

Real Estate Industry Alerts Tracker - October 23, 2020 Issue

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A green rectangular 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 end of "INDUSTRY ALERTS" back towards the "Real Estate" text.

Kelley Drye Real Estate
INDUSTRY ALERTS

New York State Extends Commercial Eviction and Foreclosure Moratorium

This week, New York Governor Andrew Cuomo signed Executive Order No. 202.70, which extends the moratorium on COVID-19-related commercial evictions and foreclosures through January 1, 2021. The new order aligns the commercial and residential moratoria so that they are extended to the same date.

Additional information may be found [here](#) and a copy of the order may be found [here](#).

CDC Issues New Clarification on the Federal Eviction Moratorium

On October 9, 2020, the CDC, joined by the DOJ, HHS and HUD, issued certain clarifications with respect to the federal eviction moratorium. The following are the more noteworthy implications of the clarifications:

- State and local eviction measures that provide tenants with greater protections than the federal moratorium still apply.
- It was previously implied that landlords are obligated to inform tenants of their rights under the federal eviction moratorium. The new guidance clarifies that landlords are under no such obligation.
- Unlike the original federal moratorium, the current prohibition on evictions does not prevent landlords from starting eviction proceedings. Eviction warrants will not be executed until the moratorium expires in January, however, landlords are not prohibited from commencing an action and starting the eviction process.
- Landlords may challenge the truthfulness of a tenant's declaration statements that establish eligibility for the federal eviction moratorium in any state or municipal court. The protections

apply, however, until a court rules on the issue.

The clarifications may be found on the CDC's FAQs page [here](#).

Property Owners Petition Judge to Block the Federal Eviction Moratorium

The New Civil Liberties Alliance (the "Alliance"), a non-profit civil liberties legal interest group based in Washington, petitioned a federal judge in the Northern District of Georgia to block the Centers for Disease Control and Preventions' (the "CDC") moratorium on evictions that is currently set to expire on December 31, 2020, but may possibly be extended if the pandemic continues. Lawyers on both sides made their arguments in a Zoom hearing this week. Caleb Kruckenberg, counsel for the Alliance, is claiming that his clients are being deprived of their Constitutional right to take possession of their own property as a result of the federal moratorium. Kruckenberg argued "[i]t cannot be [his] clients' responsibility to provide free housing indefinitely" and that "[t]he CDC has no authority here to take this action." Leslie Vigen of the Department of Justice argued on behalf of the CDC and the Department of Health and Human Services claiming that the CDC's order is valid given the current public health crisis and the advice of scientists that evictions will lead to a further spread of the virus. She argues that this is a temporary situation and that "there is no way" the judge could find "irreparable constitutional harm" asking the judge to deny the Alliance's request for a temporary injunction to block the CDC's eviction moratorium. Kruckenberg did not dispute the seriousness of the current public health crises, but he reiterated that his clients should not have to bear the cost of the coronavirus pandemic. Judge J.P. Boulee gave each side an hour to argue and then adjourned without saying when he would rule on the matter.

Additional information may be found [here](#).

New York Has Lost Out on \$755M in Tax Revenue from Real Estate Transactions

According to a report by the Real Estate Board of New York (REBNY), sales of both residential and commercial properties are down 45% in 2020 through September. As real estate sales in New York City are plummeting, so is the tax revenue that is generated from real estate transactions. According to REBNY, as compared with the first nine months of 2019, the steep decline in real estate sales has resulted in \$755 million less in city and state tax revenue that is generated solely from transfer and mansions taxes. This amount does not take into consideration lost mortgage recording taxes, which would bring the total amount of lost tax revenue even higher. In 2019, real estate transactions generated \$31.9 billion for the City's operating budget and accounted for 53% of its total tax revenue, according to the report. This is more than double the next-closest contributor, which is personal income taxes at 21%.

Additional information may be found [here](#).

Life Sciences Sector Continues to Weather the Pandemic Better than Others

A new report issued by CBRE reveals that investments in life sciences continues, despite the

pandemic. On the one hand, sales of laboratory and research and development properties totaled \$9.6 billion for the twelve months ending June, which is an 18% decrease from the same period last year. However, according to CBRE's report, pricing still remains intensely competitive. In addition, total commercial laboratory space has increased by 12% this year to 95 million square feet with another 11 million square feet under construction. The science industry's role in combating the pandemic is a factor in the upward growth trend in the life sciences sector. Venture capital funding in the life sciences sector for the twelve months ending June 30 reached an annual record, at \$17.8 billion. Additionally, federal funding for major universities and health care institutions for research is expected to increase to \$42 billion this year. This represents a 6% increase over last year.

Additional information may be found [here](#) and a copy of the report may be found [here](#).

Manhattan Retail Asking Rents Decline in the Third Quarter

A report by CBRE revealed that the average asking rent for ground-floor retail spaces in Manhattan declined by 12.8% in the third quarter to \$659 per square foot, as compared to last year. This represents a 4.2% decline from the second quarter and the 12th consecutive quarter that asking rents in Manhattan have declined. The decline is attributable, in part, to the forced temporary closures of many retail properties due to the pandemic, which resulted in many retailers having to permanently close their stores. According to the CBRE, 254 ground-floor retail spaces in Manhattan were available for rent at the end of September, up 8.1% from June. The largest asking rent declines were in SoHo (Prince Street from Broadway to West Broadway), where rents fell by 42.6% from last year to \$405 per square foot, and in the Meatpacking District (Washington Street from 14th to Gansevoort Street), where rents dropped by 22.2% to \$448 per square foot. However, in the downtown area (Broadway between Battery Park and Chambers Street) rents increased by 3.4% to \$394 per square foot.

Additional information may be found [here](#).

Multifamily Market is Stabilizing but Concessions are Rising

A recent report shows that while the multifamily market is showing signs of stabilization, the market is still facing challenges. A report from MRI Real Estate Software found that, as of September, move-in numbers are only 3% behind as compared to last year's numbers. That is tempered by the fact that concession volume is up 21% compared to last year and concessions values are up 13% for the same time period. Concessions have increased significantly in September (the first month after CARES Act benefits expired) as landlords offered additional incentives to attract tenants. Nationwide, metropolitan areas with higher rent levels are seeing substantial increases. In New York, rent concessions increased from 7.5% at the end of 2019 to 12.6% this year, while San Francisco and Boston have concession rates of 11.3% and 9.6%, respectively. In smaller rental markets, concession rates have increased but are still relatively low as compared with the larger markets. In Orlando and Phoenix, concessions increased slightly over last year, to 6.6% (up from 5.3%) and 6.4% (up from 4.9%), respectively.

Additional information may be found [here](#) and [here](#).

Apartment Evictions May Increase When CDC Moratorium Ends

A recent report from Fitch Ratings speculates that payment delinquencies may lead to increased evictions when the CDC's eviction moratorium expires at the end of the year. As of now, multifamily mortgage delinquency levels for Fitch-rated affordable and market-rate housing loans in the CMBS market are low and are up only slightly from pre-pandemic levels. According to the report, Fitch-rated affordable housing programs have sufficient cushion, liquidity and reserves to cover short-term cash flow disruptions, but added revenue pressures due to sustained high unemployment and a slower economic recovery may deplete such liquidity. Delinquencies and evictions are expected to be higher in areas impacted by the recession where employment has not rebounded.

Additional information may be found [here](#).