

State COVID-related Foreclosure and Eviction Moratorium Updates

October 23, 2020

Due to the economic impacts of COVID-19, many states have issued moratoriums on foreclosures and evictions. Some of those moratoriums have expired. However, even if a lender is now able to obtain a foreclosure judgment and take a property to sale, the Center for Disease Control's nationwide restriction on evictions may still prevent an owner of a residential property by virtue of foreclosure, a landlord, or other person with a legal right to seek possession from taking action to evict until December 31, 2020, if certain conditions are met (as set forth in the CDC **Agency Order regarding the Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19**).

Below are updates specific to extensions or expirations of various moratoriums relating to properties in California, Florida, Massachusetts, New York, and Texas.

California

The California legislature enacted the [Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 \(AB 3088\)](#) on August 31, 2020. Among other provisions, the Act protects tenants who have suffered a COVID-related hardship from eviction until February 1, 2021. If the hardship arose between March 4 and August 31, 2020, the tenant needs to provide a declaration of hardship under penalty of perjury, and tenants earning more than \$100,000 a year must provide documentation to support their declaration upon a landlord's request. For a hardship that accrues between September 1, 2020 – January 31, 2021, a tenant must also pay at least 25% of the rent owed in order to avail the protections of the Act. The Act does not forgive the rent that comes due during this time period, and landlords can begin collecting the debt come March 1, 2021, including by filing cases in small claims court. The Act also extends the Homeowner Bill of Rights (HBOR) anti-foreclosure protections, typically only available to homeowners and to small, non-commercial landlords. Among other requirements, the HBOR requires mortgage servicers to conduct loss mitigation-related outreach prior to initiating foreclosure proceedings.

Florida

On October 1, 2020 at 12:01 a.m., Florida's eviction and foreclosure moratorium established by [Executive Order 20-180](#) expired. Governor Desantis cited the CDC's eviction order to explain this decision, stating that Executive Order 20-180 "was permitted to expire to avoid any confusion over whether the CDC's evictions order should apply in a particular circumstance." As a result, it does not appear Governor Desantis intends to renew Executive Order 20-180 while the CDC's eviction order is in effect. Thus, subject to other restrictions, **foreclosures in Florida can now proceed to judgment and sale.**

Massachusetts

The Massachusetts moratorium on foreclosures and evictions **expired on October 17, 2020**. On October 5, 2020, the Massachusetts Trial Court issued **Standing Order 6-20**, which modifies the eviction process in Massachusetts for pending matters and the filing of new matters. In pending matters, the Order creates a two-tier process: (1) an initial Case Status via videoconference or telephone to determine the applicability of the CDC's Order and to discuss mediation; (2) for cases that do not resolve, a trial date will be issued.

As to new summary process actions, a trial date will not be issued at the time of filing and will be determined by the trial court at a later date. With the filing of a new summary process action, an Affidavit will now be required in which the Plaintiff must confirm that a declaration has been received by the tenant under the CDC Order. Also, subject to the CDC Order, if an execution was tolled and the 90-day expiration date on the execution has passed, a Plaintiff may file a new request or motion for execution.

There are thousands of eviction cases which are backlogged in Massachusetts. Given the CDC Order in effect through December 31, 2020, and the restrictions set forth in the Standing Order, the backlog will continue through the end of the year.

New York

On October 4, 2020, by Executive Order 202.67, Governor Cuomo continued the temporary suspension of “any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as described by the procedural laws of the state,” as set forth in [previous Executive Orders](#) (specifically 202.8, 202.14, 202.28, 202.38, 202.48, 202.55, 202.60, and 202.67) for actions in the New York State Courts until November 3, 2020. For any civil case, the suspension is effective until November 3, 2020, after which any time limit to bring an action will no longer be tolled without a further order. As a result, no defaults in civil practice are currently permitted.

Pursuant to Administrative Order [AO/157/20](#), which became effective on July 27, 2020, except for matters which are stayed or otherwise governed by a federal moratorium or Governor Cuomo's [Executive Orders](#) 202.8, 202.14, 202.28, 202.38, and 202.48, residential foreclosure matters may proceed.

Pursuant to Administrative Order [AO/232/20](#), which became effective on October 22, 2020, the conference requirement set forth Administrative Order [AO/157/20](#) was modified with respect to vacant and abandoned properties, and in rem foreclosures. No conference needs to be held in a foreclosure matter where the foreclosing lender submits an affirmation to the court averring that, following diligent inquiry, it knows the property at issue to be currently abandoned and vacant. Additionally, the conference requirement only applies to in rem foreclosure proceedings where the enforcing officer deems such a conference to be in the public interest.

Prior to conducting any further proceedings in any foreclosure matter, the court must initiate a status or settlement conference (including, where applicable, a settlement conference pursuant to CPLR Rule 3408). If any party does not appear at the conference, the court must reschedule and make a second attempt to hold the conference before undertaking further proceedings. While Administrative Order [AO/157/20](#) states that the court must initiate a status or settlement conference, a best practice of practitioners would be to closely

monitor the court docket for the conference date, and if no date has been scheduled, to reach out to the court and their adversaries in some fashion to obtain a conference date. Additionally, any foreclosure conference or proceeding will be conducted remotely to the fullest extent practicable.

Following the conference in a foreclosure matter, the court may (1) direct further briefing of any motion as needed, and (2) issue a decision on any motion, including a motion for foreclosure and sale. Pending and newly-filed motions may be considered and decided in all foreclosure matters – including residential and commercial matters, matters in which one or both parties are pro se, and matters commenced prior to and during the COVID-19 pandemic. When ordering relief in a commercial foreclosure matter, the court must stay enforcement as required under Executive Orders 202.28, 202.48, and the related Executive Orders (including subsequent Executive Order 202.70). The Courts may entertain other applications in foreclosure matters, including but not limited to post-judgment applications. Where necessary, courts may also conduct hearings, including but not limited to good-faith hearings pursuant to foreclosure settlement conferences under CPLR 3408(f).

With respect to commercial evictions and foreclosures of commercial mortgages, the initiation of a proceeding or enforcement of an eviction of any commercial tenant for nonpayment of rent or a foreclosure of any commercial mortgage for nonpayment of such mortgage is prohibited through January 1, 2021 pursuant to Executive Order 202.70.

With respect to residential eviction matters in the State of New York, AO/231/20, effective October 12, 2020, stipulates that all residential eviction matters – nonpayment and holdover, without regard to the date of commencement – may resume statewide, with certain important restrictions. All residential eviction matters, are subject to (1) current or future federal and state emergency relief provisions governing time limits for the commencement and prosecution of matters, limitation of eviction-related remedies, and similar issues, and (2) individual court scheduling requirements prompted by health and safety concerns arising from the coronavirus health emergency. However, evictions of residential tenants who meet criteria set forth in the **Tenant Safe Harbor Act**, as modified by Executive Order 202.66 are prohibited through January 1, 2021. This prohibition now bars the execution or enforcement of residential warrants of eviction or judgments of possession without regard to their date of issuance.

All proceedings continue to be governed by the suspension of “any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as described by the procedural laws of the state,” set forth in Executive Order 202.8 and continued until November 3, 2020 by Executive Order 202.67. So long as the suspension of time limits continues, no default judgment may be entered upon the failure of a respondent to answer a petition in an eviction matter.

The conference requirement applicable to residential eviction matters commenced prior to March 17, 2020, set forth in [AO/160A/20](#), remains in effect. Eviction proceedings will be conducted remotely whenever appropriate. The court has forewarned litigants that eviction matters will often require far lengthier time periods than anticipated in statutes and customary under pre-COVID conditions.

Texas

To date, Texas has not instituted a state-wide order banning foreclosures, although some counties and cities have done so. With regard to evictions, on September 17, 2020, the Texas Supreme Court entered [Emergency Order 25](#), which strengthens the CDC protections against evictions for 60 days by requiring citations to include language informing tenants of their ability to stay eviction for 60 days by executing and filing a declaration regarding their efforts to mitigate. On September 25, 2020, the Texas Supreme Court entered [Emergency Order 27](#), which establishes the Texas Eviction Diversion Program, supported by Governor Abbott's commitment of \$171 million in federal CARES Act funds for landlords to provide an eviction alternative. The order requires courts to provide tenants with information about the program, allows an eviction proceeding to be abated by agreement for 60 days, and makes court records for participants confidential while eviction cases are delayed.

As always, if you need help understanding or interpreting these guidelines, or have other related questions, please contact McGlinchey's [COVID-19 CFS Litigation Task Force](#).

Related people

Joseph A. Apatov

Shanna M. Boughton

Shaun Ramey