

Insights: Alerts

New York Executive Orders 202.64 and 66 and the Tenant Safe Harbor Act

October 8, 2020

On September 18, 2020, New York Governor Andrew Cuomo issued Executive Order 202.64, which continued through October 20, 2020 the moratorium on initiating a proceeding or enforcement of a) an eviction of any commercial tenant for nonpayment of rent or b) a foreclosure of any commercial mortgage for nonpayment of such mortgage. This represents a continuation of the moratorium directed in Executive Order 202.48, which Governor Cuomo signed on July 6, 2020. Executive Order 202.48 had modified the directive contained in Executive Order 202.28, signed by Governor Cuomo on May 7, 2020, which previously imposed a similar moratorium on eviction and foreclosure actions that applied to **both** residential and commercial tenants and mortgagees. Executive Order 202.48 did not extend the moratorium on residential evictions and foreclosures because the New York State Legislature enacted legislation subsequent to Executive Order 202.28 that protects residential tenants and mortgagees. Similar legislation has not been enacted for commercial tenants or borrowers.

On September 29, 2020, Governor Cuomo issued Executed Order 202.66, which modified the Tenant Safe Harbor Act (Chapter 127 of the Laws of New York, 2020) to prohibit courts from issuing a warrant of eviction or judgment of possession prior to January 1, 2021 against any residential tenant suffering financial hardship during the COVID-19 state disaster emergency declared by Executive Order 202. The order specifically prohibits courts from executing or enforcing such warrants or judgments in cases where the judgment or warrant was granted prior to March 7, 2020, the date when Governor Cuomo first issued Executive Order 202 declaring a state disaster emergency as a result of the COVID-19 pandemic.

It is important to note that both the Tenant Safe Harbor Act and Executive Order 202.66 only apply to residential tenants and leases. Accordingly, as of now, the moratorium on commercial evictions and foreclosures due to non-payment expires on October 21, 2020, absent another executive order extending it.