

CORONAVIRUS

MARCH 23, 2020 • NO. 1

New York Executive Order Requires Mortgage Lenders to Provide Payment Forbearance

In this ever-evolving, unprecedented state of affairs, New York Governor Andrew Cuomo added an additional category of “unsafe and unsound business practice[s]” to the Banking Law to include withholding a forbearance from “any person or business who has a financial hardship as a result of the COVID-19 pandemic.” This past Saturday, March 21, 2020, Executive Order 202.9 (“EO 202.9”) was issued on the heels of a number of other executive orders issued during a state of emergency. Moreover, such executive orders have been authorized “to cope with the disaster emergency or, if necessary, to assist or aid in coping with such disaster” and issued pursuant to § 29-a of Article 2-B of New York Executive Law. The executive law, in turn, was passed on March 3, 2020, and allows the governor to issue these executive orders and granted him a \$40 million appropriation to respond to the COVID-19 pandemic.

EO 202.9 directs the superintendent of the Department of Financial Services (“DFS”) to, under reasonable and prudent circumstances, ensure that New York licensed or regulated entities provide a consumer an opportunity for a 90-day forbearance on mortgage payments to any person or entity facing a financial hardship due to the COVID-19 pandemic. This directive requires that the application for a forbearance be “widely available” to consumers, and be granted in “all reasonable and prudent circumstances.” Additionally, EO

202.9 allows DFS to modify or restrict all ATM, overdraft, and credit card late fees.

Under § 29-a, the governor’s executive orders apply for a period of 30 days, and may be extended every 30 days with the consent of the legislature for the duration of this state of emergency. Without an extension, EO 202.9 will expire on April 20, 2020. It remains to be seen whether additional executive orders will be issued to require forbearance of other types of consumer and/or commercial credit.

Blank Rome’s [Coronavirus \(“COVID-19”\) Task Force](#) is continuing to monitor the COVID-19 crisis and will provide further updates for mortgage lenders as they become available.

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