



COVID-19 moratorium on commercial evictions and foreclosures expected to continue - by John Bues

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***Editors note: Governor Cuomo signed the COVID-19 Emergency Protect Our Small Businesses Act of 2021 into law on March 9, 2021.

It has been nearly a year since governor Andrew Cuomo began promulgating and extending a series of Executive Orders prohibiting (i) the commencement of new commercial foreclosure and eviction actions, and (ii) staying the prosecution of existing ones.

Presently, New York is in the process of enacting new legislation placing a further moratorium on foreclosures and evictions of small businesses. The legislation, known as the COVID-19 Emergency Protect Our Small Businesses Act of 2021 (the Act) passed the New York State Senate on January 6th, 2021 and the New York State Assembly on January 26th, 2021, and is expected to be signed into law by governor Cuomo.

The practical effect of the Act places a moratorium on commercial evictions and foreclosure actions relating to small commercial properties, independently owned and operated, that employ 50 or fewer people. In addition, for purposes of determining whether a commercial borrower is afforded the protection under the Act, such borrower must own ten or fewer commercial units. The ten or fewer commercial units may be in more than one property or building, as long as the total aggregate number of the ten units are currently occupied or are available for rent.

The Act imposes a moratorium on commercial eviction and foreclosure actions at least until May 1st, 2021, provided the tenant or borrower signs and delivers to its landlord or lender a hardship declaration stating that the tenant or borrower is unable to pay its rent or mortgage due to one or more of the following:

Significant loss of revenue during the COVID-19 pandemic

Significant increase in necessary expenses related to providing personal protective equipment to employees or purchasing and installing other protective equipment to prevent the transmission of COVID-19 within the business.

Moving expenses and difficulty in securing an alternative commercial property make it a hardship for the business to relocate to another property during the COVID-19 pandemic.

With regard to borrowers only, one or more of the business's tenants have defaulted on a significant amount of their rent payments since March 1st, 2020.

Lenders and landlords are required to provide delinquent borrowers and tenants with the hardship declaration prior to commencing a suit.

In addition, all pending eviction and foreclosure actions commenced prior to the enactment of the Act are stayed for at least 60 days to allow tenants and borrowers the opportunity to submit their hardship declaration. Upon submission of a hardship affidavit, the pending actions will be automatically stayed until at least May 1st, 2021.

Furthermore, the protections under the Act do not provide for the forgiveness of any underlying debt or rent owed by small businesses, but simply serve as a moratorium against commencing new actions to foreclose and evict and to stay any pending actions seeking to foreclose and evict those small businesses. As such, small business borrowers and tenants must still comply with all other terms of their loan or lease and continue to be liable for all sums due, including rent, mortgage payments, fees, penalties and interest during the term of the moratorium.

In conclusion, commercial lenders' and landlords' remedies and enforcement rights are expected to face continued moratoriums for the foreseeable future.

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