

Clients & Friends Memo

COVID-19 Update: Mayor DeBlasio Signs Legislation Intended to Limit the Enforcement of Personal Liability Provisions in Commercial Leases in New York City

May 29, 2020

On May 26, 2020, New York City Mayor Bill DeBlasio signed into effect a law (the “New Law”) that amends the administrative code of New York City¹ to prohibit the enforcement of provisions in a commercial lease or other rental agreement that provide for personal liability of a natural person who is not the tenant (i.e., a guarantor) for certain charges under the agreement in cases where the tenant has been impacted by the COVID-19 pandemic. The New Law goes beyond previous tenant protections provided for in executive orders issued by Governor Andrew Cuomo which have limited late charges and temporarily halted evictions.

The New Law seeks to provide relief to individual guarantors of commercial leases who would become personally liable as a result of a default by the tenant that has been impacted by the COVID-19 pandemic in the payment of rent or other charges under the lease. It does so by making any provision in a commercial lease or other rental agreement that provides for a natural person that is not the tenant under the agreement to become liable for rent and/or other charges unenforceable in certain circumstances. In an effort to tailor the restrictions to the time period during the COVID-19 pandemic, small businesses and particular impacted industries, guarantors are only relieved of liability if (1) they are a “natural person” and not a business entity, (2) the default giving rise to the liability occurred between March 7, 2020 and September 30, 2020, and (3) one of the following conditions is satisfied:

(a) The tenant was required to stop serving customers food or beverage for on-site consumption or otherwise cease operation pursuant to Executive Order 202.3 issued by Governor Cuomo on March 16, 2020². This Executive Order applied to bars, restaurants, gaming operations, gyms, fitness centers, and movie theaters;

¹ Instrument Number 1932-2020, available [here](#).

² Executive Order 202.3, available [here](#).

(b) The tenant was a non-essential retail establishment subject to in-person limitations under guidance issued by the New York State Department of Economic Development pursuant to Executive Order 202.6 issued by Governor Cuomo on March 18, 2020³. This Executive Order restricted the workforce of non-essential businesses to 50% and provided a non-exclusive list of essential retail including grocery stores and pharmacies and any other business that is deemed essential by an opinion from the Empire State Development Corporation after a request therefor; or

(c) The tenant was required to close to members of the public under Executive Order 202.7 issued by Governor Cuomo on March 19, 2020⁴. This Executive Order applied to barbershops, hair salons, tattoo or piercing parlors, and related personal care services.

The New Law also states that attempts to enforce a personal liability provision that a landlord knows or should know is not enforceable constitutes commercial tenant harassment.

One important item to note as landlords, tenants and lenders work to understand the implications of the New Law in the COVID-19 impacted landscape of commercial leasing in New York is that while most lease guaranties are separate documents that are neither a commercial lease or other rental agreement, the New Law only covers personal liability provisions in a “commercial lease or other rental agreement” which, on its face, would seem to not apply to most lease guaranties. This does not seem to be the intent of the New Law, but may lead to confusion and potential litigation over whether or not a separate lease guaranty is enforceable or not, even if the other conditions are satisfied.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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³ Executive Order 202.6, available [here](#).

⁴ Executive Order 202.7, available [here](#).