

March 25, 2020

## **UPDATE: New York State Legislature Considers Bill Affecting Certain Rents and Mortgage Payments During the Coronavirus Pandemic**

In recent days, state and local governments across the United States have begun requiring the closure of non-essential businesses in order to combat the coronavirus (COVID-19) pandemic, thereby significantly affecting the ability of affected businesses and individuals to continue to meet existing financial obligations, including paying rent. This alert serves as a follow-on to the [Abandonment of Leases and Abatement of Rent During the Coronavirus Pandemic](#) memorandum issued March 23, 2020, and describes a recent bill introduced in the New York State Senate that, if passed into law, would provide financial relief to certain affected businesses and individuals.

On March 23, 2020 New York State Senator Michael Gianaris introduced Senate Bill S8125, an act to suspend rent payments and certain mortgage payments for certain residential tenants and small business commercial tenants for 90 days in response to the outbreak of coronavirus. The proposed bill, which as of the date of introduction had 13 co-sponsors, is likely to undergo substantial changes before the legislature acts on it. The bill draft, as submitted, currently provides as follows:

### **Rental Relief**

Suspension, for 90 days following the effective date, of rent payments for “any residential tenant or small business commercial tenant in the state that has lost income or has been forced to close their place of business as a result of government ordered restrictions in response to the outbreak of coronavirus disease 2019 (COVID-19).”<sup>1</sup>

- Applicable rent that is suspended during this period would be permanently waived and never have to be repaid.
- Late fees will not be collectable for rent accrued during this time period.

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<sup>1</sup> See An Act to Suspend Rent Payments and Certain Mortgage Payments for Certain Residential Tenants and Small Business Commercial Tenants for Ninety Days in Response to the Outbreak of Coronavirus, N.Y. State Senate Bill S8125, 203 New York State Legislature § 1(a) (2020).

Small businesses are those businesses that are resident in New York State, are independently owned and operated, are not dominant in their field and employ 100 or fewer persons.<sup>2</sup>

It is unclear whether small business commercial tenants that have lost income, but have not been forced to close, would be covered as drafted, as “lost income” may be meant to only modify “residential tenant.” If the more restrictive interpretation were to apply, businesses such as restaurants, which have been allowed to remain open on a limited basis, would be unable to obtain relief under this proposed bill. Regulations would need to be promulgated setting forth parameters for what constitutes lost income, whether the lost income trigger applies to small business tenants without government closure, and how applicable tenants could avail themselves of the relief.

### **Automatic Lease Renewals**

Automatic renewal of all residential and small business commercial tenants’ leases that expire during the same 90-day period at the current rent charged.<sup>3</sup>

- While it is not clear from the proposed bill, it appears that the proposed bill would override automatic renewal provisions already provided for under the terms of the affected leases, even if such leases provide for a rental increase. If a tenant has a renewal option at a higher rent that would be triggered during the applicable period, such tenant could allow the existing option to lapse in order to avail itself of the statutory provision instead.
- The proposed bill also seems to mandate automatic renewal under the specified circumstances, whether or not the tenant wishes to renew its lease.

### **Mortgage Relief**

For any landlord that “faces a financial hardship as a result” of being deprived rent payments pursuant to the proposed bill, forgiveness of mortgage payments for the covered property for the same period.<sup>4</sup>

- The forgiven amount shall be determined by multiplying (1) the “mortgage payment”, *times* (2) a fraction, the numerator of which is the aggregate amount of suspended rent payments for such property during the applicable 90-day period, and the denominator of which is the total rent payments “typically owed” for the entire property over the applicable 90-day period.

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<sup>2</sup> *Id.* at § 2(d); Section 131 of the Economic Development Law (COM) of the State of New York.

<sup>3</sup> *See* S8125 § 1(a).

<sup>4</sup> *See* S8125 § 1(b).

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- Regulations would need to be promulgated setting forth parameters for what constitutes a financial hardship and how landlords could avail themselves of this relief.
  - Applicable mortgage payments that are suspended during this period would be permanently waived and never have to be repaid. For loans with an amortization component, the proposed bill would by its terms operate to forgive the applicable principal amounts.

The proposed bill does not provide relief from the impact of these payment waivers on the lenders holding the applicable mortgage loans.

We will continue to monitor developments in respect of the proposed bill and keep clients apprised of pertinent information.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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