



April 2, 2020

OHIO ISSUES EXECUTIVE ORDER REQUESTING 90 DAY PAUSE FOR SMALL BUSINESS RENT AND MORTGAGE PAYMENTS AND EVICTIONS

On April 1, 2020, Ohio Governor Mike DeWine issued an executive order regarding small business commercial tenants and borrowers ("Order"). The Order requests that lenders provide commercial real estate borrowers with commercial mortgage loans for property located in Ohio an opportunity for a period of forbearance of at least 90 days to address financial hardship resulting from COVID-19. Forbearance is defined as an agreement to forebear from enforcing legal remedies including filing of foreclosure actions. The period of forbearance is intended to allow time for sensible solutions to be worked out between commercial real estate borrowers and lenders. The Order also requests that landlord provide a 90 day pause for small business rent payments for tenants in Ohio facing financial hardship due to the COVID-19 pandemic and a 90 day moratorium on evictions of small business tenants.

The operative provisions of the Order read as follows:

- Landlords are requested to suspend, for a term of at least 90 consecutive days, rent payments for small business commercial tenants in the State of Ohio that are facing financial hardship due to the COVID-19 pandemic; and
- Landlords are requested to provided for a moratorium of evictions of small business commercial tenants for a term of at least 90 days; and
- Lenders are requested to provide commercial real estate borrowers with a commercial mortgage loan for a property located in the state of Ohio an opportunity for a forbearance of a term of at least 90 consecutive days for said mortgage as a result of a financial hardship due to the COVID-19 pandemic; and
- "Lender" as that term is used herein shall include any banking organization, bank holding company, credit union, mortgage broker, mortgage loan servicer, master or special servicer, mortgage revenue bond issue, mortgage revenue bond holder, mortgage loan originator, owning or holding any mortgage loan secured by property located in the State of Ohio, including

commercial mortgage-back securities (CMBS) loans; and

- "Forbearance" as the term is used herein shall mean an agreement to forbear from (a) the enforcement of any remedies following any monetary or non-monetary defaults arising as a results of COVID-19 pandemic, including the filing of suit against any borrower, maker, co-maker or guarantor, the filing of foreclosure, appointment of a receiver, impounding of reserve or other funds deposited in accord with any loan or security documents, or termination of any license to use cash, or (b) sweeping and/or seizing any cash by reason of cash sweep trigger events regardless of a default or the existence of circumstances that may give rise to a cash sweep trigger event arising as a result of the COVID-10 pandemic, or (c) any requirement that a party waive any legal rights or admit any default arising as a result of the COVID-19 pandemic.

The Order states that nothing in the Order is to be construed to (i) negate the obligation of a small business commercial tenant to pay rent or restrict a landlord from recovering rent at a future date; (ii) negate the obligations of a commercial real estate borrower; or (iii) suspend any federal or state law. Additionally, the Order is not intended to impacts tenants and borrowers not experiencing financial hardship due to COVID-19.

In issuing the Order, the governor cites to (i) Ohio Public Health Orders requiring individuals to stay at home, (ii) Ohio H.B. No. 197 tolling the statute of limitations for criminal, civil and administrative proceedings in Ohio set to expire between March 9, 2020 and July 30, 2020 (iii) Supreme Court of Ohio's guidance regarding continuation of evictions and foreclosures, (iv) federal CARES Act provisions relating to providing residential properties a period of suspension regarding evictions and foreclosure and (v) actions of other states such as California and New York to shield their businesses from evictions and foreclosures,

It should be noted that the Order is a request by the Governor. Please contact us with questions regarding the Order or other Ohio action relating to COVID-19.

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OHIO GENERAL ASSEMBLY TOLLS TIME LIMITATIONS IN OHIO H.B. NO. 197 AND OHIO SUPREME COURT ISSUES GUIDANCE TO LOCAL COURTS

The Ohio General Assembly recently enacted H. B. No. 197 to provide relief to Ohioans during the COVID-19 pandemic. The bill requires, among other things, that the criminal statutes of limitations, the civil statutes of limitations, the administrative statutes of limitations and other court time limitations and deadlines set to expire between March 9, 2020 and July 30, 2020, be tolled. H. B. No. 197 specifies that the tolling is retroactive to March 9, 2020; and that the tolling expires on the date the period of emergency ends or July 30, 2020, whichever is sooner. H.B. No. 197 was signed by Governor DeWine into law on March 27, 2020. H. B. No. 197 was enacted as an emergency measure and takes effect immediately.

The Supreme Court of Ohio has issued a document entitled "Guidance to Local Courts in Light of the COVID-19 Public Health Emergency." The Supreme Court recommends efforts to minimize physical appearances at court, including:

- Sua sponte granting of continuances for non-essential court appearances;
- Rescheduling non-essential court appearances as phone or video conferences;
- Temporarily continuing eviction filings, pending eviction proceedings, scheduled move-outs and the execution of foreclosure judgments; and
- Temporarily stay the filing and enforcing of any garnishment actions or orders.

The document can be found at:
<http://www.supremecourt.ohio.gov/coronavirus/resources/localCourtGuidance03.20.20.pdf>

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