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Real Estate Litigation and Counseling Newsletter

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On behalf of Jenner & Block's Real Estate Litigation and Counseling Group, we are pleased to present this newsletter, which is designed to inform lawyers and business leaders about key legal developments affecting REITs, developers, brokers, investors, contractors, tenants, and other real estate industry participants. In this edition, we cover the following topics:

- **COVID-19 Lease Disputes:** Courts refuse to exempt tenants from rent obligations based on common law and contractual defenses raised by tenants
- **Landlords and Tenants:** Third Circuit overturns dismissal of Landlord's allegations of fraud by Tenant
- **Purchasers and Sellers:** Delaware Chancery permits purchaser of $5.8 billion hotel portfolio to back out of deal where hotel operations changed in light of pandemic
- **Lenders and Borrowers:** Illinois Appellate Court holds LLC responsible for $120 million guaranty of construction financing

We also provide a summary of the current commercial foreclosure and eviction moratoria.

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COVID-19 Lease Disputes

In several recent decisions on the issue of whether commercial tenants must pay rent in spite of the impact of COVID-19 on their businesses, courts refused to exempt tenants from rent obligations based on common law and contractual defenses raised by tenants. Courts concluded that frustration of purpose, impossibility, and other common law defenses were inapplicable because the premises were physically intact, the tenants were able to open their businesses in some form, and the changed economic circumstances were not grounds for application of those doctrines. In denying tenants' arguments based on *force majeure* and casualty provisions, the courts construed the lease provisions based on the plain meaning of the text rather than the constructions proposed by tenants. Similarly, at least one court enforced a landlord's right to terminate a lease based on the unambiguous lease language and rejected the tenant's claim for breach of the covenant of good faith and fair dealing, which sought to expand the tenant's rights beyond what was provided in the lease.

Frustration of Purpose, Impossibility, Rescission, Constructive Eviction

A retail tenant (a luxury fashion company) asserted theories of frustration of purpose, impossibility,

rescission, and construction eviction and sought a declaratory judgment that its lease had been terminated and/or voided or that it was entitled to rent abatement because the pandemic and various executive orders caused its business to close for periods of time. The court granted the landlord's motion to dismiss because specific provisions of the parties' lease "expressly allocated the risk that [the tenant] would not be able to operate its business and that [the tenant] is therefore not forgiven from its performance, including its obligation to pay rent by virtue of a state law." The court noted that the lease provided that "'restrictive governmental laws or regulations,' certain cataclysmic events, 'or other reason of a similar or dissimilar nature beyond the reasonable control of the party delayed in performing work or doing acts required' shall excuse the payment of rent." The court also explained that the constructive eviction claim required dismissal because the tenant failed to plead that it moved out of the premises or that the landlord "substantially interfered with its use and possession (i.e., as opposed to the temporary interference by a state law)."

The case is *Valentino U.S.A., Inc. v. 693 Fifth Owner, LLC*, No. 652605/2020, 2021 WL 668788 (N.Y. Sup. Ct. Jan. 27, 2021).

Frustration of Purpose and Impossibility

A retail landlord sued its tenant for non-payment of rent, and the tenant raised frustration of purpose and impossibility as defenses on the grounds that "when it signed the lease in 2013 no one could have predicted that there would be an infectious disease that would shut down the vast majority of businesses" and that "the lack of customer traffic has decimated the store's revenues." The court rejected those arguments and granted summary judgment for the landlord. The court held that frustration of purpose is a "narrow doctrine," dictating that "the frustrated purpose must be so completely the basis of the contract that, as both parties understood, without it, the transaction would have made little sense." The court held the doctrine had no applicability because the case was not one where "the retail space [the tenant] leased no longer exists, nor is it even prohibited from selling its products"; instead, "[the tenant's] business model of attracting street traffic is no longer profitable because there are dramatically fewer people walking around due to the pandemic." Such a circumstance does not trigger the frustration of purpose doctrine, the court found, because "unforeseen economic forces, even the horrendous effects of a deadly virus, do not automatically permit the Court to simply rip up a contract signed between two sophisticated parties," even though the tenant "would not have entered into the lease if it knew there would be a pandemic that negatively affected the retail market." Similarly, the court rejected application of the impossibility doctrine because "[i]mpossibility excuses a party's performance only when the destruction of the subject matter of the contract or the means of performance makes performance objectively impossible" and only when the impossibility is "produced by an unanticipated event that could not have been foreseen or guarded against in the contract." However, in the instant case, "[t]he subject matter of the contract—the physical location of the retail store—is still intact," and the tenant "is permitted to sell its products," even if "it cannot sell enough to pay the rent." The court also noted that the *force majeure* clause in the parties' lease "specifically provided that it would not excuse defendant from having to pay rent," and "did not contemplate that defendant could simply walk away with nearly a decade left on the lease and not pay any more rent."

The case is *East 75th Street Corp. v. Christian Louboutin L.L.C.*, No. 154883/2020, 2020 WL 7315470 (N.Y. Sup. Ct. Dec. 09, 2020).

Frustration of Purpose and Impossibility

An office tenant was a provider of management and consulting services for restaurants, and the landlord sued for unpaid rent. The tenant asserted impossibility and frustration of purpose defenses on the ground that the shutdown of restaurants "render[ed] its business model unprofitable." The court rejected both defenses, noting that it "empathizes with the many businesses that have been adversely affected by the ongoing pandemic; here, both the landlord and the tenant have undoubtedly faced significant hardship." As to frustration of purpose, the court explained that the doctrine requires that "the frustrated purpose must be so completely the basis of the contract that, as both parties understood, without it, the transaction would have made little sense" and that the frustration must be

"substantial." The court concluded that the instant case did not "fit into the narrow doctrine of frustration of purpose" because it was merely a situation where the tenant could "no longer afford the rent because restaurants no longer needed the management help that the tenant provides." The court further pointed out that the tenant "merely provided restaurants with consulting services," but "was not shut down by any public health directives," noting that "restaurants no longer needed assistance with human resources, payroll or accounting, not because of anything plaintiff did (or failed to do)," and "[s]ometimes that happens in business—an industry changes overnight." Similarly, the court rejected application of the impossibility doctrine because "[i]mpossibility excuses a party's performance only when the destruction of the subject matter of the contract or the means of performance makes performance objectively impossible" and "must be produced by an unanticipated event that could not have been foreseen or guarded against in the contract." Accordingly, the court granted the motion for summary judgment for the landlord.

The case is *1140 Broadway LLC v. Bold Food, LLC*, No. 652674/2020, 2020 WL 7137817 (N.Y. Sup. Ct. Dec. 3, 2020).

Frustration of Purpose and Contractual Casualty Provision

A restaurant owner tenant moved for a preliminary injunction to exempt it from paying rent for two periods of time during the pandemic: (1) a period when the restaurant was closed because of the pandemic and because the Governor's executive orders barred in-person dining; and (2) a period when the Governor's executive order restricted in-person dining capacity. The tenant argued it had a likelihood of success on the merits based on a casualty provision in the lease providing for rent abatement "if the Premises [we]re damaged by fire or other casualty, or if the Building [wa]s damaged such that Tenant [wa]s deprived of reasonable access to the Premises." The court held the pandemic did not constitute a casualty under the lease because "there ha[d] been no physical harm to the demised premises and the lease [did] not provide for a rent abatement in such a case as plaintiff was required to obtain insurance to guarantee payment under said circumstances." The tenant also argued that the purpose of the lease had been frustrated, but the court held otherwise because "for a party to avail itself of the frustration of purpose defense, there must be complete destruction of the basis of the underlying contract; partial frustration such as a diminution in business, where a tenant could continue to use the premises for an intended purpose, is insufficient to establish the defense as a matter of law." Based on the record, "the plaintiff ha[d] been operating out of the . . . premises since at least July, 2020," offering "both counter service and pickup of orders submitted online." Accordingly, the court concluded there was no likelihood of success on the merits and denied the motion.

The case is *Dr. Smood New York LLC v. Orchard Houston, LLC*, No. 652812/2020, 2020 WL 6526996 (N.Y. Sup. Ct. Nov. 02, 2020).

Frustration of Purpose and Impossibility

The landlord attempted to evict the restaurant operator tenant in 2017, and the court issued a *Yellowstone* injunction at that time. The injunction was predicated on the tenant's continued payment of rent, but during the pandemic, the tenant missed two rent payments, and the landlord moved to have the injunction vacated. The tenant asserted the defenses of frustration of purpose and impossibility on the ground that the Governor's executive order had required the closure of its restaurant. The court rejected the frustration of purpose defense because "[t]he doctrine applies when a change in circumstances makes one party's performance virtually worthless to the other, frustrating [its] purpose in making the contract" because the "temporary closure of plaintiff's business for two months" in the last year of a nine-year lease "could not have frustrated its overall purpose." The court rejected the impossibility defense because "impossibility occasioned by financial hardship does not excuse performance of a contract," and "[n]othing in the lease at issue permits termination or suspension of plaintiff's obligation to pay rent in the event of the issuance of a governmental order restricting the use of the leased premises." Accordingly, the court ordered the tenant to pay rent for the two months it missed.

The case is *BKNY1, Inc. v. 132 Capulet Holdings, LLC*, No. 508647/16, 2020 WL 5745631 (N.Y. Sup. Ct. Sep. 23, 2020).

Good Faith and Fair Dealing and Lease Language

The tenant, a fitness center, missed its April 2020 rent payment as a result of the pandemic's impact on its business, and the landlord sent notice of the missed payment, triggering a five-day cure period. The tenant did not make payment within the cure period, but did pay April rent soon after, and it subsequently paid rent for May 2020. The landlord accepted both rent payments, but sent notice it was terminating the lease anyway. Around the same time, the tenant made proposals to defer rent for April–July 2020, but the parties did not reach an agreement regarding any rent deferral. The tenant then filed a lawsuit, seeking a declaration that the landlord improperly terminated the lease and violated the covenant of good faith and fair dealing by purportedly ignoring the tenant's proposals to defer rent and using the pandemic to extract concessions from the tenant during negotiations. The landlord moved to dismiss, and the court granted the motion. The court held that, under the unambiguous terms of the lease, the landlord properly terminated the lease and the landlord's acceptance of rent payments did not change that because the tenant was required to pay rent as a holdover tenant. With regards to the claim for good faith and fair dealing, the court explained that "[t]he scope of the covenant is only as broad as the contract itself; it does not impose new duties or add more rights that those otherwise provided," and that is "particularly true where the parties are (as here) corporate entities, operating in a commercial context, pursuant to written contracts negotiated with the assistance of counsel." Accordingly, the court rejected that claim because the parties were sophisticated; there was "nothing in the Lease that required [the landlord] to agree to [defer rent]," and the fact that the tenant "found itself financially strapped" did not constitute a breach of any covenant of good faith and fair dealing.

The case is *TSI South Stations, Inc. et al. v. 695 Atlantic Avenue Company, LLC*, No. 2084CV1059BLS2, 2020 WL 8182917 (Sup. Ct. Mass., Suffolk Cty. Nov. 6, 2020).

Force Majeure Clause

Tenant Kirkland Stores, Inc. stopped paying rent when the pandemic and related executive orders restricting non-essential activities disrupted its business. The shopping mall landlord sued for non-payment of rent, and the tenant filed a motion to dismiss. The tenant argued that the landlord's claim was barred because the restrictions on its business operations and non-essential activities constituted *force majeure* events under the following *force majeure* clause in the parties' lease:

> Whenever a period of time is prescribed in this Lease for action to be taken by either party, such party will not be liable or responsible for, and there will be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such party.

The court disagreed, explaining that, to trigger the *force majeure* clause, "[t]he restrictions on non-essential activities and business operations must directly affect Kirkland's ability to pay rent," and the tenant failed to explain "how the governmental regulations it describes as a *force majeure* event resulted in its inability to pay its rent."

The case is *Palm Springs Mile Assocs., Ltd. v. Kirkland's Stores, Inc.*, No. 20-21724-CIV, 2020 WL 5411353 (S.D. Fla. Sept. 9, 2020).

Impossibility and Lease Language

A catering company tenant, which leased event space, was unable to operate its business in the leased premises due to various executive orders limiting large gatherings. The tenant claimed the lease was terminated as a result of the executive orders, and therefore it was allowed to cancel a letter of credit that secured the lease. The tenant moved for an injunction requiring the landlord to refund the value of the letter of credit to the tenant or post a bond in the amount of the letter of credit, arguing that the executive orders rendered performance impossible. The court denied relief on the ground that there was no likelihood of success, holding that the executive orders did not render performance impossible.

The court pointed to a provision in the parties' lease providing that: "If the fixed rent or any additional rent shall be or become uncollectable by virtue of any law, governmental order or regulation, or direction of any public officer or body, Tenant shall enter into such agreement or agreements and take such other action (without additional expense to Tenant) as Landlord may request, as may be legally permissible, to permit Landlord to collect [rent]." The court explained that the provision demonstrated that the parties "evidently contemplated a scenario in which performance of the lease terms by plaintiffs might become prohibited by a governmental order, and agreed that, if such a situation arose, they would reach an agreement regarding the collection of rent at the conclusion of the governmental restriction." However, the tenant was not permitted to terminate the lease if the parties were not able to reach such an agreement, and therefore the tenant could not rely on the impossibility defense. Accordingly, the court denied the motion for an injunction.

The case is *Backal Hospitality Group LLC v. 627 West 42nd Retail LLC*, No. 154141/2020, 2020 WL 4464323 (N.Y. Sup. Ct. Aug. 03, 2020).

Landlord / Tenant – Fraudulent Transfer Dispute

Third Circuit Overturns Dismissal of Landlord's Allegations of Fraud by Tenant

The Third Circuit recently overturned a trial court's ruling in a fraud case and remanded the case to the lower court, directing the lower court to conduct additional fact-finding to determine whether a tenant committed fraudulent transfers intended to hide assets from its landlord.

Hollywood Tanning Systems Inc. (Hollywood Tanning) was originally founded in 1994 by Ralph Venuto, Sr. In 2007, Hollywood Tanning sold most of its assets and liabilities to another company, and members of the Venuto family received $23.4 million directly in payment for the sale. Shortly thereafter, in 2008, Hollywood Tanning defaulted on its real estate lease.

The landlord sued Hollywood Tanning, claiming that the $23.4 million distributions to the Venuto family members before the lease default were fraudulent transfers intended to keep money out of the reach of the landlord, in its role as a creditor. The trial court held against the landlord, concluding that the landlord had not shown fraud by "clear and convincing" evidence, as was required.

On appeal, the Third Circuit overturned the trial court's ruling. It considered whether any of the eleven "badges of fraud" outlined in a New Jersey statute indicated Hollywood Tanning's distributions to shareholders were fraudulent. The court found strong evidence of three of the badges of fraud: (1) the shareholder distributions were to insiders, (2) Hollywood Tanning did not get a "reasonably equivalent" value for the transfers, and (3) the shareholder distributions went from corporate accounts to individual accounts.

Noting that the presence of "[e]ven one badge of fraud can suffice to 'cast suspicion on the transferor's intent,'" the Third Circuit vacated the trial court's decision and remanded the case for further fact-finding.

The case is *MSKP Oak Grove LLC v. Venuto et al.*, No. 19-3372 (3rd Cir. 2020).

Acquisition Dispute

Delaware Court of Chancery Holds Purchaser of $5.8 Billion Hotel Portfolio Does Not Have to Close Where Hotel Operations Changed in Light of the Pandemic

Following a five-day trial, the Delaware Court of Chancery held that an investment group under contract to purchase 15 hotels for $5.8 billion did not have to close because, during the pandemic, the seller failed to continue to operate the hotels consistent with past practice.

The September 10, 2019 purchase and sale agreement required the seller to continue operating the hotels in the "ordinary course of business, consistent with past practice in all material respects" up until

the closing date, which was set for April 17, 2020. The court found that after the outbreak of the COVID-19 pandemic, and before the close of the deal, the seller made "extensive changes" to the hotels' operations. For instance, the seller shut down one hotel, closed another one before its normal between-seasons closing, and was operating other hotels at reduced levels with reduced staffing. The court held that these changes to the hotels' operations violated the requirement to operate the hotels in the "ordinary course of business," and therefore the buyer was not required to close.

The case is *AB Stable VIII LLC v. MAPS Hotels and Resorts One LLC et al.*, No. 2020-0310 (Del. Ch. 2020).

Lender / Borrower Dispute

Illinois Court Requires LLC to Pay $120 Million Guaranty Related to Construction Financing

The Appellate Court of Illinois recently affirmed a trial court decision by holding that an LLC owes US Bank National Association (US Bank) over $120 million based on a guaranty of payment the LLC signed in 2006. The LLC executed the guaranty on behalf of a borrower who was using financing from US Bank to fund the construction of the Algonquin Commons shopping center in Chicago. US Bank claimed the borrower defaulted and that the LLC was required to pay all debt associated with the construction's financing.

Algonquin Commons' construction was financed in two phases. The Phase II loan assumption agreement expressly mentioned the LLC's guaranty, so the LLC conceded to the court that it was responsible for debt associated with that phase. However, the Phase I loan assumption agreement did not specifically refer to the LLC's guaranty.

The LLC argued that because the Phase I loan agreement did not refer to the guaranty, the LLC did not owe US Bank any debt associated with that phase. The LLC also contended that to extend its liability beyond Phase II construction would violate the "precise terms" of the guaranty document.

After examining the construction finance documents, and the text of the LLC's guaranty, the court disagreed with the LLC's argument. It pointed out that through the guaranty, the LLC agreed to "pay and perform when due the Liabilities" defined in the guaranty. And the "Liabilities" defined in the guaranty included "all obligations of [the borrower] to the Lender of any kind whatsoever," including those due under the Algonquin Commons' Phase II financing documents or under "any other Loan Document." The court held that the phrase "any other Loan Document" included the Phase I financing documents.

In reaching its decision, the court rejected the LLC's argument that it should consider evidence outside of the parties' final agreement documents, otherwise known as "parol" evidence. The court noted that in its filings, the LLC included "a summary and analysis of parol evidence purporting to demonstrate the intent of the original parties," which the LLC contended limited its liability. The court stated that parol evidence "is not cognizable unless the contract is ambiguous," and because the guaranty and other agreements were "not ambiguous," the court took "no notice of the extrinsic evidence or any argument based on the extrinsic evidence" offered by the LLC.

The case is *U.S. Bank National Association v. In Retail Fund Algonquin Commons LLC et al.*, 2020 IL App (2d) 190283-U (unpublished).

Current Commercial Foreclosure Moratoria

Below is a list of states that, as of February 18, 2021, have COVID-19-related commercial foreclosure moratoria in effect or recently let moratoria expire.

Illinois

- Cook County: On December 16, 2020, the Chancery Division of the Circuit Court of Cook County

issued General Administrative Order 2020-15, which ended the foreclosure moratorium put in place due to the COVID-19 pandemic. However, commercial foreclosures will be stayed after entry of the judgment of foreclosure, and no sales shall be scheduled or held until further order of the Court.

New York

- Statewide: On May 7, 2020, Governor Andrew Cuomo issued Executive Order 202.28, instituting a foreclosure moratorium for both residential and commercial mortgages.
    - On December 11, 2020, Governor Cuomo issued Executive Order 202.81, extending the moratorium on commercial foreclosures through January 31, 2021. Governor Cuomo has not further extended the moratorium.
    - As of January 19, 2021, both the New York Assembly and the New York Senate passed a bill that would extend foreclosure protection for small businesses that can demonstrate financial hardship due to COVID-19 through May 1, 2021.

Oregon

- Statewide: On July 7, 2020, the legislature passed House Bill 4204, which prohibits any foreclosures during the COVID-19 emergency period.
    - On December 17, 2020, Governor Kate Brown signed Executive Order No. 20-67, extending the emergency period through March 3, 2021.

Current Eviction Moratoria

Federal – CARES Act II

On December 27, 2020, Former President Trump signed into law the Consolidated Appropriations Act, 2021 (an extension of the CARES Act). In that Act, Congress extended the CDC's ban on certain residential evictions through January 31, 2021. The Act does not refer to commercial evictions.

Since taking office, President Biden signed an executive order asking federal agencies to extend the moratorium on evictions and foreclosures. Originally set to expire on January 31, the relief now lasts at least another month and in some cases two months, with the possibility of more extensions. The CDC has since issued an order extending its moratorium to March 31, 2021.

Current State Eviction Moratoria

Below is a list of states and certain local jurisdictions that currently have COVID-19-related eviction moratoria in effect. For each jurisdiction, we have provided the relevant orders and/or statutes imposing the moratorium, whether the moratorium applies to residential or commercial evictions (or both), and the date on which the moratorium is set to expire. Commercial eviction moratoria are bolded in the text.

California

- Statewide: On August 31, 2020, Governor Newsom signed the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020, which provides that there can be no COVID-19-related evictions until February 1, 2021. This protection only applies to residential tenants and landlords with four or fewer properties.
    - On September 23, 2020, Governor Newsom signed Executive Order N-80-20, which extended the authority of local governments to ban **commercial evictions** through March 31, 2021.
- Los Angeles County: The Temporary Eviction Moratorium Ordinance, now effective through

February 28, 2021, implements a countywide ban on **residential and commercial evictions** for non-payment of rent based on COVID-19-related reasons.

- San Francisco: On December 1, 2020, the San Francisco Board of Supervisors approved a commercial eviction moratorium ordinance, which came into effect on January 11, 2021 (and thus terminated the mayor's commercial eviction moratorium executive order). The **commercial moratorium** is in effect until March 31, 2021, as provided in Governor Newsom's Executive Order N-80-20, unless Governor Newsom further extends this executive order.

Connecticut

- Statewide: On December 23, 2020, Governor Lamont issued Executive Order 9T, extending the residential eviction moratorium to February 9, 2021.
    - On February 8, 2021, Governor Lamont issued Executive Order 10A, extending the residential eviction moratorium to April 19, 2021.

Delaware

- Statewide: Updated as of January 8, 2021, Governor Carney's Twenty-Seventh Modification of the State of Emergency Declaration provides that residential evictions may be filed but must be stayed by the court until the time the emergency order is no longer in effect.
    - On February 19, 2021, Governor Carney extended the state of emergency for an additional 30 days.

Hawaii

- Statewide: On April 16, 2020, Governor Ige issued his Fifth Supplementary Proclamation, implementing a residential eviction moratorium to stay in effect through the end of the emergency period.
    - On December 16, 2020, Governor Ige issued his Seventeenth Proclamation, extending the emergency period through February 14, 2021.
    - On February 12, 2021, Governor Ige issued his Eighteenth Proclamation, extending the emergency period through April 13, 2021.

District of Columbia

- The COVID-19 Response Emergency Amendment Act of 2020 prohibits **residential and commercial evictions** throughout the duration of the state of emergency.
- The Mayor's Order 202-127 extends the state of emergency through March 31, 2021.

Illinois

- Statewide: On January 8, 2021, Governor Pritzker issued Executive Order 2021-01, which extended the ban on residential evictions through February 6, 2021.
    - On February 5, 2021, Governor Pritzker issued Executive Order 68, extending the ban on residential evictions through March 6, 2021.
    - However, the ban on **commercial evictions** has expired. In Executive Order 2020-48, Governor Pritzker clarified that the ban on commercial evictions would expire on August 22, 2020.
- Cook County: On November 23, 2020, the Circuit Court of Cook County issued General

Administrative Order No. 2020-07 in which it ordered that no residential real estate eviction action shall commence and the sheriff of Cook County shall refrain from eviction orders relating to residential real estate until further order of the court.

Kansas

- Statewide: On August 17, 2020, Governor Kelly issued Executive Order 20-61, prohibiting certain residential evictions based on financial hardship.
    - On January 26, 2021, Governor Kelly extended this order, via Executive Order 21-02, until the expiration of the statewide State of Disaster Emergency, as provided for in the 2021 Kansas Senate Bill 14.
        - The bill extended the State of Disaster Emergency through March 31, 2021.

Maryland

- Statewide: On December 17, 2020, Governor Hogan issued Executive Order 20-12-17-02, prohibiting **residential and commercial evictions** if the tenant can demonstrate a substantial loss of income until the state of emergency is terminated.
    - On February 19, 2021, Governor Hogan renewed the state of emergency for another 30 days.

Minnesota

- Statewide: On July 14, 2020, Governor Walz signed Executive Order 20-79, issuing a moratorium on residential evictions until the end of the state of emergency.
    - On February 12, 2021, Governor Walz issued Executive Order 21-04, extending the state of emergency through March 15, 2021.

Montana

- Statewide: On May 19, 2020, Governor Bullock issued a directive limiting residential evictions to certain categories of people, to be in effect through the end of the emergency period.
    - On January 13, 2021, Governor Gianforte issued Executive Order 2-2021, stating a statewide emergency runs concurrent to the federal emergency declaration.

Nevada

- Statewide: On December 14, 2020, Governor Sisolak issued Emergency Directive 036, allowing a resident to stay an eviction proceeding by providing a declaration they are eligible under the order to do so. The order is in effect until March 31, 2021.

New Jersey

- Statewide: On March 19, 2020, Governor Murphy issued Executive Order 106, prohibiting enforcement of evictions of residential tenants for two months following the end of the state of emergency.
    - On February 17, 2021, Governor Murphy issued Executive Order 222, extending the state of emergency for another month.

New Mexico

- Statewide: On March 24, 2020, the New Mexico Supreme Court issued an order requiring courts to stay residential evictions, arising under the Uniform Owner-Resident Relations Act, in cases in

which the tenant can show they are unable to pay rent. The order is set to remain in place until the end of the state of emergency.

  - On January 8, 2021, Governor Grisham issued Executive Order 2021-004, extending the state of emergency to March 5, 2021.

New York

- Statewide: On December 28, 2020, Governor Cuomo signed the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020, which places a moratorium on residential evictions until May 1, 2021.

  - On December 11, 2020, Governor Cuomo issued Executive Order 202.81, extending the ban on **commercial evictions** through January 31, 2021.

  - This moratorium expired on January 31, 2021. As of February 10, 2021, Governor Cuomo stated he had no intention of reissuing the executive order but would instead focus on passing legislation to address **commercial evictions** (see bullet below).

  - On January 19, 2021, the New York State Senate passed Bill S471A, which protects against **commercial evictions** in a particular context (small businesses with COVID-19-related financial hardships from evictions) until May 1, 2021.

North Carolina

- Statewide: On December 30, 2020, Governor Cooper issued Executive Order No. 184, extending the residential eviction moratorium to January 31, 2021.

  - On January 27, 2021, Governor Cooper issued Executive Order 191, extending the state of emergency to March 31, 2021.

Oregon

- Statewide: On December 21, 2020, the legislature passed House Bill 4404, which extended the eviction moratorium, as to residential evictions based on a declaration of financial hardship, to June 30, 2021.

Texas

- Austin-Travis County: On January 28, 2021, the Mayor of Austin issued Order No. 20210128-025 prohibiting **residential and commercial evictions**. However, the ban on commercial evictions is limited to tenants who operate a childcare business, live music venue, arts venue, or restaurant or bar. The moratorium is in effect until April 1, 2021.

Vermont

- Statewide: On May 14, 2020, the legislature passed an act requiring courts to stay any new residential eviction actions commenced during the emergency period. The emergency period is defined as ending 30 days after the Governor terminates the state of emergency.

  - On February 15, 2021, Governor Scott issued an addendum to Executive Order 01-20 to extend the state of emergency to March 15, 2021.

Washington

- Statewide: On December 31, 2020, Governor Inslee issued Executive Order 20-19.5, extending the eviction moratorium for both **residential and commercial** tenants until March 31, 2021.

- Seattle: On December 16, 2020, Seattle Mayor Jenny Durkan issued an order officially extending a moratorium on evictions for residents, small businesses, and nonprofits through March 31, 2021 (it was due to expire at the end of 2020).

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