COVID-19: THE COVID-19 EMERGENCY AND EVICTION FORECLOSURE AND PREVENTION ACT OF 2020

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Real Estate Alert

The COVID-19 pandemic (COVID-19) has caused many New Yorkers to experience financial hardship as they face a surge in unemployment due to COVID-19-related business closures and deal with the resultant difficulties to pay housing expenses including rent and mortgage payments. Beginning at the onset of the pandemic, the New York State government proposed several protective orders in an effort to minimize the financial burdens afflicting New York renters, homeowners, and small landlords and allow, on a temporary basis, New Yorkers impacted by COVID-19 the ability to stay in their homes. Accordingly, New York Governor Andrew Cuomo enacted comprehensive emergency eviction and mortgage foreclosure moratoriums to protect renters and homeowners who would otherwise be at risk of losing their homes due to their inability to pay rent or make mortgage payments. These executive orders temporarily prohibited the filing of eviction proceedings and suspended the enforcement of mortgage foreclosures for residential and commercial mortgages.

In March 2020, in connection with the declaration of COVID-19 as a public health emergency, Governor Cuomo issued a statewide moratorium to halt both evictions for residential and commercial tenants and mortgage foreclosures, which was in effect through 13 June 2020. This first legislation was subsequently followed by the enactment of the Tenant Safe Harbor Act on 30 June 2020, which provided, among other things, a prohibition against residential evictions for tenants who suffered financial hardship due to COVID-19 and permitted money judgments for nonpayment of rent under certain circumstances. As the pandemic continued to plague the nation, the Tenant Safe Harbor Act was extended and expanded through 1 January 2021 to afford additional protections to residential tenants from eviction. The executive orders also provided financial assistance to certain residential renters and landlords and prohibited landlords from charging fees or other penalties for late rent payments.

Please click here to access the complete list of New York State emergency eviction and foreclosure policies.

THE COVID-19 EMERGENCY AND EVICTION FORECLOSURE AND PREVENTION ACT OF 2020

In response to the continuing crisis, on 28 December 2020, Governor Cuomo signed into law the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020[1] (the Act). The Act further suspends residential evictions and mortgage foreclosure proceedings until 1 May 2021 provided that tenants or homeowners submit to their landlord or lender a “Hardship Declaration” statement (as defined below) that explains their financial difficulties. The Act also provides protections against credit discrimination and negative credit reporting and extends the Senior Citizens' Homeowner Exemption and Disabled Homeowner Exemption through 2021. The Act focuses on the following areas:

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- **Residential Evictions and Foreclosure Proceedings**
  The Act prohibits new residential evictions and completion of pending residential evictions until 1 May 2021 for tenants who have endured COVID-19-related hardships. To prevent an eviction, tenants must submit a "Hardship Declaration" document to their landlord explaining the source of the financial hardship. Landlords are also required to deliver a sample of the form of Hardship Declaration to tenants when making demands for rent or sending other notices pursuant to their leases in order to provide notice to tenants of the option to claim hardship. The Hardship Declaration includes options for tenants to indicate whether they have experienced a significant loss of household income or increase in out-of-pocket costs due to COVID-19; whether childcare activities or needing to care for an elderly, sick, or disabled family member has significantly impacted household income or increased necessary out-of-pocket expenses; or whether other circumstances related to COVID-19 have negatively impacted the tenant's ability to maintain meaningful employment, among other reasons. If a tenant provides a Hardship Declaration for a pending eviction proceeding in which an eviction warrant has not yet been issued, including an eviction proceeding filed on or before 7 March 2020, then such proceeding will be stayed until at least 1 May 2021. Pursuant to the Act, landlords maintain the right to evict tenants (i) who infringe on the use and enjoyment of other tenants or cause substantial safety hazards and (ii) who do not submit Hardship Declarations.

  The Act also temporarily halts residential mortgage foreclosure proceedings until 1 May 2021. Homeowners and small landlords who own fewer than 10 residential dwelling units may file similar Hardship Declarations with their mortgage lender, other foreclosing party, or the relevant court in order to qualify for the benefit of the mortgage foreclosure moratorium in connection with COVID-19 related financial hardships.

- **Tax Lien Sales**
  The Act also prevents local governments from engaging in tax lien sales or tax lien foreclosures relating to residential properties (including shares in a residential co-op) until at least 1 May 2021. However, local and municipal tax payments are still due and payable.

- **Credit Discrimination and Negative Credit Reporting**
  The Act expressly prohibits lending institutions from discriminating against a property owner seeking credit because the property owner has been granted a stay of mortgage foreclosure proceedings, tax foreclosure proceedings, or a tax lien sale and further prohibits mortgage lenders from negatively reporting such acts to any credit reporting agency. Additionally, institutions are prohibited from discriminating against a property owner because the owner is currently in arrears and has filed a Hardship Declaration with the lender.

- **Senior Citizens' Homeowner Exemption (SCHE) and Disabled Homeowner Exemption (DHE)**
  The Act requires local governments to carry over SCHE and DHE exemptions, relating to persons age 65 and older and for certain persons with disabilities and limited income, from the 2020 assessment roll to the 2021 assessment roll at the same levels until 1 May 2021. This requirement provides renewal applications for persons who may be eligible for a greater exemption in 2021. Additionally, local governments have the option to establish procedures by which assessors may require renewal applications from recipients who the assessors believe may no longer be eligible for an exemption in

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2021 due to a change in his or her primary residence, the addition of another owner to the property deed, a transfer of the property to a new owner, etc. Recipients of the exemption are not required to file renewal applications in person.

Please click here to access the full text of the Act.

CONCLUSION

In short, the new legislation aids in preventing a surge in rental property evictions and residential foreclosures that could lead to further deterioration of New York's economy and increase the difficulties associated with managing the COVID-19 public health crisis from a housing perspective. However, opponents of the Act, including the Rent Stabilization Association, New York's largest association of landlords, has expressed concerns that a blanket eviction ban without requiring demonstrable proof of economic hardship may encourage working tenants to stop paying rent, lead to an increase in bankruptcies, and potentially damage New York's affordable housing infrastructure. Further, opponents believe the eviction moratorium serves to simply “kick the can down the road,”[2] supplying a temporary solution to the larger problem of unreasonably high housing costs in New York. From a lending perspective, the temporary ban on evictions may lead to an impairment of landlords' and property owners' ability to satisfy their debt service requirements as tenants forego rent payments. The ultimate impact of this chain of events may contribute toward the further breakdown of an already-unstable commercial real-estate market.

FOOTNOTES

[1] New York State Senate Bill S.9114/A.11181

[2] Jacklyn Diaz, *New York Approves Eviction Moratorium Until May*, NPR (Dec. 29, 2020), click here.

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