

VALUED CLIENT:

I write to you from RAS Boriskin, LLC in New York to share a mortgage foreclosure and eviction update.

Last night, Governor Cuomo signed **Executive Order 202.48**, a copy of which is attached. In a step forward for New York mortgage foreclosures, by and through its terms, the Executive Order lifts the suspension against residential foreclosures. As such, mortgage servicers are now permitted to proceed in New York with foreclosure matters, subject to investor restrictions or other holds. Specifically, Executive Order 202.48 provides that the restrictions on foreclosures and evictions "is continued only insofar as it applies to a commercial tenant or commercial mortgagor, as it has been superseded by legislation for a residential tenant, and residential mortgagor."

The superseding legislation cited is Chapters 112, 126 and 127 of the Laws of 2020. Chapters 112 and 126 of the Laws of 220 refer to S8243C and S8428 which enacted the new Banking Law 9-x forbearance requirements for borrowers financially impacted by COVID-19. A copy of our NY blast outlining the COVID-19 forbearance requirements established by Banking Law 9-x is attached for your ease and convenience.

Chapter 127 of the laws of 2020 refers to a new session law which bars courts from issuing a judgment of possession or warrant of eviction for the non-payment of rent which becomes due while the COVID-19 pandemic restrictions remain in place for the county in which the property is located. Notably, most post-foreclosure evictions in New York are considered holdover evictions and would not be prohibited under the new law. Attached for your reference is a copy of Chapter 127 of the Laws of 2020.

In light of the foregoing, Executive Order 202.48 permits foreclosure plaintiffs to proceed, subject to investor restrictions, in the following manner:

- We can proceed to first legal on conventional loans, and with respect to GSE/FHA/VA loans we can proceed to first legal on vacant and abandoned properties.
- We can proceed with prosecuting pending foreclosure actions in accordance with investor guidelines.
- We can proceed with all foreclosure milestones, including service and judgment, in accordance with investor guidelines.
- We can proceed with mediation in accordance with investor guidelines, subject to court scheduling and OCA AO/131/20.
- We can proceed to foreclosure sale in accordance with investor guidelines, but only after the Courts have established a process for conducting public auctions in light of the restrictions on public gatherings.
- We can proceed with serving notices to quit in accordance with investor guidelines.

Practical Considerations:

- Previously, we updated all of our foreclosure templates to reflect compliance with S8428 and the AO/131/20 affirmation requirement.
- For pre-first legal loans where an SOR was previously executed and first legal has not yet been filed, <u>we will need</u> additional confirmation of compliance with Banking Law 9-x from our clients to proceed forward. To the extent that a client has files impacted in this manner, we will be in touch to address your respective portfolios.
- Going forward, on first legal loans, our SOR/OCAs will require compliance with Banking Law 9-x. As such, we recommend enhancing your SOR validation process to reflect review and compliance with this condition precedent. If you would like to discuss your approach to establishing compliance, please feel free to reach out to us.
- Although EO 202.48 permits us to move forward with foreclosure sales, there remains logistical challenges inherent with in-person foreclosure auctions due to the ongoing limitations on public gatherings statewide. The courts will need to devise an appropriate social distancing plan in order to comply with COVID-19 restrictions. I have already reached out to Office of Court Administration on this point.
- With Governor Cuomo's EO 202.48 superseding AO/131/20, we anticipate another Administrative Order will be forthcoming in the near future to address court filings, prior Administrative Orders and expanded motion practice, foreclosure auctions, rescheduling of sales, and possibly payment to referees claiming an entitlement to fees related to Covid-19 related sale cancellations. We will of course keep you updated as we received further guidance from the Office of Court Administration.

If you would like to discuss this further, please feel free to reach out.

Thanks,

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CHAPTER 127

AN ACT in relation to prohibiting the eviction of residential tenants who have suffered financial hardship during the COVID-19 covered period

Became a law June 30, 2020, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. For the purposes of this act, "COVID-19 covered period" means March 7, 2020 until the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14, as extended by Executive Orders 202.28 and 202.31 and as further extended by any future Executive Order, issued in response to the COVID-19 pandemic continue to apply in the county of the tenant's or lawful occupant's residence.

- § 2. Notwithstanding any provision of law to the contrary:
- 1. No court shall issue a warrant of eviction or judgment of possession against a residential tenant or other lawful occupant that has suffered a financial hardship during the COVID-19 covered period for the non-payment of rent that accrues or becomes due during the COVID-19 covered period.
- 2. (a) A tenant or lawful occupant may raise financial hardship during the COVID-19 covered period as a defense in a summary proceeding under article 7 of the real property actions and proceedings law.
- (b) In determining whether a tenant or lawful occupant suffered a financial hardship during the COVID-19 covered period, the court shall consider, among other relevant factors:
- (i) the tenant's or lawful occupant's income prior to the COVID-19 covered period;
- (ii) the tenant's or lawful occupant's income during the COVID-19 covered period;
 - (iii) the tenant's or lawful occupant's liquid assets; and
- (iv) the tenant's or lawful occupant's eligibility for and receipt of cash assistance, supplemental nutrition assistance program, supplemental security income, the New York State disability program, the home energy assistance program, or unemployment insurance or benefits under state or federal law.
- 3. This act shall not prohibit any court from awarding a judgment for the rent due and owing to a successful petitioner in a summary proceeding under article 7 of the real property actions and proceedings law.
 - § 3. This act shall take effect immediately.

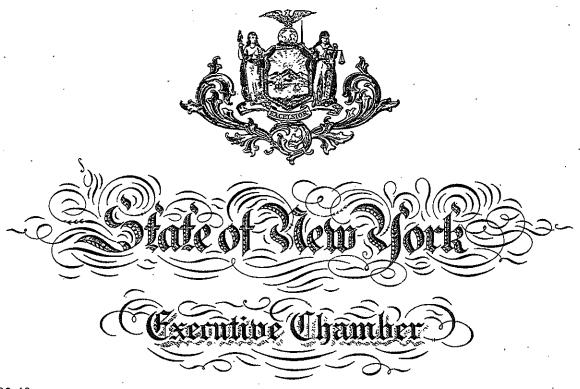
EXPLANATION--Matter in italics is new; matter in brackets [—] is old law to be omitted.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS <u>Temporary President of the Senate</u> <u>Speaker of the Assembly</u>

CARL E. HEASTIE



No. 202.48

EXECUTIVE ORDER

CONTINUING TEMPORARY SUSPENSION AND MODIFICATION OF LAWS RELATING TO THE DISASTER EMERGENCY

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.14, as continued and contained in Executive Order 202.27, 202.28, , and 202.38, for another thirty days through August 5, 2020, except the following:

- The suspension or modification of the following statutes and regulations, and the following directives, are not continued, and such statutes, codes, and regulations are in full force and effect as of July 7, 2020:
 - o The suspension of Education law section 3604(7), and any associated directives, which allowed for the Commissioner of Education to reduce instructional days, as such suspensions and directives have been superseded by statute, contained in Chapter 107 of the Laws of 2020;
 - The suspension of Section 33.17 of the Mental Hygiene Law and associated regulations to the extent necessary to permit providers to utilize staff members transport individuals receiving services from the Office of Mental Health or a program or provider under the jurisdiction of the Office of Mental Health during the emergency;
 - O The suspensions of sections 2800(1)(a) and (2)(a); 2801(1) and (2); 2802(1) and (2); and 2824(2) of the Public Authorities Law, to the extent consistent and necessary to allow the director of the Authorities Budget Office to disregard such deadlines due to a failure by a state or local authority to meet the requirements proscribed within these sections during the period when a properly executed declaration of a state of emergency has been issued, are continued only insofar as they allow a state or local authority a sixty day extension from the original statutory due date for such reports;
 - Section 390-b of the Social Services Law and regulations at sections 413.4 and 415.15 of Title 18 of the NYCRR;
 - o Subdivision 8 of section 8-407 of the Election Law;

- o The suspension of Criminal Procedure Law to the extent it requires a personal appearance of the defendant, and there is consent, in any jurisdiction where the Court has been authorized to commence in-person appearances by the Chief Administrative Judge; provided further that the suspension or modification of the following provisions of law are continued:
 - Section 150.40 of the Criminal Procedure Law, is hereby modified to provide that the 20-day timeframe for the return date for a desk appearance ticket is extended to 90 days from receiving the appearance ticket;
 - Section 190.80 of the Criminal Procedure Law, is hereby modified to provide that the 45-day time limit to present a matter to the grand jury following a preliminary hearing or waiver continues to be suspended and is tolled for an additional 30 days;
 - Section 30.30 of the Criminal Procedure Law, is hereby modified to require that speedy trial time limitations remain suspended until such time as petit criminal juries are reconvened or thirty days, whichever is later;
 - Article 195 of the Criminal Procedure Law, is hereby suspended to the extent that it would prohibit the use of electronic appearances for certain pleas, provided that the court make a full and explicit inquiry into the waiver and voluntariness thereof;
 - Sections 190.45 and 190.50 of the Criminal Procedure Law, are hereby modified to the extent necessary to allow an incarcerated defendant to appear virtually with his or her counsel before the grand jury to waive immunity and testify in his or her own defense, provided the defendant elects to do so;
 - The suspension of Section 180.80 and 190.80 of the Criminal Procedure Law, as modified by Executive Order 202.28, is hereby continued for a period not to exceed thirty days in any jurisdiction where there is not a grand jury empaneled; and when a new grand jury is empaneled to hear criminal cases, then 180.80 and 190.80 of the criminal procedure law shall no longer be suspended beginning one week after such grand jury is empaneled;
 - The suspension of Sections 180.60 and 245.70 of the Criminal Procedure Law, as modified by Executive Order 202.28, which allowed protective orders to be utilized at preliminary hearings, is hereby continued for a period of thirty days; and
 - The suspension of Sections 182.20, in addition to the modification contained in Executive Order 202.28 of section 182.30 of the Criminal Procedure Law is hereby extended for a period of thirty days, to the extent that it would prohibit the use of electronic appearances for felony pleas, or electronic appearances for preliminary hearings or sentencing;
- O Business Corporation law sections 602, 605, and 708, as such suspensions have been superseded by statute, as contained in Chapter 122 of the Laws of 2020;
- o Banking Law Section 39 (2), as such suspension has been superseded by statute, as contained in Chapters 112 and 126 of the Laws of 2020, as well as the directives contained in Executive Order 202.9;
- o Insurance Law and Banking Law provisions suspended by virtue of Executive Order 202.13, which coincide with the expiration of the Superintendent's emergency regulations;
- o Subdivision (28) of Section 171 of the Tax Law, to the extent that the Commissioner has extended any filing deadline;
- o Sections 3216(d)(1)(c) and 4306 (g) of the Insurance Law, and any associated regulatory authority provided by directive in Executive Order 202.14, as the associated emergency regulations are no longer in effect;
- o The directive contained in Executive Order 202.28, as extended, that prohibited initiation of a proceeding or enforcement of either an eviction of any residential or commercial tenant, for nonpayment of rent or a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, is continued only insofar as it applies to a commercial tenant or commercial mortgagor, as it has been superseded by legislation for a residential tenant, and residential mortgagor, in Chapters 112, 126, and 127 of the Laws of 2020; and
- o The directive contained in Executive Order 202.10 related to restrictions, as amended by Executive Order 202.11, related dispensing hydroxychloroquine or chloroquine, as recent findings and the U.S. Food & Drug Administration's revocation of the emergency use authorization has alleviated supply shortages for permitted FDA uses of these medications.
- The directives contained in Executive Order 202.3, that closed video lottery gaming or casino gaming, gym, fitness center or classes, and movie theaters, and the directives contained in Executive Order 202.5 that closed the indoor common portions of retail shopping malls, and all places of public amusement, whether indoors or outdoors, as amended, are hereby modified to provide that such directives remain in effect only until such time as a future Executive Order opening them is issued.

IN ADDITION, I hereby suspend or modify for thirty days through August 5, 2020:

• the provisions of Articles 11-A and 11-B of the State Finance Law, and any regulations authorized thereunder, to the extent necessary to respond to the direct and indirect economic, financial, and social effects of the COVID-19 pandemic.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives for the period from the date of this Executive Order through August 5, 2020:

• The directive contained in Executive Order 202.41, that discontinued the reductions and restrictions on in-person workforce at non-essential businesses or other entities in Phase Three industries or entities, as determined by the Department of Health, in eligible regions, is hereby modified only to the extent that indoor food services and dining continue to be prohibited in New York City.



BY THE GOVERNOR

Secretary to the Governor

GIVEN under my hand and the Privy Seal of the

State in the City of Albany this sixth

day of July in the year two thousand

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VALUED CLIENTS:

We write to you from RAS Boriskin, LLC in New York to advise that Governor Cuomo signed S8243C and S8428 into law. This legislation, effective immediately, provides mortgage forbearance relief to borrowers of conventional home loans. Moreover, we are providing updated guidance on post holdover evictions. An analysis of the legislation and eviction guidance are attached for your review together with the bills and court guidance.

- S8243C: On June 17, 2020 Governor Cuomo signed S8243C into law. As I shared in our June 3, 2020 New York
 Blast, this law, effective immediately, applies to conventional loans only. It requires servicers to provide
 forbearance for 180 days with an option to extend for an additional 180 days. The forbearance includes, waiving
 interest, no late fees/penalties, extension of the maturity date, re-amortization of arrears, deferral of arrears as
 non-interest balloon and no negative credit reporting. Notably, this statute establishes that compliance with this
 statute is a condition precedent to commencement of a foreclosure action stemming from a Covid-19
 default. For your ease and convenience, attached please find a copy of S8243C and a memorandum discussing
 this new law.
- **S8428C**: Hand-in-hand with S8243C, on June 17, 2020 Governor Cuomo signed S8428C into law which is effective immediately and applies to <u>conventional loans only</u>. S8428C amends the Banking Law to include the requirement that the mortgage be secured by New York property that is the primary residence of the borrower, provides limitations on the further forbearance extension of 180 days to be based on a demonstration of continued financial hardship, incorporates a reasonableness standard to the negotiation of a modification and limits the obligation to provide relief if doing so endangers the capital liquidity of the institution. For your ease and convenience, attached please find a copy of S842C and a memorandum discussing this new law.
- Post Holdover Evictions: Governor Cuomo's Executive Order 202.38 together with the recent OCA guidance on
 evictions effective June 20, 2020 permits post foreclosure holdover evictions effective July 6, 2020. Attached for
 your ease and convenience please find Executive Order 202.38 (July 6 deadline expiration), the OCA Eviction
 Guidance and our memorandum discussing this in greater detail.

After you've had a chance to review, if you'd like to discuss this further, please do not hesitate to contact myself or our General Counsel, Joe Battista, Esq.

Thanks,

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