

Dealing with the Details

Tuesday, April 28, 2020, 11:00 a.m.

Gislason & Hunter LLP Webinar

Jeff C. Braegelmann

Michael S. Dove

Jennifer G. Lurken

Dean M. Zimmerli

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 – delays will become common
- ❑ Minnesota State Courts
 - MN Supreme Court Order
 - Case Priorities – “Super High,” “High,” “Medium,” “Low”
 - Except for certain types of cases (e.g., adult criminal/juvenile) remote technology
 - May change this week

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.?

(Continued)

Michael S. Dove

□ Bankruptcy Court

- Case-by-Case basis
- First Meeting of Creditors – to be held via video/teleconference only
- Evidentiary hearing may be conducted telephonically
- Witnesses called/exhibits exchanged prior to hearing

Are farmer-lender mediations still being held?

Michael S. Dove

- Farmer-Lender Mediation is ongoing
- All mediations telephonic

Employment Law Considerations

Jennifer G. Lurken

- Governor Walz's Back to Work Protocols
 - Applies to: industrial, manufacturing and office settings.
 - Create, share and implement a COVID-19 Preparedness Plan, including actions to ensure social distancing, worker hygiene and facility cleaning
 - Health screening of employees and ensure sick employees stay home
 - All workers who can work from home must do so.

Employment Law Considerations

(Continuation)

Jennifer G. Lurken

- ADA and Rehabilitation Act
 - Direct threat
 - Someone with COVID-19, or symptoms of COVID-19
 - If direct threat, then disability-related inquiries and medical examinations are allowed.
 - May ask about symptoms of COVID-19, which currently include: fever, chills, cough, shortness of breath, or sore throat
 - May take employee's body temperature.
 - Results are confidential.

Employment Law Considerations

(Continuation)

Jennifer G. Lurken

□ Reasonable Accommodations

- If is a direct threat or has a “disability” then engage in the interactive process
- Interactive process requires employee to tell you what could be done
- Reasonable accommodation should not be an undue hardship for the employer

Employment Law Considerations

(Continuation)

Jennifer G. Lurken

- Returning to work:
 - Can require employees to wear PPE, including masks.
 - Install physical barriers, such as clear plastic sneeze guards where feasible.
 - Limit the number of customers in the bank at one time.
 - Limiting customer's route through the bank.

Employment Law Considerations

(Continuation)

Jennifer G. Lurken

- ❑ Recommendations of the CDC or public health authorities trump the ADA during a pandemic.
- ❑ Guidance changes as the pandemic evolves.
 - Need to keep up to date on the most current information.
- ❑ Make sure to keep up on guidance from the state where your branches are located.

Payment Deferral Issues: Interest, Escrow, and Tolling Agreements

Dean M. Zimmerli

- Deferral Options
 - “Tolling Agreement” – simple agreement that suspends obligations (placeholder)
 - Forbearance or Modification – can change other terms of loan
- How to handle escrow during deferral:
 - Escrow only payments
 - Recover shortfall later – RESPA regulations/notice

Payment Deferral Issues: Interest, Escrow, and Tolling Agreements

(Continued)

Dean M. Zimmerli

- How to handle interest during deferral:
 - Apply first payments after deferral to accrued interest
 - Add to monthly payments for number of months after deferral
 - Require additional payments at end of loan
 - Federal Reserve guidance stresses “latitude in addressing payment deferrals,” allows for capitalization of interest
 - FASB has issued tentative guidance on accounting for deferrals; accountant issue

Have the FDIC, the OCC or other agencies given any further guidance or directives, after March 25, as to what banks can and cannot do in dealing with our customers and our loans to our borrowers?

Peter B. Stein

- *April 3: The Financial Crimes Enforcement Network Provides Further Information to Financial Institutions in Response to the Coronavirus Disease 2019 (COVID-19) Pandemic*
- *April 3: Joint Statement Re Supervisory Practices as to Mortgage Servicing Rules (by the Fed, the CFPB, FDIC, NCUA, OCC and the Conference of State Bank Supervisors)*

Have the FDIC, the OCC or other agencies given any further guidance or directives, after March 25, as to what banks can and cannot do in dealing with our customers and our loans to our borrowers?

(Continued)

Peter B. Stein

- *April 7: Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised)* (jointly issued by the Fed, the CFPB, FDIC, NCUA and the OCC)
- *April 7: OCC Reference Guide re TDR Designations and COVID-Related Loan Modifications*

Have the FDIC, the OCC or other agencies given any further guidance or directives, after March 25, as to what banks can and cannot do in dealing with our customers and our loans to our borrowers?

(Continued)

Peter B. Stein

- *April 10:* FDIC Financial Institutions Letter Regarding Supervisory Practices as to Mortgage Servicing Rules
- *April 14:* Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus (by the Fed, the CFPB, FDIC, NCUA and the OCC)

Has the SBA or any other agency given any further guidance or reports, after March 25, as to the PPP Program?

Peter B. Stein

- *April 14:* SBA PPP Report
- *April 15:* SBA PPP “Interim Final Rules” published in the Federal Register
- *April 26:* Joint Treasury/SBA Updated FAQ regarding the PPP Program

What are some of the issues that may need to be addressed with the initial PPP Program?

Peter B. Stein

- ❑ Secondary market transfers
- ❑ Loan Forgiveness precondition documentation
- ❑ Borrower eligibility
- ❑ Other?

Suspension of deadlines affecting state court proceedings

Jeff C. Braegelmann

- ❑ 2020 Laws, Chapter 74, Article 16; effective April 16, 2020;
- ❑ Suspends the running of deadlines imposed by statutes governing proceedings in district and appellate courts (state courts)
- ❑ Includes any statutes of limitations
- ❑ Suspension applies during the peacetime emergency declared on March 13, 2020, and for 60 days after the end of the declaration

Suspension of deadlines affecting state court proceedings

(Continued)

Jeff C. Braegelmann

- ❑ Applies to deadlines that had not expired as of March 13, 2020, or were triggered on or after that date
- ❑ E.g., deadlines to commence lawsuits, deadlines for courts to issue decisions
- ❑ Does not prevent courts from holding hearings, requiring appearances or issuing orders

Farmer-Lender Mediation Extensions

Jeff C. Braegelmann

- ❑ 2020 Laws, Chapter 74, Article 19; effective April 16, 2020
- ❑ Creditor may not enforce debt until 150 days after debtor files a mediation request (was 90 days)
- ❑ For mediations in progress on April 16, 2020, add 60 days
- ❑ Also applies to new mediations if the mediation request was filed before July 31, 2020
- ❑ Does not change other requirements such as eligibility, good faith, disclosures, inspections, release of proceeds, etc.

Wrap-up and Conclusion

Jeff C. Braegelmann



THANK YOU!



This program is not intended to be responsive to any individual situation or concerns, as the contents of this presentation are intended for general informational purposes only. Participants are urged not to act upon the information contained in this presentation without first consulting competent legal advice regarding implications of a particular factual situation. Questions and additional information can be submitted to your Gislason & Hunter Attorney or to the presenter of this session.