

REAL ESTATE ADVISORY

Arizona Governor Issues Executive Order Prohibiting Evictions of Certain Small Business Tenants



On April 6, 2020, Arizona Governor Doug Ducey issued [Executive Order 2020-21](#), which prohibits landlords from evicting or taking certain other adverse actions against certain small business tenants until May 31, 2020. The governor's press release announcing the order is available [here](#).

Which tenants are covered?

The order applies to "commercial tenants," defined in Section 6 of the order as any business type that is eligible for the federal Paycheck Protection Program, which was enacted by the CARES Act and is administered by the Small Business Administration. Sherman & Howard's summary of the Paycheck Protection Program is available [here](#), but eligible tenants generally include small businesses, 501(c)(3) nonprofit entities, veterans groups, and tribal groups with fewer than 500 employees as well as other SBA-qualified small businesses (using the SBA's size and industry requirements in its "Table of Size Standards") that incurred payroll costs on or before February 15, 2020.

Which actions are prohibited?

The order suspends landlords' rights to evict, lock out, issue a notice to vacate, or take any other action that inhibits the operations of a commercial tenant unable to pay rent due to financial hardship caused by the COVID-19 pandemic. There are limited exceptions where a court determines that suspending these actions would be contrary to the interests of justice and for continuing actions initiated prior to March 11, 2020.



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The order does not relieve any tenant of an obligation to pay rent or to comply with any other obligation under a lease or rental agreement.

Are there any conditions on the relief?

Yes. First, commercial tenants that are unable to pay rent due to financial hardship caused by the COVID-19 pandemic and seek to take advantage of the protections provided by the order must notify a landlord in writing as soon as practicable with any available supporting documentation evidencing their inability to pay, and they must acknowledge that the contractual terms of the lease remain in effect. Because of this condition, tenants considering invoking the order should consult with their attorneys in advance to avoid waiving potential force majeure or other legal defenses that they may wish to assert.

Second, commercial tenants that receive financial assistance from public programs to assist businesses suffering hardships from COVID-19 (presumably including the Paycheck Protection Program) must apply a portion of the assistance to the payment of past or currently due rents. There is no specific requirement for the amount to be applied, and landlords may not impose a requirement themselves. Tenants who take advantage of both this order and the Paycheck Protection Program should be careful to comply with the Paycheck Protection Program requirements when determining how much of the loan proceeds to apply to rent. (The SBA's preliminary regulations state that at least 75 percent of loan forgiveness costs should be used for payroll costs.)

Any other advice?

Sherman & Howard attorneys have urged landlords and tenants to be reasonable and proactive in responding to issues resulting from COVID-19. Governor Ducey does the same in the order, which requires landlords to consider deferring or adjusting rent payments and encourages landlords to work with commercial tenants to waive late fees, penalties, and interest. The order also requires commercial lenders to consider providing an opportunity for forbearance for any borrower that has suspended any action pursuant to the order.

Questions

Please contact a member of the Sherman & Howard [Real Estate Group](#) with any questions relating to this advisory.

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