

THE FIRST QUARTER OF 2021 IS OVER: WHERE ARE WE IN NEW YORK?



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Like every other aspect of life in New York over the past year, real property leasing, lending, and sales have been turned upside-down by the Covid-19 pandemic. Countless tenants and property owners have failed to pay full rent or mortgage payments, but have been protected from immediate dispossession through at least August 31, 2021 by a combination of executive orders and legislation.¹ While trials have resumed in New York City, a growing backload of foreclosures and evictions continue to be held in abeyance.² Many offices and commercial establishments that emptied out as a result of closure orders, job losses, work-from-home arrangements and rising vacancy rates, raised questions about lasting changes to New York's office stock and streetscapes.³ Commercial real estate lawyers

are anxiously wondering what the coming months will hold in store. This article will briefly examine some recent developments on the legislative and litigation fronts that may be consequential for the commercial real estate law bar.

On the legislative front, as of this writing, the Governor has signed a \$212 billion budget bill for the 2022 fiscal year (the "2022 budget").⁴ This budget, criticized by some as a "tax-and-spend boondoggle,"⁵ nevertheless failed to implement several measures that had been dreaded in many real estate circles:

- First, the 2022 budget does not include the so-called mezzanine recording tax. This tax, the latest incarnation of which was introduced

in the State legislature earlier this year,⁶ would create a new section 291-k of the Real Property Law that would require the recording of a mezzanine loan or preferred equity investment (in the latter case, if there is a special, preferred or accelerated rate of return) concurrently with the recording of a mortgage on the subject real property located in New York. This legislation would also require the payment of a mortgage recording tax (on the amount of the loan or investment) at the same rate as applicable to the recording of a mortgage on the property (under a new proposed section 253(4) of the Tax Law). Failure to record and pay the tax may mean that the lender would not have a perfected security interest and would not have the right to enforce its lien on the collateral (under UCC section 9-601(h)). The mezzanine recording tax, in its current and former iterations, has been widely criticized as unworkable by the real estate law bar, and fiercely opposed by industry groups.⁷

- The 2022 budget also left out an extension and increase to the state capital base tax which had been inadvertently included in the Senate and Assembly budget proposals.⁸
- Also omitted was the pied-a-terre tax, which had been included in the original Senate and Assembly budget proposals. Such a tax, under consideration for at least seven years, had been advancing in Albany earlier this year.⁹
- Notably, the 2022 budget also failed to pick up a new short-term rental sales tax requirement that was included in Governor Cuomo's executive budget proposal.¹⁰ The proposal was opposed by Mayor DeBlasio and others on the basis that it would legitimize activity that is currently illegal under the Multiple Dwelling Law.¹¹

Nonetheless, the 2022 budget increases income tax rates, even in the face of better-than-expected revenues from tax collections and federal aid.¹² Given the State legislature's current inclination to increase tax revenues, the real estate industry's collective sigh of relief as to the absence of the above-described taxes from the budget could very well prove fleeting.

In Albany, other legislation is in the works to address rising commercial vacancy rates. The Housing Our Neighbors with Dignity Act, in committee in both the Senate and Assembly, would permit building owners to sell their properties to the State with the purchase price being funded with federal monies, and the State would then operate them as affordable housing managed by housing nonprofits and similar organizations.¹³ The 2022 budget did not include anything close to what is proposed in this bill, but did include \$100 million in funding for an Adaptive Reuse Affordable Housing Program, the monies for which will not be used until a program for buying and converting distressed commercial properties in New York City is established.¹⁴ How the program will ultimately be structured (if at all) remains to be seen.

Other recent proposed legislation has been aimed at helping small businesses affected by the pandemic. The Save our Storefronts Act, introduced in the summer of 2020, would reduce the rent of qualifying small business tenants to the lesser of 20 percent of actual income or one-third of the contractual rent.¹⁵ Other legislation would be aimed at limiting defaulting commercial tenants' liability by requiring landlords to mitigate damages.¹⁶ In New York City, in coming months, we may very well see increasing calls¹⁷ to enact the Small Business Jobs Survival Act¹⁸ and/or the so-called Commercial Rent Stabilization Act,¹⁹ which have been referred to, individually and collectively, as commercial rent control (approvingly or derisively, depending on the speaker).²⁰

On the practical side, a bill pending in Albany would authorize the use of video and audio conference technology to identify individuals for electronic notarization.²¹ This legislation would, in effect, make permanent some temporary measures implemented during the pandemic. This bill is still in committee in the Assembly, but it has passed in the Senate. Federal legislation permitting remote and electronic notarization (the Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2020) is also pending in Washington, D.C.²² All such legislation is being closely monitored by title insurance companies and other interested constituents.

Shifting now to litigation, the proverbial elephant in the room is, of course, the deluge of eviction and foreclosure actions that is expected after the expiration of the moratoria.²³ It remains to be seen to what extent the substantial federal and state aid expected to be made available to affected tenants and owners will ultimately protect these individuals and entities from dispossession, money judgments, and lasting negative credit consequences.

Over the past year, tenants, licensees, purchasers, and other parties adversely affected by the pandemic have sought relief from their performance obligations through the doctrines of force majeure, impossibility of performance, frustration of purpose, failure of consideration, constructive eviction, and even on the basis that the pandemic constitutes a casualty event or regulatory taking. To date, these efforts have met with limited success in the federal and state courts.²⁴ However, there is presently scant guidance from the courts as to the impact of these doctrines on loan enforcement proceedings, and little to no guidance at the appellate level as to their applicability in any context. As time goes on, the Appellate Divisions and other appellate courts may have the opportunity to adjudicate these issues, and clearer parameters for the applicability of these doctrines may emerge.

In recent months, we have also seen the resolution of legal challenges to legislation enacted by the New York City Council in 2020 to ameliorate the effect of the pandemic on commercial and residential tenants and lease guarantors.²⁵ In November 2020, in *Melendez v. City of New York*,²⁶ the Southern District of New York rejected the constitutional challenges to Local Laws No. 56-2020, No. 53-2020, and No. 55-2020, a suite of legislation passed by the City Council in May, 2020 prohibiting landlords from harassing “person[s] impacted by COVID-19” out of their lawfully occupied space, and permanently limiting the ability of commercial landlords to enforce “personal guaranties” by natural persons of payments accrued between March 7, 2020 and June 30, 2021 contained in leases with certain tenants (the “guaranty law”).²⁷ An appeal is pending in the Second Circuit. Still unresolved is the question

of whether the courts will interpret the guaranty law to limit the enforcement of standalone guaranties which are not, strictly speaking, in “a commercial lease or other rental agreement.”²⁸ In January 2021, the Supreme Court of New York County permitted *Saks, Inc.’s* landlord to enforce a lease guaranty, confirming that the 2020 Local Law does not limit a landlord’s remedies against non-natural person guarantors.²⁹

Any discussion of Covid-19-related real estate litigation would be incomplete without saying a word about the wealth of disputes between property owners, lessors, and their insurers about whether or not commercial property policies (including business interruption and civil authority coverages contained therein) cover pandemic-related losses. The defenses to such coverage raised by insurers have included the requirement of direct physical loss and, if applicable, virus exclusions.³⁰ Insurers’ incentives to settle pandemic-related claims may grow in view of legislation pending in the at the state³¹ and federal³² levels which, if passed, would require certain pandemic-related perils to be covered under business interruption policies or would reimburse insurers for voluntary payments of pandemic-related losses. These pandemic-related insurance suits may be consolidated or continue to be litigated separately.³³ Also under consideration is the Pandemic Risk Insurance Act of 2020,³⁴ which, using an approach analogous to the Terrorism Risk Insurance Act of 2002,³⁵ would create a federal Pandemic Risk Insurance Program providing coverage to insurers that incur losses as a result of coverage related to pandemics and the outbreaks of disease on or after January 1, 2021.

In light of the moratoria on the commencement of commercial mortgage foreclosure actions, lenders are exploring other potential remedies. One that has been utilized is an action (and application therein, albeit on notice) for the appointment of a receiver for the mortgaged property pursuant to Article 64 of the Civil Practice Law and Rules.³⁶ There are many implications (including the impact of New York’s election of remedies) that must be considered before a lender may invoke this remedy. In a

recent federal case, the court appointed a receiver for the income-producing mortgaged property, in the absence of a mortgage foreclosure action, concluding “the elimination of rental income is a direct impairment of the lender’s collateral.”³⁷ In addition, mezzanine lenders may proceed with UCC foreclosures notwithstanding the moratoria;³⁸ however, establishing the commercial reasonableness of such sales during a pandemic may be complicated.³⁹

Lastly, and perhaps overshadowed by the Covid-19 emergency, is 2019’s Climate Mobilization Act,⁴⁰ which deals with greenhouse gas emissions mitigation, adaptation, and finance. Notably, the 2022 budget failed to include a so-called climate law workaround for which many in the real estate industry had lobbied and which had been included in Governor Cuomo’s executive budget.⁴¹ While the January 1, 2024 compliance date is less than two years away, building owners claiming “adjustments” to the emissions limitations had to do so by July 1, 2021.⁴² Affected real estate owners and their advisors should promptly access the Act and navigate its compliance requirements as best they can. While

comprehensive rules are not yet in place, there is a wealth of law firm client advisories, webinars, and continuing legal education programs that may help provide guidance. Owners, users, and their respective legal counsel will need to negotiate compliance cost allocations. Environmental experts, construction companies, and related consultants will need to be enlisted to help guide compliance. Brokers and bankers will need to evaluate how the Act will affect both the future value of real estate and its cash flows. Regulators will need to fill in any remaining gaps in the Act.

Covid-19 has changed our world, including real estate in New York. The extent to which its effects will continue to be felt in years to come remains to be seen. Much will depend on epidemiology (including the emergence of variants and long-term efficacy of vaccines), economics (overall economic growth and the effect of stimulus monies), changes in work habits (less reliance on use of physical office space), and politics (in particular, the outcome of the gubernatorial election on November 8, 2022 and, in New York City, the mayoral election on November 2, 2021). 📌

Notes

1 See N.Y. Exec. Order No. 202 (Mar. 7, 2020) (the Executive Order; together with its successors, collectively, the Executive Orders). The moratoria on commercial evictions, foreclosures and tax sales previously mandated by the Executive Orders were codified in a modified form on March 9, 2021 in the COVID-19 Emergency Protect Our Small Businesses Act of 2021, Assemb. B. 3207, 2021-2022 Leg. Sess. (N.Y. 2021); S.B. 471-A, 2021-2022 Leg. Sess. (N.Y. 2021), as extended by Assemb. B. A7175-A, 2021-22 Leg. Sess. (N.Y. 2021); S.B. S6362-A, 2021-22 Leg. Sess. (N.Y. 2021). It establishes hardship declarations for owners of commercial real property and a temporary stay.

Currently, small businesses with 50 employees or less are eligible for the eviction moratorium, and properties of 10 units or less are eligible for the foreclosure moratorium. It seems possible that these protections will be expanded to include additional business owners and landlords suffering financial hardship in the coming months. See Press Release, Andrew Cuomo, Governor, New York State, Governor Signs the COVID-19 Emergency Protect Our Small Businesses Act of 2021 Establishing Eviction and Foreclosure Protections for Small Business (Mar. 9, 2021), <https://www.governor.ny.gov/news/governor-cuomo-signs-covid-19-emergency-protect-our-small-businesses-act-2021-establishing>.

Since the pandemic began, residential tenants and mortgagors have been protected from dispossession by operation of the Executive Orders and, since December 28, 2020, the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020, Assemb. B. 11181, 2019-2020 Leg. Sess. (N.Y. 2020); S.B. 9114, 2019-2020 Leg. Sess. (N.Y. 2020). This enactment stays all evictions for residential tenants experiencing a financial hardship due to COVID-19 until August 31, 2021. See also Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. L. No. 116-136, 134; Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020), as extended by Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, § 502, as further extended by Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 Fed. Reg. 8,020, 8,021 (Feb. 3, 2021).

2 See Coronavirus and the New York State Courts, <https://www.nycourts.gov/covid-archive.shtml> (last visited Mar. 10, 2021); Eviction Moratoria and Courthouse Operations, N.Y.C. Mayor’s Office to Protect Tenants, <https://www1.nyc.gov/content/tenantresourceportal/pages/eviction-moratorium-and-courthouse-closures> (last visited Mar. 18, 2021); Will Parker, New York Renters Owe More Than \$1 Billion in Unpaid Rent, Survey Finds, Wall St. J. (Jan.

- 14, 2021), <https://www.wsj.com/articles/new-york-city-renters-owe-more-than-1-billion-in-unpaid-rent-survey-finds-11610622000>.
- 3 See, e.g., Matthew Haag, Remote Work is Here to Stay, Manhattan May Never Be the Same, N.Y. Times (March 29, 2021), <https://www.nytimes.com/2021/03/29/nyregion/remote-work-coronavirus-pandemic.html>.
 - 4 The 2022 budget is embodied in more than 10 bills passed in each legislative chamber, all of which are available at <https://www.budget.ny.gov/pubs/archive/fy22/#en>.
The 2022 budget was signed by the Governor on April 19, 2021. Press Release, Governor Andrew M. Cuomo, Governor Cuomo Signs FY 2022 Budget and Announces Continuation of Middle-Class Tax Cuts to Help New Yorkers Recover from Economic Hardship During the COVID-19 Pandemic (April 19, 2021), <https://www.governor.ny.gov/news/governor-cuomo-signs-fy-2022-budget-and-announces-continuation-middle-class-tax-cuts-help-new>.
 - 5 See Press Release, New York Republican State Committee, Statement from NYGOP Chairman Nick Langworthy on the 2022 State Budget (April 7, 2021), <https://nygop.org/statement-from-nygop-chairman-nick-langworthy-on-the-2022-state-budget/>.
 - 6 Assemb. B. A3139, 2020-2021 Leg. Sess. (N.Y. 2021); S.B. S3074, 2020-2021 Leg. Sess. (N.Y. 2021). This legislation is a new version of legislation introduced in 2020. See Assemb. B. 9041-A, 2019-2020 Leg. Sess. (N.Y. 2020); S.B. 7231-A, 2019-2020 Leg. Sess. (N.Y. 2020).
 - 7 See, e.g., Meghan O'Reilly and Rachel M. Orbach, Potential Implications of Proposed Mezzanine Tax: Consequences for Lenders and Developers (January 2020), <https://www.herrick.com/publications/potential-implications-of-proposed-mezzanine-tax-consequences-for-lenders-and-developers/>.
 - 8 See Erin Hudson, Legislators Accidentally Propose Huge Tax Hike for Co-ops, The Real Deal (Mar. 26, 2021), <https://therealdeal.com/2021/03/26/legislators-accidentally-propose-huge-tax-hike-for-co-ops/>.
 - 9 Assemb. B. 9041-A, 2021-2022 Leg. Sess. (N.Y. 2021); S.B. 4199, 2021-2022 Leg. Sess. (N.Y. 2021).
 - 10 See Jimmy Vielkind, Cuomo Proposes Airbnb Collect Sales Tax on New York Stays, Wall St. J. (Jan. 25, 2021), <https://www.wsj.com/articles/cuomo-proposes-airbnb-collect-sales-tax-on-new-york-stays-11611579661>.
 - 11 See MDL § 4(8)(a). See also Ryan Deffenbaugh, Lawmakers Fear Trojan Horse in Cuomo's Airbnb Tax Proposal, Crain's N.Y. Bus. (Mar. 18, 2021), <https://www.craigslist.com/hospitality-tourism/lawmakers-fear-trojan-horse-cuomo-airbnb-tax-proposal>.
 - 12 See Carl Campanile, COVID Stimulus Eliminates Need for NY Tax Hikes, Experts Say, N.Y. Post (Mar. 10, 2021), <https://nypost.com/2021/03/10/covid-19-stimulus-eliminates-need-for-ny-tax-hikes-expert-says/>.
 - 13 Assemb. B. 6593, 2021-2022 Leg. Sess. (N.Y. 2021); S.B. 5257, 2021-2022 Leg. Sess. (N.Y. 2021); See Katie Honan, New York Could Turn Hotels, Office Buildings Into Affordable Housing Under State Senate Bill, Wall St. J. (Mar. 2, 2021), <https://www.wsj.com/articles/new-york-could-turn-hotels-office-buildings-into-affordable-housing-under-state-senate-bill-11614723512>.
 - 14 See supra note 4.
 - 15 Assemb. B. A-10901, 2019-2020 Leg. Sess. (N.Y. 2020); S.B. 8865, 2019-2020 Leg. Sess. (N.Y. 2020). This legislation would, inter alia, cancel the contractual rent of qualifying small business tenants during the state of emergency to the extent it exceeds the lesser of 20 percent of actual income or 1/3 of the contractual rent, landlords would waive 20 percent of the contractual rent, and an interim commercial rent relief program of up to \$500 million of federal monies will be set up to help compensate landlords for the differential. This legislation is a commercial adaptation of the Rent and Mortgage Cancellation Act, proposed earlier in 2020. Assemb. B. A-10826, 2019-2020 Leg. Sess. (N.Y. 2020); S.B. 8802, 2019-2020 Leg. Sess. (N.Y. 2020).
 - 16 Assemb. B. A8482, 2019-2020 Leg. Sess. (N.Y. 2019); S.B. S1129, 2021-2022 Leg. Sess. (N.Y. 2021) (passed by the Assembly and introduced in the Senate in January 2021).
 - 17 In fact, some small business advocates have already renewed their calls for this legislation; See Bridget Bartolini, City's Small Businesses Need Rent Stabilization to Survive COVID-19, Advocates Say, City Limits (Apr. 6, 2020), <https://citylimits.org/2020/04/06/citys-small-businesses-need-rent-stabilization-to-survive-covid-19-advocates-say/>.
 - 18 N.Y. City Council Int. No. 737A (2018) (would establish conditions and requirements for commercial lease renewals).
 - 19 N.Y. City Council Int. No. 1796 (2019) (would establish conditions and requirements for commercial lease renewals). (would cap annual rent increases for certain commercial tenants at amounts determined by a City Council-appointed board).
 - 20 These bills seek to regulate the commercial landlord-tenant relationship in a manner not seen in over half a century. See N.Y. Unconsol. Laws §§ 8521-38 (Consol. 1945) (expired 1963);
see also N.Y. Unconsol. Laws §§ 8521-67 (Consol. 1945) (expired 1963). We expect that all such legislation will continue to be vociferously opposed, on constitutional and other grounds, by the Real Estate Board of New York and other industry groups.
 - 21 Assemb. B. 4076-B, 2019-2020 Leg. Sess. (N.Y. 2020); S.B. S4352B, 2019-2020 Leg. Sess. (N.Y. 2020).
 - 22 S.B. 3533, 116th Cong. (2020) currently before the Senate Judiciary Committee; H.R. 6364, 116th Cong. (2020) (currently before the House Energy and Commerce and House Judiciary Committees).
 - 23 See supra note 1.
 - 24 Some courts have been persuaded to apply these doctrines excusing performance. See, e.g., In re Hitz Rest. Grp., 616 B.R. 374 (Bankr. N.D. Ill. 2020); Gap, Inc. v. 170 Broadway Retail Owner, LLC, No. 652732/2020 (Sup. Ct., N.Y. Co. Oct. 30, 2020), rev'd on other grounds;
Gap, Inc. v. 44-45 Broadway Leasing Co., LLC, No. 2020-03361 (1st Dep't Feb. 16, 2021);

- UMNV 205-207 Newbury, LLC v. Caffé Nero Americas Inc., No. 2084CV01493-BLS2 (Mass. Super. Ct. Feb. 8, 2021) (partial summary judgment order);
- 188 Ave A Take Out Food Corp. v. Lucky Jab Realty Corp., No. 653967/2020 (Sup. Ct., N.Y. Co. Dec. 21, 2020) (Yellowstone injunction motion).
- However, courts seem to reject the applicability of these doctrines in most reported decisions. See, e.g., Martorella v. Rapp, 20 Misc. 000153 (MDV) (Mass. Land Ct. June 1, 2020);
- FTC v. A.S. Research, LLC, No. 19-CV-03423-PAB-KMT (D. Colo. July 21, 2020);
- Future St. Ltd. v. Big Belly Solar, LLC, No. 20-cv-11020-DJC (D. Mass. July 31, 2020);
- Victoria's Secret Stores, LLC v. Herald Sq. Owner LLC, 70 Misc. 3d 1206(A), 136 N.Y.S.3d 697 (Sup. Ct., N.Y. Co. 2020); Lantino v. Clay LLC, No. 1:18-cv-12247 (SDA) (S.D.N.Y. May 8, 2020);
- Backal Hosp. Grp. LLC v. 627 W. 42nd Retail LLC, No. 154141/2020 (Sup. Ct., N.Y. Co. Aug. 3, 2020);
- BKNY 1, Inc. v. 132 Capulet Holdings, LLC, No. 508647/16, 2020 N.Y. (Sup. Ct., Kings Co. Sept. 23, 2020);
- Dr. Smood N.Y. LLC v. Orchard Houston, LLC, No. 652812/2020 (Sup. Ct., N.Y. Co. Sept. 29, 2020);
- E. 16th St. Owner LLC v. Union 16 Parking LLC, No. 653839/2020 (Sup. Ct., N.Y. Co. Jan. 15, 2021);
- Atlantic Garage Mgmt. LLC v. Boerum Commercial LLC, No. 512250/2020 (Sup. Ct., Kings Co. Dec. 2, 2020);
- 35 East 75th Street Corporation v. Christian Louboutin L.L.C., No. 154883, slip op. (Sup. Ct., N.Y. Co. Dec. 9, 2020).
- 25 N.Y. City Local Laws Nos. 56-2020, 53-2020, and 55-2020; See also Press Release, N.Y.C. Council, Council Votes to Provide Relief to Small Businesses and Restaurants Impacted by COVID-19 Pandemic (Aug. 27, 2020), <https://council.nyc.gov/press/2020/08/27/2012/>.
- 26 Melendez v. City of New York, No. 20-CV-5301 (RA) (S.D.N.Y. Nov. 25, 2020), appeal docketed, No. 20-4238 (2d Cir. Dec. 22, 2020).
- 27 N.Y. City Local Law No. 55-2020. The prohibition on enforcement originally expired on March 31, 2021, but on March 25, 2021, the date was extended to June 30, 2021. See Natalie Sachmechi, City Council Extends Protections for Small Businesses, Crain's N.Y. Business (March 25, 2021), <https://www.craigslist.com/commercial-real-estate/city-council-extends-protections-small-businesses>.
- 28 See Mark S. Edelstein, Jeffrey J. Temple and Bozena Sarsynska, Morrison Foerster Client Alert: NYC Enacts Law Prohibiting Enforcement of Personal Liability Provisions for COVID-19-Impacted Commercial Tenants (May 29, 2020), <https://www.mofo.com/resources/insights/200529-nyc-law-personal-liability-covid-commercial-tenants.html>.
- 29 135 East 57th Street, LLC v. Saks Inc., No. 155234/2020 (Sup. Ct., N.Y. Co. Jan. 29, 2021).
- 30 See, e.g., Soundview Cinemas Inc. v. Great Am. Ins. Grp., No. 605985-20 (Sup. Ct., N.Y. Co. Feb. 8, 2021); Social Life Magazine, Inc. v. Sentinel Insurance Co., Ltd., No. 20 Civ. 3311 (VEC) (S.D.N.Y. May 14, 2020).
- 31 Assemb. B. A-10226B, 2019-2020 Leg. Sess. (N.Y. 2020).
- 32 Business Interruption Relief Act of 2020, H.R. 7412, 116th Cong. (introduced on June 29, 2020) (establishes a Business Interruption Relief Program to provide benefits to insurers that choose to join the program and voluntarily pay benefits for Covid-19 related losses).
- 33 See Storm Wilkins, Commercial Property and Business Interruption Insurance Coverage Issues: The Next COVID-19 Hotspot?, 49 Real Est. Rev. J., no. 1, 2020, at 7.
- 34 H.R. 7011, 116th Cong. (2020).
- 35 Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322 (codified as amended at 15 U.S.C. § 6701 (2002)).
- 36 CPLR 6401.
- 37 Wilmington Tr., Nat'l Ass'n v. Winta Asset Mgmt. LLC, No. 20-CV-5309 (JGK) (S.D.N.Y. Sept. 28, 2020).
- 38 See, e.g., 1248 Associates Mezz II LLC v. 12E48 Mezz II LLC, Index No. 651812/2020 (Sup. Ct., N.Y. Co. May 18, 2020) (order vacating TRO); 893 4th Ave. Lofts LLC v. 5AIF Nutmeg, LLC, 2020-08886, 511942/2020 (2d Dep't Jan. 20, 2021).
- 39 UCC § 9-610(b) requires that "[e]very aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable." Pandemic-related disruptions have affected courts' assessment of the commercial reasonableness of UCC sales. See D2 Mark LLC v. OREI VI Invests., LLC, Index No. 652259/2020 (Sup. Ct., N.Y. Co. June 23, 2020) ("what is reasonable during normal business times, may not be reasonable during a pandemic").
- 40 N.Y. City Local Law Nos. 92 and 94–97.
- 41 The proposed executive budget would have allowed building owners to meet emissions targets by buying credits for renewable energy produced in New York. N.Y. State Div. of the Budget, FY 2022 New York State Executive Budget (2021), <https://www.budget.ny.gov/pubs/archive/fy22/ex/artvii/ted-bill.pdf>.
- 42 See Raymond "Rusty" Pomeroy II, Brian Diamond, Karen Scanna, Ross F. Moskowitz and Joseph B. Giminaro, The NYC Climate Mobilization Act: How to Prepare and What You Need to Know, Stroock Special Bulletin (Jan. 16, 2020), <https://www.stroock.com/news-and-insights/new-york-city-climate-mobilization-act>.