



Post-Foreclosure Issues

*Monday, December 21, 2020
12:00 PM - 1:15 PM Central Time*

Presented By



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Session Overview

- We hope to provide updated information regarding post-sale files and evictions on default properties, as moratoriums continue until at least 1/31/21. We will review any new regulations and discuss anticipated time delays regarding evictions.
- Questions to be addressed:
 - Has your local jurisdiction implemented their own COVID-19 post sale related requirements?
 - Do you foresee any CARES Act related litigation popping up in your jurisdictions?
 - How do you think Moratoria will impact timeframes?
 - What is your firm doing to position themselves to be ready to go when the moratoria are lifted?



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Post Foreclosure Issues: Maryland, DC and Virginia

Has your local jurisdiction implemented their own COVID-19 post sale related requirements?

- Maryland
 - Court of Appeals, November 12, 2020, Amended Administrative Order
 - Governor's, December 17, 2020, Amended Executive Order
 - Phased court opening approach
- Washington D.C.
 - B23-0906 signed on October 5, 2020, now designated Act 23-411
 - B23-0898 signed on October 14, 2020, now designated Act 23-415
- Virginia
 - House Bill 5115 (Ch.49)

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Post Foreclosure Issues: New York

Has your local jurisdiction implemented their own COVID-19 post sale related requirements?

- New York, Tenant Safe Harbor Act, Senate Bill 10290B, Dated April 8, 2020, prohibits the eviction of Residential tenants who have suffered Financial hardships during Covid.
- New York, Court Administrative order 160/20 August 12, 2020, states cases where warrants were issued/granted before COVID, we must have a status conference before sheriff/marshal can execute the warrant and proceed with Lockout.
- City Court Directive and Procedures, DRP-213, August 12, 2020, all status conferences will be on Motion.
- New York, Governor's Executive order 202.66, September 29, 2020, which stays physical lockouts till January 1, 2021.
- New York, Chief Judge's Message dated December 7, 2020, advises that all court personnel, including appearances, will be cut back to 40% for areas outside of New York and 30% for inside New York. There is also a hiring freeze, which will delay the eviction proceeding.

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Post Foreclosure Issues: Florida, etc

Has your local jurisdiction implemented their own COVID-19 post sale related requirements?

- Florida Supreme Court Justice Charles T. Canady issued 4 orders during 3/2020, limiting court proceedings to essential proceedings (criminal, child dependency, emergency guardianship/commitment), waiving speedy trial and SOL, allowing oaths to be given remotely - <https://www.floridasupremecourt.org>
- Chief Justice Canady order 4/21/2020- workgroup phases for reopening courts:
 - Phase 1- courthouses closed- evictions stalled
 - Phase 2- limited in person- all 67 counties as of 11/9/2020
 - Phase 3- in-person contact with protective measures
 - Phase 4- back to normal
 - <https://www.flcourts.org/Publications-Statistics/Publications/Courts-Phase-Status>

Post Foreclosure Issues: Florida, etc

Has your local jurisdiction implemented their own COVID-19 post sale related requirements?

- Florida Governor Ron DeSantis issued series of executive orders, beginning 4/2/2020 and ending 10/1/2020, placing moratorium on evictions and foreclosures
- Last substantive order, issued 7/29/2020, limited moratorium and suspended *final action* on residential foreclosures and evictions from financial difficulties due to COVID-19
- Governor relied on CDC order 9/4/2020, expiring 12/31/2020, prohibits landlords/owners from evicting a tenant based upon public health concerns in connection with COVID-19

Post Foreclosure Issues: Florida, etc

Has your local jurisdiction implemented their own COVID-19 post sale related requirements?

- As of late 11/2020, 24 states, including 4 territories and DC - eviction orders in place, extending a moratorium on evictions or providing relief to tenants in eviction
- De facto moratoria caused by court closings and limited re-openings help slow eviction proceedings
- <https://www.perkinscoie.com/en/news-insights/covid-19-related-eviction-and-foreclosure-ordersguidance-50-state-tracker.html>
- <https://www.ncsc.org/newsroom/public-health-emergency>

Post Foreclosure Issues: Florida, etc

Has your local jurisdiction implemented their own COVID-19 post sale related requirements?

- Eviction Lab at Princeton University: as of 11/28/2020, in 27 cities, 151,165 evictions filed, upward trend since 3/15/2020
- Global advisory firm Stout Risius Ross, LLC estimates that 11.6 million evictions could be filed in the United States in the next 4 months
- Compare to 61 million evictions filed between 2000 and 2016, average of 3.6 million evictions annually.

Polling Question

Have your local jurisdictions implemented any Post Sale COVID-19 related Moratoria?

- A. Yes
- B. No
- C. Yes, but stay has already been lifted
- D. No, but there is something in process



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Post Foreclosure Issues: Maryland, DC and Virginia

Do you foresee any CARES Act related litigation popping up in your jurisdictions?

- Third Party Purchaser Issues
 - Abatement of Interest
- Motions to Stay or Dismiss specifically citing CARES Act
- Penalties, Fees and Interest during Forbearance



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Do you foresee any CARES Act related litigation popping up in your jurisdictions?

We expect extensive and possibly complex post COVID litigation. Bear in mind that we are in New York, historically one of the most litigious states. And furthermore, given the fact that many of the occupants are entitled to free legal services such as legal aid, we are expecting the litigation regarding COVID issues to be off the charts. We are also expecting The plaintiffs bar to take advantage of this opportunity as well and represent people who claim to have been victimized but would not otherwise qualify for free legal services.



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Post Foreclosure Issues: Florida, etc

Do you foresee any CARES Act related litigation popping up in your jurisdictions?

- Not at this time, some defenses raised regarding forbearance agreements on private investor loans
- Duval County (Jacksonville) launched \$5.3 million program to aid residents and businesses facing eviction and foreclosure end of Oct., 2020
- Private investors generally following GSE, FHA, VA and USDA-reputational risk
- Anecdotally, judges proceeding with cases, eviction hearing dates often set in early 2021

Polling Question

When do you believe the federal moratoriums will end?

- A. April 1, 2021
- B. July 1, 2021
- C. October 1, 2021
- D. February 28, 2025



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Post Foreclosure Issues: Maryland, DC and Virginia

How do you think Moratoria will impact timeframes?

- Maryland:
 - Considerable increases in certain jurisdictions
 - Baltimore County, Prince George's County, Baltimore City, Anne Arundel County, Montgomery County
- Washington D.C.:
 - Significant increases due to length of jurisdictional moratorium
- Virginia:
 - Possible increases
 - Timeliness of recording and abstracting



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How do you think Moratoria will impact timeframes?

Given the fact that as of this date, the Courts in New York have drastically reduced staffing and further given the fact that many of the courts are still months behind hearing and processing cases due to Covid and furthermore given the fact that eviction cases as well as foreclosure cases require specific Covid hearings, we are expecting time frames to be dramatically increased. It's a bit too early to estimate how much the timelines will be impacted and frankly at least in New York this will vary from county to county. In addition to the Court's the Sheriff and Marshals are subject to unprecedented backlog, leading to further delays as well. We believe that the timelines will be in a fashion never seen before.

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Post Foreclosure Issues: Florida

How do you think Moratoria will impact timeframes?

- Statute of Limitations should be tolled- addressed by another panel
- Florida and about ½ have eviction orders in place, extending moratorium on evictions or providing relief to tenants in eviction
- Unknown if FHFA, FHA, VA and USDA moratoria will be extended beyond 1/31/2021, and if private investors



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Polling Question

In order to prepare for 2021, has your firm:

- A. Obtained additional funding (PPP, EIDL, Main Street, other).
- B. Enhanced case management systems and other operations areas.
- C. Hired more personnel in preparation for increased caseload.
- D. All of above.
- E. A and B only.

Post Foreclosure Issues:

What is your firm doing to position themselves to be ready to go when the moratoria are lifted?

- COHN GOLDBERG & DEUTSCH, LLC
- THE MARGOLIN & WEINREB LAW GROUP, LLP
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Webinar Wrap-Up

Questions

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