

COVID-19: Loan Enforcement and Foreclosure-Related Actions

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Among many measures being taken in response to the novel coronavirus (COVID-19) outbreak, a number of jurisdictions have taken measures to limit foreclosures and evictions stemming from the economic impact of the outbreak. Below is a summary of recent actions taken in certain jurisdictions with regard to foreclosure actions.

New York

On March 20 and 21, 2020, New York Governor Andrew Cuomo issued Executive Order No. 202.8 (EO 202.8) and Executive Order No. 202.9 (EO 202.9), respectively. EO 202.8 directs, among other things that “[t]here shall be no enforcement of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days.” EO 202.9 directs, among other things, that the New York State Department of Financial Services (NYDFS) ensure under reasonable and prudent circumstances that any licensed or regulated entities “provide to any consumer in the State of New York an opportunity for a forbearance of payments for a mortgage for any person or entity facing a financial hardship due to the COVID-19 pandemic.” While EO 202.8 clearly applies to foreclosures of both residential and commercial property, EO 202.9 is a bit ambiguous. Although the reference in EO 202.9 to “any consumer” suggests an intent to apply to residential mortgages, its reference to “any person or entity facing a financial hardship” suggests that it could be intended to apply to commercial mortgages also.

In addition, although the above language of EO 202.9 on its face appears to apply only to licensed or regulated entities under NYDFS jurisdiction, in light of the rapidly evolving regulatory situation in response to the COVID-19 outbreak it would not be surprising to see lenders and financial firms who are not subject to NYDFS jurisdiction, for the time being, act in a manner consistent with promulgated NYDFS guidance.

New Jersey

On March 19, 2020, New Jersey Governor Phil Murphy signed into law Assembly Bill A-3859, providing the Governor with the authority to issue an executive order declaring a moratorium that individuals shall not be removed from their homes pursuant to an eviction or foreclosure proceeding. Immediately thereafter, Governor Murphy issued Executive Order No. 106, imposing the contemplated moratorium. As a result, for so long as the order is in effect, no renter or homeowner shall be removed from his/her residence pursuant to an eviction or foreclosure proceeding. Governor Murphy also asked any financial institutions holding residential and commercial mortgages, equity loans, lines of credit and business loans in the State of New Jersey to implement procedures to actively work with borrowers to avoid defaults and foreclosures due to COVID-19 related financial hardship.

Pennsylvania

To date, Pennsylvania Governor Tom Wolf’s office has taken a more informal approach geared primarily towards guidance for individual residential homeowners and renters, and it does not appear at this time that any executive statewide guidance in regard to the enforcement of mortgages on commercial properties has been issued. The state’s official COVID-19 webpage notes at this time that individuals should contact their lenders and landlords (as applicable) to discuss their inability to pay with the parties they owe directly, to attempt to work out a deal before a default occurs. However, on March 18, 2020, the Supreme Court of the State of Pennsylvania,

Western District, issued an emergency order halting all residential foreclosures and evictions for a period extending until at least April 3, 2020, citing the widespread financial hardship brought upon by COVID-19. Courts in Montgomery County and Philadelphia have already taken local action to stay any foreclosure and eviction proceedings pursuant to this order.

IOWA

On March 19, 2020, Iowa Governor Kimberly K. Reynolds issued a Proclamation of Disaster Emergency related to COVID-19 which provides, in part, for the temporary suspension of residential tenant evictions until April 16, 2020 (except as to tenants in unlawful possession). On March 22, 2020, Governor Reynolds issued another proclamation which, in part, suspended the commencement or continuing prosecution of foreclosure proceedings on residential, commercial, or agricultural real property within the State of Iowa until April 16, 2020.

other considerations

Iowa's March 22, 2020 Proclamation also provides, in part, for remote notarization of documents, temporarily suspending the personal appearance requirement in Section 9B.6 of the Iowa Code. Many jurisdictions are implementing or considering similar measures allowing for remote notarization.

In addition, apart from any executive or legislative actions taken by jurisdictions affecting the enforcement of mortgages secured by commercial or residential properties, it should be noted that, as courts in many states have temporarily suspended or curtailed non-essential filings and activity as a result of the COVID-19 outbreak, it can be expected that mortgage enforcement actions will generally be curtailed as a practical matter for the immediate future.

This list is neither exhaustive nor includes all actions taken by all jurisdictions on this matter. If you have questions relating to a specific loan or mortgage, please contact Jason Kim (kimcj@whiteandwilliams.com; 212.714.3077), Tim Davis (davist@whiteandwilliams.com; 215.864.6829) or another member of our Real Estate and Finance Groups.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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