

The Impact of Residential Evictions on Future Finances

SmithAmundsen Real Estate and Financial Services Alert
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Local and national news agencies anticipate a wave of evictions once all moratoria against evictions expire. The CDC moratorium on residential evictions expires at the end of December, 2021. Governor Pritzker's similar moratorium in Illinois is renewed every 30 days, and may be extended until the end of the pandemic. The Governors of neither Indiana nor Missouri have issued moratoria on evictions, but the CDC moratorium applies in those states. With the lack of rent payments come the lack of mortgage payments, and with those come foreclosures and bankruptcies. Lenders should prepare themselves now in order to be able to roll with the economic changes.

The various moratoria on evictions provide a temporary respite for residential tenants, but none of them forgive the rent that is owed. Once evictions can be prosecuted again, otherwise good tenants who were unable to pay rent before will likely be in the same financial straits as they were pre-pandemic and will eventually be removed from their rentals unless they are able to come to an agreement with the landlords. Likewise, landlords may be unable to fully pay on their mortgages for such properties and lenders will have to face a decision on how to work with an otherwise good borrower who has not been able to collect rent or obtain paying renters for their properties.

Workout departments in financial institutions should be prepared to be creative with these credits. A borrower that works with a lender in order to cure a problem credit is a far-better solution than foreclosure. Creative solutions often require modifications to loans, which must be properly documented. Lenders must ensure that modifications, forgiving of debt, adding of guarantors, etc. are all properly documented so as to be legally enforceable. Many states, including Illinois, Indiana, and Missouri, have statutes that require commercial loan modifications be in writing, with their specified terms, and be signed by all parties. Failure of a lender to properly document a loan modification could result in a legal nullity that a court will not enforce. Lenders should also be prepared to deal with borrowers that seek relief in bankruptcy courts by knowing and understanding how to best protect lenders once bankruptcies are filed.

With vaccines showing promise, the end of the pandemic may be in sight. However, once the threat of the virus has been eliminated, the economic destruction left in its wake will continue for months, if not years. Foreclosures, evictions, and bankruptcies are likely to follow close on the heels of a vaccine,

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Michael G. Cortina
Partner

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and lenders need to be prepared to handle them, and handle them correctly.

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