reopening.” The requirements apply to all construction activities, essential and non-essential, during the ongoing COVID-19 crisis until the practices are rescinded or amended by the State.

The guidance includes a comprehensive list of requirements for employers to implement. A high level summary of those requirements are below:

- Each business or entity must develop a safety plan using the template available at [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS\\_BusinessReopeningSafetyPlanTemplate.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_BusinessReopeningSafetyPlanTemplate.pdf) and post the plan on site.
- Additionally, construction businesses must review the Department of Health Guidelines (summarized below) and affirm compliance with the same.
  - For indoor work, there can be no more than 1 worker within a 250 square foot space, excluding supervisors, without additional PPE measures.
  - Employees must generally maintain at least 6 feet of distance, or wear acceptable face coverings. If the nature of the activities requires a higher degree of PPE, then N95 respirators or other PPE under existing industry standards (including OSHA guidelines) should be worn.
  - Schedules should be staggered for employees to observe social distancing for any gathering.
  - Measures should be taken to reduce interpersonal contact among employees and non-essential visitors should be prohibited.
  - PPE must be supplied for employees, however employees must also be allowed to use their own acceptable face coverings.
  - Hand hygiene stations must be provided and maintained on site in accordance with guidelines.
  - Employers must conduct regular cleaning and disinfecting of the work site in accordance with guidelines.
  - Mandatory daily health screenings must be implemented, which includes daily temperature checks.
  - Local health departments and the Department of Health must be notified immediately upon being informed of any positive COVID-19 test result by a worker at the site.

#### [New York City Guidance](#)

The City of New York has issued additional best practices guidance for social distancing at construction sites amid reopening. This includes maintaining physical and operational distancing to the greatest degree possible, monitoring temperatures, requiring handwashing, use of personal protective equipment (“**PPE**”), use of temporary barriers, and shutting down construction sites where physical distancing cannot be maintained. This guidance would apply in addition to any OSHA guidance.

## Execution of Real Estate Documents and Notary Requirements

### Executive Order

Pursuant to Executive Order 202.7, signed by Governor Cuomo on March 19, 2020, and extended through October 4, 2020 by Executive Order 202.60, any notarial act that is required under New York State law is authorized to be performed utilizing audio-video technology provided the following conditions are met:

- The person seeking the Notary's services, if not personally known to the Notary, must present valid photo ID to the Notary during the video conference, not merely transmit it prior to or after;
- The video conference must allow for direct interaction between the person and the Notary (e.g. no pre-recorded videos of the person signing);
- The person must affirmatively represent that he or she is physically situated in the State of New York;
- The person must transmit by fax or electronic means a legible copy of the signed document directly to the Notary on the same date it was signed;
- The Notary may notarize the transmitted copy of the document and transmit the same back to the person; and
- The Notary may repeat the notarization of the original signed document as of the date of execution provided the Notary receives such original signed document together with the electronically notarized copy within thirty days after the date of execution.

### Additional Guidance

The New York Department of State issued additional guidance on Executive Order 202.7, as follows:

- Notary publics using audio-video technology must continue to follow existing requirements for notarizations that were unaltered by the Executive Order. This includes, but is not limited to, placing the notary's expiration date and county where the notary is commissioned upon the document.
- If the notary and signatory are in different counties, the notary should indicate on the document the county where each person is located.
- Any format of electronic document (including PDF, JPEG, TIFF) may be sent to the notary provided it is legible.
- Following remote notarization, if the notary receives the original document within 30 days, the notary may notarize the document again using the original remote notary date.

	<ul style="list-style-type: none"> <li>• It is considered a best practice for each notary to keep a log of each remote notarization and to note on the document that the notarization is made pursuant to Executive Order 202.7.</li> </ul> <p><b>Recording of Documents</b></p> <p>Electronic recording is generally widely available in the State of New York (electronic recording in New York City is handled through a program known as ACRIS). Although many counties have resumed limited in-person access, some counties, such as Richmond County (Staten Island), remain closed to in person visits. Parties should confirm with the relevant jurisdiction regarding potential service disruptions, including for e-recording.</p> <p><b>General Real Estate News of Note</b></p> <p>None.</p>
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