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Pennsylvania Bill Would Grant Waiver to Residential Real Estate Industry

State responses to the COVID-19 pandemic have been characterized by shelter-in-place and business closure orders. Some states have closed more businesses than others, including Pennsylvania. Many states have followed the guidelines from the U.S. Cybersecurity and Infrastructure Security Agency (CISA) and CDC guidance to determine what is critical infrastructure and what businesses can and cannot be operated safely in accordance with CDC guidelines.

Pennsylvania has gone beyond CISA and CDC guidance and crafted a system in which life-sustaining businesses were permitted to remain open, and all non-life sustaining businesses were required to close. It also created a “waiver” process in which individual businesses were permitted to apply for a waiver from the business closure order. The waiver appeal process closed on April 4, 2020.

Pennsylvania’s executive branch is denying or indefinitely delaying open records requests for any information related to the waiver process, such as who applied for waivers, who was granted waivers, who was denied waivers and what criteria the Pennsylvania Department of Community and Economic Development used to grant or deny waivers. The Pennsylvania Legislature has attempted to step in to compel waivers for certain industries with limited success.

On April 28, 2020, the Pennsylvania House of Representatives passed House Bill 2412, which almost exclusively grants a waiver to the residential real estate industry. One amendment to H.B. 2412 includes a waiver for lawyers and law firms. What H.B. 2412 fails to do is recognize that there is more to the real estate industry than single family residential real estate and the Pennsylvania Association of Realtors. H.B. 2412, as passed by the Pennsylvania House, can be viewed [here](#).

To address certain limitations of H.B. 2412, the Pennsylvania Senate should consider adopting the following proposed amendments and grant waivers for the commercial real estate activities described

below:

Add new Subsections 101-A(a)(6), (7) and (8), all of which are subject to subsection (A.1) of HB 2412.

(6) all real estate activities of commercial real estate brokers required to consummate a commercial leasing, purchase and sale, development or other transaction, including, without limitation, meetings with owners, purchasers, landlords and tenants; producing and distributing marketing materials for commercial real estate for sale or lease, entering by commercial real estate brokers and an individual representing the landlord or seller of a commercial real estate project, and coordinating the scheduling and performance of inspections and other on-site diligence.

(7) All activities of diligence, valuation, property condition and other commercial real estate professionals including, without limitation, title insurance underwriters, title insurance agents, surveyors, geotechnical engineers, appraisers, environmental consultants, stormwater management and traffic engineers, and Americans with Disabilities Act compliance consultants.

(8) The Commonwealth of Pennsylvania Department of State shall open for all services necessary to complete real estate and other transactions that do not require any in person contact with the general public including, without limitation, accepting and docketing business formation filings, amendment filings, and entity transactions such as mergers, divisions and conversions, accepting and docketing the filings of Uniform Commercial Code financing statements including amendments, continuation statements and termination statements, and processing and issuing notary commissions and notary commission reappointments.

Pennsylvania permitted remote online notarization by statute during the pandemic to facilitate closings, but the Department of State, which processes and issues notary commission appointments and re-appointments, remains closed. As a result, notaries with expiring commissions are out of luck so long as the Department of State remains closed and does not process notary appointment and reappointment applications.

H.B. 2412 was referred to the Pennsylvania Senate and its Community, Economic and Recreational Development Committee on May 6, 2020. Hopefully, the Senate will amend the legislation to apply to the commercial real estate industry as well.

For more information, please contact [Steven Regan](#), or any attorney in Frost Brown Todd's [Real Estate](#) Practice Group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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