NYS MANDATES 90 DAY FORBEARANCE FOR COVID-19 IMPACTED BORROWERS

Hodgson Russ Banking & Finance Alert
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As part of the State of New York's response to the COVID-19 pandemic, on March 21, 2020, Governor Andrew Cuomo issued Executive Order No. 202.9 (the "Order"), which, in part, temporarily modifies subdivision 2 of Section 39 of the Banking Law of the State of New York (which provides that the superintendent may issue an order directing the discontinuance of unauthorized or unsafe business conduct) to deem it an unsafe and unsound business practice for a bank to refuse to grant a forbearance for 90 days to any person or business who has a financial hardship as a result of the COVID-19 pandemic. This modification in the Order is aimed at "any bank which is subject to the jurisdiction"[1] of the New York Department of Financial Services. View the Order here.

The Order goes on to direct the Superintendent of the Department of Financial Services, Linda A. Lacewell, (1) to ensure under reasonable and prudent circumstances that any licensed or regulated entities provide to any consumer in the State of New York an opportunity for a forbearance of payments for a mortgage for any person or entity facing a financial hardship due to the COVID-19 pandemic and (2) write emergency regulations to ensure banks make such applications for forbearance widely available to consumers and directs such applications to be granted in all reasonable and prudent circumstances. The Order also states that the Superintendent may draft regulations that restrict or modify ATM fees, overdraft fees and credit card late fees.

Many other states, including California, Delaware, New Jersey, Pennsylvania and Texas, to name a few, have issued various directives focused generally on residential and other consumer banking practices, such as moratoriums on residential evictions and foreclosures. Individual banks are also offering mortgage-relief assistance to clients who are encountering financial trouble as a result of the current pandemic.

But as of now, New York appears to be the first state to issue such a broad executive order requiring an extended forbearance to any individual or business entity experiencing a financial hardship as a result of the COVID-19 pandemic.

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[1] While "subject to the jurisdiction" is not further explained in the Order, it is likely meant to extend to those organizations to which Subdivision 2 of Section 39

Attorneys

Jessica Chue
Krystal Daniels
Christofer Fattey
Amy Fitch
Warren Gelman
Andrea Gervais
Elizabeth Holden
Peter Lutz
Brianne Szopinski
James Thoman
Sujata Yalamanchili

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of the Banking Law of the State of New York applies: any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in the State of New York, or foreign banking corporation licensed by the superintendent to do business in the State of New York.

Hodgson Russ continues to monitor this and all other financing and lending issues presented by the COVID-19 pandemic. If you have any questions about how this order affects your business, please contact any member of our Financial Services team.

Hodgson Russ remains on top of these circumstances as they develop. Our attorneys are working remotely, and ready, willing, and able to address the needs of our clients, so do not hesitate to contact us (attorney directory). **Please check our Coronavirus Resource Center to view many other alerts our attorneys in various practice areas have published on topics related to the pandemic.**

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