Member Advisory:

NEW STATE LAW IMPOSES MORATORIUM ON EVICTIONS AND MORTGAGE FORECLOSURES

A new law has been enacted to bar certain evictions and mortgage foreclosures during the state of emergency declared by the governor on March 10 because of the coronavirus pandemic. The key provisions of the new statute can summarized as follows:

Tenants Protected
In addition to residential tenants, the law provides some protection to small businesses occupying commercial premises. In order to qualify as a small business, neither the tenant nor its parent, subsidiaries or affiliates may (1) operate multi-state or multi-nationally, (2) be publicly traded or (3) have 150 or more full-time equivalent employees.

Non-Essential Evictions
The act defines non-essential evictions as those (1) for nonpayment of rent, (2) resulting from a foreclosure, (3) for no fault or no cause or (4) for a cause which does not involve or include allegations of criminal activity or lease violations that may impact the health or safety of other tenants, health care workers, emergency personnel, persons lawfully on the property or the general public. However, in the case of premises occupied by a small business, non-essential evictions do not include evictions on account of (1) the expiration of the term of the lease or tenancy or (2) any default which occurred prior to the governor’s emergency declaration.

Eviction Actions Barred
No landlord may, in connection with a non-essential eviction involving a residential dwelling unit, terminate the tenancy or send any notice (including a notice to quit) requesting or demanding that the tenant vacate the unit. In addition, no court may process any case where a landlord seeks a non-essential eviction of a residential tenant or a small business. This means that no complaint may be accepted, no judgment (for default or otherwise) or execution may be issued, no trial or other court event may be scheduled and no request for a continuance or stay of execution may be denied. Time deadlines (such as the date by which a tenant must answer a landlord’s complaint) are automatically extended and no sheriff, constable or other official may enforce an eviction order.

Late Fees
No landlord may impose a late fee for nonpayment of rent on a residential tenant or small business or report the tenant to a consumer credit agency if, not later than 30 days after the payment is missed, the tenant provides “notice and documentation” that the delay has been due to a “financial impact” from the pandemic. In no event is the tenant relieved from the obligation to pay the rent, nor is the landlord’s ability to recover the rent (other than through an eviction proceeding) restricted.

Use of Last Month’s Rent
The law gives landlords who have received the last month’s rent in advance from residential tenants the right to use the money to cover expenses, including without limitation mortgage payments, utility charges and repair costs. Any landlord choosing to do so must notify the tenant in writing that (1) such funds were utilized before the last month of the tenancy, (2) the landlord remains obligated to apply the amount collected to rent for the last month of the tenancy and (3) the tenant will still be entitled to the same amount of interest which would have accrued had the landlord not chosen to use the money. This is a fairly troubling clause given that last month’s rent has not needed to be escrowed since 1984 and was believed to be the landlord’s money to do with as he or she pleased.

Mortgage Provisions
The holders of mortgages on owner-occupied one-to-four family dwellings may not initiate or pursue
foreclosure proceedings, including publishing notice of a foreclosure sale. Borrowers who have experienced a financial impact from the pandemic may obtain a forbearance for up to 180 days; any payment subject to the forbearance must be made at the end of the term of the loan unless otherwise agreed. Negative information may not be reported to a consumer credit agency regarding missed payments covered by the forbearance.

Expiration Date
The act expires 120 days after its enactment, subject to extension by the governor in increments of not more than 90 days, provided however that the act will in no event remain in effect 45 days after the state of emergency has been lifted.

As usual, newly-enacted legislation is subject to ambiguities and interpretive issues which cannot yet be authoritatively addressed. Forms and recommendations will be forthcoming from the Executive Office of Housing and Development. Members are urged to consult their own attorneys.

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