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COVID-19 Update: Governor Cuomo Extends Eviction and Foreclosure Moratorium and Allows Tenants to Apply Security Deposits to the Payment of Rent

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On May 7, 2020, New York State Governor Andrew Cuomo issued **Executive Order 202.28** (the "New Order") to provide additional relief to renters impacted by the COVID-19 pandemic and extended the time periods for certain other protections that had been previously granted to renters and property owners pursuant to **Executive Order 202.8** (the "March 20 Order").

The March 20 Order provided for a moratorium on evictions of residential and commercial tenants and foreclosures of residential and commercial properties for 90 days. The New Order extends the moratorium on evictions and foreclosures for an additional 60 days beginning on June 20, 2020, if the basis of the eviction or foreclosure is the nonpayment of rent or the mortgage, as applicable, and the tenant or owner, as applicable, is eligible for unemployment insurance or benefits under state or federal law or is otherwise facing financial hardship due to the COVID-19 pandemic. This is a slight modification from the March 20 Order, which contained a flat prohibition on the enforcement of evictions and foreclosures regardless of the basis, employment state or impact of COVID-19.

The New Order also allows landlords and tenants of residential properties, upon the consent of the tenant, to enter in an agreement by which a security deposit, and any accrued interest thereon, may be used to pay rent. The New Order requires that landlords provide such relief to tenants who request such relief and are eligible for unemployment insurance or benefits under state or federal law or are otherwise facing financial hardship due to the COVID-19 pandemic. While the New Order permits security deposits to be applied to rent, tenants are not ultimately relieved from the obligation to maintain security deposits. Any security deposit that is used to pay rent is required to be replenished by the tenant by paying 1/12 of the amount of the security deposit used as rent each month beginning no later than 90 days from the date the security deposit is used. In lieu of the monthly security deposit replenishment, the tenant may, at their option, retain insurance that provides relief for the landlord.

Additionally, pursuant to the New Order, residential landlords may not demand or be entitled to any payment, fee or charge for late payment of rent occurring between March 20, 2020 and August 20, 2020.