

I Mortgage & Structured Finance

This page is designed to gather in one place the Lowenstein Mortgage & Structured Finance practice thought leadership regarding the impact of Coronavirus/COVID-19 on the structured finance and secondary market loan trading industries. This page will focus on the impact of Coronavirus/COVID-19 on the mortgage industry. We will continue to update this page with useful content as quickly as possible.

Lowenstein's full coverage of COVID-19 matters can be found [here](#).

- **Single Family Mortgage Loans** Under the CARES Act: Single family borrowers with agency loans will be entitled to substantial loan forbearance, without the provision of any supporting documentation beyond an attestation of need; and such borrowers will be entitled to temporary relief from foreclosure. Mortgage servicers of single family homes are searching for sources of liquidity to fund advances of the forbore amounts. Absent substantial liquidity from the federal government, it is hard to envision a scenario where these servicers can fulfill such advances obligations. Click [here](#) for our recent client alert on the impact of expected delinquencies and loan forbearance programs.
- **Multifamily Mortgage Loans** Under the CARES Act: Multifamily borrowers with agency loans will be entitled to loan forbearance. Such borrowers will be entitled to temporary relief from foreclosure. Such borrowers will be prohibited for a period of time from taking certain enforcement actions (such as eviction or the imposition of late fees).
- **Foreclosure Moratoria By State** A global summary of foreclosure moratoria can be found [here](#). Please use the below as general guidance only, as the information set forth below may be superseded by updated information from time to time. **Alaska:** Governor Mike Dunleavy has directed the Alaskan Housing Finance Corporation to suspend foreclosures and evictions. **California:** Governor Gavin Newsom, among other things, has requested that financial institutions impose a foreclosure moratorium when the foreclosure relates to COVID-19. **Connecticut:** The Chief Court Administrator has delayed upcoming foreclosure sales. A stay has been issued for evictions and ejectments through May 1, 2020. **Delaware:** Governor John Carney issued an order prohibiting residential mortgage foreclosure actions under certain conditions and halting foreclosure-related actions during the state of emergency plus 31 days. **Indiana:** Governor Eric Holcomb ordered an indefinite foreclosure moratorium on residential properties. **Iowa:** Governor Kimberly Reynolds temporarily suspended regulations permitted foreclosure proceedings and the prosecution of the same on residential, commercial and agricultural real property until April 16, 2020. **Kansas:** Governor Laura Kelly issued an order halting evictions and foreclosures, while also ordering financial institutions to suspend new foreclosure actions, until May 1, 2020. **Kentucky:** Governor Andy Beshear ordered law enforcement officers to cease enforcing orders of eviction for residential premises. Louisiana: Governor John Bel Edwards indefinitely suspended foreclosures and evictions. **Maine:** The Supreme Court of Maine issued an order staying all foreclosure proceedings from being scheduled or heard through May 1, 2020. **Maryland:** Maryland Court of Maryland Court of Appeals Chief Judge Mary Ellen Barbera issued an indefinite order staying all foreclosures of residential properties, rights of redemption of tax sales of residential properties currently pending and the processing of new filings of the same. **Massachusetts:** A bill in the House of Representatives, if enacted, would prohibit publishing a notice of foreclosure sale, exercising a power of sale, exercising a right of entry, or initiating a summary process action until the rescission of the State of Emergency declared by Governor Charlie Baker. **Minnesota:** Governor Tim Walz ordered a foreclosure and eviction moratorium on home mortgages where the same arose out of COVID-19. **Montana:** Governor Steve Bullock issued a directive suspending trustee's sales, sheriff's sales and other involuntary sales of residential property, foreclosure actions and actions seeking surrender or vacating of the property while the directive is in effect, and also requested Montana courts to stay all related actions currently pending. **New Hampshire:** Governor Christopher Sununu ordered a foreclosure and eviction moratorium and stays all laws, rules and regulations that would permit the initiation of foreclosure proceedings. **New Jersey:** Governor Phil Murphy issued an indefinite 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, among other related matters. (**Access Executive Order here.**) **New York:** Governor Andrew Cuomo codified previously announced foreclosure relief by prohibiting enforcement of any residential or commercial foreclosure for ninety days. **North Carolina:** State Supreme Court Chief Justice Cheri Beasley stayed all eviction and foreclosure hearings for thirty days. Evictions orders already in process were not stayed and would be subject to regular court intervention, if at all. **Pennsylvania:** The Supreme Court of Pennsylvania indefinitely directed that no officer, official or other employee of the Pennsylvania judiciary effectuate any eviction, ejectment or other displacement from a residence based upon the failure to make a rent, loan, or other similar payment. **South Carolina:** Supreme Court Chief Justice Donald W. Beatty ordered a statewide moratorium on foreclosure hearings, foreclosure sales, writs of assistance and writs of ejectments. **Wisconsin:** Governor Tony Evers temporarily banned commencing foreclosure actions or requesting a sheriff's sale for mortgaged premises and prohibited sheriffs from performing any foreclosure-related actions. **Alabama:** On April 3, Alabama Gov. Kay Ivey issued a **Sixth Supplemental Proclamation** related to the state public health emergency declared on March 13. The Governor directed all state, county, and local law enforcement officers to cease the enforcement of any order that would result in the displacement of a person from his or her residence. Alabama residents explicitly are not relieved of their obligations to make mortgage payments or comply with any other mortgage-related obligation. The proclamation will remain in full force and effect for the duration of the public health emergency unless the Governor otherwise rescinds or extends it by subsequent proclamation. **Colorado:** In **Executive Order D 2020 012**, issued on March 20, Colorado Gov. Jared Polis directed the Department of Regulatory Agencies (DORA), through the Divisions of Banking and Financial Services, to work with state-chartered financial institutions to identify practices and policies to ease the threat of residential and commercial foreclosures. The Governor further directed DORA to encourage banks, credit unions, and other financial institutions holding residential or commercial mortgages to halt foreclosures and related evictions when such foreclosures and/or foreclosure-related evictions were caused by a substantial loss in household or business income because of the COVID-19 pandemic. Further, the Governor authorized the public trustees of the state of Colorado to suspend for 30 days certain provisions of the Colorado Revised Statutes related to the foreclosure process. The executive order was set to expire 30 days from March 20, but the Governor already had issued **Executive Order D 2020 031**, which amended and extended Executive Order D 2020 012 through April 30 unless it is otherwise modified, rescinded, or extended further by executive order. **District of Columbia:** On March 13, the D.C. Superior Court issued a **Corona Virus Advisory** announcing that the court would suspend evictions of all tenants and foreclosed homeowners. No information was

provided as to the duration of this suspension. **Florida:** Florida Gov. Ron DeSantis issued **Executive Order Number 20-94**, suspending and tolling any statute providing for a mortgage foreclosure cause of action under Florida law for 45 days from the date of the executive order, including any extensions. Individuals explicitly are not relieved of their obligation to make mortgage payments. **Illinois:** On March 20, Illinois Gov. JB Pritzker issued **Executive Order 2020-10**. Among other things, the Governor instructed all state, county, and local law enforcement officers to cease enforcement of orders of eviction for residential premises for the duration of the Gubernatorial Disaster Proclamation declared on March 9. Individuals are not relieved of their obligation to make mortgage payments or comply with other obligations an individual may have under a mortgage, however. **Nevada:** Pursuant to Declaration of **Emergency Directive 008**, issued on March 29, Nevada Gov. Steve Sisolak articulated applicable foreclosure moratorium provisions for the state during the COVID-19 pandemic. The declaration prohibited initiating any lockout, notice to vacate, notice to pay or quit, eviction, foreclosure action, or other proceeding involving residential or commercial real estate based on a mortgagor's default of any contractual obligations imposed by a mortgage until the state of emergency declared on March 12 terminates or expires or the Governor orders the rescinding of the directive. Evictions based on serious endangerment to the public or other residents, engagement in criminal activity, or significant damage to the property may still proceed. Borrowers are also still obligated to make mortgage payments and otherwise comply with any other obligations imposed by the mortgage. Foreclosure actions currently being adjudicated by a court are stayed until the state of emergency declared on March 12 terminates or expires, but this limitation does not include current foreclosure proceedings based on threats by a tenant or resident to public health or safety, criminal activity, or significant damage to the property. The directive also does not prohibit the continuation of foreclosure actions or proceedings predating the March 12 Declaration of Emergency. The Governor's directive is effective until the declared state of emergency is terminated or unless it is renewed by a subsequent directive from the Governor. **Texas:** On April 6, Chief Justice of the Supreme Court of Texas Nathan L. Hecht issued the **Ninth Emergency Order** Regarding the COVID-19 State of Disaster. Pursuant to the order, in any action for eviction to recover possession of residential property under Chapter 24 of the Texas Property Code and Rule 510 of the Texas Rules of Civil Procedure, (i) trials, hearings, or other proceedings are prohibited and all deadlines are tolled until after April 30; (ii) a writ of possession may issue, but the written warning required under the Texas Property Code may not be posted and the writ of possession may not be executed until after May 7, while applicable deadlines are tolled during the effectiveness of the order; and (iii) the court will accept new filings, but time periods are suspended and the issuance and service of a citation may not occur until after April 30. The proceedings outlined above may still proceed, however, if (i) the plaintiff files a "Sworn Complaint for Forcible Detainer for Threat to Person or For Cause"; (ii) the court determines that the tenant or the tenant's household members or guests pose an imminent threat of (a) physical harm to the plaintiff, the plaintiff's employees, or other tenants or (b) criminal activity; and (iii) the court signs an order stating procedures for the case to proceed. The order was effective immediately and expires April 30 unless Chief Justice Hecht extends the order. Under Chapter 24 of the Texas Property Code, eviction proceedings include forcible detainer actions filed against an occupant after foreclosure.

The **consequences** mortgage servicers face given these foreclosure moratorium policies and other COVID-19-related measures imposed on the mortgage finance industry endure. While organizations including **Ginnie Mae** have taken steps to keep the mortgage servicing industry afloat, calls for more action persist. We will continue to monitor the statewide action on foreclosure moratorium policies and periodically update this article with any new developments.