

## COVID-19: Practical Impacts of “Shelter in Place” and Limitations on Foreclosures and Evictions

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Throughout the nation, governmental units are shutting down businesses and issuing shelter-in-place orders. The trend is that only essential businesses remain open. These orders will have a significant impact on all industries, but particularly the retail, travel, and hospitality sectors, including malls, hotels, resorts, B&Bs, and VRBO/Airbnb.

The practical impact to many commercial tenants – particularly small businesses without significant cash reserves – is that they will have difficulty paying employees and vendors, let alone making rent and loan payments. This should concern both landlords and creditors who hold their mortgages. Commercial lenders should be prepared not only for more defaults, but also for delay in resolving them.

Some governmental units are suspending foreclosures or outright issuing moratoria. The biggest push relates to residential real estate, prompted by HUD directives. For example, Indiana has issued an executive order barring evictions and foreclosures “involving residential real estate or property, whether rental or otherwise.” While most of these measures target single-family residential real estate, any restrictions that are not narrowly tailored may impair multifamily foreclosures as well.

Residential real estate is not the sole target, however. For example, Cuyahoga County (Cleveland, Ohio) has suspended all foreclosures of occupied property for 60 days. These broader measures are likely intended to help small businesses deal with the current crisis.

Even where foreclosures are not barred by law or decree, many courts and government offices, although generally remaining open, are restricting services during this pandemic. In states where judicial foreclosures are the norm, courts that are hearing only emergency and certain criminal matters are unlikely to move forward with foreclosure actions. Kentucky, for example, is postponing all civil trials, hearings, and motions through at least April 10<sup>th</sup>. In non-judicial foreclosure states that nonetheless rely on public auctions, the most common sale officer is the sheriff—many of whose offices are also suspending foreclosure activities.

Some states are also barring eviction actions. Like prohibitions on residential foreclosures, broadly written eviction bans may impact all manner of commercial real estate and all manner of tenants, regardless of their individual financial circumstances. For instance, Michigan’s 36th District Court, which handles more than 30,000 landlord tenant actions annually for Detroit, announced a limited docket essentially for handling criminal matters only until at least April 3<sup>rd</sup>. This effectively delays evictions. This policy may be extended past April 3<sup>rd</sup>; and regardless, once eviction hearings resume, it will take time to clear up the significant backlog. These types of measures may challenge stabilization of distressed assets.

Specific measures being implemented vary from one state and local unit to the next. This is part of a series of our **COVID-19 alerts** providing clients with practical advice on measures they can take to navigate through these troubled times. Please contact the authors or your Miller Canfield attorney with further questions.

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*This information is based on the facts and guidance available at the time of publication, and may be subject to change.*