

## Foreclosure Moratorium Policies in Response to the COVID-19 Pandemic

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In the face of the COVID-19 pandemic and the resulting economic downturn, housing advocates and lawmakers have called for a nationwide moratorium on foreclosures. On March 18, U.S. Department of Housing and Urban Development Secretary Ben Carson authorized the Federal Housing Administration (FHA) to impose an **immediate foreclosure moratorium** for the next 60 days for single-family homeowners whose mortgages are FHA insured. The guidance applies to homeowners with FHA-insured Title II Single Family forward and Home Equity Conversion (reverse) mortgages. Mortgage servicers have been directed to cease all new foreclosure actions and suspend those foreclosure actions currently in process. With a near-identical policy, the Federal Housing Finance Agency announced that it directed Fannie Mae and Freddie Mac to suspend foreclosures for *at least* 60 days. The moratorium applies to homeowners with either Fannie Mae- or Freddie Mac-backed single-family mortgages. **Fannie Mae** and **Freddie Mac** published guidelines to servicers formalizing these policies for servicing during the COVID-19 outbreak.

On March 27, President Donald J. Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act). Under the CARES Act, servicers of federally backed mortgage loans may not initiate any judicial or nonjudicial process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for at least 60 days from March 18, 2020. A more thorough explanation of the mortgage relief measures provided under the CARES Act can be found [here](#).

Concurrently with the federal government, state governments have been taking action to prevent foreclosures during the crisis. Below is a list of states that have imposed mortgage foreclosure moratoriums, with a brief summary of the specifics of each state's approach:

### Alaska

In a press conference on March 20, Alaska Governor Mike Dunleavy directed the Alaskan Housing Finance Corp. to immediately **suspend foreclosures** and evictions.

### California

On March 16, California Governor Gavin Newsom issued **Executive Order N-28-20**. The order contains two foreclosure-specific provisions. First, the Department of Business Oversight is to consult with the Business, Consumer Services and Housing Agency and then engage financial institutions to identify available tools to provide California residents relief from the threat of foreclosure. Second, financial institutions that hold home and/or commercial mortgages, such as banks, credit unions, government-sponsored enterprises, and institutional investors, are *requested* to impose an immediate foreclosure moratorium when the foreclosures relate to substantial loss in household or business income or substantial out-of-pocket medical expenses caused by the COVID-19 outbreak or any resulting governmental response.

### Connecticut

Per a **statement** from the Chief Court Administrator on March 19, all previously scheduled foreclosure sales that were set to occur in April or May are rescheduled to June 6, 2020, and no committee to begin working on the sale may be appointed prior to May 1, 2020. There is also a stay on all issued executions for evictions and ejectments through May 1, 2020.

### Delaware

On March 24, Delaware Governor John Carney issued the **Sixth Modification** of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat. The order prohibits commencing residential mortgage foreclosure actions with respect to any owner-occupied one- to four-family residential property subject to a mortgage, and used by the mortgagor as a primary residence, provided that the mortgage is held by a

seller that holds more than five such mortgages. The Governor has extended all deadlines in residential mortgage foreclosure actions commenced prior to the declaration of the state of emergency until at least 31 days following the termination of the state of emergency and the rescission of the public health emergency. If prior to the declaration of the state of emergency a judgment of foreclosure was issued with respect to a residential property that is the subject of a residential mortgage foreclosure action, a sheriff's sale may not proceed until at least 31 days following the termination of the state of emergency and the rescission of the public health emergency. Lastly, if a residential property subject to a residential mortgage foreclosure action was sold at a sheriff's sale, actions of ejectment and writs of possession may not be enforced until at least 31 days after the termination of the state of emergency and the rescission of the public health emergency. Mortgagors are not relieved of their obligations to make mortgage payments or otherwise comply with their residential mortgage-related obligations.

### **Indiana**

Pursuant to [Executive Order 20-06](#) issued March 19, Indiana Governor Eric J. Holcomb ordered that no foreclosure actions or proceedings relating to residential real estate or property may be initiated during the period beginning on the date of the issuance of the order and ending on the date on which the state of emergency is terminated. The order also suspends any applicable statutes in connection with foreclosures during the same period. The order does not, however, relieve mortgagors of their obligations to make mortgage payments or otherwise meet any other obligations arising under a mortgage. The suspension on initiating foreclosure actions was initially set to expire concurrently with the expiration of the state of emergency on April 5, 2020, but the Governor has already extended the state of emergency for an additional 30 days.

### **Iowa**

In a Proclamation of Disaster Emergency [issued on March 22](#), Iowa Governor Kimberly Reynolds suspended the regulations that permit commencing foreclosure proceedings and the prosecution of current foreclosure proceedings on residential, commercial, and agricultural real property. The suspension does not, however, relieve an individual of the obligation to make mortgage payments or otherwise comply with any other mortgage-related obligations. The Governor also directed the Iowa Division of Banking and the Iowa Division of Credit Unions to engage with banks, credit unions, mortgage bankers, and mortgage servicers to identify any tools, means, or methods that could be used to relieve Iowans of the threat of foreclosure. The order took effect immediately and will continue through April 16, 2020, unless the Governor sooner terminates or extends the proclamation.

### **Kansas**

Kansas Governor Laura Kelly issued [Executive Order No. 20-06](#) on March 17, temporarily halting evictions and foreclosures. The Governor directed and ordered all financial institutions operating in Kansas to suspend initiating any mortgage foreclosures, judicial or otherwise, until May 1, 2020. The order went into effect March 17 at 12:01 p.m. and is to remain in force until the earlier of the Governor's rescinding of the order, May 1, 2020, or the statewide State of Disaster Emergency related to COVID-19 expiring.

### **Kentucky**

On March 25, Kentucky Governor Andy Beshear issued [Executive Order 2020-257](#). Among other emergency measures, the order directs all state, county, and local law enforcement officers in Kentucky to cease enforcing orders of eviction for residential premises during the State of Emergency declared in Executed Order 2020-215. The order, however, explicitly does not relieve an individual of the obligation to make mortgage payments or any other obligation an individual may have related to a mortgage.

### **Louisiana**

Louisiana Governor John Bel Edwards suspended foreclosures and evictions in the state on March 18. There is no information regarding the duration of this suspension.

### **Maine**

The Maine Supreme Court issued an Emergency Order and Notice on March 18 providing that, among other things, no foreclosure proceedings will be scheduled or heard, effective immediately and continuing through May 1, 2020.

### **Maryland**

Effective March 18, in response to the COVID-19 pandemic, Maryland Court of Appeals Chief Judge Mary Ellen Barbera ordered a hold on [all foreclosures](#) of residential properties and the rights of redemption of tax sales of residential properties currently pending in Maryland circuit courts. New residential foreclosures, foreclosures of right of redemption of tax sales, and evictions may still be filed while the order remains in place, but the filings will be stayed immediately. This suspension will remain in effect until courts resume normal functions or unless otherwise indicated.

### **Minnesota**

Pursuant to [Emergency Executive Order 20-14](#), signed by Minnesota Governor Tim Walz on March 23, financial institutions holding home mortgages were requested to implement an immediate moratorium on all pending and future foreclosures and related evictions when the foreclosure or foreclosure-related eviction resulted from a substantial decrease in income or substantial out-of-pocket medical expenses caused by the COVID-19 pandemic or any governmental responses to the pandemic.

## Montana

On March 31, Montana Governor Steve Bullock issued a **directive** limiting foreclosures. For as long as the directive is in effect, no trustee's sale, sheriff's sale, or other involuntary sale of residential real property may proceed. "Residential real property" means a residential structure or mobile home that contains one to four family housing units, or individual condominium or cooperative units. Further, for the duration of the directive, actions for the foreclosure of a mortgage, trust indenture, or other lien on residential real property, as well as actions seeking a writ, judgment, or order directing the sale of such property or directing the mortgagor, grantor, or other debtor in possession of the property to surrender or vacate the property, are prohibited. Existing writs, judgments, or orders directing the sale of residential real property or directing a mortgagor, grantor, or other debtor in possession of the property to surrender or vacate the property may not be enforced. The Governor also requested that Montana courts stay any currently pending actions related to the foregoing. Borrowers, mortgagors, and grantors in possession of real property are not relieved of their obligations to make payments under the mortgage, including principal and interest payments, insurance, taxes, accrued interest, or other financial obligations. Notably, the foreclosure relief applies only to foreclosures based on the grounds of failure to make a payment of a financial obligation required under any trust indenture, mortgage, or related loan notes, instruments, or other documents. Abandoned or unoccupied residential real properties are not covered under the directive. The directive was effective immediately and remains in effect through April 10, 2020.

## New Hampshire

On March 17, New Hampshire Governor Christopher Sununu issued **Emergency Order #4** pursuant to Executive Order 2020-04, temporarily prohibiting evictions and foreclosures. The order prohibits all judicial and nonjudicial foreclosures and suspends any law, rule, or other regulation that would permit initiating foreclosure proceedings during the State of Emergency declared in Executive Order 2020-04. The order explicitly provides, however, that mortgagors are not relieved of their obligations to make mortgage payments or meet other obligations arising under their mortgages.

## New Jersey

On March 19, the New Jersey Legislature passed **A-3859/S-2276**. Pursuant to the act, whenever the Governor has declared a Public Health Emergency or a State of Emergency, the Governor may also issue an executive order declaring that a lessee, tenant, homeowner, or any other person shall not be removed from a residential property as a result of an eviction or foreclosure proceeding. The executive order can remain in effect for the duration of the Public Health Emergency or State of Emergency and up to two months following the end of such State of Emergency. Foreclosure proceedings may still be initiated or continued during the pendency

of the executive order, but enforcement of all judgments for possession, warrants, or removal and writs of possession are stayed unless a court determines the interest of justice necessitates enforcement. Similarly, sheriffs, court officers, and their agents are prohibited from taking any actions to remove individuals from residential properties via eviction or foreclosure processes unless a court determines removal is required in the interest of justice. As defined in the act, "residential property" is owned or rented residential property, including houses, buildings, mobile homes or land in mobile home parks, and tenements for residential leases. The definition does not cover hotels, motels, or guesthouses rented to temporary or seasonal tenants, or residential health care facilities.

Having already declared both a Public Health Emergency and a State of Emergency, New Jersey Governor Phil Murphy issued **Executed Order No. 106**, effective immediately, which tracks the language of A-3859/S-2276. The Governor included an additional provision granting the State Director of Emergency Management, who also serves as the Superintendent of State Police, the discretion to add to, amend, clarify, except, and exclude from the current definition of "residential property."

## New York

New York Governor Andrew Cuomo codified previously announced mortgage foreclosure relief by issuing **Executive Order No. 202.8**. Executive Order No. 202.8 prohibits the enforcement of any residential or commercial foreclosure for 90 days. At the end of the 90-day period, the Governor will reassess the measures put in place.

## North Carolina

On March 15, Cheri Beasley, Chief Justice of the State Supreme Court, announced that North Carolina will cease **all foreclosure hearings** for the next 30 days. Sheriff's offices will still carry out eviction orders already in process unless the courts intervene and halt them.

## Pennsylvania

The Supreme Court of Pennsylvania issued **an order** on March 18, effective at the close of business on March 19, closing all Pennsylvania courts to the public until at least April 3. Additionally, the Pennsylvania Supreme Court acknowledged that the COVID-19 pandemic is causing and may cause people to lose income, thereby delaying rent payments, mortgage payments, and other similar payments. Therefore, the Pennsylvania Supreme Court directed that during the pendency of its order or the judicial emergency, whichever lasts longer, no officer, official, or other person employed by the Pennsylvania Judiciary at any level shall effectuate an eviction, ejection, or other displacement from a residence based on the failure to make a rent, mortgage, or other similar payment.

## South Carolina

On March 18, Donald W. Beatty, Chief Justice of the South Carolina Supreme Court, ordered a **statewide moratorium** on foreclosure hearings, foreclosure sales, writs of assistance, and writs of ejectments. The order also prohibits any other foreclosure-related actions until explicitly directed by a subsequent order from the Chief Justice.

## Wisconsin

Wisconsin Governor Tony Evers issued **Emergency Order #15** temporarily banning foreclosures on March 27. The order prohibits mortgagees from commencing civil actions to foreclose on real estate or requesting or scheduling a sheriff's sale of the mortgaged premises. Sheriffs are also prohibited from conducting sheriff's sales of mortgaged premises, acting on any order of foreclosure, or executing any writ of assistance related to foreclosure. The order does not relieve an individual of the obligation to make mortgage payments or meet any other obligation related to the mortgage. Foreclosures may still proceed on abandoned premises. The order was effective immediately and will remain in effect for 60 days.

There are also states that are in the process of imposing foreclosure moratoriums, described below:

## Massachusetts

On March 13, two state representatives filed the proposed bill, House Docket 4935, **An Act Providing**

**for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency**. As currently drafted, the bill would prohibit the following actions in relation to the foreclosure of a residential property from the date Massachusetts Governor Charlie Baker issued the emergency declaration on March 10 until the emergency declaration is rescinded: publish a notice of foreclosure sale, exercise a power of sale, exercise a right of entry, or initiate a summary process action. Violations of this provision could be punishable by a \$5,000 fine, six months' imprisonment in a county jail, or both.

These moratoriums create issues for mortgage servicers. Foreclosing on properties when the borrower is not making payments is one way a mortgage servicer recoups advances it paid to the mortgage note holder to cover missed or insufficient payments from the borrower. With a moratorium on foreclosures, both federally and under the state policies outlined above, mortgage servicers may find themselves without a means for reimbursement. Advocates have called on the Federal Reserve Board to establish a facility accessible to servicers to maintain sufficient liquidity levels to accommodate the anticipated increase in advance obligations.

**Visit our COVID-19 Mortgage & Structured Finance Resource page [here](#). To see our prior alerts and other material related to the pandemic, please visit the Coronavirus/COVID-19: Facts, Insights & Resources page of our website by clicking [here](#).**

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