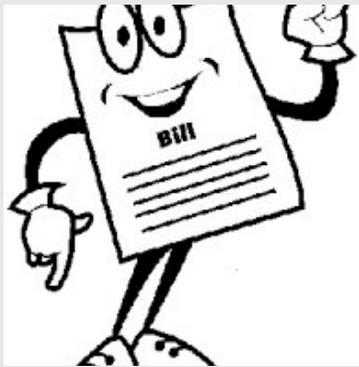


EVICCTIONS AND FORECLOSURES  
AND OTHER CONCERNS OF  
BUSINESS AND PROPERTY  
OWNERS IN THE MIDST OF A  
PANDEMIC

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# Understanding the Law



AMENDED SUBSTITUTE  
OHIO HOUSE BILL 197



EXECUTIVE ORDER  
2020-08D



SUPREME COURT OF  
OHIO TOLLING ORDER

# Amended Substitute Ohio House Bill 197

- Section 22.
  - (A) The following that are set to expire between March 9, 2020, and July 30, 2020, shall be tolled:
    - (1)(b) When a civil cause of action accrues against a person, notwithstanding any other provision of law to the contrary, the period of limitation for commencement of the action as provided under any section in Chapter 2305. of the Revised Code, or under any provision of the Revised Code that applies to the cause of action.
    - (10) Any other criminal, civil, or administrative time limitation or deadline under the Revised Code.
  - (B) This section applies retroactively to the date of the emergency declared by Executive Order 2020-01 (D), issued on March 9, 2020
  - (C) Division (A) of this section expires on the date the period of emergency ends or July 30, 2020, whichever is sooner.

# Amended Substitute Ohio House Bill 197, continued

Section 21. (A) During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and notwithstanding an order or directive from the court of common pleas or the board of county commissioners, the office of a county recorder, the office of a county auditor, the title office of a clerk of court of common pleas, and the county map office shall remain open and operational in order to allow land professionals physical access to the office as necessary to search records that are not otherwise available online, digital, or by some other means, so long as all necessary public land records are available. The office may provide such access during limited hours and for a limited duration, and may subject searchers to requirements and restrictions in the interest of public health. The office may allow persons other than land professionals physical access to the office at the discretion of the office during such limited hours, for such limited duration, and subject to such requirements and restrictions in the interest of public health as the office determines. All essential services to effectuate a property transfer shall remain open and available with all offices.

# Executive Order 2020-08D

signed on April 1, 2020

- Landlords are requested to suspend, for a term of at least ninety (90) consecutive days, rent payments for small business commercial tenants in the State of Ohio that are facing financial hardship due to COVID-19 pandemic; and
- Landlords are requested to provide for a moratorium of evictions of small business commercial tenants for a term of at least ninety (90) consecutive 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 ninety (90) consecutive days for said mortgage as a result of a financial hardship due to the COVID-19 pandemic
- Nothing in this order shall be construed to negate the obligation of a small business commercial tenant to pay rent or restrict a landlord from recovering rent at a future time; and
- Nothing in this Order shall be construed to negate the obligations of a commercial real estate borrower, but rather provide a pause and time for sensible solutions to be worked out among commercial real estate borrowers and lenders.

# Supreme Court of Ohio Tolling Order

- (A) This order shall apply retroactively to the date of the emergency declared by Executive Order 2020-01D and shall expire on the date the period of emergency ends or July 30, 2020, whichever is sooner.
- (B)(1) “Rules of the Court” means the following rules promulgated by the Court:
  - (c) The Ohio Rules of Civil Procedure
- (B)(1) “Time requirements” means the time for filing all pleadings, appeals and all other filings; time limitations; deadlines; and other directives related to time, including non-constitutional jurisdictional deadlines.
- (D) The time requirements imposed by the rules of the Court and set to expire during the term of this order shall be tolled.
- (F) Nothing in this order precludes filings during the duration of the order if the Court, local court, hearing panel, board, commission, or clerk is able to receive filings due to local accommodations and the matter is related to a situation that requires immediate attention.



WHAT DOES ALL THIS  
MEAN?

# Residential Evictions

- Executive Order 2020-08D does not apply to residential evictions.
- There is nothing in Amended Substitute Ohio House Bill 197 or the Supreme Court of Ohio Tolling Order that prohibits the filing of an eviction action during the tolling period.
- At an eviction hearing, the Court will need to consider the implications of Amended Substitute Ohio House Bill 197 as well as the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).
- Residential tenants, while provided short term relief, are not relieved from paying rent and they may face eviction after the time periods end.
- Franklin County Municipal Court put a hold on eviction hearings for 8 weeks commencing on March 27, 2020

# What is the CARES Act and how does it apply to residential evictions?

- Pursuant to the Congressional Research Services -
- The CARES Act was passed by Congress to provide relief to “aid individuals and businesses harmed by the pandemic.”
- “CARES Act Section 4024(b) prohibits landlords of certain rental “covered dwellings” from initiating eviction proceedings or “charging fees, penalties, or other charges” against a tenant for the nonpayment of rent.” These protections extend for 120 days from March 27, 2020.
  - “‘Covered Dwellings’ are rental units in properties: (1) that participate in federal assistance programs; (2) are subject to a “federally backed mortgage loan,” or (3) are subject to a “federally backed multifamily mortgage loan”.”
    - “The covered federal assistance programs include most rental assistance and housing grant programs, including public housing, Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, rural housing programs, and the Low Income Housing Tax Credit (LIHTC) program.”
    - “A “federally backed mortgage loan” is a single-family (1-4 units) residential mortgage or securitized by Fannie Mae or Freddie Mac or insured, guaranteed, or otherwise assisted by the federal government.” “Federal backed multifamily mortgage loans” are the same as “federally backed mortgage loan” except it is for five or more families.
  - “Section 4024(c) requires landlords of the same properties to provide tenants at least 30 days-notice before they must vacate the property. It also bars those landlords from issuing a notice to vacate during the 120-day period. This section “does not expressly tie the notice to vacate requirement to a particular cause” and, therefore, “arguably prohibits landlords from being able to force a tenant to vacate a “covered dwelling” for nonpayment or any other reason until August 23, 2020.”

# Commercial Evictions

- The language in Executive Order 2020-08D is a request and not a requirement and creates an attempt for parties to work together to come up with a solution that works for both parties.
- Nothing in the order negates the tenant's responsibility to pay rent or for the landlord to request rent at a later point in time.
- Look to lease and legal doctrines to determine if any potential clauses apply:
  - Force Majeure – French for Superior Force
    - Use depends on how Force Majeure is defined in the lease agreement
    - Typically, Force Majeure clauses still require payment of rent
  - Doctrine of Impossibility:
    - The subject matter of the contract or the means for performance have been destroyed or so impaired that performance is impossible
    - Event needs to be unforeseen
    - Objective Condition
  - Impracticability:
    - Duty to perform has become unfeasibly difficult or burdensome
    - Subjective Condition
  - Doctrine of Frustration of Purpose:
    - Unforeseen event
    - Performance under contract is impossible or frustrates a person's purpose for entering into a contract

# Foreclosures

- Executive Order 2020-08D
  - Does not apply to residential properties
  - Is a Request and Not a Requirement in order for lenders to work with commercial property owners to come up with a solution to avoid foreclosure
- Amended Substitute Ohio House Bill 197 and Supreme Court of Ohio Tolling Order are working in conjunction so that rulings are not being made on default motions or proposed judgment decrees in foreclosure prior to July 31, 2020
- Filings are allowed
- Local courts can supersede the tolling requirements made by the Ohio Supreme Court if the court decides the case requires immediate attention
  - It is unlikely that a foreclosure case would fall under this category



WHAT CAN YOU DO?

- Evictions
  - Attempt to work with tenants and/or landlords to come up with a feasible solution for both parties
  - Consider whether or not the CARES act applies to your rental property before commencing an eviction case
- Foreclosures
  - If you are looking to foreclosure, you may want to start the process now as it usually takes time to get a preliminary judicial report and obtain service on a party
  - If you are concerned about your mortgage payment, contact your mortgage provider and see if they will work with you and see if they have any relief programs
- Investing
  - Pursuant to Amended Substitute Ohio House Bill 197, “all essential services to effectuate a property transfer shall remain open.” Therefore, you can still purchase and sell real estate during this time
  - As a real estate investor, you will want to consider our LLC checklist

# Purchasing a Property Subject-to

- Means to purchase a property subject to an existing mortgage – Owners would deed their interest in the house to you and you would pay the existing liens on the property.
- Benefits:
  - You do not need to qualify for a loan
  - Larger portion of payment goes towards principal than if you were purchasing a property subject to a new loan
  - Low money down
- Cautions:
  - Due on Sale Clause
  - Title Work

# Creative Financing

- **Wrap Around Mortgage:**
  - When a Seller sells a property to a Buyer with a promissory note for the existing mortgage and they take a junior mortgage on the property for the amount due on the underlying mortgage plus an amount for the remaining purchase on the balance.
    - Allows the Seller to foreclose and take back to the Property if the Buyer misses a payment
    - Allows the Buyer to purchase without going to a bank for the loan
- **Reverse Mortgage:**
  - When you get a loan from a lender in which the lender uses the equity in your home to provide you funds
    - Need to be over the age of 62
    - Funds are usually non-taxable
    - Doesn't have to be paid back until the "last surviving borrower dies, sells the home, or no longer lives in the home as a principal residence
- **Land Contract:**
  - Receive a deed to the property after you have made the payments on the land contract
    - Need to make sure the land contract is recorded
    - Foreclosure if you have paid 20% down or have paid for 5 or more years, otherwise eviction



LIMITED LIABILITY  
CHECKLIST: DO'S AND  
DON'TS

# DO'S

- Discuss forming an entity with your attorney and accountant to determine whether a Limited Liability Company (LLC) is the best option for your business
- Select the name of the LLC and check with the Secretary of State for name availability
- File Articles of Organization for a Domestic Limited Liability Company with the Ohio Secretary of State
- Have a written operating agreement with terms and goals specific to this LLC including, but not limited to:
  - Number of Members in LLC
  - Percentage of each member's interest in the LLC
  - Purpose of LLC
  - Whether there is a general manager and, if so, the powers of the general member to act on behalf of the LLC
  - A member's ability to transfer, convey or sell all or part of a member's interest to another member or a third party
  - Voting and deadlock provisions, if necessary
  - Rules about capital contributions (i.e. whether mandatory, how much can be asked for at a time);
  - Estate planning related provisions
  - Input by an accountant
- Work with your accountant to determine whether the LLC needs its own EIN number for tax purposes or whether it will operate under a sole member's social security number. Obtain an EIN from the Internal Revenue Service if necessary
- Set up at least one checking account in the name of the LLC and make sure all LLC related monetary transactions go through an LLC bank account
- Obtain at least 1 credit card in the name of the LLC and make sure only LLC related expenditures are charged on the LLC credit card

# DO'S Continued

- Make sure you sign on behalf of the LLC
- Make sure that any contracts, leases, vendor agreements, suppliers, orders, mortgages, purchase agreements, loans, etc. for the LLC are only in the name of the LLC and not your personal name
- Run the LLC totally independent of your personal finances as a separate and distinct entity so that the LLC does not default to a sole proprietorship
- Have an email account that is used solely for LLC business
- Make sure that all insurance policies, licenses, permits, etc., are in the name of the LLC and NOT your personal name
- Make sure that the LLC files its own tax return or that the LLC is reflected on your personal tax return, whichever is appropriate per your accountant
- Invest in and use a good accounting software that will allow you to manage the LLC's finances. Check with your accountant for a software suggestion so that you can allow easy access to the LLC's software by the accountant if desirable
- Have a separate phone number for the LLC whether cell phone number or landline

# DON'TS

- Do not commingle LLC and personal funds in a bank account
- Do not charge personal transactions on the LLC credit card
- Do not sign as an individual on any documents including but not limited to, checks, contracts, leases, mortgages, notes, purchase agreements, loans
- Do not treat the LLC as your personal financial institution
- Do not commingle personal assets and debts with the LLC's assets and debts
- Do not personally guarantee debts and/or obligations of the LLC either in writing or verbally unless you plan on being personally liable for the debts and/or obligations of the LLC
- Do not use your personal email account(s) and/or personal social media accounts for LLC business communications



## Questions?

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