

Default Mortgage Servicing of Litigated Matters in the COVID-19 Era

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INTRODUCTION

The COVID-19 pandemic has directly impacted the default mortgage servicing industry and has broadly affected default litigation matters nationwide. As state and federal governments seek to mitigate the impact of the virus, new regulations have been implemented to slow the rate of foreclosures and evictions. Consequently, mortgage servicers and their counsel have been forced to navigate a constantly shifting sea of regulations. This survey summarizes some of the regulatory developments affecting default mortgage servicers as of the writing of this survey and further examines considerations for handling default litigation.

RECENT DEVELOPMENTS IMPACTING MORTGAGE SERVICERS

THE CARES ACT

The federal Coronavirus Aid, Relief, and Economic Security (“CARES”) Act¹ was designed to provide substantial, immediate relief to American families and businesses victimized by the COVID-19 pandemic. The CARES Act sets forth requirements that deeply impact default litigation involving “[f]ederally backed mortgage loans.”² Federally backed mortgage loans are defined as those that are insured by the Federal Housing Administration or under the National Housing Act; guaranteed under section 255 or section 184A of the Housing and Community Development Act of 1992; guaranteed or insured by the U.S. Department of Veterans Affairs or the U.S. Department of Agriculture (“USDA”); made by the USDA; or purchased or securitized by the Federal Home Loan Mortgage Corporation (“Freddie Mac”) or the Federal National Mortgage Association (“Fannie Mae”).³

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1. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 132 Stat. 281 (2020) (to be codified in scattered sections of 42 U.S.C.).

2. *Id.* § 4022, 134 Stat. at 490–91.

3. *Id.* § 4022(a)(2)(A)–(G), 134 Stat. at 490.

Borrowers of loans that are subject to the CARES Act were entitled to relief in the form of a federal foreclosure moratorium under which a servicer was prohibited from initiating any judicial or non-judicial foreclosure process, moving for a foreclosure judgement or order of sale, or executing a foreclosure-related eviction or foreclosure sale for a period of sixty days extending from March 18, 2020.⁴ Furthermore, under the CARES Act, a borrower experiencing a financial hardship due, directly or indirectly, to the COVID-19 pandemic may request a forbearance which must be granted, upon request, for a period of up to 180 days.⁵ A servicer is required to extend the forbearance period of up to an additional 180 days at the borrower's request.⁶ The forbearance relief extends through the duration of the "covered period," which is defined as the sooner of the termination date of the national emergency concerning COVID-19 or December 31, 2020.⁷

EXTENSION OF FORECLOSURE MORATORIUMS BY FEDERAL ENTERPRISES AND AGENCIES

Although the foreclosure moratorium provided by the CARES Act expired on May 17, 2020, several federal enterprises and agencies extended foreclosure moratoriums through the end of the year. The Federal Housing Finance Agency ("FHFA") announced in March 2020 that it "has directed Fannie Mae and Freddie Mac (the "Enterprises") to suspend foreclosures and evictions for at least sixty days due to the coronavirus national emergency. The foreclosure and eviction suspension applies to homeowners with an Enterprise-backed single-family mortgage."⁸ In June, the single-family moratorium on foreclosures and evictions was extended until August 31, 2020.⁹ The FHFA stated in August that Fannie Mae and Freddie Mac "will extend the moratoriums on single-family foreclosures and real estate owned (REO) evictions until at least December 31, 2020 The REO eviction moratorium applies to properties that have been acquired by an Enterprise through foreclosure or deed-in-lieu of foreclosure transactions."¹⁰

Fannie Mae accordingly issued a lender letter in March in which it instructed servicers to suspend all foreclosure sales for a period of sixty days, unless the property securing the mortgage loan had been determined to be vacant or

4. *Id.* § 4022(c)(2), 134 Stat. at 491.

5. *Id.* § 4022(b), 134 Stat. at 490.

6. *Id.* § 4022(b)(2), 134 Stat. at 490.

7. *Id.* § 4023(f)(5), 134 Stat. at 492.

8. Press Release, Fed. Hous. Fin. Agency, FHFA Suspends Foreclosures and Evictions for Enterprise-Backed Mortgages (Mar. 18, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Suspends-Foreclosures-and-Evictions-for-Enterprise-Backed-Mortgages.aspx>.

9. Press Release, Fed. Hous. Fin. Agency, FHFA Extends Foreclosure and Eviction Moratorium (June 17, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-Eviction-Moratorium-6172020.aspx>.

10. Press Release, Fed. Hous. Fin. Agency, FHFA Extends Foreclosure and REO Eviction Moratoriums (Aug. 27, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-REO-Eviction-Moratoriums.aspx>.

abandoned.¹¹ The lender letter was updated to suspend foreclosure-related activities in accordance with the requirements of the CARES Act and to suspend the requirement that servicers file motions for relief from the automatic stay in bankruptcy cases.¹² The lender letter was amended to extend the directives through June 30, 2020, and to extend the suspension of foreclosure-related activities through August 31, 2020.¹³ The lender letter was updated in August “further extending the suspension of foreclosure-related activities through Dec. 31, 2020.”¹⁴ Servicers were also prohibited from initiating “any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure sale.”¹⁵

Freddie Mac issued a similar bulletin in March 2020 directing servicers to suspend all foreclosure sales for the next sixty days for mortgages secured by properties that have not been determined to be vacant or abandoned.¹⁶ This was extended through May 17, 2020, and then through December 31, 2020.¹⁷

The U.S. Department of Housing and Urban Development (“HUD”) issued a series of mortgagee letters extending its moratorium on foreclosures for FHA Title II Single Family mortgage programs. The moratorium was first extended through June 30, 2020, by mortgagee letter and was extended again through August 31, 2020.¹⁸ The most recent mortgagee letter as of this writing was issued on August 27, 2020, and extended the moratorium through December 31, 2020, except for mortgages that are secured by vacant or abandoned properties.¹⁹ The moratorium “applies to the initiation of foreclosures and to foreclosures in process” and appears to apply broadly to all aspects of the foreclosure process.²⁰ The moratorium was also extended to “evictions of persons from properties securing FHA-insured Single Family mortgages, excluding actions to evict occupants of legally vacant or abandoned properties.”²¹

The Veterans Benefits Administration (“VA”) issued a circular in March 2020 providing that it “strongly encourages loan holders to establish a sixty-day

11. Fannie Mae, Lender Letter 2020-02 (Mar. 18, 2020), <https://singlefamily.fanniemae.com/media/22261/display>.

12. *See id.*

13. *See id.*

14. Fannie Mae, Lender Letter 2020-02 (Aug. 27, 2020), <https://singlefamily.fanniemae.com/media/22261/display>.

15. *See id.*

16. Freddie Mac, Temporary Servicing Requirements Related to COVID-19, Bulletin 2020-4 (Mar. 18, 2020), <https://guide.freddiemac.com/app/guide/bulletin/2020-4>.

17. Freddie Mac, Temporary Servicing Requirements Related to COVID-19, Bulletin 2020-10 (Apr. 8, 2020), <https://guide.freddiemac.com/app/guide/bulletin/2020-10>; Freddie Mac, COVID-19 Foreclosure Moratorium Extension and Disaster Forbearance Updates, Bulletin 2020-34 (Aug. 27, 2020), https://guide.freddiemac.com/app/guide/content/a_id/1003988.

18. *See* Letter, U.S. Dep’t of Hous. & Urb. Dev., HUD Mortgagee Letter 2020-13 (May 14, 2020), <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-13hsgml.pdf>; *see also* U.S. Dep’t of Hous. & Urb. Dev., HUD Mortgagee Letter 2020-19 (June 17, 2020), <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-19hsgml.pdf>.

19. U.S. Dep’t of Hous. & Urb. Dev., HUD Mortgagee Letter 2020-27 (Aug. 27, 2020), <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-27hsgml.pdf>.

20. *See id.*

21. *See id.* at 2.

moratorium beginning March 18, 2020, on completing pending foreclosures or initiating new foreclosures on loans,” and that “loan holders should consider the impact of completing an eviction action when choosing to retain a property instead of conveying to VA. VA requests holders not expose Veterans and their families to additional risk through an eviction action, if at all feasible.”²² Another circular was issued providing that, except for vacant or abandoned property, “a servicer of a Federally-backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020.”²³ It further provided that the borrower may request a forbearance of up to 180 days, regardless of delinquency status, and that “the servicer must grant the forbearance request, with no additional documentation.”²⁴ The forbearance must be extended at the borrower’s request for an additional period of up to 180 days, and “[t]he borrower, not the servicer, is entitled to determine the period of the forbearance, subject to the statutory limit of up to 360 days.”²⁵ Two additional circulars were issued, one providing that “properties secured by VA-guaranteed loans are subject to a moratorium on foreclosure through December 31, 2020. The moratorium applies to the initiation of foreclosures, and to the completion of foreclosures in process.”²⁶ The other circular provided that servicers may not file a lawsuit “to initiate a legal action to recover possession of the dwelling” on “properties secured by VA-guaranteed loans, including those loans currently in VA’s [REO] portfolio” through December 31, 2020.²⁷

The USDA initiated its moratorium by directing that “borrowers with USDA single-family housing Direct and Guaranteed loans are subject to a moratorium on foreclosure and eviction for a period of 60 days. This action applies to the initiation of foreclosures and evictions and to the completion of foreclosures and evictions in process.”²⁸ The USDA further directed that “upon receiving a request for a forbearance from a borrower who attests to financial hardship directly or indirectly caused by COVID-19, lenders shall provide immediate forbearance of the borrower’s Single Family Housing Guaranteed Loan payment

22. Veterans Benefits Admin., Foreclosure Moratorium for Borrowers Affected by COVID-19, Circular 26-20-8, at para. 2 (Mar. 18, 2020), https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_8.pdf.

23. Veterans Benefits Admin., Extended Relief Under the CARES Act for Those Affected by COVID-19, Circular 26-20-12, at para. 6 (Apr. 8, 2020), https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_12.pdf.

24. *Id.* at para. 3.

25. *Id.*

26. See Veterans Benefits Admin., Extended Foreclosure Moratorium for Borrowers Affected by COVID-19, Circular 26-20-30, at para. 2 (Aug. 24, 2020), <https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-20-30.pdf>.

27. Veterans Benefits Admin., Extended Eviction Moratorium for Borrowers Affected by COVID-19, Circular 26-20-29, at para. 2 (Aug. 24, 2020), <https://benefits.va.gov/HOMELOANS/documents/circulars/26-20-29.pdf>.

28. Press Release, U.S. Dep’t of Agric., USDA Implements Immediate Measures to Help Rural Residents, Businesses and Communities Affected by COVID-19 2 (Apr. 15, 2020), https://www.rd.usda.gov/sites/default/files/USDA_RD_SA_COVID19_CUMULATIVEUpdate04152020.pdf.

for a period of up to 180 days. In addition, the initial forbearance period may be extended up to an additional 180 days at the borrower's request."²⁹ The USDA also issued a stakeholder announcement providing that "with the exception of vacant or abandoned dwellings, foreclosures and related evictions for borrowers with USDA single-family housing Direct and Guaranteed loans are suspended through December 31, 2020."³⁰

FORECLOSURE MORATORIUMS EXTENDED BY STATES

Several states have, by executive order, court administrative order, or legislation, issued extended foreclosure moratoriums. The following are just a few examples of states that have taken action to extend relief to COVID-19-affected borrowers through statewide moratoriums impacting foreclosures and evictions. As the COVID-19 pandemic continues to run its course, states will likely continue to implement or extend such moratoriums.

Florida issued a moratorium by executive order in April 2020 to "suspend and toll any statute providing for a mortgage foreclosure cause of action under Florida law for 45 days" and "suspend and toll any statute providing for an eviction cause of action under Florida law . . . for 45 days."³¹ The moratorium was extended by subsequent executive orders.³² In July, the moratorium was modified to "suspend and toll any statute providing for final action at the conclusion of a mortgage foreclosure proceeding under Florida law solely when the proceeding arises from non-payment of mortgage by a single-family mortgagor adversely affected by the COVID-19 emergency."³³ On August 31, 2020, Florida issued another executive order in August further extending the moratorium through October 1, 2020.³⁴

At the same time, the Florida Supreme Court issued an administrative order postponing non-essential functions until May 29, 2020, and suspending the issuance of writs of possession.³⁵ The administrative order was amended to provide for remote hearings in certain non-essential matters and to further suspend the issuance of writs of possession and to continue the suspension of

29. *Id.* at 2–3.

30. Press Release, U.S. Dep't of Agric., USDA Implements Immediate Measures to Help Rural Residents, Businesses and Communities Affected by COVID-19 (Aug. 28, 2020), https://www.rd.usda.gov/sites/default/files/COVID19_CUMULATIVE_StakeholderNotification_WEEKLY_Aug28.pdf.

31. Fla. Exec. Order No. 20-94 (Apr. 2, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-94.pdf.

32. See Fla. Exec. Order No. 20-121 (May 14, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-121.pdf; Fla. Exec. Order No. 20-137 (June 1, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-137.pdf; Fla. Exec. Order No. 20-159 (June 30, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-159.pdf.

33. Fla. Exec. Order No. 20-180, at para. A (July 29, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-180.pdf.

34. Fla. Exec. Order No. 20-211 (Aug. 31, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-211.pdf.

35. Fla. Admin. Order No. AOSC20-23 (Apr. 6, 2020), <https://www.floridasupremecourt.org/content/download/636183/file/AOSC20-23-original.pdf>.

the issuance of writs of possession.³⁶ The most recent amendment to the administrative order as of this writing continued the directives for remote and in-person hearings for non-essential matters until further order of the supreme court.³⁷

The Texas Supreme Court issued a First Emergency Order in March 2020 permitting state courts to “modify or suspend” deadlines until thirty days after the Governor’s state of emergency is lifted.³⁸ State courts were also allowed to conduct proceedings remotely.³⁹ Less than a week later, a Fourth Emergency Order was issued directing a moratorium on evictions, preventing trials, hearings, and other proceedings from going forward, and tolling deadlines through April 19, 2020.⁴⁰ Less than two weeks later, the supreme court issued an Eighth Executive Order tolling all civil filing and service deadlines until June 1, 2020, unless further extended.⁴¹ Thereafter, multiple additional emergency orders were issued extending the deadlines established by the First, Fourth, and Eighth Emergency Orders.⁴²

A Fifteenth Emergency Order was issued in May modifying the moratorium on evictions by permitting evictions to begin at the end of the month, with a requirement that they be accompanied by a sworn petition stating “that the premises are not subject to the moratorium on evictions imposed by Section 4024 of the CARES Act.”⁴³ The supreme court then issued a Twenty-Fourth Emergency Order further extending its moratorium on eviction proceedings and requiring a sworn petition stating “whether or not: a. the premises is a ‘covered dwelling’ subject to Section 4024 of the CARES Act; b. the plaintiff is a ‘multifamily borrower’ under forbearance subject to Section 4023 of the CARES Act; and c. the plaintiff has provided the defendant with 30 days’ notice to vacate under

36. See Fla. Amended Admin. Order No. AOSC20-23 (May 4, 2020), <https://www.floridasupremecourt.org/content/download/636182/file/AOSC20-23-amendment1.pdf>; Fla. Amended Admin. Order No. AOSC20-23 (May 21, 2020), <https://www.floridasupremecourt.org/content/download/633282/file/AOSC20-23-amendment2.pdf>.

37. See Fla. Admin. Order No. AOSC20-23 (Aug. 12, 2020), <https://www.floridasupremecourt.org/content/download/642474/file/AOSC20-23-Amendment-6.pdf>.

38. Tex. First Emergency Order, Misc. Dkt. No. 20-9042, at para. 2(a) (Mar. 13, 2020), <https://www.txcourts.gov/media/1446056/209042.pdf>.

39. *Id.* at para. 2(b).

40. Tex. Fourth Emergency Order, Misc. Dkt. No. 20-9045, at para. 3 (Mar. 19, 2020), <https://www.txcourts.gov/media/1446203/209045.pdf>.

41. Tex. Eighth Emergency Order, Misc. Docket No. 20-9051, at para. 3 (Apr. 1, 2020), <https://www.txcourts.gov/media/1446315/209051.pdf>.

42. See, e.g., Tex. Twelfth Emergency Order, Misc. Dkt. No. 20-9059 (Apr. 27, 2020), <https://www.txcourts.gov/media/1446470/209059.pdf>; Tex. Seventeenth Emergency Order, Misc. Dkt. No. 20-9071 (May 26, 2020), <https://www.txcourts.gov/media/1446702/209071.pdf>; Tex. Twenty-First Emergency Order, Misc. Dkt. No. 20-9091 (July 31, 2020), <https://www.txcourts.gov/media/1449546/209091.pdf>; Tex. Twenty-Second Emergency Order, Misc. Dkt. No. 20-9095 (Aug. 6, 2020), <https://www.txcourts.gov/media/1449564/209095.pdf>.

43. Tex. Fifteenth Emergency Order, Misc. Dkt. No. 20-9066, at paras. 2–3 (May 14, 2020), https://81db691e-8a8c-4e25-add9-60f4845e34f7.filesusr.com/ugd/64fb99_94a4b7a899094411811f5cdfd8aab25.pdf.

Sections 4024(c) and 4023(e) of the CARES Act.”⁴⁴ The moratorium remained in effect at the time of this writing.⁴⁵

New York issued an executive order directing a ninety-day foreclosure and eviction moratorium in March 2020.⁴⁶ It also tolled all commencement, service, and filing deadlines for foreclosures for thirty days.⁴⁷ Thereafter, a statewide moratorium was then imposed prohibiting initiation of residential and commercial foreclosure proceedings for sixty days.⁴⁸ The moratorium was modified in July to reflect that “it has been superseded by legislation for a residential tenant, and residential mortgagor.”⁴⁹ In August, the moratorium on commercial foreclosures and evictions was extended through September 20, 2020.⁵⁰ A memorandum titled Procedure for Addressing Residential and Commercial Foreclosure Proceedings and issued by the Chief Administrative Judge of New York in June also required that commencement papers for both commercial and residential foreclosure proceedings include specific form notices indicating that the defendant may be eligible for an extension of time to respond to the complaint, and that a status conference or settlement conference must be held prior to any further proceedings.⁵¹

New York State enacted new legislation that required that a mortgage servicer regulated by New York shall make applications for forbearance on a residential mortgage “widely available” to a “qualified mortgagor who, during the covered period, is in arrears or on a trial period plan, or who has applied for loss mitigation,” and “grant such forbearance of all monthly payments due . . . for a period of up to one hundred eighty days to any such qualified mortgagor . . . subject to the mortgagor demonstrating continued financial hardship.”⁵² The forbearance does not apply to federally backed mortgage loans and may be backdated to March 7, 2020.⁵³

New Jersey imposed a statewide moratorium prohibiting evictions by executive order, including the removal of a person from the property as result of a foreclosure proceeding.⁵⁴ The moratorium stayed “enforcement of all judgments

44. Tex. Twenty-Fourth Emergency Order, Misc. Dkt. No. 20-9097, at para. 3 (Aug. 21, 2020), <https://www.txcourts.gov/media/1449602/209097.pdf>.

45. *See id.*

46. N.Y. Exec. Order No. 202.8 (Mar. 20, 2020), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf.

47. *See id.*

48. N.Y. Exec. Order No. 202.28 2 (May 7, 2020), <https://www.governor.ny.gov/news/no-20228-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

49. N.Y. Exec. Order No. 202.48 2 (July 6, 2020), <https://www.governor.ny.gov/news/no-20248-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

50. N.Y. Exec. Order No. 202.57 (Aug. 20, 2020), <https://www.governor.ny.gov/news/no-20257-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

51. Letter from Lawrence K. Marks, Chief Administrative Judge, to Judge Silver, Judge Caruso & Judge Heitler, Procedure for Addressing Residential and Commercial Foreclosure Proceeding (June 23, 2020), http://documents.nycbar.org/files/Procedure_Residential_Commercial_Foreclosure_6.23.20.pdf.

52. N.Y. BANKING LAW § 9-x (Consol. 2020).

53. *See id.*

54. N.J. Exec. Order No. 106, at para. 1 (Mar. 19, 2020), <https://nj.gov/infobank/eo/056murphy/pdf/EO-106.pdf>.

for possession, warrants of removal, and writs of possession . . . unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice.”⁵⁵ The moratorium was extended until two months after the state of emergency due to COVID-19 is lifted.⁵⁶ The New Jersey Court of Operations and Legal Practice issued a Fifth Omnibus Order in June 2020 permitting the Office of Foreclosure to “recommend judgments or dispositive motions received on or after March 1, 2020,” in mortgage foreclosure actions “in addition to non-dispositive motions.”⁵⁷

The Massachusetts Legislature issued an emergency declaration in response to the COVID-19 pandemic declaring a state of emergency in March 2020.⁵⁸ The act provided that for all non-vacant or abandoned residential properties, mortgagees shall not “(i) cause notice of a foreclosure sale to be published pursuant to said section 14 of said chapter 244; (ii) exercise a power of sale; (iii) exercise a right of entry; (iv) initiate a judicial or non-judicial foreclosure process; or (v) file a complaint to determine the military status of a mortgagor under the federal Servicemembers Civil Relief Act, 50 U.S.C. sections 3901 to 4043, inclusive.”⁵⁹ The act further provided that a mortgagee must grant a forbearance to borrowers who submit a request advising that they are experiencing “financial impact” due to COVID-19 for not more than 180 days, extendable for an additional 180 days.⁶⁰ The eviction and foreclosure moratorium was later extended through October 17, 2020.⁶¹

CONSIDERATIONS FOR DEFAULT LITIGATION WHEN IT BECOMES PERMISSIBLE

As discussed above, default litigation in the wake of COVID-19 is constantly changing in response to the flood of new regulations. Accordingly, there are several considerations to be taken into account. Diligent research should be conducted on a case-by-case basis to assess applicable regulations at the local, state, and, if the mortgage loan is federally backed, federal levels. Many jurisdictions are subject to general moratoriums prohibiting foreclosures for extended periods of time and, in some instances, additional procedural requirements have been implemented to proffer additional protection to borrowers affected by COVID-19.⁶²

55. See *id.* at para. 2.

56. See *id.* at para. 5.

57. N.J. Fifth Omnibus Order 1 (June 25, 2020), <https://njcourts.gov/notices/2020/n200626a.pdf?c=qKq>.

58. Mass. Declaration of a State of Emergency to Respond to COVID-19 (Mar. 10, 2020), <https://www.mass.gov/news/declaration-of-a-state-of-emergency-to-respond-to-covid-19>.

59. 2020 Mass. Acts c. 65, § 5(a).

60. *Id.* § 5(b).

61. Letter from Mass. Gov. Charlie Baker, to Robert DeLeo, Mass. House Speaker, Karen Spilka, Mass. Senate President, Foreclosures and Evictions Moratorium Extension (July 21, 2020), <https://www.mass.gov/doc/foreclosures-and-evictions-moratorium-extension-july-21-2020>.

62. Letter from Lawrence K. Marks, Chief Administrative Judge, to Judge Silver, Judge Caruso & Judge Heitler, Procedure for Addressing Residential and Commercial Foreclosure Proceeding (June

Particular attention should be given to regulations concerning forbearance. There are regulations at both the state and the federal level that may require a mortgage servicer to place a forbearance upon request by the borrower.⁶³ As a result of a forbearance, a pending foreclosure may need to be placed on hold or a new foreclosure postponed.

Litigation strategies need to be updated to avoid running afoul of applicable regulations. For example, in cases where the next step involves dispositive motion practice, it may be necessary to tailor requests for affirmative relief narrowly where foreclosures are permitted but removal proceedings are prohibited.⁶⁴ In instances where foreclosures are prohibited, mortgage servicers may consider advancing with settlement negotiations.⁶⁵

23, 2020), http://documents.nycbar.org/files/Procedure_Residential_Commercial_Foreclosure_6.23.20.pdf.

63. See Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4022(b), 132 Stat. 281, 490–91 (2020); see also 2020 Mass. Acts c. 65, § 5(a).

64. See, e.g., N.J. Exec. Order No. 106 (Mar. 19, 2020), <https://nj.gov/infobank/eo/056murphy/pdf/EO-106.pdf>.

65. See, e.g., 2020 Mass. Acts c. 65.

