

Legal Alert: Housing Court Update on Commercial Eviction Moratorium for Small Businesses

March 10, 2021

Last night, Governor Cuomo signed into law the "COVID-19 Emergency Protect Our Small Businesses Act of 2021", which prohibits a landlord from evicting any commercial tenant with 50 or fewer employees through May 1, 2021, *if and only if* that tenant provides a financial hardship declaration claiming it has been detrimentally affected by the COVID-19 Pandemic. Similarly, property owners of businesses with 10 or fewer commercial units can fill out a hardship declaration form to avoid mortgage foreclosure until May 1, 2021 as well.

Effective immediately, for nonpayment and holdover proceedings alike, a landlord must include a hardship declaration to a commercial tenant with every written notice sent to that tenant, including rent demands and termination and cure notices necessary to commence an eviction action. This must include a hardship declaration in English, as well as in the primary language spoken by the commercial tenant.

The new law further stays all pending commercial eviction proceedings, and any commercial eviction proceedings filed through April 8, 2021, for 60 days (through May 8, 2021).

For any eviction proceeding where a warrant of eviction or judgment of possession has been issued prior to March 9, 2021, but has not yet been executed upon, the court will stay execution of the warrant of eviction until it has held a status conference with the parties.

Please note that any eviction proceeding against a commercial tenant with 50 or fewer employees will not be stayed by this law if that tenant has either (a) not filed with the court or provided a hardship declaration to the landlord, or (b) been found by the court to be 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 (i.e., nuisance).

Governor Cuomo also announced that he has reached a deal with the State Legislature to make changes to this bill, although those changes have not yet been passed into law by the Legislature. If passed, the changes will expand the eviction protections to apply to businesses with 100 or fewer employees, and to those with 500 or fewer employees that were closed to in-person operations by executive order or a Department of Health directive for two or more weeks between May 15, 2020, and May 1, 2021. We will of course notify you immediately if and when these proposed changes become law.

Should you receive a hardship declaration from any of your commercial tenants going forward, please immediately forward that declaration to an attorney in our office.