Executive Order 2020-134: Eviction diversion program for COVID-19-related debtors

EXECUTIVE ORDER

No. 2020-134

Eviction diversion program for COVID-19-related debtors

Rescission of Executive Order 2020-118

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended (EMA), MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended (EPGA), MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created

emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the EPA, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the EMA.

Those executive orders have been challenged in *Michigan House of Representatives and Michigan Senate v. Whitmer*. On May 21, 2020, the Court of Claims ruled that Executive Order 2020-67 is a valid exercise of authority under the Emergency Powers of the Governor Act but that Executive Order 2020-68 is not a valid exercise of authority under the Emergency Management Act. Both of those rulings are being challenged on appeal.

On June 18, 2020, I issued Executive Order 2020-127, again finding that the COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan. That order constituted a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature had declined to grant an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this executive order. In relevant part, it provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

Nevertheless, subject to the ongoing litigation and the possibility that current rulings may be overturned or otherwise altered on appeal, I also invoke the Emergency Management Act as a basis for executive action to combat the spread of COVID-19 and mitigate the effects of this emergency on the people of Michigan, with the intent to preserve the rights and protections provided by the EMA. The EMA vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)–(2). This executive order falls within the scope of those powers and duties, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has not granted an extension request, they too provide a sufficient legal basis for this order.

Executive Order 2020-118 and its predecessors, which temporarily prohibited removal or exclusion of a tenant or mobile home owner from their residential premises, were issued because removing or excluding people from their residences was likely to exacerbate the public health threat of COVID-19. Although COVID-19 remains a deadly pandemic, conditions in Michigan are improving. As a result, it is now reasonable and necessary to replace the eviction moratorium with a special judicial process for addressing COVID-19-related debts. This process will keep people in their homes, while facilitating prompt payment to landlords.

To facilitate this transition, this order temporarily extends, and then rescinds, the eviction moratorium. Beginning July 16, 2020, Michigan landlords and lenders are strongly encouraged to take advantage of COVID-19 housing debt remedies, rather than pursuing eviction or foreclosure.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. **Executive Order 2020-118 is temporarily extended and will remain in effect through July 15, 2020. Effective July 16, 2020 at 12:01 am, Executive Order 2020-118 is rescinded.**
2. "COVID-19 housing debt" means a money debt resulting at least in part from a breach of a residential lease, residential executory contract, or residential mortgage due to failure to make a required payment during a state of emergency or state of disaster arising out of the COVID-19 pandemic.
3. A conditional dismissal, pursuant to Michigan Court Rule 2.602, of a claim based on COVID-19 housing debt may provide for the Eviction Diversion Program (EDP) or any similar relief fund established at the county or municipal level to satisfy up to 90% of the amount due to the plaintiff via a lump sum rental assistance payment, subject to availability of funds.
    a. Rental assistance under this section is available only for COVID-19 housing debt.
    b. Non-COVID-19 housing debt must be paid by the tenant either in a lump sum or as part of a conditional dismissal.
    c. A conditional dismissal that includes EDP rental assistance must require the defendant's share of the amount due to be paid in 12 equal monthly payments.
    d. In order to receive a lump sum rental assistance payment, plaintiff must waive any late fees or penalties, and must forgive one-ninth of one dollar of the remaining amount due for every dollar received as a lump sum payment. For example: (i) if a plaintiff receives $900 from the Eviction Diversion Program on a $1,000 arrearage, they must forgive the remaining $100; (ii) if a plaintiff receives $450 from the Eviction Diversion Program on a $1,000 arrearage, they must forgive $50, and the defendant tenant is responsible for paying the remaining $500 in twelve equal monthly payments.
4. Eligibility for rental assistance payments under section 3 will be based on tenant income and household size.
    a. Households up to 100% of area median income (AMI), calculated based on income during the period for which assistance is sought, will be eligible for rental assistance, with a target of half of funds reserved for households earning less than 50% of AMI.
    b. Tenant responsibility will vary based on AMI and amount due.
    c. The Department of Labor and Economic Opportunity (LEO) must issue program guidance to implement this section.
5. LEO will issue grants to Housing Assessment and Resource Agencies (HARAs) to administer the Eviction Diversion Program. HARAs are responsible for making rental assistance

payments under section 3 of this order, consistent with the eligibility criteria in section 4 and relevant LEO guidance.

6. Any statutory limits on the court of this state to adjourn any proceedings, toll any redemption periods or limitations periods, or extend any deadlines are suspended through July 31, 2020 at 11:59 pm.
7. For purposes of this order, “Eviction Diversion Program” refers to the rental assistance program funded by section 506 of Enrolled Senate Bill 690 of 2020.
8. A copy of this order will be transmitted to the State Court Administrative Office.

Given under my hand and the Great Seal of the State of Michigan.

GRETCHEN WHITMER
GOVERNOR

Date: June 26, 2020

Time: 11:45 pm

MICHIGAN.GOV HOME
ADA
MICHIGAN NEWS
POLICIES

COPYRIGHT 2021 STATE OF MICHIGAN