

Banking Questions and Answers:

Navigating the legal issues you face
from the COVID-19 Pandemic

Friday, March 27, 2020, 11:00 a.m.

Gislason & Hunter LLP Webinar

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Peter B. Stein

Introduction and Welcome

Jeff C. Braegelmann



Are the courts open? Are there delays? What if we need a quick replevin order, or want to avoid farmer-lender mediation because collateral is disappearing, cattle are not being fed, etc.?

Michael S. Dove

- ❑ Courts are open – there will be delays
- ❑ Minnesota State Courts
 - Limited hearings on emergency basis
 - Case Priorities – “Super High,” “High,” “Medium,” “Low”
 - ❑ High:
 - Statutory deadline – 30 days – avoid Farmer-Lender Mediation
 - Public Safety
 - Temporary Restraining Order (“TRO”)
 - ❑ Medium – Court Trials
 - ❑ Low – Mortgage Foreclosures

Are the courts open? Are there delays? What if we need a quick replevin order, or want to avoid farmer-lender mediation because collateral is disappearing, cattle are not being fed, etc.?

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Michael S. Dove

□ Bankruptcy Court

- Case-by-Case basis
- No First Meeting of Creditors – date to be determined

Are farmer-lender mediations still being held?

Michael S. Dove

- ❑ Farmer-Lender Mediation is ongoing
- ❑ All mediations telephonic
- ❑ Quality of Mediation
- ❑ Extension of termination deadline

If someone faxes or emails me a signed document, is that enough? Is it enforceable? How do I get a document notarized when the person can't or won't come to the Bank?

Dean M. Zimmerli

- Generally, electronic copies and electronic signatures will be enforceable under UETA.
 - Exceptions: real estate documents, promissory notes (if you plan to transfer them), some others.
- Generally admissible in court.
- Remote online notarization possible.
- E-recording possible in most counties.

How should we document loan modifications, deferrals of payments, etc.? What if we want to implement across-the-board payment deferrals? Can we require that the loan not be in default to qualify for a deferral?

Jennifer G. Lurken

- Documentation requirements have not changed.
 - Document with a new note or with a modification/extension agreement.
 - New documentation must be signed by all borrowers and guarantors.
- Review security agreements and how they are affected by an extension or modification.
- Generally, banks can set eligibility requirements to qualify for deferrals.

Have the FDIC, the OCC or other agencies given any guidance or directives as to what banks can and cannot do in dealing with our customers and our loans to our borrowers?

Peter B. Stein

- Federal Reserve, FDIC and OCC Joint Statement of March 19, 2020
 - Encourages fee waivers, payment deferral & the like to affected individuals, small business and small farms by indicating that such accommodations may be favorably considered for CRA credit.

Have the FDIC, the OCC or other agencies given any guidance or directives as to what banks can and cannot do in dealing with our customers and our loans to our borrowers?

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Peter B. Stein

- FDIC Frequently Asked Questions for Financial Institutions Affected by the Coronavirus Disease 2019 (Referred to as COVID-19) updated March 18, 2020
 - Provides detailed guidance regarding working with borrowers affected by COVID-19, including guidance as to reporting and accounting
 - Provides detailed operational and security guidance

Have the FDIC, the OCC or other agencies given any guidance or directives as to what banks can and cannot do in dealing with our customers and our loans to our borrowers?

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Peter B. Stein

- Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus of March 22, 2020
 - Provides further broad and detailed guidance regarding accounting and reporting for loan modifications

How are my existing SBA-guaranteed loans affected? Has SBA said how I should handle my SBA loans? And are there new SBA-related loan facilities available?

Peter B. Stein

- SBA Information Notice of March 10, 2020, regarding Deferments on SBA 7(a) and 504 Business Loans and Microloans
 - Provides detail to 7(a) Lenders, 504 program CDCs and Microloan Intermediaries as to their unilateral authority to provide temporary relief to existing borrowers via deferred payments under certain circumstances.

How are my existing SBA-guaranteed loans affected? Has SBA said how I should handle my SBA loans? And are there new SBA-related loan facilities available?

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Peter B. Stein

- Economic Injury Disaster Loans (“EIDL’s”)
 - Authorized for Minnesota on March 20, 2020
 - Small business applicants apply directly to the SBA
 - Loan characteristics:
 - Up to \$2 Million, at 3.75% rate (to small businesses)
 - Can be used to pay fixed debts, payroll, accounts payable and other bills
 - Long-term repayment, up to 30 years
 - Terms are determined on a case-by-case basis, based upon each borrower’s abilities

Can we stop advancing money on a line of credit?

Jeff C. Braegelmann

- ❑ Currently no orders, moratoriums, etc., on this.
- ❑ Will be governed by your loan documents. Review conditions to advances and events of default.
- ❑ Discretionary line?
- ❑ “Lender in good faith believes it is insecure.”
- ❑ “Material adverse change in Borrower’s financial condition.”
- ❑ “Cessation of Borrower’s business.”
- ❑ “Lender believes the prospect of payment or performance of the loan is impaired.”

Are there any new moratoriums on collecting loans? Explain the Governor's executive order regarding evictions and a moratorium on foreclosures.

Jeff C. Braegelmann

- ❑ Minnesota: No evictions from residential premises.
- ❑ Minnesota: Cannot file eviction actions; landlords cannot terminate leases (except where tenant is seriously endangering safety of others), officers cannot execute writs to evict.
- ❑ Minnesota: Violation is a misdemeanor.
- ❑ Minnesota: No moratorium on foreclosures yet.
- ❑ Minnesota: Financial institutions are “requested” to implement a moratorium where foreclosure or eviction arises out of substantial decrease in income or increase in medical expenses caused by pandemic.

Are there any new moratoriums on collecting loans? Explain the Governor's executive order regarding evictions and a moratorium on foreclosures.

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Jeff C. Braegelmann

- ❑ Minnesota: Financial institutions “strongly urged” not to impose late fees or other penalties.
- ❑ Iowa: Moratorium on evictions for residential property and manufactured homes.
- ❑ Iowa: Moratorium on foreclosure of residential, commercial or ag property.
- ❑ Iowa: Moratorium currently does not apply to claim and delivery (replevin).

Will foreclosure sales be delayed because of distancing rules? Are the sheriffs still serving summonses and foreclosure notices?

Jeff C. Braegelmann

- ❑ Some Sheriffs continue to conduct sales.
- ❑ Generally, no one else is attending; sheriff may ask to waive reading; may complete paperwork in office and return it later.
- ❑ Kandiyohi County may schedule several months out; lobby closed.
- ❑ Renville County currently not holding sales; postponing for now; generally not serving any papers.
- ❑ Private process servers still active; reporting better success because people are home.

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Jeff C. Braegelmann

- ❑ Minnesota Attorney General currently accepting service through email.
- ❑ Minnesota Secretary of State has drop box/basket to receive paperwork.

Wrap-up and Conclusion

Jeff C. Braegelmann



THANK YOU!



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