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## ORLANS PC LEGAL ALERT

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### Orlans PC *Client Alert*

#### Attorney - Client Privileged Communication

#### **Update to Massachusetts Statutory and Contractual Demands Issued during State and Federal Moratoriums**

Please be advised that our office has received various updated title company opinions regarding servicers issuing statutory (35A and 35B) and contractual notices during any state or federal moratorium for occupied properties. Massachusetts currently is under a foreclosure moratorium for occupied residential properties which is slated to end on October 17, 2020 should no further extensions be issued. Pursuant to this moratorium, a mortgagee cannot:

1. cause notice of a foreclosure sale to be published pursuant to said section 14 of said chapter 244;
2. exercise a power of sale;
3. exercise a right of entry;
4. initiate a judicial or non-judicial foreclosure process; or
5. file a complaint to determine the military status of a mortgagor under the federal Servicemembers Civil Relief Act, 50 USC sections 3901 to 4043

While case law has determined that the statutory 35A and 35B notices are pre-foreclosure notices and not part of the initiation of a foreclosure process, various title companies are now reluctant to insure if the notices are issued on any occupied properties during any foreclosure moratorium. Some title companies are not willing to take a position yet on this issue. Once files are removed from hold, they may need to be re-reviewed to confirm if new notices should be issued based on any current title insurance opinions.

The title companies are still insuring files where these notices have been issued on properties not subject to any moratorium, based on a vacancy exception.

Should you have any further questions, please reach out to Jamie Welch, Lead FC Attorney Northeast, directly at (781) 790-7852 or [jwelch@orlans.com](mailto:jwelch@orlans.com).

If you have specific legal questions about your files, please feel free to contact our attorneys referenced below.

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