

Relief for Commercial Tenants in the Midst of the Covid-19 Pandemic: Executive Order 2020-08D

By: Catherine Gorman on May 14, 2020 on graydon.law

On April 1, 2020, Governor DeWine issued Executive Order 2020-08D, providing some relief for commercial tenants in Ohio.

The Order, among other things, makes the following two requests:

1. Landlords are requested to suspend, for a term of at least 90 consecutive days, rent payments for small business commercial tenants in the State of Ohio that are facing financial hardship due to the COVID-19 pandemic.
2. Landlords are requested to provide for a moratorium of evictions of small business commercial tenants for a term of at least 90 consecutive days.

Although it is clear that the Order is intended to provide some form of relief for commercial tenants, it raises a number of un-answered questions, including:

- What qualifies as a “small business commercial tenant”?
- Do the requests apply only to “base rent,” or additionally to the obligation to pay other expenses such as common area maintenance expenses?
- Is deferral of rent an option in lieu of an outright suspension of rent?
- Can landlords charge interest or penalties on deferred rent payments?
- Is the moratorium intended to apply to non-monetary defaults as well as monetary defaults?

Unfortunately, the answers to these questions remain unanswered at this time.

It is also important to note that the Order, as it currently stands, is merely a *request*. Thus, it does not impose any mandatory requirements and there are currently no penalties for disobeying the requests contained in the Order.

However, the fact that the Order currently contains mere requests does not eliminate the possibility that Governor DeWine could issue a subsequent executive order in the future turning the requests into mandatory requirements. Other states and municipalities such as

California, Los Angeles, San Francisco and New York have gone down this route and have taken it a step further to *order* commercial moratoriums on commercial evictions.

The Graydon real estate team is monitoring this closely. If you have any questions regarding what benefits may be available to you as a commercial tenant, please give us a call. We are here to help your business during this challenging time.