

## CHANGES TO MICHIGAN REAL ESTATE LAW ARISING FROM THE RESPONSE TO COVID-19

The last two weeks have seen numerous governmental orders issued as well as passage of the federal stimulus package known as the CARES Act intended to address the effects of the coronavirus pandemic. The following summarizes the resulting changes in law and procedure impacting Michigan's real estate industry.

**Michigan Stay Home Executive Order:** Governor Whitmer issued "Stay Home, Stay Safe" Executive Order 2020-21 (COVID-19) which took effect on March 24, 2020 and continues through April 13, 2020. This Order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life. With certain limited exceptions, everyone living in Michigan is ordered to stay home, and all public and private gatherings are prohibited. Exception is made for "critical infrastructure workers" necessary to sustain or protect life, or to conduct minimum basic operations. Minimum basic operations are where in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions, or facilitate the ability of other workers to work remotely. Employers must designate which employees are critical infrastructure workers, and the designation must be in writing beginning April 1, 2020.

**Impact on Michigan Real Estate Transactions:** Governor Whitmer's Stay Home Executive Order is having a huge impact on Michigan real estate transactions as it prohibits many of the activities central to brokering. The Governor has indicated that real estate brokers and salespersons are not "critical infrastructure workers"; and therefore, these real estate individuals may not leave their homes for work. Services by real estate brokers and salespersons must be conducted remotely. However, a March 30, 2020 Bulletin issued by the Michigan Department of Insurance and Financial Services states that title insurance companies along with



inspectors, appraisers, surveyors, registers of deed and notaries all provide "financial services" falling within the definition of "critical infrastructure workers." While their work is to be done remotely to the fullest extent possible, in-person work is permitted in accordance with social distancing and other requirements of the Governor's Stay Home Executive Order. Remote escrow closings should also still be possible even if in-person closings become impractical or impossible.

**Residential Evictions in Detroit:** On Monday, March 16, 2020, 36<sup>th</sup> District Court Chief Judge William McConico issued an order placing a moratorium on residential evictions in the City of Detroit during the coronavirus outbreak. According to the Judge, "This is a difficult period for our entire community, and in an effort to avoid any additional hardship for those affected, it is important that we halt residential evictions at this time. As everyone is encouraged to practice social distancing, and, if applicable, self-quarantine during this period, it would be unwise and mean-spirited to remove people from their homes until this threat has passed."

**Michigan Residential Evictions Executive Order:** Just 4 days later, on March 20, 2020, Governor Whitmer issued Executive Order 2020-19, which also limits and affects residential evictions in several respects until the end of the day on April 17, 2020. This Executive Order makes it more difficult to evict tenants during this interim period. District Courts in Michigan are generally not currently accepting initial filings of summonses and complaints for eviction cases and the Governor's Executive Order specifically prohibits any court officer from serving the summons and complaint upon a tenant or land contract vendee. If the time for payment or to vacate the home as set forth in a Judgment of Possession has elapsed, no Order of Eviction can be executed unless the tenant, vendee or person holding under them poses a substantial risk to another person or an imminent and severe risk to property. Thus far, there have been no formal limitations placed upon commercial evictions although this area is evolving rapidly.

**Wayne County Tax Foreclosures:** On March 16, 2020, Wayne County Treasurer Eric Sabree announced Wayne County will not foreclose on any homes in 2020 due to nonpayment of delinquent real property taxes. It has been reported that this year, about 3,200 occupied homes — about 10,000 properties in total — were likely headed to the tax foreclosure auction. The decision was made in an effort to help Detroiters stay in their homes while dealing with the coronavirus pandemic. As you may have learned, Detroit is one of the hardest hit communities in the nation.

**CARES Act and Residential Multi-Family Mortgage Forbearance and Eviction Moratorium:** The Federal Coronavirus Aid, Relief, and Economic Security Act ("CARES") Act) provides for a 90 day residential mortgage forbearance period for multi-family borrowers with federally backed multi-family mortgage loans that have experienced a financial hardship. Applicable mortgages include loans to real property designed for 5 or more families that are purchased, insured, or assisted by Fannie Mae, Freddie Mac or HUD. The CARES Act also imposes a temporary eviction moratorium for 120 days, applicable to covered properties. The moratorium prohibits issuing a notice to vacate, initiating an eviction filing or assessing late fees or penalties on tenants for nonpayment of rent. The moratorium applies to properties with federally backed mortgage loans or that receive a Low Income Housing Tax Credit (LIHTC), as well as tenants who receive a Section 8 Housing Choice Voucher. The spread between the forbearance period (90 days) and the moratorium (120 days) is of great concern to the multi-family housing industry, and the industry is seeking further relief so as to avoid this dilemma. It should be noted that tenants are still obligated to pay rent and comply with the terms of the lease agreement.

**Delay in Recording Real Estate Documents:** Many Register of Deeds offices in Michigan have closed and are not accepting new documents for recording. This could have far-reaching implications for property owners, mortgage lenders and title companies. At least one title insurance underwriter has created a special "Affidavit of Understanding and Indemnity and Hold Harmless Agreement Due to the COVID-19 Emergency" for use in addressing the delay in recording deeds, mortgages and other related documents. The Affidavit is designed to effectively shift the risk in delayed recording normally taken by the title insurance industry to buyers and borrowers.

**CARES Act Summary and Paycheck Protection Program:** Our office prepared a separate detailed summary of the \$2 trillion emergency CARES Act. If you did not receive a copy, please let us know. This unprecedented and far reaching Federal legislation provides significant tax and non-tax stimulus to individuals and businesses. One of the many significant features of the Act creates a new Business Loan Program category - the "Paycheck Protection Program." From February 15, 2020 to June 30, 2020 the Small Business Administration may provide 100% federally-backed loans to eligible businesses to help pay certain costs including payroll, rent, health benefits, insurance premiums and utilities. Many commercial tenants will be eligible for these loans. Best of all, *the loans will be forgiven* to the extent used for lease payments and other qualifying expenses within the 8 week period following loan origination, as long as certain conditions are satisfied. As initially implemented, the SBA is requiring that 75% of the loan proceeds be used for payroll and related expenses in order for the balance of the loan used for other costs and expenses to be forgiven. Qualifying tenants would be well advised to apply for such a loan as soon as applications become available.

**In Summary:** The coronavirus pandemic will no doubt lead to additional, dramatic and far reaching changes in laws impacting all segments of the real estate industry. This memo is intended only as a general overview. If you have any questions or would like legal advice regarding the recent changes in real estate law, or any real estate matter, please contact [Gregg Nathanson](#), [Phil Neuman](#) or [Ronn Nadis](#)