

Executive Order 202.8 and 202.9: 90 Day Suspension of Mortgage Payments; Moratorium on Evictions and Foreclosures

On March 19, 2020, New York Governor Andrew Cuomo addressed the need to provide financial relief to New Yorkers suffering as a result of the COVID-19 pandemic. One issue was the plan to suspend mortgage payments for 90 days. Following the press conference, the Department of Financial Services (the Department) issued guidance with respect to Governor Cuomo's comments.

Most notably, the guidance states that the Department is "urging" lenders to provide relief "to those who can demonstrate they are not able to make timely payments, including taking reasonable and prudent actions, and subject to the requirements of any related guarantees or insurance policies." Thus, after the guidance was issued, many were left wondering whether their lenders would follow the recommendations of the Department which did not appear to be mandatory. Those recommendations were as follows:

- Forbearing mortgage payments for 90 days from their due dates;
- Refraining from reporting late payments to credit rating agencies for 90 days;
- Offering mortgagors an additional 90-day grace period to complete trial loan modifications, and ensuring that late payments during the COVID-19 pandemic do not affect their ability to obtain permanent loan modifications;
- Waiving late payment fees and any online payment fees for a period of 90 days;
- Postponing foreclosures and evictions for 90 days; and
- Ensuring that mortgagors do not experience a disruption of service if the mortgage servicer closes its office, including making available other avenues for mortgagors to continue to manage their accounts and to make inquiries; and
- Proactively reaching out to mortgagors via app announcements, text, email or otherwise to explain the above-listed assistance being offered to mortgagors.

On March 21, 2020, Governor Cuomo issued Executive Order 202.9, which modified Section 39 of the Banking Law by expressly stating that it shall be deemed an unsafe and unsound business practice for any bank, subject to the Department's jurisdiction, to not grant forbearance to any person or business who has a financial hardship as a result of the pandemic, for a period of 90 days. The Order states that the Superintendent of the Department must ensure under "reasonable and prudent circumstances that any licensed or regulated entities provide to any consumer in the State of New York an opportunity for a forbearance of payments for a mortgage for any person or entity facing a financial hardship due to the COVID-19 pandemic." The Superintendent will be promulgating emergency regulations to ensure that the forbearance application be made widely available for consumers, and that the application be granted in "all reasonable and prudent circumstances." It remains to be seen how "financial hardship" will be defined and interpreted, but we expect further guidance going forward.

While this Executive Order does not address all the items set forth in the guidance issued by Department or all that was discussed in Governor Cuomo's press conference on March 19, 2020, it does address that forbearance of mortgage payments is required and is not discretionary for licensed or regulated entities.

Executive Order 202.9 follows Executive Order 202.8 signed by Governor Cuomo on March 20, 2020, which, amongst other things, placed a stay on all residential and commercial evictions and foreclosures for 90 days. Accordingly, there may be no enforcement of either an eviction of any tenant (residential or commercial), or a foreclosure of any residential or commercial property for a period of 90 days. This Order follows the New York State Unified Court System's suspension of all nonessential court functions until further notice which became effective earlier this week. All evictions proceedings are stayed, and no eviction orders can be signed or served. In addition, foreclosure proceedings are stayed, and no foreclosure auctions can be held or scheduled.

Lastly, these Executive Orders and changes to New York State Court protocol follow an announcement of the United States Department of Housing and Urban Development last week authorizing the Federal Housing Administration to put a moratorium on foreclosures for the next two months for single-family homeowners unable to pay FHA-backed mortgages. A 60-day moratorium was also placed on evictions of persons from properties encumbered with FHA-insured single-family mortgages.

If you have any questions about this memo, please contact any of the [attorneys](#) in the [Property Practice Group](#), or the attorney in the firm with whom you are regularly in contact.



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