

Real Estate Law: New laws covering residential real estate and the COVID-19 emergency



By **JOHN A. ANDERSON**

During the first few months of the COVID-19 emergency, the New York State government responded to matters involving residential leases and mortgages primarily through Executive Orders issued by the governor. Notable examples include:

(i) Executive Order 202.8 issued on March 20, which barred eviction actions until June 18, 2020; (ii) Executive Order 202.9 issued on March 21, which required banks regulated by the state to grant mortgage forbearances to borrowers experiencing financial hardship; and (iii) Executive Order 202.28 issued on May 7, which extended the eviction moratorium until August 19, 2020 for tenants facing financial hardship, allowed tenants facing financial hardship to apply security deposits to cover past due rent, and waived late fees for the late payment of rent. A recent decision of the U.S. District Court for the Southern District of New York (*Elmsford Apartment Associates LLC v. Cuomo*) upheld these Executive Orders.

While the governor has been issuing Executive Orders to address this crisis, many proposed bills involving residential real estate matters have also been introduced in the New York Assembly and Senate and have been working their way through the legislative process. Three of these bills recently made their way to the governor's desk.

The first is Chapter 112 — An Act to Amend the Banking Law in Relation to the Forbearance of Residential Mortgage Pay-

ments — which became law on June 17. This Act provides relief to New York residents whose principal dwelling is encumbered by mortgage loans from, or serviced by, any New York regulated banking organization or mortgage servicer. The Act does not apply to mortgage loans made, insured or securitized by the federal government (including Ginnie Mae loans) or the federal home loan bank. For qualifying mortgage loans, New York regulated financial institutions are required to make forbearance applications widely available and to grant a 180-day forbearance (with the option to extend for an additional 180 days) to individual borrowers who can demonstrate financial hardship and who are in arrears, have applied for mitigation or are on an existing trial period plan.

The Act further provides that, with respect to any mortgage forbearance granted under the Act, Executive Order 202.9 or any other law during the COVID-19 emergency, the borrower has the right to (1) extend the loan term for the length of the forbearance with interest and late fees being waived during the forbearance, (2) pay the arrears on a monthly basis over the remaining loan term without penalties or late fees, or (3) in some cases, treat the arrears as a non-interest bearing balloon payment due on maturity of the loan. The Act also prohibits lenders from reporting negatively to credit reporting agencies for borrowers who take advantage of the Act.

The second is Chapter 125 — An Act in Relation to Enacting the “Emergency Rent Relief Act of 2020” — which became law on June 17. This Act authorizes the use of up to \$100 million made available to New York under the federal CARES Act in order to implement a

rent relief program for households impacted by the COVID-19 crisis. This program is available to households with incomes below 80% of the median household income, with rent that is more than 30% of the household's monthly income, and who have lost income from April 1, 2020 through July 31, 2020. Qualifying households are entitled to receive a subsidy in the form of a voucher paid directly to their landlords equal to the amount by which their rent burden has increased during that three-month period as the result of their income decline.

The third is Chapter 127 — An Act in Relation to Prohibiting the Eviction of Residential Tenants who have Suffered Financial Hardship during the COVID-19 Covered Period — which became law on June 30. This Act extends the existing residential eviction moratorium in each county until all current and future Executive Orders restricting business and places of public accommodation no longer apply in that county. Under this Act, while landlords may still recover money judgments against tenants, they are precluded from evicting residential tenants for the non-payment of rent who have suffered financial hardship during the moratorium period.

The impacts of the coronavirus pandemic have certainly hit home in the real estate industry. We will continue to monitor how those impacts continue to take shape in additional real estate laws.

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