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COVID-19 Update: Governor Cuomo Extends Residential Eviction and Foreclosure Moratorium

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Since declaring a State of Emergency on March 7, 2020 in response to the COVID-19 pandemic, New York Governor Andrew Cuomo has issued a number of Executive Orders providing protections for both commercial and residential tenants and mortgagors. On March 20, 2020, Governor Cuomo issued Executive Order 202.8 prohibiting the enforcement of an eviction of any residential or commercial tenant or a foreclosure of any residential or commercial property for a period of ninety days. Most recently, Executive Order 202.66 extended the residential moratorium through January 1, 2021, and Executive Order 202.81 extended the commercial moratorium through January 31, 2021.

On December 28, 2020, Governor Cuomo signed the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (the "Act"). The Act seeks to provide additional relief to residential tenants and property owners impacted by the COVID-19 pandemic and extends the time periods of the stays granted pursuant to Executive Order 202.66 through May 1, 2021. Although the Act does not address the moratorium on commercial evictions and foreclosures, Governor Cuomo announced on January 8, 2021 that he will propose legislation codifying and extending the moratorium on commercial evictions through May 1, 2021, as well.

The Act provides that any eviction proceeding pending on December 28, 2020, or commenced within thirty days thereof, will be stayed for at least sixty days. If there is no pending eviction proceeding, and a landlord wants to pursue an eviction, the landlord must provide a form (the "Hardship Declaration") to the tenant, which gives notice to the tenant that if (a) the tenant is experiencing financial hardship due to COVID-19 or (b) moving would pose a significant health risk because of a high-risk household member, then the tenant cannot be evicted until at least May 1, 2021 for nonpayment of rent or for holding over. The landlord also must provide the tenant a mailing address and e-mail address to which the tenant can return the Hardship Declaration. If the tenant completes, signs and delivers the Hardship Declaration to the landlord indicating that one of the foregoing circumstances is applicable, and specifying which circumstance is applicable, then the tenant cannot be evicted until at least May 1, 2021. A court cannot accept a filing for an eviction proceeding unless the landlord files (i) an affidavit of service demonstrating the manner in which the landlord served a copy of the Hardship Declaration on the tenant, and (ii) an affidavit attesting that either (a) at the time of filing, the landlord did not receive a Hardship Declaration from the tenant, or (b) the tenant returned a Hardship Declaration, but the tenant is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or causes a substantial safety hazard to others. In either case, the protection from eviction would not apply to the tenant.

The Act provides a similar moratorium on foreclosure proceedings until May 1, 2021 for mortgages relating to residential real property, provided that the owner or mortgagor requesting relief is a natural person who owns ten or fewer dwelling units (which may be in more than one property or building as long as the total aggregate number of ten or fewer units includes the primary residence of such natural person requesting relief and the remaining units are rental units). Additionally, if a real property owner submits a Hardship Declaration to any entity or person that conducts tax foreclosures or tax lien sales, then such submission will act as a temporary stay on tax foreclosure actions and tax lien sales until May 1, 2021. While the stay is in effect, no other action or proceeding may be commenced to recover any part of the delinquent taxes.

The Act also prohibits credit discrimination against residential real property owners as a result of such owner being granted a stay of mortgage foreclosure proceedings, tax foreclosure proceedings or tax lien sales, or as a result of

such owner filing a Hardship Declaration with a lender. The prohibition extends to negative credit reporting, and both prohibitions will expire May 1, 2021. Finally, the Act requires local governments to extend the Senior Citizen's Homeowner Exemption and Disabled Homeowner Exemption from the 2020 assessments to the 2021 assessments. The local assessor must make available renewal applications for eligible recipients, and the local government may adopt laws or resolutions that include procedures that govern the filing of renewal applications.