

GISLASON & HUNTER

COMMERCIAL LENDING CONFERENCE

PRESENTATION

2021

GISLASON & HUNTER LLP
ATTORNEYS AT LAW

VIDEO WEBINAR

**WEDNESDAY
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COVID-19 ONE YEAR LATER

LAWS, MORATORIUMS, AND EXECUTIVE ORDERS IMPACTING YOUR BANK

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Status of the Court System

- Courts Are Open – Delays Have Become Common
 - Some trials (e.g. criminal trials) are in person.
 - Majority of hearings are telephonic or via Zoom.
 - Parties/clients are still welcome to participate, but it takes more preparation.
- Minnesota State Courts
 - MN Supreme Court Orders govern the administration of Minnesota State Courts.
 - The most-recent MN Supreme Court Order currently affecting Minnesota State Courts was filed on February 18, 2021, and this Order governs the administration of Minnesota State Courts through April 30, 2021.
 - A new MN Supreme Court Order was filed on March 22, 2021, which will be effective May 1, 2021 and run through June 13, 2021.

Status of the Court System

cont.

- General Proceedings (As Per February 18, 2021 Order)
 - The Judicial Branch has had requirements for face coverings in Court facilities since July 7, 2020.
 - Courts have implemented exposure control measures at Court facilities and other locations at which Judicial Branch proceedings are held, consistent with public health guidance.
 - Effective as of March 15, 2021, in-person criminal jury trials may be held in any county. District Courts that schedule and hold an in-person criminal jury trial must adhere to the guidelines and exposure measures in approved Judicial Branch.

Status of the Court System

cont.

- General Proceedings (As Per February 18, 2021 Order)
 - Subject to a few exceptions, proceedings in the District Court in criminal and civil cases, including civil jury trials, are conducted remotely unless the chief judge of the district in which the proceeding is to be held grants an exception for an in-person proceeding.
 - In-person civil jury trials may be granted by the chief judge only after consultation with the Chief Justice.
 - Civil jury trials may proceed remotely if the presiding judge and the parties agree.

Status of the Court System

cont.

- General Proceedings (As Per February 18, 2021 Order)
 - For in-person proceedings, access to the Courtroom is limited to the parties in the case who are participating in the proceeding, attorneys who represent those parties, any necessary Court staff, and other individuals designated by the presiding judge as necessary to the proceeding.
 - Special rules apply for media access to Court proceedings, generally, and in Hennepin County, in particular.



Farmer Lender Mediations

- Farmer Lender Mediation is ongoing.
- All mediations are telephonic.
- Extended the length from 90 -150 days or December 1, 2020, whichever is later.
- Currently an act pending to extend mediation length from 90 days to 120 days



Foreclosures

- USDA Single Family Housing Direct and Guaranteed loans- moratorium through June 30, 2021
 - Cannot initiate any judicial or non-judicial foreclosure process, unless:
 - The property is vacant or abandoned
- Private loans in Minnesota
 - No moratorium on foreclosures
 - Can move forward with foreclosure
 - May run into other tolling issues
- Private loans in other states- Check state law

Redemption Issues

- March 13, 2020- Peacetime Emergency effective in MN
- April 15, 2020- Legislation tolling statutory deadlines that govern court proceedings until 60 days after the end of the peacetime emergency or until February 15, 2021, whichever is earlier. Ch. 74, art. 1. Section 16.
 - Retroactively applied to March 13, 2020
- February 15, 2021- Legislation stating statutory deadlines “shall not expire” from March 13, 2020 through April 15, 2021.

Redemption Issues

cont.

- Where does that leave us now?
 - Foreclosures by Action
 - Can start but redemption period is most likely tolled.
 - Foreclosures by Advertisement
 - Can start, disagreement as to whether redemption period is tolled.
 - Ramsey County Court – does not toll redemption period for foreclosures by advertisement.
 - Title Insurance – Some requiring exclusion in policies when sold after foreclosure.

Redemption Issues

cont.

- What does “shall not expire” language mean?
 - Example 1: Original Deadline was September 13, 2020 (6 months after peacetime emergency)
 - Is the new deadline April 15, 2021?
 - Is the new deadline October 15, 2021 (6 months after April 15, 2021)?
 - Example 2: Original Deadline is May 15, 2021
 - Is the deadline still May 15, 2021?
 - Is the new deadline June 15, 2022 (13 months after May 15, 2021)?

State Moratorium on Evictions

- Minnesota State Moratorium on Evictions
 - Since March 23, 2020, there has been a moratorium on most residential evictions in the State of Minnesota pursuant to various Executive Orders issued by Governor Tim Walz.
 - As of this presentation, the current Minnesota state moratorium on most evictions will be in place until at least April 14, 2021, which is when the current peacetime emergency is scheduled to expire.
 - Although, if the Governor's prior actions are any indication, this moratorium is likely to continue another 30 days beyond April 14, 2021, if the Governor extends the current peacetime emergency.

State Moratorium on Evictions

cont.

- Minnesota State Moratorium on Evictions
 - While a state moratorium on most residential evictions has been in place since March 23, 2020, the initial moratorium has been modified.
 - Specifically, Executive Order 20-79, issued on July 14, 2020 and effective August 4, 2020, modified the Governor's prior Executive Order(s) to authorize certain evictions in limited circumstances.

State Moratorium on Evictions

cont.

- Minnesota State Moratorium on Evictions
 - Exec. Order 20-79 –
 - 7-day notice of intent to file an eviction
 - Can evict where tenant:
 - Seriously endangers the safety of other residents;
 - The lease violation is specific unlawful actions (prostitution/drugs);
 - Significant damage to property; or
 - The property owner or owner's family is going to move into the property.

Federal Moratorium on Evictions

- Federal Moratorium on Evictions

- On September 4, 2020, the Director of the Center for Disease Control (“CDC”) issued an Order temporarily halting residential evictions in the United States for the reasons identified in that Order.
- The September 4, 2020 CDC Order has been extended multiple times, most recently in late March 2021.
- The current CDC Order will remain in effect, unless extended, modified, or rescinded, through June 30, 2021.

Federal Moratorium on Evictions

cont.

- Federal Moratorium on Evictions

- The current CDC Order does not apply to any State with a moratorium on residential evictions that provides the same or greater level of public-health protection than set forth in the CDC Order.
- The current CDC Order applies to any a “landlord, owner of residential property, or other person with legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property.”
- A “residential property” “means any property leased for residential purposes”

Federal Moratorium on Evictions

cont.

- A “covered person” means: any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that:
 - The individual has used best efforts to obtain all available government assistance for rent or housing;
 - The individual either (i) expects to earn no more than \$99,000 for calendar year 2021 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2020, or (iii) received a stimulus check pursuant to the CARES Act;
 - The individual is unable to pay full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work, a lay-off, or extraordinary out-of-pocket medical expenses;
 - The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual’s circumstances may permit; and
 - Eviction would likely render the individual homeless or force the individual to move into and live in close quarters in a new congregate or shared living setting.

Federal Moratorium on Evictions

cont.

- Federal Moratorium on Evictions
- Exceptions: Nothing in the current CDC Order precludes evictions based on a tenant, lessee, or resident:
 - engaging in criminal activity while on the premises;
 - threatening the health or safety of other residents;
 - damaging or posing an immediate and significant risk of damage to the property;
 - violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
 - violating any other contractual obligation, other than the timely payment of rent or similar housing related payment

Federal Moratorium on Evictions

cont.

- Federal Moratorium on Evictions
 - Legal challenges to the constitutionality of the CDC's Order are on-going.
 - At least one federal judge in Texas has declared the CDC's eviction moratorium unconstitutional, but that judge did not issue an injunction preventing the enforcement of the CDC Order.
 - More litigation on this issue is expected.



Garnishments

- Moratorium- Not all garnishments are included
- What type of debt?
 - Commercial/Agricultural/Business- moratorium does not apply.
 - Consumer- moratorium applies with exceptions:
 - Can garnish or levy if judgment was entered prior to May 4, 2020.
- State specific