



The impact of Governor Cuomo's ending of the state of emergency for real estate securities developers

Part I – Impact on New York City

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Governor Andrew M. Cuomo announced that the state of disaster emergency due to the COVID-19 pandemic officially ends June 24, 2021. The end of the Executive Orders will impact developers in New York City and state-wide. This bulletin covers the impact to developers in New York City. Part II will cover the impact to developers outside of New York City, including those offering interests in homeowners' associations and seniors communities. Below is an overview of the relevant relief and what the end of the state of disaster emergency means for Sponsors in New York City.

- 15-Month requirement for conversion plans in New York City.** Sponsors of rental to cooperative or conversion plans were granted additional time to declare a conversion plan effective—a requirement that otherwise must happen within a 15-month statutory time period. Now, Sponsors must submit an amendment to their conversion plan no later than August 9, 2021, to provide for an updated timeframe to declare the conversion plan effective (unless more time is provided for by the New York Attorney General). Executive Orders 202.18 and 202.55 provided for a total of 554 additional days to meet the 15-month requirement (i.e., 434 days plus 120 days). Therefore, Sponsors are able to add an additional 554 days to the overall timeframe required to declare a conversion plan effective.
- First year of operation.** Sponsors of new construction cooperatives and condominiums were excused from amending their offering plans due to delays in the commencement of the projected first year of operation. Now, Sponsors must submit an amendment to their offering plans no later than August 9, 2021, to provide for an updated projected first year of operation (unless more time is provided for by the New York Attorney General). Executive Orders 202.18 and 202.55 provided for a total of 554 days to extend the first year of operation (i.e., 434 days plus 120 days). Therefore, Sponsors that did not update the first year of operation during the state of disaster emergency must do so now, and must provide for an updated projected first year of operation based upon the relief provided. Furthermore, mere delays in the commencement of the projected first year of operation, to the extent the budget does not increase by 25% or more, will not trigger any rescission rights.

- **Requirement to have first unit closing.** Sponsors of new construction cooperatives and condominiums were excused from having their first unit closing during the projected first year of operation. Similar to delays in the projected first year of operation, Sponsors must submit an amendment to their offering plans no later than August 9, 2021, to project when the first unit closing will take place (unless more time is provided for by the New York Attorney General). Executive Orders 202.18 and 202.55 provided for a total of 554 days to have the first unit closing (i.e., 434 days plus 120 days). Therefore, Sponsors that did not update the projected first unit closing date must do so now. Furthermore, delays in having the first unit closing will not trigger any rescission rights.
- **Mortgage recording tax credit requirements.** Finally, Executive Order 202.55 preserves an important means by which Sponsors are able recoup a major expense of their financing costs by having suspended the two-year time periods referenced within New York Real Property Law § 339-ee(2). To ensure eligibility for the mortgage recording tax credit, Sponsors can now calculate the amount of time they have to record their condominium declaration and have the first unit closing. Executive Order 202.55 provided for a total of 443 days to meet the requirements of § 339-ee(2). To calculate the date, Sponsors should determine how many days they had to meet the statutory requirements as of the date of Executive Order 202.55 (i.e., August 5, 2020), and add to that date 443 days, which is the relief provided by 202.55 plus 120 days. Additional information on the mortgage recording tax credit relief is available in the “Ask the Former Regulator” column dated June 23, 2021, and available [here](#).

Nixon Peabody’s full-service cooperatives and condominiums team has kept abreast of the relief provided by the governor’s executive orders in prior bulletins, which are available below:

[“New Executive Order pauses key deadlines for cooperative and condominium projects”](#) dated April 17, 2020

[“Latest Executive Order Provides Relief to Tenants and Developers of Coops, Condos, HOAs and Senior Communities State-Wide”](#) dated August 10, 2020

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