

COVID-19 Impacts on the Real Estate Industry: New York State Executive Orders and the CARES Act

By Patrick T. Fitzgerald
and Timothy P. Moriarty
Phillips Lytle LLP

COVID-19 has impacted American workers and businesses, including those in the real estate industry, in an unprecedented fashion. In response, New York State and the federal government have taken significant, highly publicized actions. Governor Andrew M. Cuomo issued various Executive Orders ("NYS Orders") that impact how workers and businesses are permitted to operate. What's more, President Donald J. Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, a \$2 trillion economic stimulus package that seeks to provide "direct and fast relief" to American workers and businesses. Stakeholders in the real estate industry should consider the potential direct and indirect impacts that may result from key provisions in the NYS Orders and the CARES Act.



Patrick T. Fitzgerald
Partner



Timothy P. Moriarty
Attorney

NYS ORDERS

- **Evictions:** NYS Executive Order 202.8 imposed a stay on residential and commercial evictions for a period of ninety (90) days.
- **Forbearance:** NYS Executive Order 202.9 revised the Banking Law to state that it "shall be deemed an unsafe and unsound business practice, if in response to the COVID-19 pandemic, any bank which is subject to the jurisdiction of the Department shall not grant a forbearance to any person or business who has a financial hardship as a result of the COVID-19 pandemic for a period of ninety [90] days." It also tasked the Superintendent of the Department of Financial Services to ensure forbearance opportunities are provided to NYS consumers.
- **Construction:** NYS Executive Order 202.13 provides that only certain construction qualifies as an essential service not subject to in-person work restrictions. Empire State Development Corporation is authorized to determine which projects are essential.

CARES ACT

Ownership and Financing Matters

- **Protection Against Foreclosure:** Servicers of federally-backed mortgage loans may not initiate any foreclosure, foreclosure-related eviction or foreclosure sale for at least a sixty (60)-day period, commencing on March 18, 2020.
- **Forbearance:** Borrowers with qualified federally backed loans may request a forbearance for up to thirty (30) days. Two (2) additional forbearance extension periods of thirty (30) days each also may be requested.
- **Eviction Moratorium:** Landlords are prohibited from evicting tenants from property that is subject to certain federal agencies and their programs for a one hundred twenty (120)-day time period, beginning on the enactment date of the CARES Act.

TAX BENEFITS

- **Qualified Improvement Property:** "Qualified improvement property" is now eligible for bonus depreciation.
- **Net Operating Loss Carryback Extension:** Qualified taxpayers may carryback net operating losses for a period of five (5) years.
- **Net Operating Loss Deduction:** The existing net operating loss deduction limit of eighty percent (80%) of taxable income is suspended. Businesses may use their net operating losses to offset one hundred percent (100%) of their income accruing in 2020.

- **Business Loss Limitations:** The excess business loss limitation is suspended for tax years 2018, 2019 and 2020.
- **Business Interests Deductions:** Deductible business interest amounts increased for certain tax years. Businesses may elect to use their 2019 EBITDA to determine their 2020 business interest deduction.
Taxpayers may be able to amend their tax returns for prior years in order to benefit from these tax law changes.

INDIRECT IMPACTS

- **The CARES Act:** This Act allocates substantial portions of the \$2 trillion economic stimulus package to aid key industries, to the Small

Business Administration to lend to small and mid-sized businesses, and for economic programs, including the Paycheck Protection Program and Economic Injury Disaster Loan program. Commercial and residential property owners, landlords and tenants anticipate that beneficial indirect impacts will result. Phillips Lytle stands ready to assist Western New York's real estate community on the application of the NYS Orders and the CARES Act, and is prepared to counsel on the latest updates in this dynamic and unstable legal environment.

Patrick T. Fitzgerald is a partner at Phillips Lytle LLP, where he assists clients with all matters related to real estate transactions and development projects. This includes sales and acquisitions, financing, leasing, land use and zoning, easements, covenants, conditions and restrictions, and environmental compliance and permitting at both the state and federal levels. He can be reached at (716) 847-8315 or pfitzgerald@phillipslytle.com.

Timothy P. Moriarty is an attorney at Phillips Lytle LLP, where he concentrates his practice in real estate law, with particular emphasis on real estate development and commercial leasing. He can be reached at (716) 847-8329 or tmoriarty@phillipslytle.com.



Our passion to deliver means we'll do whatever it takes to keep your complex project progressing. That's The Phillips Lytle Way. Our fully integrated Real Estate Development Team combines the day-to-day "dirt work" of traditional real estate development with specialties like the Brownfield Cleanup Program, land use and zoning, and PILOT Increment Financing. We understand that a one-size-fits-all approach doesn't work for leading-edge redevelopment efforts. That's why our attorneys tailor their style to your time frame, goals and risk tolerance—so you stay on track and in control. Talk to us and learn why sophisticated developers keep building trust in Phillips Lytle.



Phillips Lytle LLP

Visit us at [PhillipsLytle.com/RealEstateDevelopment](https://www.phillipslytle.com/RealEstateDevelopment)