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## Latest Executive Order Provides Relief to Tenants and Developers of Coops, Condos, HOAs and Senior Communities State-Wide

By Erica F. Buckley and Brian Flanagan

Last week, Governor Andrew M. Cuomo signed Executive Order 202.55 in response to the COVID-19 pandemic. Executive Order 202.55 extends and modifies many of the deadlines and filing requirements of cooperative and condominium developers, adds relief to sponsors of homeowners' associations and senior entry fee communities, and increases the protections for tenants in conversion plans in New York City and certain upstate regions. Executive Order 202.55 was signed on August 5, 2020, and is effective through September 4, 2020.

A summary of the key provisions impacting developers of cooperative interests in realty are as follows:

- **Cooperative or condominium conversions taking place in New York City.** The 15-month statutory deadline to convert residential rental properties to cooperative or condominium status, previously tolled for the duration of the COVID-19 emergency disaster pursuant to prior executive orders, is further tolled for the effective period of Executive Order 202.55, plus an additional 120 days after the emergency disaster is lifted (the "Tolling Period"). Executive Order 202.55 also states that all tenants in occupancy of a rental property undergoing conversion must be afforded the status of "non-purchasing tenant" for the duration of the Tolling Period and shall (i) be afforded certain protections from eviction and (ii) not be subject to unconscionable rent increases). Executive Order 202.55 also tolls the expiration of certain tenancy rights such as the right to buy and the right to elect non-purchasing tenant status for eligible seniors and disabled tenants through the duration of the Tolling Period;
- **Cooperative or condominium conversions taking place in certain municipalities in Nassau, Westchester, or Rockland Counties.** For those municipalities subject to the provisions of General Business Law § 352-eee, the 12-month statutory deadline to convert a residential rental property to cooperative or condominium status is tolled for the duration of the Tolling Period. Through the Tolling Period, every tenant in occupancy of a property undergoing a conversion in these municipalities must be afforded the status of "non-purchasing tenant." That is, during the Tolling Period, residential tenants in occupancy shall (i) be afforded certain protections from

eviction; and (ii) shall not be subject to unconscionable rent increases). Executive Order 202.55 also tolls the expiration of certain tenancy rights such as the right to elect non-purchasing tenant status for eligible seniors and disabled tenants through the duration of the Tolling Period;

- **First year of operation for homeowners' associations and senior entry fee communities tolled.** Sponsors of homeowners' associations and senior entry fee communities are now afforded tolling rights under Executive Order 202.55. The projected date of first closing of a unit or lot is tolled for the length of the Tolling Period and rescission rights are tolled based upon the new projected date of first closing of a unit or lot.
- **First year of operation in coops and condos further tolled.** Sponsors of cooperatives and condominiums are afforded additional tolling rights under Executive Order 202.55. The projected date of first closing of a unit or shares is tolled for the length of time previously provided for by prior executive orders and the Tolling Period of Executive Order 202.55. Rescission rights are further tolled based upon the new projected date of first closing of a unit or shares.
- **Requirement to Update Budgets in Real Estate Securities Offerings Tolled.** The requirement to provide an updated budget in cooperative, condominium, homeowners' association, timeshare and senior entry fee offering plans is tolled for the duration of the Tolling Period. The mere delay in updating any budget, to the extent such budget does not increase by 25% or more, shall not be treated as a material and/or adverse event by the Department of Law, and therefore no rescission rights will be provided due to tolling of this requirement.
- **Mortgage Recording Tax Credit Tolled.** Finally, Executive Order 202.55 preserves an important means by which sponsors are able recoup a major expense of their financing costs. By extending the two-year time periods referenced within New York Real Property Law § 339-ee(2) for the Tolling Period, Executive Order 202.55 permits a sponsor to still recover from its purchasers the value of the mortgage recording taxes it may have paid.

Executive Order 202.55 is an acknowledgement of the impact COVID-19 has had on residential real estate. Unlike prior executive orders, Executive Order 202.55 has expanded relief outside of New York City to homeowners' associations and senior entry fee communities while balancing the relief afforded to sponsors and tenants. Finally, Executive Order 202.55 extends the time frame for sponsors to take advantage of the mortgage recording tax credit—a suggestion made to the Real Estate Board of New York by Nixon Peabody on behalf of our developer clients. While certain questions remain as to the scope of certain rights for tenants (whether the protections are for plans submitted both prior to and after the 2019 amendments to the Martin Act), Executive Order 202.55 makes clear that the role of development in New York continues to be critical to our recovery and that Governor Andrew M. Cuomo has emphasized that New York welcomes much-needed development activity state-wide.

Nixon Peabody's full-service Cooperatives and Condominiums team is available to discuss the impact of Executive Order 202.55 and past executive orders with developers and sponsors, who should be carefully planning ahead as all offering plans will need to be amended at the end of the Tolling Period. Such planning is now required for developers in New York City as well as active regions in Upstate New York including the Capital Region and Western New York—areas serviced by the Nixon Peabody Cooperatives and Condominiums Team.

For more information on the content of this alert, please contact the authors or another member of the Cooperatives and Condominiums Team, our [Coronavirus Response Team](#), or your Nixon Peabody attorney.

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A copy of Executive Order 202.55 is available [here](#).