

March 27, 2020

MISSISSIPPI REAL ESTATE TRANSACTIONS AND THE COVID-19 EMERGENCY

The COVID-19 emergency which has resulted in a National Emergency Declaration by the President and an Emergency Declaration by the governor of the State of Mississippi, Tate Reeves, has created an uncertain situation for all in business and professions, including the real estate profession.

1. CAN REAL ESTATE OFFICES STILL OPERATE

Governor Reeves issued an Executive Order Number 1463 on March 24, 2020 that prohibited non-essential gatherings of ten or more people. However, it did list, among essential businesses professional services including legal services and real estate, including appraisal and title service. Therefore, under the current guidelines as of March 27, real estate offices can still operate.

Some Mississippi cities have placed more restrictions on public activity than the state. Accordingly, one should check with their local authorities to be sure that they are complying with rules and regulations that have been enacted in their locality. For example, the Leflore County Courthouse in Greenwood was declared closed for the week of March 23 after it was discovered that a staff person had the Corona Virus. We have learned that the authorities were allowing attorneys to enter the building to examine titles and record deeds as of March 26. There may be other areas which have similar restrictions, although this has not been highly publicized as yet in the statewide news media.

2. EFFECT OF THE EMERGENCY ON PENDING CONTRACTS FOR THE SALE OF REAL ESTATE

The standard residential real estate contract for the sale and purchase of real estate promulgated by the Mississippi Association of Realtors provides that as to closings of the transactions contemplated by the contract, time is of the essence,

meaning that unless the parties should agree otherwise, the closing must go forward as scheduled or there is a potential breach of contract. The standard contract does not include a force majeure (sometimes referred to as an “Act of God”) clause which would excuse performance due to a situation like the current Corona Virus emergency which is beyond the control of all parties to the contract.

As of March 26, 2020, the Mississippi Association of Realtors has made available on its website through the software templates which realtors are able to access, an addendum to the standard contract addressing the “time is of the essence” provision of the contract and acknowledging the parties’ right to cooperate in good faith and make reasonable allowances for delays due to quarantine or closure related to the COVID-19 state of emergency. This addendum must be signed by the seller and the buyer and allows them to agree to alter deadlines and contingencies such as they may agree, subject to the right of either party to terminate the contract if more than 30 days elapses past the closing date in the contract. The form also allows the seller and buyer an option to cover the situation where a buyer loses his or her financing due to the COVID-19 loss of income after the loan contingency has been waived. There are other modifications to standard forms on the website such as residential lease agreements, listing agreements, disclosure and waiver regarding physical property showings or inspections. These should be consulted.

Because the contract does not currently have a force majeure clause, it is believed that the parties will need to agree to amend or to waive the “time is of the essence” provision in order to alter closing dates or other contingencies contained in contracts. The time is of the essence provision does specifically apply to the closing date and specifically to the other deadlines in the contract.

It is believed that subject to any further emergency orders issued by the federal, state or local governments, that real estate transactions may go forward as agreed. In addressing any new contracts, it would be strongly suggested to include the modified standard contract which would waive the time is of the essence provision if the parties agreed.

Other contracts for purchase and sale of real estate, such as agricultural contracts, are often done specifically for that transaction and do not necessarily use the standard contract promulgated by the Mississippi Association of Realtors. Many of these have force majeure provisions which would allow delay if there is a

“time is of the essence” provision. Under Mississippi law with regard to real estate contracts if time is not specifically stated to be of the essence in the contract, it is not. A reasonable time is implied for performance.

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DISCLAIMER: This article is a brief overview and survey of COVID-19 issues facing real estate professionals in general. The article is designed and its purpose is to serve only as a general discussion of these issues. This article does not constitute legal advice. The reader should consult with a licensed, experienced attorney on any specific or general matter in the reader’s particular jurisdiction. We hope that all real estate practitioners find this article to be a useful and practical tool in identifying COVID-19 issues.