

US COVID-19 Real Estate Legal Developments Federal, California, Florida, Illinois, New York

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Federal	<p>Lease Related Developments (namely rent relief)</p> <p>The CARES Act, signed into law on March 27, 2020, created the Paycheck Protection Program (“PPP”) which expands the U.S. Small Business Administration’s (“SBA”) loan program. The program provides for loan forgiveness during the eight week period following loan origination if 75% of the funds are used for payroll costs. The remaining 25% may be used for payment of certain expenses, such as mortgage interest, rent and utilities. The initial \$350 billion in funding was exhausted by April 17, 2020, and an additional \$310 billion in PPP funding was approved on April 24, 2020.</p> <p>The CARES Act also modified the Economic Injury Disaster Loan program operated by the SBA which provides for Emergency Economic Injury Grants of up to \$10,000 which are emergency advances that can be issued by the SBA within three days of a completed application by a qualifying business. The advance does not need to be repaid and may be used to pay rent and mortgage payments.</p> <p>Anecdotes</p> <p><u>Landlord/Tenant Positions</u></p> <ul style="list-style-type: none">• Generally: Some landlords are providing 2-3 months of rent deferral (as opposed to rent <u>abatement</u>), and asking tenants to repay deferred rent by YE 2021; other landlords are offering to allow tenants to defer rent and extend the term by the number of months of deferral.
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- Supporting Documentation: Most landlords are requesting that tenants provide documentation supporting their request for a deferral/abatement (e.g., financial statements and business plan).
 - Transparency: As a general rule, landlords and tenants are disclosing access to funds from different sources (e.g., insurance, government assistance, etc.), and sometimes offering pay abated amounts upon receipt of assistance.
 - Specific Landlords:
 - Federal Realty Investment Trust: Sent letters telling tenants that they expect them to pay rent;
 - The Irvine Company: Allowing tenants to defer rent for April, May and June, and to repay it without interest by YE 2021;
 - Kimco: Working with tenants;
 - Related: Announced that 75% of retail tenants at Hudson Yards did not pay rent for the month of April;
 - McNellis Partners: April rent suspended for mom-and-pop businesses that demonstrate virus-related business reduction;
 - Bedrock Detroit: Rent forgiven for months of April, May and June.
 - Specific Tenants That Reportedly Did Not Pay All of a Portion of April Rent for Some or All Stores:
 - Burlington Stores (600+ stores);
 - Dick's Sporting Goods (800+ stores);
 - Gap (3.3k stores);
 - Mattress Firm (2.4k US stores);
 - Petco Animal Supplies (1.5k stores);
 - Staples (300+ stores);
 - Subway (20k US stores);
 - The Cheesecake Factory (200+ stores);
 - Urban Outfitters (200+ stores).

	<p>Eviction Moratoriums</p> <p>The CARES Act imposes a 120-day moratorium on tenant evictions if a property owner’s mortgaged property is insured, guaranteed, supplemented, protected, or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program or the Violence Against Women Act of 1994. Specifically, an owner cannot initiate actions for evictions or related to a tenant’s nonpayment of rent or fees until July 25, 2020.</p> <p>Foreclosure Moratoriums</p> <p>Under the CARES Act, for at least 60 days beginning on March 18, 2020 a servicer of a federally-backed mortgage loan may not initiate, seek or execute any foreclosure.</p> <p>Loan Related Developments</p> <p>The CARES Act allows multifamily property owners (designed for occupancy of 5 or more families) with federally-backed mortgages to request forbearance of up to 90 days on the condition that they suspend all evictions for renters unable to pay rent due to COVID-19. Residential property owners (for properties designed for occupancy of fewer than 5 families) with federally-backed mortgages can request forbearance of up to 180 days.</p> <p>Construction Related Developments</p> <p>None.</p> <p>General Real Estate News of Note</p> <p>The CARES Act also revises certain property depreciation, loss limitation, credit and deduction provisions for taxpayers.</p> <p>The IRS issued Notice 2020-23 (which updates Notice 2020-18, “Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic”), released on April 9, 2020, which provides taxpayers who are currently engaged in a 1031 exchange some relief from the 45-Day Identification and 180-Day Exchange Period deadlines. Any affected taxpayer with a 45-Day Exchange Period or 180-Day Exchange Period deadline between April 1 and July 15, 2020 will have an automatic extension to July 15, 2020.</p>
<p>California</p>	<p>Lease Related Developments (namely rent relief)</p> <ul style="list-style-type: none"> • Los Angeles: On March 30, 2020, the Mayor halted rent increases on occupied rental units that are subject to the City’s Rent Stabilization Ordinance (RSO). • A rent freeze is in place in Concord.

- Rent increases are capped at 3.5% in Oakland.
- A rent freeze is in place in Glendale through April 30, 2020 (effective March 24, 2020). The rent freeze applies to single family homes, condominiums or townhomes, and rental units that received a Certificate of Occupancy on or after February 1, 1995.

Several cities (including Anaheim, Long Beach, Pasadena, Riverside, San Diego, Santa Ana and Santa Monica) that have enacted eviction moratoriums for non-payment of rent due to COVID-19 (see section below) are also prohibiting landlords from charging or collecting any late fees for missed rental payments during the applicable period.

Eviction Moratoriums

[Legislative Proposals](#)

Proposed Senate Bill SB 939 would prohibit landlords from evicting tenants of commercial real property, including businesses and non-profit organizations, during the state of emergency. A violation of this prohibition would be a misdemeanor, an unlawful business practice and an act of unfair competition. The bill has been introduced to the Senate but it has not yet passed.

[Executive Orders and Judicial Rules](#)

California's Governor issued Executive Order N-37-20 which prohibits residential evictions for non-payment of rent due to COVID-19 through May 31, 2020.

Executive Order N-28-20, issued on March 16, 2020, removes state law restrictions (e.g., Civil Code Sec. 1940 et. seq or 1954 et. seq.) on local government's ability to impose limitations on commercial evictions when the grounds for eviction is non-payment of rent due to a documented substantial decrease in income or increase in expenditures due to COVID-19, or government emergency orders related to COVID-19.

Subsequent to Executive Order N-28-20, the California Judicial Council enacted emergency rules which suspend enforcement of evictions (other than those necessary to protect public health and safety) and judicial foreclosures until 90 days after the state of emergency is lifted or until the emergency rule is amended or repealed by the Judicial Council.

Foreclosure Moratoriums

[Executive Orders](#)

Governor Newsom signed an executive order on March 16, 2020 to suspend foreclosures for people who are affected by COVID-19 through May 31, 2020.

Effective as of March 25, 2020, Governor Newsom has requested that financial institutions not commence any new foreclosure sales or evictions for 60 days.

- Citigroup, JP Morgan Chase, US Bank, Wells Fargo, and approximately 200 state-chartered banks, credit unions and mortgage lenders and servicers have agreed to Governor Newsom's requests.

Loan Related Developments

Effective as of March 25, 2020, Governor Newsom has requested that financial institutions offer mortgage payment forbearances for up to 90 days to borrowers impacted by COVID-19. Additionally, financial institutions will waive or refund mortgage-related late fees and other fees including early CD withdrawals for at least 90 days for borrowers who have requested assistance.

- Citigroup, JP Morgan Chase, US Bank, Wells Fargo, and approximately 200 state-chartered banks, credit unions and mortgage lenders and servicers have agreed to Governor Newsom's requests.
- Credit scores of borrowers who apply for mortgage relief will not be negatively affected.

Construction Related Developments

The State of California and certain municipalities have established inconsistent guidelines as to whether construction is an essential service exempt from the statewide shelter in place order. Governor Newsom did not explicitly address construction in the executive order, but the California State Public Health Officer issued a list on the State of California's website which designated "construction of critical or strategic infrastructure," "construction material supplier[s]," and "construction workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)" as "essential workforce." Such designations potentially conflict with municipal city executive orders. As an example, San Francisco's Order of the Health Officer No. C19-07 states that only public works construction and construction of housing (i.e., affordable housing or housing for individuals experiencing homelessness) are considered to be essential services.

Execution of Real Estate Documents and Notary Requirements

California has yet to allow for remote online notarizations, but notary services at shipping/packaging stores are deemed to be critical infrastructure and are exempt from the State's mandate to remain at home. Additionally, Section 1189(b) of the California Civil Code provides that any acknowledgment taken in another location is sufficient in California if taken in accordance with the law of the place where the acknowledgment is made, so a remote notarization performed in a state that permits it could be valid in California.

Recording of Documents

- Over-the-counter and walk-in document recording services are suspended until further notice.
- In most larger counties, it is possible to record documents through e-filing. The following counties allow e-recording: Butte, Calaveras, Contra Costa, El Dorado, Fresno, Kern, Los Angeles, Madera, Marin, Merced, Modoc, Mono, Monterey, Napa,

	<p>Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbra, Santa Clara, Santa Cruz, Shasta, Sonoma, Tehama, Tulare, Ventura, and Yuba.</p> <ul style="list-style-type: none"> Certain counties are also accepting recordings via drop box or mail. <p>General Real Estate News of Note</p> <p>Residential and commercial real estate services, including settlement services, are considered part of the “essential critical infrastructure.”</p>
<p>Florida</p>	<p>Lease Related Developments (namely rent relief)</p> <p>None.</p> <p>Eviction Moratoriums</p> <p>Executive Orders</p> <p>On April 3, 2020, Governor DeSantis suspended and tolled all mortgage foreclosures and evictions for 45 days.</p> <p>Leon County Sherriff has suspended evictions until further notice.</p> <p>Miami-Dade Police Department will not enforce Writs of Possession until further notice.</p> <p>Foreclosure Moratoriums</p> <p>Executive Orders</p> <p>On April 3, 2020, Governor DeSantis suspended and tolled all mortgage foreclosures and evictions for 45 days.</p> <p>Miami-Dade County has cancelled all foreclosure sales through April 15, 2020.</p> <p>Palm Beach County has cancelled all foreclosure sales up to and including May 1, 2020.</p> <p>Loan Related Developments</p> <p>None.</p>

	<p>Construction Related Developments</p> <p>Construction has generally been deemed “essential business” in statewide and local orders – including architectural, engineering and land surveying services.</p> <p>Execution of Real Estate Documents and Notary Requirements</p> <p>Remote notarizations became legal in Florida on January 1, 2020.</p> <p>Recording of Documents</p> <ul style="list-style-type: none"> • Broward County Recorder’s Offices are closed until further notice; eRecording remains available. • Collier County Clerk’s Office closed through April 17, 2020; eRecording remains available. • Dade County Recorder’s Office is closed until further notice; eRecording remains available through third-party vendors. • Hillsborough County has closed some Clerk’s offices and left others open. • Leon County has suspended all Tax Deed sales until further notice. • Orange County Clerk’s Office closed until further notice; eRecording remains available. • Palm Beach County Clerk’s office closed until further notice; eRecording remains available. • Pinellas County Clerk’s office closed until further notice; eRecording remains available. <p>General Real Estate News of Note</p> <p>Miami-Dade County Department of Regulatory and Economic Resources closed its permitting and inspection center until at least April 8, 2020 due to employees testing positive, RER has allowed licensed contractors to perform inspections, but final inspections can only be performed by Miami-Dade County, which cannot be completed until services resume.</p>
<p>Illinois</p>	<p>Lease Related Developments (namely rent relief)</p> <p>None.</p>

Eviction Moratoriums

[Illinois Supreme Court Order](#)

On March 17, 2020, the Illinois Supreme Court ordered that, “[a]ll non-essential court matters and proceedings should be continued or, where possible, conducted remotely via telephone or video or other electronic means.” Although the order does not specifically address eviction or foreclosure proceedings, it is likely to delay them.

[Executive Orders](#)

On March 20, 2020, the Governor issued an Executive Order suspending residential evictions until the declared state of disaster ends. It does not apply to commercial properties.

[Additional Guidance](#)

On March 30, 2020, the Illinois Department of Financial Regulation, Division of Banking and Division of Financial Institutions (Department), issued guidance to Illinois-licensed mortgage servicers and exempt mortgage servicers urging support for borrowers impacted by Covid-19. The Department urges all servicers of nonconforming and private mortgages to implement policies at least as helpful to borrowers as those offered for conforming loans, including, among others: (i) forbearing mortgage payments for at least 90 days without incurring additional interest or fees; (ii) refraining from reporting late payments to credit rating agencies and, when payments are deferred or modified, coding those payments as deferred with the applicable disaster order; (iii) offering loss mitigation options to borrowers; and (iv) waiving late payment fees and online payments fees; and (v) postponing foreclosures and evictions for at least 90 days. It appears the guidance pertains to all mortgages, not just residential mortgages.

[Cook County](#)

On March 13, 2020, as amended on March 30, 2020, the Circuit Court of Cook County announced that, “no orders for an eviction or foreclosure will be entered during [a] 30-day period” beginning March 17, 2020 and continuing through May 18, 2020. The order does not distinguish between commercial and residential properties.

Foreclosure Moratoriums

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Loan Related Developments

City of Chicago has established a \$100M Chicago Small Business Resiliency Fund to provide small businesses and non-profits with emergency cash flow in the form of low-interest loans.

Cook County Board President Toni Preckwinkle announced the creation of the Community Recovery Fund, a new loan program for small businesses and independent contractors. The loans will be one time, zero interest loans to suburban small businesses with up to 25 employees and residents who make up more than half of their income from independent contracting. The fund will give loans of up to \$20,000 for small businesses and \$10,000 for independent contractors.

The state is making loans of up to \$50,000 available through its Illinois Small Business Emergency Loan Fund, but that program is available only to businesses outside Chicago. Its terms resemble those of the Chicago program for the state’s other small-business owners.

Construction Related Developments

Pursuant to Executive Order 20-10, signed by Governor Pritzker on March 20, 2020, non-essential businesses were required to cease all activities. “Essential Infrastructure” is carved out of the order due to the fact that such work is deemed essential. Essential Infrastructure includes a number of items, including, but not limited to, construction, building management and maintenance. In addition, “Critical Trades” are deemed essential; these include, but are not limited to, plumbers, electricians, exterminators, cleaning and janitorial staff and security.

Execution of Real Estate Documents and Notary Requirements

- Any act of notarization or witnessing required by Illinois law may be completed remotely via two-way audio-video communication technology, provided that the acts follow specific guidelines set forth in Executive Order 2020-14.

	<p>Recording of documents</p> <ul style="list-style-type: none"> • Cook County is closed for all in-person real estate document recording, although eRecording is permitted. • DuPage County is closed for all in-person real estate document recording, although mail-in and e-recording is permitted. • McHenry County is closed for all in-person real estate document recording, although eRecording is permitted. • Will County is closed for all in-person real estate document recording, although mail-in and e-recording is permitted. <p>General Real Estate News of Note</p> <p>Title companies are essential businesses, along with lenders and appraisers.</p> <p>With respect to real estate taxes, each county in Illinois will independently decide whether to extend the due date for payment of taxes and whether to waive late fees.</p>
<p>New York</p>	<p>Lease Related Developments (namely rent relief)</p> <p>Legislative Proposals</p> <p>Two bills have been introduced in the New York Senate (SB 8125) and New York Assembly (AB 10224) that would waive rent for residential and small business commercial tenants for a 90-day period following the effective date of the act. Landlords of qualifying commercial and residential tenants would be granted mortgage relief. Any tenant whose lease expires during this period would get an automatic renewal at the then current rental rate.</p> <p>Eviction Moratoriums</p> <p>New York State Court Response</p> <p>Effective as of 5:00 p.m. (EST), March 16, 2020, all eviction proceedings and pending eviction orders in New York state courts have been suspended until further notice. No new filings can occur except for “essential matters,” which includes landlord lockouts, emergency repair orders, and serious code violations.</p> <p>Executive Orders</p> <p>All eviction orders have been halted for 90 days pursuant to Executive Order 202.8 signed by Governor Cuomo on March 20, 2020 (“EO 202.8”).</p>

Foreclosure Moratoriums

[Executive Orders](#)

All foreclosure orders in the state of New York have been halted for 90 days pursuant to EO 202.8.

Loan Related Developments

[Executive Orders](#)

Executive Order 202.9 was issued on March 21, 2020 (“EO 202.9”) that included two directives affecting commercial real estate loans:

- New York Banking Law was amended on a temporary basis (now through May 7, 2020) to provide that it is an “unsafe and unsound business practice” if “any bank which is subject to the jurisdiction of the [New York Department of Financial Services] shall not grant a forbearance to any person or business who has a financial hardship as a result of the COVID-19 pandemic for a period of ninety days.”
- The New York Department of Financial Services is directed to “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” and to “promulgate emergency regulations to require that the application for such forbearance be made widely available for consumers, and such application shall be granted in all reasonable and prudent circumstances solely for the period of such emergency.”

The New York Department of Financial Services quickly released emergency regulations on March 24, 2020, which generally address the impact of EO 202.9 on consumer mortgage transactions. Given the focus of the regulations on residential mortgages, many practitioners assume that the loan forbearance requirement in EO 202.9 applies only to residential mortgage loans on property in the State of New York, however, without more guidance, it remains uncertain regarding the types of lenders, loans and borrowers that may be impacted.

Construction Related Developments

[Executive Orders](#)

- Pursuant to Executive Order 202.6, signed by Governor Cuomo on March 18, 2020, businesses in the State of New York are required to reduce in-person workforces by 50% and utilize telecommunications to the maximum extent possible; provided, however, that any essential business or entity providing essential services or functions is not subject to the in-person restrictions, and “construction” is included as an essential business.
- Pursuant to EO 202.8, EO 202.6 was modified so that employers are required to reduce the number of employees working at any location by 100%.

- EO 202.6 was further modified by Executive Order 202.13, signed by Governor Cuomo on March 29, 2020. The order clarifies that only certain construction is considered an essential service not subject to the in-person work restrictions. Furthermore, the order authorizes the Empire State Development Corporation to determine which construction projects will be deemed essential. Lastly, the order provides that all construction projects are required to utilize best practices to avoid transmission of COVID-19.

Additional Guidance

The Empire State Development Corporation (“ESD”) has issued additional guidance interpreting what construction constitutes an “essential business” under Executive Order 202.6, as follows:

- All non-essential construction must shut down except emergency construction, (e.g. a project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site);
- Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters. At every site, if essential or emergency non-essential construction, this includes maintaining social distance, including for purposes of elevators/meals/entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments. This will include fines of up to \$10,000 per violation.
- For purposes of this section, construction work does not include a single worker, who is the sole employee/worker on a job site.

Associated General Contractors of New York State has published unofficial guidance from ESD stating that “construction in support of essential businesses is permissible, but only with appropriate social distancing and cleaning/disinfecting precautions. If those cannot be met, the project should be postponed.”

New York City Guidance

The City of New York has issued additional best practices guidance for social distancing at construction sites. This includes maintaining physical and operational distancing to the greatest degree possible, monitoring temperatures, requiring handwashing, use of personal protective equipment (“PPE”), use of temporary barriers, and shutting down construction sites where physical distancing cannot be maintained. This guidance would apply in addition to any OSHA guidance.

The NYC Department of Buildings has issued additional guidance on the EO 202.6, including:

- Guidance on Essential v. Non-essential construction;
- Non-essential construction service notice;
- Guidance on securing construction sites; and

- FAQs on essential and non-essential construction, including questions covering emergencies, inspections, elevator, façade and building systems work, as well as enforcement obligations.

Execution of Real Estate Documents and Notary Requirements

Executive Order

Pursuant to Executive Order 202.7, signed by Governor Cuomo on March 19, 2020 (“EO 202.7”), any notarial act that is required under New York State law is authorized to be performed utilizing audio-video technology provided the following conditions are met:

- The person seeking the Notary’s services, if not personally known to the Notary, must present valid photo ID to the Notary during the video conference, not merely transmit it prior to or after;
- The video conference must allow for direct interaction between the person and the Notary (e.g. no pre-recorded videos of the person signing);
- The person must affirmatively represent that he or she is physically situated in the State of New York;
- The person must transmit by fax or electronic means a legible copy of the signed document directly to the Notary on the same date it was signed;
- The Notary may notarize the transmitted copy of the document and transmit the same back to the person; and
- The Notary may repeat the notarization of the original signed document as of the date of execution provided the Notary receives such original signed document together with the electronically notarized copy within thirty days after the date of execution.

Additional Guidance

The New York Department of State issued additional guidance on EO 202.7, as follows:

- Notary publics using audio-video technology must continue to follow existing requirements for notarizations that were unaltered by the Executive Order. This includes, but is not limited to, placing the notary’s expiration date and county where the notary is commissioned upon the document;
- If the notary and signatory are in different counties, the notary should indicate on the document the county where each person is located;
- Any format of electronic document (including PDF, JPEG, TIFF) may be sent to the notary provided it is legible;
- Following remote notarization, if the notary receives the original document within 30 days, the notary may notarize the document again using the original remote notary date;

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- It is considered a best practice for each notary to keep a log of each remote notarization and to note on the document that the notarization is made pursuant to EO 202.7.

Recording of Documents

Generally

Electronic recording is generally widely available in the State of New York (electronic recording in New York City is handled through a program known as ACRIS). However, parties should confirm with the relevant jurisdiction regarding potential service disruptions, including for e-recording. Certain counties that have confirmed closures are included below.

Selected County Closures

- Nassau County is closed for in person access. Document recordings can be submitted through e-recording, mail/delivery or lobby drop box.
- Richmond County (Staten Island) is closed until further notice. All County Register matters (i.e., deeds, mortgages, etc.) should be submitted in hard copy via mail and will be processed in the order received. Otherwise, all other County Clerk and Business Service matters will be logged in sequential order and will be held until they can be processed (in accordance with EO 202.8).
- Schenectady County is closed until further notice. Parties may record documents via e-recording or mail. Any emergent situation can be emailed to the office and they will work to accommodate in-person recording.

General Real Estate News of Note

None.

White & Case LLP
Federal, California,
Florida, Illinois,
New York

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