Real Estate Industry Alerts Tracker - September 11, 2020 Issue

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CDC Has Formally Issued its Order Temporarily Holding Residential Evictions Through the End of the Year

Last week we reported that the Centers for Disease Control and Prevention (CDC) intended to use its quarantine authority to halt certain residential evictions through the end of the year in an effort to prevent the further spread of COVID-19. The CDC has now issued the Agency Order, which has been published in the Federal Register, and is effective from September 4, 2020 to December 31, 2020. The order prevents a “covered person” from being evicted until the end of the year. A “covered person” is defined as a residential tenant that provides their landlord with a declaration under perjury declaring 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 in annual income for Calendar Year 2020 (or no more than $198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, 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, taking into account other nondiscretionary expenses; 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 – because the individual has no other available housing options.

A person violating the order may be subject to a fine of no more than $100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than $250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law. An organization violating the order may be subject to a fine of no more than $200,000 per event if the violation does not result in a death or $500,000 per event if the violation results in a death or as otherwise provided by law. The U.S. Department of Justice may initiate court proceedings as appropriate seeking imposition of these criminal penalties.

A copy of the CDC's Agency Order, which also contains a copy of the affidavit to be used by the tenant, may be found here.

Heard Around the Industry

Northeast Industrial Vacancy Rates Remains Stable: A new report from CBRE revealed that the industrial real estate market in the Northeast remained stable in the second quarter, despite the pandemic. Industrial leasing activity declined slightly earlier this year as compared to 2019. However, there was an uptick in the second quarter, with traditional retailers and e-commerce firms showing strong demand for industrial space. The report noted that the regional vacancy rate for Class A space remained at 6.6% in the second quarter and has varied only slightly since the second quarter of 2018. In the Northern New Jersey/New York City region, the vacancy rate shrunk from 0.9% in the fourth quarter of 2019 to 0.3% in the second quarter of 2020. The Philadelphia metropolitan area (including Southern New Jersey) experienced a slight decline in its vacancy rate in the second quarter of 2020, after increasing to 5.5% at the end of 2019.

Additional information may be found here and here.

Special Servicing Rate on CMBS Loans Climbs to 10.04%: Trepp's September 2020 report on the status of the CMBS market revealed that the Trepp Special Servicing rate on commercial mortgage-backed securities increased by 55 basis points in August to 10.04%. According to the report, the surge in special servicing was primarily due to increases in the retail and lodging special servicing rates. The retail special servicing rate increased from 16% in July to 17.3% in August, while the lodging special servicing rate increased from 24.3% to 25% during the same period. Although in August Trepp reported that the delinquency rate in the CMBS market dropped 58 basis points to 9.02%, the special servicing rate is a more accurate representative of the state of the CMBS market, according to Trepp. Loans that were once characterized as "delinquent" switched to "current" status as forbearance agreements were granted, but the agreements are short term and the loans continued to be specially serviced even though they were no longer technically delinquent.

Additional information may be found here and a copy of the report may be found here.

In light of it being the first week back to school in many states, we thought it would be appropriate to share several articles written by our Labor and Employment lawyers guiding employers through the complicated issues around employee leave requests and managing a remote workforce. If you find this helpful and would like to see more of this type of articles in this newsletter, please let us know or you can sign up for our L&E blog directly at www.LaborDaysBlog.com.

Back to School and the FFCRA: A Study Guide

This fall's return to school will be a challenge for students, parents, and employers alike. Most states are dealing with a wide array of approaches to begin the school year. Schools constantly shifting plans should stir employers to understand their obligations under federal and state leave laws. To assist employers in understating their obligations under the Families First Coronavirus Response Act ("FFCRA"), the Department of Labor ("DOL") offered guidance on leave and the various approaches to schooling.

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Compel OSHA to Issue an Emergency Temporary Standard for COVID-19? The DC Circuit Says No to the AFL-CIO (Twice)

On July 28, the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit") declined to rehear the unanimous ruling of a three-judge DC Circuit panel that denied the AFL-CIO's request that the court compel the U.S. Occupational Safety and Health Administration ("OSHA") to an emergency temporary standard ("ETS") to protect workers from coronavirus. This rejection of the AFL-CIO's petition for rehearing *en banc,* signals that the AFL-CIO's five-month effort to compel OSHA to issue an ETS has likely come to an end.

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When Home = Work: New DOL Guidance on Managing Your Remote Workforce

On Monday, July 20, 2020, the U.S. Department of Labor published additional guidance, addressing questions arising from the COVID-19 pandemic under the Fair Labor Standards Act ("FLSA"), the Family and Medical Leave Act ("FMLA"), and the Families First Coronavirus Response Act ("FFCRA"). This guidance is particularly apropos, as more and more employers realize that the "new normal" is a world of remote work, with some employers extending telework on an indefinite basis.

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