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Eviction Moratorium Extended to January 15, 2022

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Eviction Moratorium Extended to January 15, 2022 Despite Recent Supreme Court Decisions in Favor of Landlords; New Constitutional Challenges by Landlords in Progress

On September 2, 2021, Governor Kathy Hochul signed new legislation affecting the COVID-19 Emergency Eviction and Foreclosure Prevention Act (“CEEFPFA”) and the COVID-19 Emergency Protect Our Small Businesses Act, extending New York’s moratorium on residential and commercial evictions, which expired on August 31, 2021, to January 15, 2022.

The legislation was passed to extend the expired moratorium and to also address two Supreme Court decisions that found parts of the prior moratorium unconstitutional. In Chrysafis v. Marks, the Court held that denying residential landlords a hearing based solely on their tenants’ submission of a hardship declaration violates Due Process. In Alabama Association of Realtors v. DHHS, the Court held that the nationwide CDC moratorium exceeded the agency’s federal authority and therefore, it is up to federal or state legislatures to enact further moratoriums.

The new law, which applies to both commercial and residential evictions, attempts to address the Chrysafis decision by making the presumption of COVID hardship based on a tenant declaration rebuttable rather than an absolute defense, but places the burden on landlords to oppose their tenants’ claims of hardship. The rebuttable presumption, and the burden of landlords to overcome it in order to proceed with eviction matters, applies to both residential and commercial evictions.

In response to the new law, on September 9, 2021, the Rent Stabilization Association (RSA), the largest landlord group in New York, filed suit in the Second Circuit Court of Appeals challenging the moratorium extension as contravening the Chrysafis decision in that it does not require tenants to submit actual proof of hardship in order to gain protection under the statute.

While the constitutional challenges to the eviction moratorium make their way through the courts, landlords should continue to try to pursue their eviction cases in court even if an eviction may not be possible until 2022, and should also consider other legal remedies like pursuing money judgments for unpaid rent against tenants and guarantors.

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