

**LEGAL ALERT**  
**FEDERAL EASTERN DISTRICT JUDGE DISMISSES LANDLORDS'**  
**CHALLENGE TO THE COVID EVICTION AND FORECLOSURE**  
**MORATORIUM STATUTE**

New York State's COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ("CEEFPFA") became effective on December 28, 2020. CEEFPFA imposed a moratorium on evictions and mortgage foreclosures involving nonpayment of rents and mortgages on residential properties where there is a claim of a COVID related hardship. It also required landlords and lenders to provide tenants and borrowers with a hardship declaration and a list of legal services providers as a condition of any nonpayment proceeding or mortgage foreclosure.

On February 24, 2021, four individual landlords commenced an action against the New York State Attorney General (the "AG") in the United States District Court for the Eastern District of New York challenging CEEFPFA on due process and other constitutional grounds seeking a preliminary injunction to prevent the State from enforcing it.

The AG moved to dismiss the action on several grounds, including lack of subject matter jurisdiction, relying on the 11th Amendment, which bars a citizen of a state from suing his or her own state in federal court, and failure to state a claim for relief.

On April 14, 2021, Eastern District Judge Joanna Seybert issued a lengthy decision granting the AG's motion to dismiss the action. Judge Seybert agreed with the AG, holding that the action was barred by the 11<sup>th</sup> Amendment and that the AG did not play a role in enforcing CEEFPFA so none of the limited exceptions to immunity under that Amendment were applicable. The decision dismissing the action did not rule on the constitutional issues advanced by the landlord-plaintiffs in their complaint and motion papers.

Please feel free to contact us if you have any questions or wish to discuss this further.