

Locke Lord QuickStudy: New York State Senate Extends Foreclosure and Eviction Moratorium from August 31, 2021 until January 15, 2022

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In one of her first acts as Governor of New York, newly appointed Governor Kathy Hochul called for a “Special” legislative session on September 1, 2021, to extend the moratorium on foreclosure and eviction actions provided in the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (S.9114/A.11181) (the “Eviction and Foreclosure Prevention Act”) until January 15, 2022. Originally signed into law by former Governor Andrew Cuomo in December 2020, the Eviction and Foreclosure Prevention Act prevented all residential evictions and foreclosure proceedings from going forward, and halted related credit discrimination and negative credit reporting due to the impact of the COVID-19 pandemic. Similar to the previous extensions passed by the NY State Senate, the bill was sponsored by Brian Kavanagh (D-26th District).

The bill provided several reasons for an extension including “the need for continued statutory protections and other emergency public health measures ...demonstrated by rates of transmission in the state... cases have risen ten-fold, and 95 percent of the sequenced recent positives in New York State were the Delta variant.”

The bill also recognized the United States Supreme Court’s recent ruling which struck down New York’s self-certification financial hardship. Previous versions of the bill allowed tenants facing eviction and homeowners in foreclosure to self-certify their own financial hardship with no mechanism in place to challenge the hardship claim. As amended, the bill permits a landlord or mortgage lender to request a hearing on the validity of a tenant’s or homeowner’s hardship submission.

The bill continues to provide protection to homeowners facing foreclosure “provided the owner or mortgagor... owns ten or fewer dwelling units whether directly or indirectly until January 15, 2022.” So long as the homeowner provides a hardship declaration, any foreclosure action will be stayed until January 15, 2022. In cases where the judgment of foreclosure has been entered, if the homeowner signs a hardship declaration any foreclosure sale will be stayed until the court can hold a conference.

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