



RENT IS DUE! . . . CAN THE “SHELTER IN PLACE” ORDERS LAWFULLY CHANGE EXISTING CONTRACTS (i.e. prevention of evictions, fees or interest penalties)?

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It is almost the 1st of July and traditionally on the first day of the month, rent is due. However, as we all know, the shelter in place orders have severely impacted Americans ability to work or generate revenue to earn the income necessary to meet financial obligations, including the payment of rent, mortgages, or lease agreements. As a result, orders have been issued to prevent evictions or the use of contractual remedies when the agreements related to the obligation of a person (corporation or person) to pay are breached. (Ex. <https://www.floridasupremecourt.org/content/download/632431/7186205/AOSC2017.pdf> - see section regarding Writs of Possession) Is it constitutional?

The short of the long answer is **maybe**. Although the United States Constitution (Art. 1, Section 10, cl 1) and the Florida Constitution (Art. 1, Section 10) provides the citizens of this Country and the state of Florida with protection from laws that impair the obligation of contracts, there are exceptions that will be upheld. One exception: a law or order enacted in response to a Pandemic or national emergency.

In *Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774, 779–80 (Fla. 1979), the Florida Supreme Court adopted the United States Supreme Court’s two part analysis to determine the constitutionality of an Order or statute which impairs an existing contract. Impairment has been defined as “to make worse; to diminish in quantity, value, excellency, or strength; to lessen in power; to weaken. Whatever legislation lessens the efficacy of the means of enforcement of the obligation is an impairment. Also if it tends to postpone or retard the enforcement of the contract, it is an impairment.” *Citrus Cty. Hosp. Bd. v. Citrus Mem’l Health Found., Inc.*, 150 So. 3d 1102, 1108 (Fla. 2014). The Courts employ a balancing test which measures the level of impairment against the public purpose to be served. “An impairment may be constitutional if it is reasonable and necessary to serve an important public purpose.” *Pomponio*, 378 So.2d at 778–79 (citing *United States Trust Co. v. New Jersey*, 431 U.S. 1, 25, 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977)).

The shelter in place or stay home orders have been issued by local governmental entities in response to the national Covid-19 Pandemic in an effort to prevent the spread of the virus. Therefore, the Courts may opine that the orders and statutes impair the existing contracts. However, the impairment may be constitutional and supersede the contractual remedies for which the parties previously bargained when balanced against the public’s important purpose. This is not a one shoe fits all analysis. Contract terms vary which may also sway the Court’s rulings into different directions especially since the decision is within the Court’s discretion in each jurisdiction.

For more corporate information or to discuss your contractual issues, feel free to contact attorney **Karen D. Fultz at SheeHe & Associates, P.A. Tampa Office (678) 777-8447.**