

## **UPDATE: ISSUES AFFECTING MICHIGAN REAL ESTATE BUSINESSES ARISING FROM THE COVID-19 PANDEMIC**

As the COVID-19 pandemic continues, real estate businesses operating in Michigan are feeling the impact of the spread of the virus and resulting limitations on the conduct of in-person business. The following summary addresses several legal issues currently faced by many Michigan real estate businesses arising from the pandemic.

**Michigan's New Stay Home, Stay Safe Order:** On April 9, 2020, Governor Whitmer issued Executive Order 2020-42, replacing the previous "Stay Home, Stay Safe" Order issued on March 23, 2020. The new order extends the duration of the Stay Home, Stay Safe measures to April 30, 2020. The order mandates that Michigan residents remain in their homes, except to the extent necessary to secure medical care and essential supplies, or to conduct certain other important activities. Although employees necessary to sustain or protect life, to conduct minimum basic operations of any business, or who are critical infrastructure workers are expressly permitted to do in-person work, guidance construing the Order states that real estate agents, brokers, and real estate service employees are not considered "critical infrastructure workers" and may not leave their homes for work. However, an exception may be made in the rare circumstance that these individuals are providing "food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities." Property managers, on the other hand, are considered critical infrastructure workers according to the Cybersecurity and Infrastructure Security Agency's March 19, 2020 Memorandum, which identifies "workers to ensure continuity of building functions" and "security staff to maintain building access control and physical security measures" as such workers. Governor Whitmer's Executive Order also declared workers in the insurance industry (which would include the title insurance industry) as critical infrastructure workers, but only to the extent that their work cannot be done by telephone or remotely.

The newly expanded order may have additional effects on certain real estate business, as it prohibits travel between two Michigan residences, including to vacation rentals, and also prohibits the advertising or rental of a short-term vacation property, except to assist in housing a health care professional or volunteer aiding in the response to the COVID-19 crisis. The new Order also imposes additional restrictions on retail businesses, mandating that stores having over 50,000 square feet of floor space close areas dedicated to carpet or flooring, furniture, garden centers and plant nurseries, and paint, as well as refrain from advertising or promoting goods that are not groceries, medical supplies, or items necessary to maintain safety, sanitation, and basic operation of residences. Commercial tenants, many of whom are already struggling, may be faced with further difficulties in meeting rental obligations due to these additional restrictions.

**Impact on Closing Michigan Real Estate Transactions:** Remote work requirements pose significant logistical issues in the conduct of real estate closings. However, important changes to the law governing remote online notarization and electronic signatures were recently instituted by Governor Whitmer via Executive Order 2020-41, in order to mitigate some of these challenges. Although Michigan law previously permitted remote online notarization and electronic recording of documents, this Order aims to facilitate and encourage these methods by relaxing requirements for strict compliance with statutes governing their use. Pursuant to EO 2020-41, remote notarization is permitted using any two-way real-time audiovisual technology, provided that certain other criteria set out in the Order governing its use are met. Importantly, financial institutions and registers of deeds must not refuse to record a tangible copy of an electronic record on the ground that it does not bear the original signature of a person, witness, or notary, if the notary before whom it was executed certifies that the tangible copy is an accurate copy of the electronic record. The Order is effective through May 6, 2020.



**Mortgage Relief and Moratoriums on Eviction:** As record numbers of individuals experience unemployment and loss of income, a variety of measures have been instituted at the State and Federal level to assist those who might otherwise face eviction or foreclosure. These measures include:

- [Michigan Executive Order 2020-19](#): This order went into effect on March 20, 2020 and will last until April 17, 2020 unless further extended. The Order substantially restricts residential evictions throughout the state by prohibiting the execution of an order for eviction on any tenant or land contract vendee, unless a substantial risk to another person or an imminent and severe risk to property is present. Additionally, a seven day demand for possession may still be mailed to a delinquent commercial or residential tenant, but cannot be served by personal delivery.



- [CARES Eviction Moratorium](#): The Federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) includes measures to benefit tenants of certain properties. The CARES Act restricts lessors of covered properties from filing new eviction actions for non-payment of rent, and also prohibits charging fees, penalties, or other charges to the tenant related to the nonpayment of rent. A tenant may not be evicted after the moratorium expires except on 30 days' notice—which may not be given until after the moratorium period. "Covered properties" are properties having a federally backed mortgage loan, or a federally backed multifamily mortgage loan, or which participate in most federally assisted rental housing programs, including Section 8 housing. These restrictions went into effect on March 27, 2020 and will continue for a period of 120 days.

- [CARES Mortgage Forbearance](#): The CARES Act also provides assistance for borrowers experiencing financial hardship as a result of COVID-19 by requiring lenders to extend mortgage forbearance to those borrowers. Multifamily borrowers with federally backed multifamily mortgage loans may be eligible for a forbearance period of up to 90 days. Additionally, single family homeowners with FHA-insured mortgages who are experiencing COVID-19 related hardship may apply for a 180 day forbearance, which must be granted, as directed by the U.S. Department of Housing and Urban Development. This initial forbearance period may then be extended by an additional 180 days. All late charges, fees, and penalties, if any, must be waived, and a borrower who is granted this forbearance will not be considered delinquent for credit reporting purposes.

**[Section 1031 Exchange Deadlines Extended](#)**: On April 9, 2020 the US Internal Revenue Service issued Notice 2020-23 extending a variety of time sensitive deadlines, including those pertaining to Section 1031 'like kind' exchanges of real property interests. Under the Notice, if any 45-day or 180-day deadline expires between April 1 and July 14, 2020, the deadline expiration is extended to July 15, 2020. Assume you or your client is in the middle of an exchange. You disposed of 'relinquished property' on March 1, 2020 and your 45 day period to identify one or more 'replacement properties' was set to expire on April 15, 2020. The 45 day period now expires July 15, 2020. Likewise, assume you disposed of relinquished property last year, and your 180 day period to complete the exchange was set to expire April 30, 2020. The 180 day period now expires July 15, 2020.

This Memo provides only a general overview of the issues real estate businesses are experiencing as a result of the COVID-19 pandemic. If you have questions or require legal advice regarding these or other issues arising from the pandemic or any other real estate matter, please contact [Gregg Nathanson](#), [Phil Neuman](#), [Ronn Nadis](#) or [Alexis Havenstein](#).