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## CLIENT ADVISORY

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## MID-MONTH EDITION

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MID-JULY 2020

### THE CORONAVIRUS AND REAL ESTATE: MID-JULY UPDATE

It is now four months since New York was hit by the coronavirus pandemic and largely shut down by the Governor's "New York on PAUSE" orders. All of us continue to feel the effects of the virus emergency throughout our lives. The improved public health situation in New York City and the surrounding area is tragically counterbalanced by exponential rises in coronavirus cases throughout much of the rest of the country and beyond. Vigilance remains the order of the day.

As of July 6, 2020, New York City entered "Phase Three" of reopening. In addition to the businesses that reopened under Phases One and Two, Phase Three also allowed personal care establishments such as nail salons to reopen. In addition, under Phase Three, the previous restriction limiting informal gatherings for any purpose to 10 people is now increased to 25 people, provided that social distancing is observed. As a significant exception to New York City having entered Phase Three, the reopening of indoor food and beverage service at restaurants and bars, which was originally to be included in Phase Three, has been delayed indefinitely in the five boroughs. (It is now permitted, with limitations, in the rest of New York State.) Outdoor food and beverage service is allowed where there is sufficient outdoor space available, and is being offered at an increasing number of establishments.

The Real Estate Board of New York, Local 32BJ SEIS, and the Realty Advisory Board continue to update their guidance to residential boards and landlords from time to time. For their most current "Best Practices," see [https://rebny.com/content/dam/rebny/Documents/PDF/Resources/CoronavirusResources/Guidelines\\_Residential%20Buildings\\_FINAL.pdf](https://rebny.com/content/dam/rebny/Documents/PDF/Resources/CoronavirusResources/Guidelines_Residential%20Buildings_FINAL.pdf). All businesses that have reopened, including residential property managers, were required to adopt a COVID-19 safety plan and file an affirmation of compliance with the State. The safety plan must be posted in the workplace, distributed to employees, and most importantly must be complied with. If you have not already posted and disseminated a plan you must do so at once.

Many cooperatives and condominiums are still addressing the dilemma of how to conduct their 2020 annual meetings. As discussed in prior issues of this *Client Advisory*, virtually all buildings that were scheduled to hold annual meetings this spring concluded that it was impossible to do so and postponed the meetings. With the increased realization that in-person shareholder meetings will probably remain problematic for months to come, New York State recently enacted legislation confirming that shareholder meetings may be conducted electronically during the duration of the coronavirus emergency. (As a technical matter, the new law covers cooperatives but not condominiums, but it is anticipated that many condominiums will also apply it by analogy.) Holding an electronic meeting, especially in a larger building, is clearly a second-best alternative compared to an in-person meeting, but it provides a legally acceptable alternative if a meeting is to be held. Conducting a successful electronic shareholder meeting requires detailed planning and coordination in which legal, technological, and shareholder relations aspects must all be addressed. Counsel should be involved in planning the annual meeting to ensure compliance with applicable corporate governance requirements and to modify the usual form of meeting notice to fit the new format.

Effective June 30, 2020, New York enacted the **Tenant Safe Harbor Act** to protect residential tenants during the coronavirus emergency. This law prohibits the courts from issuing orders to evict a residential tenant or occupant who has suffered a financial hardship during the period that began on March 7, 2020 and will continue until none of the executive orders closing or restricting business, places of accommodation, or non-essential gatherings remain in effect in the tenant's county of residence. Tenants will be allowed to raise financial hardship during the period as a defense in any summary proceeding. In determining whether the tenant has suffered financial hardship, the courts are to consider factors including the tenant's income history and receipt of or eligibility for various forms of benefits. While a landlord may not be awarded a warrant of eviction or judgment of possession against a tenant who demonstrates financial hardship, the landlord still may seek and obtain a money judgment for rent arrears or other amounts due. Although the Tenant Safe Harbor Act applies only to residential tenants, the Governor's executive orders continue to provide some protection for commercial tenants that have suffered financial hardship. The interplay of the various executive orders as well as administrative directives from the court system is complex, and affected parties should consult with their legal counsel.

The federal government has extended its Payroll Protection Program through August 8, 2020. This program provides forgivable loans to employers of up to 500 people that have been financially damaged by the pandemic. The loans are forgivable provided that the proceeds are expended for permissible purposes, primarily payroll, within 24 weeks after receipt of the loan. More than \$100 billion in funding for these loans remains available. This is expected to be the final extension of this program, so anyone interested in exploring a PPP loan must act immediately. For those who have already taken PPP loans, the Small Business Administration continues to update the rules and guidelines for loan forgiveness applications. Employers should be tracking and documenting their expenditures so they will be able to submit the required documentation when it is due. In addition to potentially forgivable PPP loans, several other loan programs remain available through federal, state, and city agencies depending on a business's size and financial status. Congress and the Administration are discussing another federal stimulus bill, but its prospects and contents remain uncertain at this time.

An important issue that will affect millions of families, as well as the economy, is how schools will operate in the fall. School officials are faced with difficult choices between resuming in-person instruction, which may facilitate the spread of the coronavirus and endanger the health of teachers, students, and their families, and keeping the schools closed, which deprives students of the benefits of in-person instruction and prevents many parents of young children from returning to work. At present, the New York City public schools have announced plans for a "blended" reopening in September, with students reporting to school on certain days each week and remaining home for online instruction on the other days. The challenges facing public and private schools, as well as colleges, universities, and day-care establishments, are enormous and no one knows what the fall will bring.

As expected, a number of litigations have been filed raising issues triggered by the coronavirus pandemic and associated government shutdown orders. For example, some businesses have asserted that they should be excused from paying their rent for periods in which "New York on PAUSE" made it illegal for them to operate in their leased premises. We anticipate that the courts will rule on these issues in the upcoming months and will report on such decisions in future issues of this *Client Advisory*.

There are also a series of litigations in which New York landlords have challenged the constitutionality of laws and executive orders suspending certain tenant obligations during the emergency. In one of the first court rulings on these challenges, the U.S. District Court for the Southern District of New York upheld Governor Cuomo's executive orders allowing certain residential tenants to apply their security deposits to their rent and placing a moratorium on eviction cases. The court held that these provisions do not violate the Takings, Contract, Due Process, or Petition Clauses of the U.S. Constitution because, among other things, the court viewed them as temporary in nature. The court declined to rule on plaintiffs' challenges based on the New York State Constitution and Executive Law, holding that these state-law issues should be litigated in state court. **Elmsford Apartment Associates, LLC v. Cuomo**, No. 20-CV-4062, 2020 U.S. Dist. LEXIS 115354 (CM) (S.D.N.Y. June 29, 2020).