

ORLANS PC

2020 YEAR END WRAP UP

2020 proved to be a monumental year for the country as the COVID-19 pandemic descended upon us and we grappled with the myriad personal and professional challenges it brought. We cancelled travel plans, practiced social distancing, learned how best to work remotely, to stay safe, help our children adapt to the virtual classroom and support our communities as businesses were forced to shut down, some never to re-open. Here at Orleans we kept our clients apprised of the rapidly changing Federal and State legal environment, followed clients' directives on file movement, spoke at virtual conferences and "appeared" at hearings and trials. We hope our more than twenty Client Alerts issued in 2020 helped you in navigating forward.

As we say goodbye to 2020 and roll into 2021, we offer this Federal and state status wrap up for our ten jurisdictions [DC, DE, FL, MA, MD, MI, NH, PA, RI, VA] **as of January 29th, 2021.**

FORECLOSURE/EVICTION MORATORIA AND FORBEARANCE

File movement in 2020 and into 2021 will continue to be largely dependent on vacancy status and the investor on the loan. Beginning in March of 2020, the CARES Act along with individual state laws and Governors' Executive Orders as well as court rules imposed moratoriums of varying duration and applicability on most foreclosures ("FC") and evictions ("EV"). The CARES Act also allowed any borrower with a federally guaranteed mortgage who was impacted by COVID-19 to request loan forbearance.

The following guide indicates the current ability to move files or begin moving files in our jurisdictions. Note – The below reflects the current response to President Biden's request that the CDC and holders of government insured loans extend the current FC/ EV moratoria (except vacant/abandoned) to March 31, 2021. He plans to file legislation for a further extension to September 30, 2021.

FEDERAL

CARES Act

FC moratorium (except vacant/abandoned) expired May 17, 2020.

EV filing/completion moratorium effective March 27, 2020 – July 25, 2020.

CDC

EV moratorium extended to "at least" March 31, 2021.

STIMULUS BILL

EV moratorium extended until January 31, 2021.

FHA – FC/EV moratorium (except vacant/abandoned) extended until March 31, 2021.

VA – FC moratorium currently extended until February 28, 2021.

Fannie/Freddie – FC/EV moratorium (except vacant/abandoned) currently extended until “at least” February 28, 2021.

USDA – FC/EV moratorium (except vacant/abandoned) extended until March 31, 2021.

STATES/JURISDICTIONS

The below summaries are applicable to loans not already subject to the above Federal moratoria.

Washington, DC

Temporary Legislation, A23-334 effective October 9, 2020 and expiring on May 21, 2021 imposes a FC moratorium (initiating or completing a residential/condo FC) during a public health emergency and for 60 days thereafter with an exemption for properties vacant or not occupied by record owners or their heir/beneficiaries for 275 days of the 12 months prior to the 1st day of the public health emergency which was March 11, 2020. The current public health emergency which was first declared on March 11, 2020 has been extended until March 31, 2021. Accordingly, FC's may not be initiated or sales conducted until May 30, 2021 (03/31/21 + 60 days) unless the property has been consistently vacant or not occupied by the owner or an heir/beneficiary since June 10, 2019 (03/11/20 – 275 days) in which case the foreclosure may proceed.

Delaware

Governor's Sixth Modification State of Emergency prohibits new residential FC filings (except vacant/abandoned) during State of Emergency. The Governor's Twenty Third Modification State of Emergency lifted the FC moratorium effective July 1, 2020. It also lifted the EV moratorium but stayed Sheriff enforcement unless the Court determined otherwise.

Maryland

Governor's Executive Order 20-04-03-01 directed the Commissioner of Financial Regulation to cease accepting pre-FC NOI's until the State of Emergency is lifted. Governor's Executive Order 20-12-17-02 amended by 20-04-03-01 prohibits certain EV repossessions and further restricts initiation of residential mortgage FC's and directs the Commissioner of Financial Regulation ("Commissioner") to reopen the NOI website effective February 1, 2021. The Commissioner has now extended this re-open date to March 1, 2021 as authorized by the Order. For NOI's sent and registered prior to the site's closure on April 3, 2020, FC's may proceed. Additionally, the Executive Order requires a written notice to be sent to all borrowers offering a CARES or CARES equivalent forbearance option at least 30 days prior to sending the NOI.

The Maryland Court of Appeals on May 22, 2020 issued an Order lifting the FC/EV moratorium effective July 25, 2020. Cases that have a valid NOI may be filed and new cases not impacted by the Governor's executive orders may now be filed.

Virginia

Governor's Executive Order EO55 Stay at Home Order prevented FC auctions until after June 10, 2020. Currently no state imposed stay in effect. File movement has resumed.

Michigan

Governor's Executive Order 2020-100 Extended Stay at Home Order prevented FC auctions until after June 12, 2020. File movement has resumed.

Massachusetts

Ch. 65 of the Acts of 2020 prohibited FC (initiation/completion) on owner occupied property until the sooner of August 18, 2020 or 45 days after the State of Emergency lifted. The law was extended once and was allowed to expire on October 17, 2020. Governor's Safer at Home Reopening Plan prohibited gatherings of more than 10 people until June 8, 2020.

Effective June 1, 2020, the Supreme Judicial Court ordered Courts including the Land Court to open for virtual adjudications of emergency and nonemergency matters including SCRA filings. File movement has resumed.

New Hampshire

Governor's Executive Order 2020-04, extended by Emergency Order #51 prevented FC auctions until after July 1, 2020. File movement has resumed.

Rhode Island

The Governor's Executive Order 20-32, Stay at Home Order expired on May 8, 2020. However, as a result of the increase in COVID-19 cases in late 2020, the Governor issued Executive Order 20-108 effective December 17, 2020 which limited outdoor gatherings to members of a single household through January 19, 2021 which was further extended to February 18, 2021 by Executive Order 2021-05 which prevents scheduling any FC auction sales until after that date. At that time, FC's may proceed if the restriction is either lifted or permitted gatherings are increased to 15 people.

Florida

On March 17, 2020 the Florida Supreme Court issued AOSC20-15 moving the FL State Courts to "mission critical", closing courthouses to the general public and suspending jury proceedings until July 2, 2020. On May 4, 2020 parts of FL and the FL Courts, moved into Stage Two reopening allowing telephonic/remote court appearances and court personnel to return to the courthouses. On April 2, 2020 Executive Order Number 20-94 imposed a FC/EV moratorium for 45 days which was subsequently extended by Executive Orders 20-94, 20-121, 20-137 and 20-159 and was set to expire on August 1, 2020. However, Executive Order 20-180, effective August 1, 2020 instituted a moratorium where the FC/EV arose out of a monetary default caused by COVID-19 and was further extended by executive Order 20-211 which was allowed to expire on October 1, 2020. File movement has resumed.

Pennsylvania

On March 18, 2020 the Pennsylvania Supreme Court issued an Administrative Order which effectively precluded the entry of FC/EV default judgments by suspending deadlines to plead and prohibiting EV lockouts through April 3, 2020 which was extended through May 11, 2020 by subsequent Administrative Orders. On May 7, 2020 the Governor issued an Executive Order suspending the sending of Act 6/Act 91 letters and filing FC complaints in cases subject to Act 6/Act 91 through July 10, 2020, further extended to August 31, 2020. (excludes vacant/abandoned properties and FHA loans which exceed the Act 6 base figure). Currently in several PA counties, default judgments can't be filed because deadlines to plead have been temporarily suspended by local Administrative Orders and/or Administrative Orders postponing sheriff sales are in effect.

BANKRUPTCY

Consolidated Appropriations Act

The CAA signed into law on December 27, 2020 amends the Bankruptcy Code in three major respects. It requires servicers to (1) monitor confirmed Chapter 13 cases for debtors' attempts to obtain an early discharge; (2) not deny CARES Act relief (forbearance agreements) to borrowers because of a bankruptcy and (3) file timely supplemental proofs of claim for debtors who received a CARES Act forbearance.

CASE LAW DEVELOPMENTS

Massachusetts Supreme Judicial Court ("SJC") Issues Decision in *Thompson v. JP Morgan Chase Bank*

On November 25, 2020, the SJC unequivocally responded in the negative to the question certified to the Court as to whether Chase's combination demand/default FC notice which followed the mandatory form of notice required by the Division of Banks in providing the borrower the right to reinstate up until the FC sale was potentially deceptive because it was inconsistent with paragraph 19 of the mortgage which cut off this right five days before the FC sale. This long awaited SJC decision put an end to more than two years of uncertainty, challenges to insurability by skittish title companies, suspension of FC actions, issuance of supplemental notices waiving the five day limitation on reinstatement and the filing of reams of amicus briefs in support of Chase, including one by this office. In its decision, the SJC pointed out that under the mortgage, the Servicer was entitled to waive any mortgage provision and was also subject to "applicable" (state) law which in this case allowed for the later reinstatement date. The borrower almost immediately filed a motion to reconsider which was roundly dismissed with a clear rebuke by the Court. Servicers can discontinue supplemental notice and at least one challenge to the MA FC process is now in the rear view mirror.

If you have specific questions about this wrap up, please feel free to contact our attorneys referenced below.

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