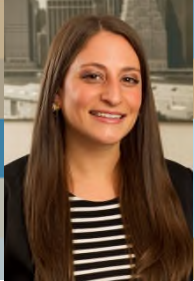


# ALERT

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## New York's New Confession of Judgment Law and Its Unintended Consequences

by: Lauren Bernstein



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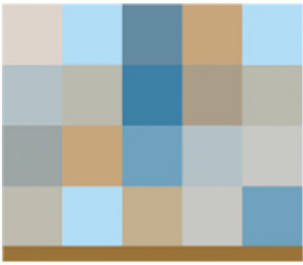
On August 30, 2019, Governor Cuomo signed Senate Bill No. 6395, amending Civil Practice Law and Rules ("CPLR") §3218 and eliminating filing in New York Confessions of Judgment ("COJ") against non-New York residents. The language of the new law does not take into account the circumstance behind the execution of the COJ. For example, it does not expressly address circumstances where the COJ: (a) was part of a settlement resolving a pending litigation in which the court had personal jurisdiction over the confessor; (b) was to secure payment on a business loan rather than a consumer loan; or (c) was given after default rather than being required at the time a loan was originated. Instead, the new law in New York is a blanket prohibition against filing a COJ against an individual or entity that never resided in the State of New York.

The law, as amended, only allows a COJ to be filed with the Clerk of the county where the affidavit states the defendant *resided when it was executed* or where the defendant *resides at the time of filing*. If the defendant does not reside in the State of New York either at the time the COJ was executed or at the time of filing, the new law prohibits the Clerk from entering judgment against the defendant.

Should a New York individual or entity relocate to another state after executing a COJ – so long as the individual or entity was a New York resident *at the time they executed* the COJ, a judgment can still be entered in the county where that individual or entity resided at the time of execution. Additionally, if an out of state individual or entity executes a COJ and later becomes a New York resident, a judgment may be entered in the county where that individual or entity resides at the time of filing. It should be noted that the statute provides that "residence" for an entity is in any county in which it has a place of business.

Based upon the language set forth in the amendment, it appears as though the law will be applied retroactively. Thus, New York Clerks will not be authorized to enter a COJ executed by non-New Yorkers regardless of when it was executed. While the purpose of the law seems to be directed at preventing non-New York creditors from using New York resources to enter judgments against unsophisticated non-New York debtors with respect to transactions that have no connection to New York, the law appears to (perhaps unintentionally) effectively nullify all COJs that are executed by non-New Yorkers, regardless of the circumstances behind the execution of the COJ, even if the parties are sophisticated business entities, or the creditor or transaction has a connection to New York. Due to the retroactive application, many parties may now face a scenario where they have lost the benefit of a bargain previously agreed to.

With the passage of this new law, it appears that creditors who wish to settle pending lawsuits with non-New York residents and seek to have the ability to enter judgment upon a default, will have to



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rely upon CPLR §3215(i) to do so (a Clerk's judgment after default under a Stipulation of Settlement). However, unlike a COJ which allows a pending action to be discontinued, in order to have a New York Clerk enter a judgment pursuant to CPLR §3215(i) an action must be pending. In order for creditors to adequately protect themselves and take advantage of CPLR §3215(i), in the event of a default under a settlement agreement, the action cannot be discontinued. However, if the terms of the settlement agreement require the defendant make payments over time, the defendant may not be willing to settle or may demand more favorable terms due to the fact that a public litigation will still be pending against them until the settlement amount is paid in full. Thus, it is important to note that this change may seriously hinder a creditor's ability to settle a lawsuit with a non-New York resident.

Any issues raised in this Alert may be addressed to Ms. Bernstein who can be reached at (516) 873-2000 or by email at [bernstein@moritthock.com](mailto:bernstein@moritthock.com).



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