

Real Estate Industry Alerts Tracker - May 1, 2020 Issue

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A green banner with white text. The text reads "Kelley Drye Real Estate" in a large font, with "INDUSTRY ALERTS" in a smaller font below it. A white arrow points from the "INDUSTRY ALERTS" text back to the "Real Estate" text.

Kelley Drye Real Estate
INDUSTRY ALERTS

Payment Protection Program Update

On April 23, 2020, the Small Business Administration issued a new FAQ No. 31 regarding the Payment Protection Program (PPP) loan application. The PPP loan application requires applicants to certify that the current economic uncertainty resulting from the pandemic made the loan request *necessary* to support its ongoing obligations. The new guidance in FAQ No. 31 addresses the “necessity” certification in the PPP loan application. It advises that when an applicant certifies as to the need for the loan to support its ongoing operations, it must take into account its current business activity and ability to access other sources of liquidity sufficient to support ongoing operations in a manner that is not significantly detrimental to the business. A public company with substantial market value and access to capital markets may be unable to make that certification in good faith, and, upon request of the SBA would need to demonstrate the necessity.

The PPP FAQs may be found [here](#).

New Jersey Tenants Permitted to Use Security Deposits Towards Rent During Pandemic

On April 24, 2020, New Jersey Governor Phil Murphy signed Executive Order No. 128, which became effective immediately and will be in place until 60 days after the current public health emergency is terminated. The order permits residential tenants to use their security deposits and any accumulated interest towards rent during the pandemic. Tenants must notify landlords in writing (electronic communication is acceptable) and direct their landlords to use security deposits to pay current rent to either make up for deficits in rent or pay their rent in full, as applicable. The tenant is not obligated to replenish the security deposit unless the lease is extended or renewed, in which case the tenant will be required to replenish the security deposit in full either (a) six (6) months following the end of the pandemic, or (b) on the date on which the current lease is extended or renewed, whichever is later.

A copy of Executive Order No. 128 may be found [here](#).

Short Term Rental Restrictions in New Jersey

On April 4, 2020, New Jersey Governor Phil Murphy and Colonel Patrick Callahan, superintendent of the State Police, issued an administrative order granting New Jersey municipalities and counties the authority to restrict hotels, motels, guest houses and private residences from accepting new transient guests or seasonal tenants.

A copy of the administrative order may be found [here](#), and a list of the rental restrictions may be found [here](#).

New York City Rent Relief

On April 22, 2020, the following rent relief bills were introduced by the New York City Council to address the effects of COVID-19:

Int. 1912-2020: If passed, would suspend the enforcement of evictions against individuals and businesses impacted by COVID-19 through at least April, 2021.

- The bill prohibits the City’s sheriff and marshals from evicting tenants until the “first suspension date,” which is defined as the later of: (i) the end of the first month that commences after the end of the eviction moratorium set out in Governor Cuomo’s Executive Order 202.8 (currently set to expire on June 20, 2020); (ii) the end of the first month that commences after the end of the eviction moratorium set out in the CARES Act (currently set to expire on July 25, 2020); or (iii) September 30, 2020.
- If an individual or business suffered a “substantial loss of income” due to COVID-19, the bill would suspend the enforcement of evictions through at least April, 2021. The bill sets out a list of ways in which a party may show that it has “suffered a substantial loss of income because of COVID-19.”
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 - **Residential Tenants:** A residential tenant can show a “substantial loss of income” if, between March 7, 2020, and the “first suspension date” (see above), the individual experienced two or more weeks in which (i) he/she claimed federal or state unemployment insurance benefits in connection with a claim that was filed on or after March 7, 2020, or (ii) he/she worked fewer than three days and earned less than \$504 due to, among other examples: (a) being diagnosed with COVID-19; (b) a family member or caregiver was diagnosed with COVID-19; (c) the tenant was unable to work because his/her child’s school was closed and he/she is the primary caregiver; (d) the tenant was unable to reach a place of employment due to a required quarantine/self-quarantine.
 - **Commercial Tenants:** A commercial tenant can show a “substantial loss of income” by demonstrating that: (i) it was subject to seating, occupancy, or on-premises service limitations pursuant to an executive order issued by the governor or mayor during the COVID-19 emergency period; or (ii) its revenues for any three-month period between March 7, 2020, and the “first suspension date” were less than 50 percent of its revenues for the same period in 2019, or less than 50 percent of its aggregate revenues for the months of December, 2019, January, 2020 and February, 2020.

Int. 1932-2020: If passed, would prohibit landlords from enforcing a personal liability provision against any commercial tenant impacted by COVID-19, and would make such conduct a form of

harassment.

Int. 1914-2020: If passed, would amend section 22-902 of the New York City Administrative Code to bar landlords from threatening a commercial tenant because of its “status as a person or business impacted by COVID-19, or...its receipt of a rent concession or forbearance of any rent owed during the COVID-19 period.” As a result of this amendment, landlords who engage in such conduct would be subject to a fine ranging from \$10,000 to \$50,000.

Int. 1936-2020: If passed, would amend the definition of “harassment” in the Housing Maintenance Code to include threats against an individual based on their status as a COVID-19 impacted person, their status as an essential employee, or their receipt of a rental concession or forbearance. Such harassment would be subject to a penalty of between \$2,000 and \$10,000.

Heard Around the Industry

CMBS Deals to be Revived?: Several CMBS lenders are looking at the possibility of moving forward with slimmed down conduit deals from those originally planned before the outbreak of the pandemic and related shutdown of the U.S. economy. It is highly unlikely that any conduits would include loans on hotel or retail properties, as cash flow has plummeted with “stay-in-place” orders nationwide that have closed operations at such properties. Any loans included in the slimmed down deal may include only strong borrowers that are unlikely to seek loan forbearance in the near future.

Democratic Senators Call for the SBA Inspector General to Investigate PPP Abuses: Last week, Senators Ben Cardin, Chuck Schumer, and Sherrod Brown sent a letter to U.S. Small Business Administration (SBA) Inspector General Mike Ware, calling for an investigation of reports that some lenders participating in the Paycheck Protection Program (PPP) prioritized the applications of larger and wealthier clients to the detriment of smaller businesses. While the PPP program is supposed to address claims on a “first-come, first-served basis”, some reports indicated that private and commercial banking customers received special treatment from their banks when applying for a PPP loan, while, at the same time, many retail customers have struggled to receive timely assistance from their banks to help them navigate the process and receive funds needed to allow their businesses to survive the economic downturn that resulted from the pandemic.

Maryland Groups Request Statewide Rent Abatement During COVID-19: Maryland Realtors, the Maryland Multi-Housing Association Inc., and the Apartment and Office Building Association of Metropolitan Washington signed a letter addressed to Gov. Larry Hogan, House Speaker Adrienne Jones, and Senate President Bill Ferguson in response to a request from unions and political activists to: (a) suspend rent collections in Maryland for a period of 90 days; (b) prohibit late fees and collections on rental and mortgage payments for one year once the pandemic subsides; and (c) make property owners offer interest-free payment plans for up to three years to pay the debt. The owner groups urged the creation of rental assistance programs instead, noting that rent abatements and deferred payments and collections would prevent owners from being able to invest in, and maintain properties.