

COVID-19 Legal Update

New York Passes COVID-19 Emergency Eviction and Foreclosure Prevention Act: Effect on Prosecuting Foreclosures in New York

By **Kenneth J. Flickinger**

On December 28, 2020, New York State passed the COVID-19 Emergency Eviction and Foreclosure Prevention Act. The law stays all eviction and foreclosures of residential real property for sixty (60) days. With respect to foreclosures, a further stay until May 1, 2021 is available to a mortgagor who submits a "hardship declaration" attesting that the mortgagor is experiencing hardship due to COVID-19. Submission of the declaration creates a rebuttable presumption that the mortgagor is experiencing hardship.

A mortgagor may claim a hardship, and cause a stay of the foreclosure proceeding, by attesting that he/she has been affected by COVID-19 in any of the following ways:

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 have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.
5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.
6. One or more of my tenants has defaulted on a significant amount of their rent payments since March 1, 2020. To the extent I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.

The mortgagor does not need to identify which of the above hardships he/she is facing, only that one of the six (6) enumerated reasons apply. It will not be difficult for most mortgagors to claim the hardship necessary to stay the foreclosure action until May 1, 2021.

Other notable provisions of the Act are:

- Only a mortgagor, who is a natural person, and is residing in the property subject to foreclosure, may request the relief provided in the Act.
- The Act applies to interests in cooperative housing units. The Act does not apply to vacant and abandoned properties.
- No foreclosure action may be initiated until at least May 1, 2020 if a mortgagor submits a hardship declaration to the foreclosing party.

- If a mortgagor provides a hardship declaration to the foreclosing party or its agent, “any specific time limit for the commencement of an action to foreclose a mortgage shall be tolled until May 1, 2021.”
- No action to foreclose residential real property shall be accepted for filing unless an affidavit is filed attesting to compliance with the hardship declaration provision, i.e., that the declaration was served on the mortgagor.
- In cases where no judgment of foreclosure and sale has been entered, if the mortgagor provides a hardship declaration to the foreclosing party or the court, the action shall be stayed until at least May 1. If the hardship affidavit is submitted to the Plaintiff, the Plaintiff shall file it with the court.
- If a judgment of foreclosure and sale was entered prior to the effective date of the Act, the court shall stay the case until a status conference is held. If the mortgagor provides a hardship declaration, the foreclosure sale shall be stayed until at least May 1, 2021.
- A foreclosing party must include the “Notice to Mortgagor” including a copy of the “Mortgagor’s Declaration of COVID-19 Related Hardship” with all RPAPL 1303 and 1304 notices.

Additional considerations we will monitor include the following:

- Whether Courts may continue to conduct settlement conferences during the period when the initial sixty (60) day stay is in effect, or where the additional stay is invoked by a mortgagor’s hardship declaration.
- Whether the Chief Administrative Judge will revoke AO 157/20, which requires COVID Conferences to be held in each case, or whether the parties may stipulate to waive the stay of foreclosure proceedings.
- Whether the Appellate Courts will continue with regular scheduling of appeals.

Our office will continue to monitor developments in the interpretation and implementation of the Act and advise accordingly.