

CLIENT ADVISORY

OCTOBER 2020

GOVERNOR EXTENDS MORATORIUMS ON COVID-RELATED EVICTIONS

In the early stages of the COVID-19 pandemic in March, Governor Cuomo issued an Executive Order imposing a moratorium on residential evictions where the tenant has incurred financial hardship as a result of the coronavirus emergency. In June, the Legislature passed and the Governor signed the Tenant Safe Harbor Act, which extended these protections for several months.

On September 28, 2020, the Governor issued an Executive Order further extending these provisions through January 1, 2021. This extension prohibits the enforcement of any warrant of eviction against a tenant who has suffered a COVID-related financial hardship. The extension applies whether the warrant was issued before or after the COVID emergency began. In a separate Executive Order, the Governor has extended a moratorium against COVID-related commercial evictions and foreclosures until October 20, 2020.

NEW YORK CITY EXTENDS SUSPENSION OF SOME PERSONAL GUARANTEES OF COMMERCIAL RENTS

In the June issue of this *Client Advisory*, we reported that New York City had adopted legislation intended to temporarily bar landlords from enforcing personal guarantees of certain commercial leases. The law applies to defaults in payment of rent, utilities, or taxes due for the period beginning March 7, 2020 under commercial leases for premises where the tenant was required to close to the public, limit retail operations, or cease in-person service of food or beverages as the result of the coronavirus emergency. Where it applies, the law prohibits landlords from enforcing any lease or rental agreement provision providing for a guarantee by any natural person other than the tenant.

This Local Law has been extended in duration and now applies to a natural person's guarantee of a covered business's rent obligations if "[t]he default or other event causing such natural persons to become wholly or partially personally liable for such obligation occurred between March 7, 2020 and March 31, 2021, inclusive." The constitutional validity of this legislation remains the subject of pending litigation.

LANDLORDS MUST USE SPECIFIC FORM OF PAPERS IN HOUSING COURT

Even apart from current concerns such as moratoriums, landlords bringing proceedings in the Housing Court are subject to a variety of technical requirements. Among other things, the law and court rules contain specific requirements for information that must be included in the Notice of Petition, which is one of the legal documents that commences a proceeding. In the past, it was sufficient that the Notice of Petition include the substance of the required information. However, in **New York City Housing Authority v. Destin, Index No. 18864/2019 (Civil Court Kings Co. Sept. 15, 2020)**, the court held that landlords must now use the *exact form* that is prescribed for the Notice of Petition in the court rules. Failure to use the required form may result in dismissal of the proceeding, even where the tenant cannot show any prejudice resulting from the use of a different form.

NEW YORK EXPANDS EMPLOYEES' PAID SICK LEAVE RIGHTS

New York State and New York City have adopted new legislation expanding the sick leave rights of employees within the state. The new legislation applies to employers with four or more employees. Employers with four or more employees and income of over \$1 million per year, and any employer with 11 or more employees, must provide at least 40 hours of paid sick leave per employee each year. If the employer has 100 or more employees, it must provide at least 56 hours of paid sick leave each year.

The law also requires employers to allow employees to carry unused sick time over from year to year, up to a maximum of the same number of hours specified above. For example, an employer with between 11 and 99 employees must allow an employee to carry 40 hours of unused sick time over to the following year. However, such an employer is not required to allow the employee to actually *use* more than 40 hours of paid sick leave in any year, nor is there any requirement to pay out an employee's unused sick time in cash upon termination – which some commentators have opined renders the carryover provision virtually meaningless. There is a possibility of a clarification by law or regulation in the future, but none has been announced to date.

In this era of COVID-19, New York State has also guaranteed workers job protection and financial compensation in the event they, or their minor dependent child, are subject to a mandatory or precautionary order of quarantine or isolation issued by state or local authorities such as the Department of Health. Most employees will receive financial compensation by using a combination of benefits, which may include employer-provided paid sick leave, paid family leave, and disability benefits. Paid family leave time may also be used to care for a family member who has contracted COVID-19. Paid time off, however, will not be available to an employee who is able to continue working remotely. Employees are also entitled to guaranteed job protection for the duration of their illness or any quarantine period.

The interplay of the various federal, state, and local laws governing paid and unpaid time off becomes increasingly complicated with every new enactment. Employers with questions about employees' rights and obligations should consult with counsel.

CONDOMINIUM OBTAINS APPOINTMENT OF RECEIVER TO OBTAIN PAYMENT OF UNPAID COMMON CHARGES

An appellate court has reaffirmed a Condominium Board of Managers' right to seek appointment of a receiver when unit owners fail to pay common charges. **Board of Managers of the 1835 E. 14th St. Condominium v Singer, 2020 N.Y. App. Div. LEXIS 5130 (2d Dep't Sept. 23, 2020)**. In this case, the Board of Managers increased the unit owners' common charges. The owners of two units refused to pay the increased common charges and sued the Board and its members on a variety of claims. The Board counterclaimed seeking a money judgment for the unpaid common charges. Subsequently, the Board commenced a separate action seeking to foreclose on common charges liens against the units, and moved for an order appointing a temporary receiver to collect a "reasonable rent" on the units while the foreclosure action was pending. The court granted the Board's motion and appointed a temporary receiver.

The appellate court upheld the receivership. The Condominium Act provides that in an action to foreclose a common charges lien, "the unit owner shall be required to pay a reasonable rental for the unit for any period prior to sale pursuant to judgment of foreclosure and sale, if so provided in the by-laws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same." Here, the By-Laws contained such a provision, and each unit had significant arrears. Accordingly, the Board was entitled to have a receiver appointed. The fact that a prior litigation between the parties was pending, in which the Board also sought a money judgment, did not change the result. However, the court stayed further proceedings in the foreclosure action, except regarding the receivership, until the prior pending action was resolved.