State of Delaware

Executive Department
Dover

SIXTH MODIFICATION OF THE DECLARATION OF
A STATE OF EMERGENCY FOR THE
STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT

WHEREAS, the Centers for Disease Control and Prevention ("CDC") has determined that a novel coronavirus ("COVID-19") presents a serious public health threat, and has advised the public that asymptomatic individuals may be carriers of the COVID-19 virus and may unknowingly spread the virus to other individuals in close proximity, and therefore, social distancing is required to help mitigate the individual exposure to (and community spread of) the COVID-19 virus; and

WHEREAS, it is in the best interests of the State to protect its citizens from a potential public health emergency that could threaten the lives of those who live and work here; and

WHEREAS, on March 12, 2020 at 3:00 p.m. E.D.T., I issued a State of Emergency due to the public health threat of COVID-19, which became effective as of 8:00 a.m. E.D.T. on March 13, 2020 (the "COVID-19 State of Emergency"); and

WHEREAS, on March 16, 2020 at 2:00 p.m. E.D.T., I issued the First Modification to the COVID-19 State of Emergency declaration to advise that the CDC issued new guidance for large

events and mass gatherings, recommending that organizers halt gatherings of 50 people or more for the next eight weeks due to the public health threat of COVID-19, including conferences, social events, concerts and other types of assemblies; and

WHEREAS, as of Friday, March 13, 2020 at 8:00 a.m. E.D.T., the Division of Public Health ("DPH") and Delaware Emergency Management Agency ("DEMA") were authorized to cancel gatherings should it be deemed necessary for public health reasons, and such cancellation shall not constitute a taking and shall not entitle the owner or organizer to just compensation; and

WHEREAS, on March 18, 2020 at 2:00 p.m. E.D.T., I issued the Second Modification to the COVID-19 State of Emergency declaration that modified the limitations on public gatherings of 50 or more people and, among other things, placed certain restriction on the operation of certain businesses and facilities in the State of Delaware; and

WHEREAS, on March 21, 2020 at 12:00 p.m. E.D.T., I issued the Third Modification to the State of Emergency declaration to close all Delaware beaches, except to persons using the beaches for exercise or to walk their dogs, subject to certain precautions recommended by the CDC on COVID-19, which became effective as of 5:00 p.m. E.D.T.; and

WHEREAS, on March 22, 2020 at 4:00 p.m. and 4:02 p.m. E.D.T., respectively, I issued the Fourth and Fifth Modifications to the COVID-19 State of Emergency declaration to close all non-essential businesses in Delaware, except those that can offer goods and services on the Internet, and to order a Shelter in Place for Delaware residents; and

WHEREAS, in the next 60 days, multiple statewide, municipal, and school district elections are scheduled to be conducted, and such elections will necessarily result in public gatherings in numbers (of voters and poll workers) greater than 50 persons in contravention of my

Emergency Order, and above the threshold numbers recommended by the CDC to avoid potential exposure to (and community spread of) the COVID-19 virus; and

WHEREAS, Article V, § 4A of the Delaware State Constitution provides limited reasons, including the "sickness or physical disability" of a duly registered voter, to allow such voter to cast an absentee ballot in a "general election;" and

WHEREAS, Title 15, § 5502 of the Delaware Code provides limited reasons, including a duly registered voter being "sick or physically disabled," (15 *Del. C.* § 5502(4)) to permit such voter to cast an absentee ballot in "any primary election, general election, special election for statewide or local offices. . .;" and

WHEREAS, Title 15, § 3182 of the Delaware Code provides that the presidential primary election shall be conducted in accordance with the laws governing statewide office primaries;" and

WHEREAS, Title 14, § 1086 of the Delaware Code provides that "[a]ny individual qualified to vote in a school district election who shall be unable to appear to cast their ballot at the polling place of their school district on the date of the election may cast their vote by absentee ballot provided that the voter qualifies under 1 of the provisions of § 5502 of Title 15. . . .;" and

WHEREAS, Title 15, § 7571 of the Delaware Code provides limited reasons, including an otherwise duly registered voter who is "sick or physical disabled," (15 *Del. C.* § 7571(4)) to permit such voter to cast an absentee ballot in a State municipal election; and

WHEREAS, the spread of COVID-19 is likely to result in loss of work and loss of income for some residents of Delaware, which may impact their ability to pay for rental housing, and potentially result in their eviction; and

WHEREAS, to avoid the serious health, welfare, and safety consequences that may result if Delawareans lose their rental housing as a result of COVID-19, it is necessary and reasonable to impose a moratorium on certain evictions; and

WHEREAS, the enforcement of eviction orders for residential premises is contrary to the interest of preserving public health and ensuring that individuals remain in their homes during the public health emergency; and

WHEREAS, many Delaware utilities and service providers have agreed that, to protect the public health, welfare, and safety, certain residential services should not be terminated, and have taken action to provide additional assistance to their customers during the state of emergency and public health emergency; and

WHEREAS, residents and businesses may experience a change in economic stability due to the public health threat caused by COVID-19, and reduction in revenue or income could result in delayed or missed payments for insurance policies providing coverages that are vital to maintain; and

WHEREAS, it is important and necessary for the statewide operations and the economy that business be able to respond to the needs of the State and public bid solicitations and to account for the need to modify how the State receives and processes bids.

NOW, THEREFORE, I, JOHN C. CARNEY, pursuant to Title 20, Chapter 31 of the Delaware Code, in an effort to control and prevent the spread of COVID-19 within the State of Delaware, do hereby order, effective March 25, 2020 at 8:00 a.m. E.D.T.:

A. ELECTIONS:

1. The Delaware presidential primary election scheduled to be conducted on April 28, 2020 pursuant to 15 *Del. C.* § 3181 is hereby cancelled and rescheduled to June 2, 2020.

2. All elections for school board members in any Delaware school district scheduled to be conducted on May 12, 2020 pursuant to 14 *Del. C.* § 1072(c) are hereby delayed until June 16, 2020.
3. To the extent not already canceled by its board of education, any referendum election in a Delaware school district, scheduled before May 15, 2020, and to be conducted pursuant to the requirements of 14 *Del. C.* Chapters 10, 19, 20 or 21, is hereby cancelled and shall be rescheduled by the school district's board of education no earlier than May 15, 2020.
4. To the extent not already canceled by a municipality by written notification to the State Election Commissioner pursuant to 15 *Del. C.* § 7550(h), all municipal elections scheduled to be conducted between date of this Order and May 15, 2020, pursuant to a municipality's charter or municipal code, are hereby cancelled and shall be rescheduled by the municipality no earlier than May 15, 2020 in accordance with 15 *Del. C.* §7553, and the term of any existing officeholder shall continue until the results of the rescheduled election are certified pursuant to 15 *Del. C.* § 7558.
5. Until this Order is rescinded and for purposes of qualification of an otherwise duly registered voter to vote by absentee ballot pursuant to 14 *Del. C.* § 1086, 15 *Del. C.* § 5502, or 15 *Del. C.* § 7571, as applicable, in the State's 2020 presidential primary, or in any other upcoming State primary election, special election for statewide or local offices, the qualification of "sick or physically disabled" as used in 15 *Del. C.* §§ 5502(4) and 7571 shall apply to and include any such voter who is asymptomatic of COVID-19 infection and otherwise abiding by CDC and DPH guidelines by exercising self-quarantine or social distancing to avoid potential exposure to (and community spread of) COVID-19, and who herself or himself freely chooses to use such qualification to vote by absentee ballot.

6. In order to provide the Department of Elections sufficient time and resources to process the anticipated significant increase in the volume of absentee voting resulting from the shelter in place and social distancing requirements mandated by my State of Emergency, the earliest time the Department may begin the processing of such absentee ballots as set forth in 15 Del. C. § 5510 is hereby extended from the Friday before the day of the election to 10 calendar days before such election.

B. EVICTIONS:

1. Until the state of emergency is terminated and the public health emergency is rescinded, the provisions of Chapter 57, Title 25 of the Delaware Code are hereby modified as follows:
    a. No action for summary possession may be brought with respect to any residential rental unit located within the State. With respect to any past due balance for a residential rental unit, no late fee or interest may be charged or accrue on the account for the residential rental unit during the state of emergency.
    b. For any action for summary possession for a residential rental unit located within the State, commenced prior to the declaration of the state of emergency, all deadlines in that action shall be extended until a date no sooner than the 31st day following the termination of the state of emergency and the rescission of the public health emergency. No late fee or interest may be charged or accrue on the balance due on the account for the residential rental unit that is the subject of the action for summary possession during this time period.
    c. For any residential rental unit that was the subject of an action for summary possession, for which a final judgment was issued prior to the declaration of a state of emergency, no writ of possession may be executed prior to the 7th day following

the termination of the state of emergency and the rescission of the public health emergency.

d. This Paragraph B.1. does not apply to actions for summary possession based upon a claim that continued tenancy will cause or is threatened to cause irreparable harm to person or property.

2. Except as modified in paragraph B.1. above, all other provisions of the Landlord Tenant Code (Chapters 51-59 of Title 25 of the Delaware Code) remain in effect in accordance with their terms.

3. Except as provided in paragraph B.1. above, no provision contained in this Order shall be construed as relieving any individual of the obligation to pay rent or to comply with any other obligation that an individual may have under tenancy.

C. FORECLOSURES: Until the state of emergency is terminated, and the public health emergency is rescinded, the provisions of the Delaware Code relating to residential mortgage foreclosures, including Subchapter XI, Chapter 49 of Title 10, are hereby modified as follows:

1. No residential mortgage foreclosure action may be commenced with respect to any owner-occupied 1- to 4-family primary residential property subject to a mortgage, unless the mortgage is held by the seller of the subject property who does not hold more than 5 such mortgages. With respect to any missed payment on a residential mortgage occurring during the state of emergency, no late fee or excess interest may be charged or accrue on the account for such residential mortgage during the state of emergency.

2. For any residential mortgage foreclosure action commenced prior to the declaration of the state of emergency, all deadlines in that action, including those related to the Automatic Residential Mortgage Foreclosure Mediation Program established pursuant to § 5062C of

Title 10 of the Delaware Code, shall be extended until a date no sooner than the 31st day following the termination of the state of emergency and the rescission of the public health emergency. No late fee or interest may be charged or accrue on the balance due on the mortgage that is the subject of the residential mortgage foreclosure action during this time period.

3. No residential property that is the subject of a residential mortgage foreclosure action, for which a judgment of foreclosure was issued prior to the declaration of the state of emergency, may proceed to sheriff's sale until a date no sooner than the 31st day following the termination of the state of emergency and the rescission of the public health emergency.
4. No residential property that was the subject of a residential mortgage foreclosure action, and which was sold at sheriff's sale, may be subject to action of ejectment or writ of possession until a date no sooner than the 31st day following the termination of the state of emergency and the rescission of the public health emergency.
5. Except as modified in this section, all other provisions of Chapter 49 of Title 10 of the Delaware Code remain in effect in accordance with their terms.
6. Except as provided in paragraph C above, no provision contained in this Order shall be construed as relieving any individual of the obligation to make mortgage payments or to comply with any other obligation that an individual may have under a residential mortgage.

D. UTILITIES: To reduce the threat to human health caused by COVID-19 in Delaware, protect the health and safety of utility employees and customers, and save lives, it is necessary and reasonable that residential service companies not terminate service to dwellings or residents or charge fees for late or untimely payments for services to residential dwellings, and therefore it is ordered that, during the state of emergency:

1. No electric, natural gas, propane, telegraph, telephone, water, wastewater, cable television, or internet service provider, including municipalities, counties, and cooperatives (a "Residential Service Provider"), shall terminate the service of a customer if the service is used, in whole or in part, in a dwelling unit or residence.
2. A Residential Service Provider shall not bill or collect, on an account that serves a dwelling unit or residence, any fee or charge imposed for a late or otherwise untimely payment that becomes due from the date of this Order.
3. The Public Service Commission has the authority to enforce and carry out this Section D against all Residential Service Providers utilizing its penalty authority under § 217 of Title 26 of the Delaware Code. A violation of this Section D shall also be deemed an unlawful practice under § 2513 of Title 6 of the Delaware Code and a violation of Subchapter II of Chapter 25, Title 6 of the Delaware Code.
4. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended.

E. INSURANCE: No insurer may, without a court order, lapse, terminate or cause to be forfeited a covered insurance policy because a covered policyholder does not pay a premium or interest or indebtedness on a premium under the policy that is due during the pendency of the declared state of emergency. As used in this paragraph, (i) "covered insurance policy" means a policy for health insurance, life insurance, disability insurance, property insurance, motor vehicle insurance, and commercial/business insurance, and (ii) "covered policyholder" means any individual or business entity who, as a result of the conditions imposed under the COVID-19 State of Emergency (or Modifications) or the public health emergency, was laid off or fired from their employment or was required to close or significantly reduce its business.

F. NATURAL RESOURCES: The Delaware Secretary of the Department of Natural Resources and Environmental Control ("DNREC") is authorized to develop emergency rules, amending the authority vested to the DNREC Secretary in Chapter 80 of Title 29 of the Delaware Code, and Title 7 of the Delaware Code, in response to COVID-19. These emergency rules should enhance the flexibility of the DNREC Secretary to respond to COVID-19 concerns that implicate the natural resources of the State of Delaware.

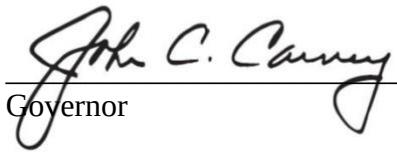
G. PROCUREMENT: The statutory time periods prescribed in 29 Del. C. Ch. 69 may be extended with written approval of the Director of the Office of Management and Budget up to 15 business days following the termination of the Declaration of a State of Emergency for any bids that are presently pending or submitted hereafter. These time periods include, but are not limited to bid advertisement, addenda, pre-bid meetings, proposal submission, contract award, and contract execution. In addition, bid responses may be accepted electronically and the electronic receipt will serve as the official time stamp with hard copies to follow by mail, provided that the hard copy mailed shall match the electronic submission without exception. Documents requiring execution, may be executed electronically and bid openings shall be recorded and published without in person attendance provided that bid receipts are certified by the State and timely announced on Bids.Delaware.Gov.

H. MISCELLANEOUS

1. The Fourth Modification of the Declaration of the State of Emergency, dated March 22, 2020, at paragraph 5.d. is modified to read: "To the greatest extent possible, exclude individuals at highest risk of poor outcomes such as those over age 60 who have chronic underlying conditions from on-premises work (with the exception of healthcare workers).

2. This Order and any emergency rules or regulations effected therefrom remain effective until the termination of the COVID-19 State of Emergency, but in all events no later than May 15, 2020, except as may be rescinded, superseded, amended, or revised by additional orders.
3. This Order has the force and effect of law. Any failure to comply with the provisions contained in a Declaration of a State of Emergency or any modification to a Declaration of the State of Emergency constitutes a criminal offense. 20 Del. C. §§ 3115 (b); 3116 (9); 3122; 3125. State and local law enforcement agencies are authorized to enforce the provisions of any Declaration of a State of Emergency.

APPROVED this 24nd day of March 2020 at 4:00 p.m.



Governor