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Client Alert: Ohio Executive Order to Landlords and Lenders

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On April 1, 2020, Ohio Governor Mike DeWine signed Executive Order 2020-08D, *Commercial Evictions and Foreclosures* (the "Order"). A copy may be accessed here.

Following recitations of the Governor's purported authority, the Order makes the following "requests" for the ensuing ninety (90) days:

- To Landlords:
  - To suspend rent payments for "small business commercial tenants in the State of Ohio that are facing financial hardship due to the COVID-19 pandemic"; and
  - To provide for a moratorium of evictions of "small business commercial tenants."
- To Lenders:
  - To engage in forbearance on commercial mortgage loans for a property located in the State of Ohio with respect to "commercial real estate borrowers" due to financial hardship of the COVID-19 pandemic.

The Order broadly defines "Lender" to include banks, bond issuers, holders, and servicers of mortgages on Ohio properties through commercial mortgage-backed securities ("CMBS"), among others (for a complete definition, see the Order, paragraph 4). *We note that the CMBS market was not covered by recent FDIC guidance on loan modifications, https://www.fdic.gov/news/news/financial/2020/fil20022.html.*

The Order defines "Forbearance" to mean (a) the enforcement of any remedies, (b) sweeping cash, or (c) requiring a waiver of legal rights or admission of default (for a complete definition, see the Order, paragraph 5).

We note that the Ohio HB 197 became effective on March 27, 2020 tolling certain deadlines in criminal and civil cases, and that the Ohio Supreme Court Chief Justice O'Connor issued an order and guidance to Ohio judges regarding toll timing requirements in Supreme Court rules that govern the bench and bar. Local courts may also have issued administrative orders affecting court deadlines.

The Order stipulates that nothing is intended to negate the obligation of a small business commercial tenant to pay rent, or restrict a landlord from recovering rent, at a future time. Similarly, nothing negates the obligations of a commercial real estate borrower, but rather the Order provides "a pause and time for sensible solutions to be worked out among commercial real estate borrowers and lenders."

In his daily briefing, the Governor explained, the Order enumerates actions he believes that landlords and lenders should take, but he is granting flexibility in tackling the situation.

If you have any questions, please do not hesitate to contact Regina Joseph at rjoseph@shumaker.com or 419.321.1435.

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