

New York's COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 Offers Broad Benefits for Borrowers and Tenants

A Practical Guidance® Article by
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New York Governor Andrew M. Cuomo has signed into law the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (the "Act"), an act designed to prevent—until May 1, 2021—both evictions of residential tenants with financial or health-related hardships arising from the COVID-19 pandemic and foreclosures against homeowners and small landlords with the same hardships. While the Act protects individuals suffering from COVID-19-related hardships, it also benefits tenants, borrowers, and property owners in already pending pre-COVID-19 actions.

Pending Pre-COVID-19 Foreclosures and Evictions

Foreclosures

The Act immediately stays pending foreclosure actions for 60 days (i.e., starting from December 28, 2020, through February 27, 2021) and actions commenced between December 28, 2020, and January 27, 2021, for 60 days

from filing ("Immediate Stay"). The Act further provides for an additional stay until May 1, 2021, for certain residential mortgagors/owners, if the mortgagor/owner submits to the foreclosing party or the court a declaration attesting to a COVID-19 hardship ("Mortgagor Hardship Declaration"), which creates a "rebuttable presumption that the mortgagor is suffering from financial hardship..." (Act, Part B, § 10.) A copy of the form Mortgagor Hardship Declaration is available [here](#).

During the Immediate Stay, the Act requires the court to mail a copy of the Mortgagor Hardship Declaration and ensure that the mortgagor has sufficient time to submit it.

The additional stay is only available in residential foreclosure actions in which the property is owned and occupied by the mortgagor and consists of ten or fewer dwelling units. To qualify for the additional stay, the mortgagor/owner must submit the Mortgagor Hardship Declaration attesting to experiencing a financial hardship and being unable to pay a mortgage "in full" due to one or more of the following:

1. Significant loss of household income during the COVID-19 pandemic.
2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic that have negatively impacted the ability to obtain meaningful employment or earn income or have increased necessary out-of-pocket expenses.
4. Moving expenses and difficulty securing alternative housing that caused a hardship in relocating to another residence during the COVID-19 pandemic.

5. Other circumstances related to the COVID-19 pandemic that have negatively affected the ability to obtain meaningful employment or earn income or have significantly reduced household income or significantly increased expenses.
6. The default by one or more tenants on a significant amount of rent payments since March 1, 2020.

In an action in which a judgment of sale has not been issued, the submission of a Mortgagor Hardship Declaration will stay the proceeding until at least May 1, 2021. If a judgment of sale was issued on or before December 28, 2020, but has not yet been executed, the execution of the judgment has been stayed until the court has held a status conference with the parties. The action will be stayed until May 1, 2021, if the mortgagor submits a Mortgagor Hardship Declaration.

Evictions

The Act stays pending evictions for 60 days (i.e., starting from December 28, 2020, through February 27, 2021) and matters commenced between December 28, 2020, and January 27, 2021, for 60 days from filing. The Act provides for a further stay of proceedings until May 1, 2021, where a tenant submits to the landlord or the court a declaration attesting to a COVID-19 hardship (“Tenant Hardship Declaration”). A copy of the form Tenant Hardship Declaration, which must be mailed by the court in pending proceedings, is available [here](#).

A tenant qualifies for eviction protection under the Act if: (1) they are unable to pay the rent or other financial obligations under the lease in full or obtain alternative suitable permanent housing due to financial hardship caused by or during the COVID-19 pandemic; and/or (2) vacating the premises and moving into new permanent housing would pose a significant health risk because the tenant or one or more members of the tenant’s household have an increased risk for severe illness or death from COVID-19.

The eviction stay provisions of the Act do not apply where a pending or new petition alleges that the tenant is “persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others (the ‘Nuisance Exception’).” (Act, Part A, § 9.)

Commencement of New Foreclosures and Evictions

Foreclosures

A Mortgagor Hardship Declaration must be included with every notice to a mortgagor pursuant to sections 1303 and 1304 of the real property actions and proceedings law (N.Y. Real Prop. Acts. Law § 1303, N.Y. Real Prop. Acts. Law § 1304). If a mortgagor submits a Mortgagor Hardship Declaration, foreclosure actions may not be initiated against that mortgagor until at least May 1, 2021.

On commencement of a new action, the foreclosing party must file, under penalty of perjury, an affidavit

- Of service demonstrating the manner in which the foreclosing party’s agent served a copy of the Mortgagor Hardship Declaration in English and the mortgagor’s primary language, if other than English, with the notice, if any, provided to the mortgagor pursuant to sections 1303 and 1304 of the real property actions and proceedings law (N.Y. Real Prop. Acts. Law § 1303, N.Y. Real Prop. Acts. Law § 1304) –and–
- Attesting that at the time of filing, neither the foreclosing party nor any agent of the foreclosing party has received a Mortgagor Hardship Declaration from the mortgagor.

Evictions

Petitioners are required to serve with all pre-eviction notices a blank copy of the Tenant Hardship Declaration and provide a list of not-for-profit legal services providers actively handling housing matters in the county where the subject property is located. In any newly commenced eviction proceeding, the petitioner must submit an affidavit of service of the Tenant Hardship Declaration as well as, under penalty of perjury, an affidavit: (1) attesting that at the time of filing, neither the petitioner nor any agent of the petitioner has received a Tenant Hardship Declaration, or (2) attesting to the applicability of the Nuisance Exception.

The Act contains other requirements and provisions not discussed in this writing that are available [here](#).

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Adam M. Swanson represents major financial institutions in disputes brought by consumers, including those concerning consumer mortgage lending and servicing and consumer credit, as well as major title companies in real property, land title, and title insurance litigation.

Adam's extensive experience resolving real property matters includes those concerning deeds, easements, ownership disputes, land titles, and real property acquisitions. Because of his deep understanding of the consumer mortgage sector, He is regularly retained by the nation's largest title insurers to provide them with efficient and cost-effective solutions to their most complex real property disputes.

Adam's experience in the consumer mortgage lending and servicing sectors includes handling legal challenges concerning agency and non-agency mortgages, large mortgage portfolios, and residential mortgage-backed securities products. Whether a client hopes to achieve victory at the individual loan level or set new legal precedent to protect its industry practices, Adam works closely with each client to focus on their goals. Adam represents all of the major players in the consumer mortgage lending and servicing space in the full range of claims arising from origination, servicing, default servicing, foreclosure, bankruptcy, evictions as well as concerning real estate owned properties.

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Jessie D. Bonaros is an associate in McCarter's Bankruptcy & Commercial Litigation group, focusing her practice on consumer financial services and real estate litigation. She has a broad range of experience representing lenders, loan servicers, and other financial institutions in commercial and residential foreclosure actions and related litigation in both state and federal court. Jessie's specific expertise lies in developing creative legal arguments successfully utilized to defeat complex affirmative defenses and claims.

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