

Real Estate Activities In Connection with Essential Financial Services

On March 10, 2020, Governor Whitmer issued Executive Order 2020-04, which declared a state of emergency across the State of Michigan due to the COVID-19 pandemic. On March 23, 2020, Governor Whitmer issued Executive Order 2020-21, directing Michigan residents to remain at home or in their place of residence, with limited exceptions.

Executive Order 2020-21 broadly prohibits in-person work with a narrow exception for critical infrastructure workers to continue in-person work in certain sectors necessary to sustain or to protect life. These workers include some workers in the financial services sector.

On March 30, 2020 the State of Michigan Department of Financial Services issued Bulletin 2020-11 BT/CF/CU to clarify what constitutes “financial services” under Executive Order 2020-21.

Pursuant to Bulletin 2020-11 BT/CF/CU, the term “financial services” as used in Executive Order 2020-21 means:

- Banks, credit unions, and consumer financial service providers (e.g. mortgage companies, money transmitters, payday lenders, consumer installment lenders, sales finance lenders, debt management companies, and pawnbrokers).
- Bond issuers.
- Title companies.
- Inspectors.
- Appraisers.
- Surveyors.
- Registers of Deeds.
- Notaries.

Bulletin 2020-11 also makes clear that the ordinary services provided by real estate brokers and real estate agents and salespersons are not permitted. Real estate brokers and agents do not constitute “critical infrastructure workers” and thus may not leave their homes for work unless, under section 9(d) of the Executive Order, they are “provid[ing] food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.”

As a cautionary note, this Bulletin should not be deemed a blanket authorization to perform work which is unrelated to the provision of financial services. Rather, the services being performed by title companies, inspectors, appraisers or other covered industries should be tied to financial services, such as mortgage loans. At the moment surveyors and appraisers are likely not entitled to undertake other work, such as surveying vacant land for development or appraising property for estate planning purposes.

Although the Registers of Deeds are now considered providers of essential financial service, many are not expected to read the Bulletin as a mandate to reopen for business as usual. The decision to open registers of deeds offices reside with local officials. An informal canvass by Bodman of several registers of deeds suggest they will not be opening for business as usual as a result of this Bulletin.

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