

## Litigation + Dispute Resolution

# New York City’s “Guaranty Law” Remains Legal – For Now

### The Bottom Line

- The Guaranty Law, enacted on May 26, 2020, provides strong protection to personal guarantors of commercial leases in New York City.
- While subject to an ongoing legal challenge, the Guaranty Law currently prevents certain commercial landlords from recouping unpaid rental arrears against personal guarantors affected by the COVID-19 pandemic between March 7, 2020 and June 30, 2021 – the period most impacted by the COVID-19 pandemic.
- The legality of the Guaranty Law remains in question, and commercial landlords with property in New York City should consult with legal counsel regarding the ongoing constitutional challenge to the validity of the Guaranty Law.

When the COVID-19 pandemic struck in 2020, it brought New York City to a standstill. In response to the worsening pandemic, then Gov. Andrew Cuomo passed a series of Executive Orders mandating the closure of non-essential businesses with the intent of limiting the spread of the deadly disease. Many businesses in the City were forced to temporarily close and found themselves unable to meet their rental obligations.

In response, New York City enacted Administrative Code § 22-1005, entitled “Personal Liability Provisions in Commercial Leases.” This provision is commonly known as the “Guaranty Law” and is largely intended to protect personal guarantors of commercial leases from facing liability for obligations incurred at the early height of the pandemic, between **March 7, 2020** and **June 30, 2021**. While the Guaranty Law remains in effect, it is facing a significant constitutional challenge in federal court.

### Guarantors of Commercial Leases

A “guaranty” is often an addendum or special clause in a commercial lease agreement designed to protect a landlord. A guaranty allows a third-party individual or company to be held personally responsible for the tenant’s obligations under a lease, including the timely payment of rent and other monetary obligations incurred. If the named tenant under a lease fails to meet its monetary obligations, the guaranty

provides a landlord the option to recover damages against whoever signed the guaranty individually, in addition to the tenant.

### The Guaranty Law

The Guaranty Law protects a natural person (not corporations) who signed a guaranty to a New York City commercial lease from becoming personally liable for rent or other monetary obligations incurred under the lease if one of the following conditions was satisfied:

- The tenant was required to cease serving customers food or beverage for on-premises consumption or to cease operation;
- The tenant was a non-essential retail establishment subject to in-person limitations or
- The tenant was required to close to the public.

As long as one of the above conditions was met, a personal guarantor will not face liability under a guaranty if the lease default occurred between March 7, 2020 and June 30, 2021.

The Guaranty Law's effects are permanent: A commercial landlord may never collect from the personal guarantor for those outstanding payments, even after the pandemic ends.

### Constitutionality of the Guaranty Law Remains in Question

While the Guaranty Law remains legal in New York City, its constitutionality is being challenged in *Melendez v. The City of New York*, a lawsuit pending in the U.S. District Court for the Southern District of New York.

Plaintiffs, who include owners of small commercial and residential buildings in Brooklyn, Queens and Manhattan, have challenged the Guaranty Law on multiple grounds. The plaintiffs argue that the Guaranty Law violates the Contract Clause of the U.S. Constitution by preventing them from recouping income pursuant to personal guaranties in connection with commercial leases. The Contract Clause of the U.S. Constitution states: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts."

In a recent, significant victory for the plaintiffs, the United States Court of Appeals for the Second Circuit found that the plaintiffs are permitted to pursue this claim, determining that the Guaranty Law could plausibly represent "a significant impairment of contract." This ruling by the Second Circuit allowed the plaintiffs to continue their ongoing constitutional challenge, and the fate of the Guaranty Law remains uncertain.

---

## For More Information

Please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

**Jesse Schneider**

**Partner**

212 468 4854

[jschneider@dglaw.com](mailto:jschneider@dglaw.com)

**Zachary Karram**

**Staff Attorney**

212 237 1480

[zkarram@dglaw.com](mailto:zkarram@dglaw.com)