



Impact of COVID-19 on Foreclosure Filings and Detailed Information on State Holds

*Wednesday, December 9, 2020
12:00 PM - 1:15 PM Central Time*

Presented By



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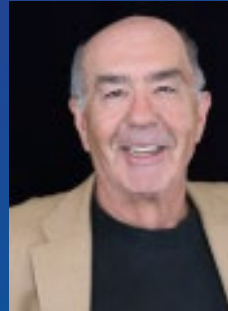
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A peek under the hood

- North Carolina
- Minnesota
- New Jersey/Pennsylvania
- South Carolina/USVI



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North Carolina



“Balanced Approach” – Set the Stage

- **Protect the Health, Safety, Welfare of Citizens / Maintain continuity of Judicial System in North Carolina.**
 - **March 10, 2020 – Governor Roy Cooper declared a State of Emergency in North Carolina in response to the public health threat posed by Covid-19.**
 - **In conjunction with the State of Emergency Declaration, Chief Justice of North Carolina Supreme Court issued Emergency Directives aimed at keeping the judicial process functioning.**
 - **Emergency Directive:**
 - **Procedural Orders:**
 - **Rescheduled Hearings for 30 days, unless;**
 - **Hearing could be conducted remotely**
 - **Hearing was necessary to preserve the right to due process of law**
 - **Emergency relief was being sought**
 - **Judgment of Senior Superior Court Judge, Chief Business Court Judge, Chief District Court Judge that hearing could be conducted with safety protocols in place.**

Impact of COVID-19 in North Carolina on the Court System

The immediate effect of the March 10, 2020 Order on Foreclosures in North Carolina

- Hearings were rescheduled for a minimum of 30 days depending on local rules and scheduling
- First Legal continued to commence, but were subject to limitations based upon individual counties scheduling / logistics:
 - Some counties operated at normal capacity
 - Some counties shortened their hours of operation
 - Some counties closed to the general public but permitted mail in filings

CONTROL WHAT YOU CAN CONTROL – ADAPT ACCORDINGLY

“ROLLING ORDERS AND EMERGENCY DIRECTIVES”

- Chief Justice Beasley continued issuing a series of rolling orders throughout the summer as follow ups to the original March 10, 2020 Order.
- Filing Deadlines / Clarifications (www.nccourts.org)
 - Filings in Civil Cases that were due between March 16, 2020 and June 1, 2020 were deemed timely filed if filed before the close of business on June 1, 2020.
 - Filings that were due pursuant to a statute of limitations or state of repose between March 16, 2020 and July 31, 2020 were timely filed if before the close of business on July 31, 2020.
 - Appellate Court filings due between March 27, 2020 and April 30, 2020 were extended by 60 days
 - Notices of appeal due to be filed between March 16, 2020 and June 1, 2020 were timely filed if filed by June 30, 2020.

“ROLLING ORDERS AND EMERGENCY DIRECTIVES” – (Cont’d)

- Emergency Directives (www.nccourts.org)
 - No jury trials held before October 15, 2020.
 - Courts must allow for social distancing when scheduling cases.
 - Many hearings can now be conducted online by teleconference.
 - Documents that ordinarily require a notary can be submitted with a signed statement under penalty of perjury.
 - Filings submitted by mail will be timely if received within 5 days of the due date
 - Hearings in summary ejectment actions (evictions) may be scheduled within 30 days, rather than the usual 7 days.

“ROLLING ORDERS AND EMERGENCY DIRECTIVES” – (Cont’d)

Impacts on the foreclosure practice within North Carolina – First Legal Filings

- Increased mailed 1st Legal filings done (Notice of Hearing) vs. In person delivery for filing (depending on courthouse availability and appropriate safety protocols)
 - Increased need to leverage relationships with clerks to confirm filings expeditiously with appropriate documentation.
 - Case by Case assessment of active inventory to ensure filing deadlines met Chief Justice Beasley’s Orders.
- Upset bid periods extended additional 5 days post sale to account for mailed upset bid filings (Hence, sale confirmation period extended and reported accordingly).

“ROLLING ORDERS AND EMERGENCY DIRECTIVES” – (Cont’d)

Impacts on the foreclosure practice within North Carolina – First Legal Filings

- Webex Hearings in select counties
 - Utilized in larger counties (Wake County).
 - Keeps traffic of people at courthouses to minimum.
 - Additional verbiage added to the Notice of Hearing for logistics of the Webex Process.
 - Borrowers can appear and / or seek an in-person hearing.
 - Could enlarge timelines with the need to set a new hearing date on a designated time for in-person hearings in the applicable county.
- Hearing schedules for all in-person hearings staggered by counties for social distancing and designated courthouse cleaning / sanitization

“ROLLING ORDERS AND EMERGENCY DIRECTIVES” – (Cont’d)

Impacts on the foreclosure practice within North Carolina – First Legal Filings

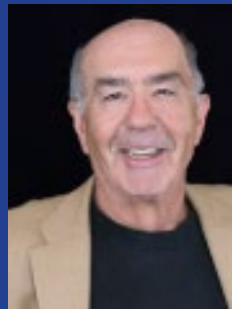
- “The unexpected, yet to be anticipated abrupt courthouse closures”
 - Relationship management with Clerks of Courts and courthouse officials is key to get “real time” notice.
 - Continuances / Postponements handled analogous to inclement weather situations. Notices sent out accordingly and near hearings / sale dates set as promptly and appropriately as possible.
 - New filings monitored and where continuity dictates “mail in” filings even if there is a physical courthouse closure.

Lessons to Take Forward in 2021 and Beyond

- Control What You Can Control
- Safety and well-being a top priority
- Maintain continuity to the extent feasible
- Adaptability is necessary at times and should not be feared
- Effective communication is paramount
 - Internally within your organization
 - Externally to your clients and courthouse contacts

Polling Question

- When do you believe foreclosures will be allowed to proceed against borrower-occupied federally-insured loans nationally?
 - February - March 2021
 - April - May 2021
 - June - August 2021
 - September 2021 or later



Paul Weingarden, Esq.

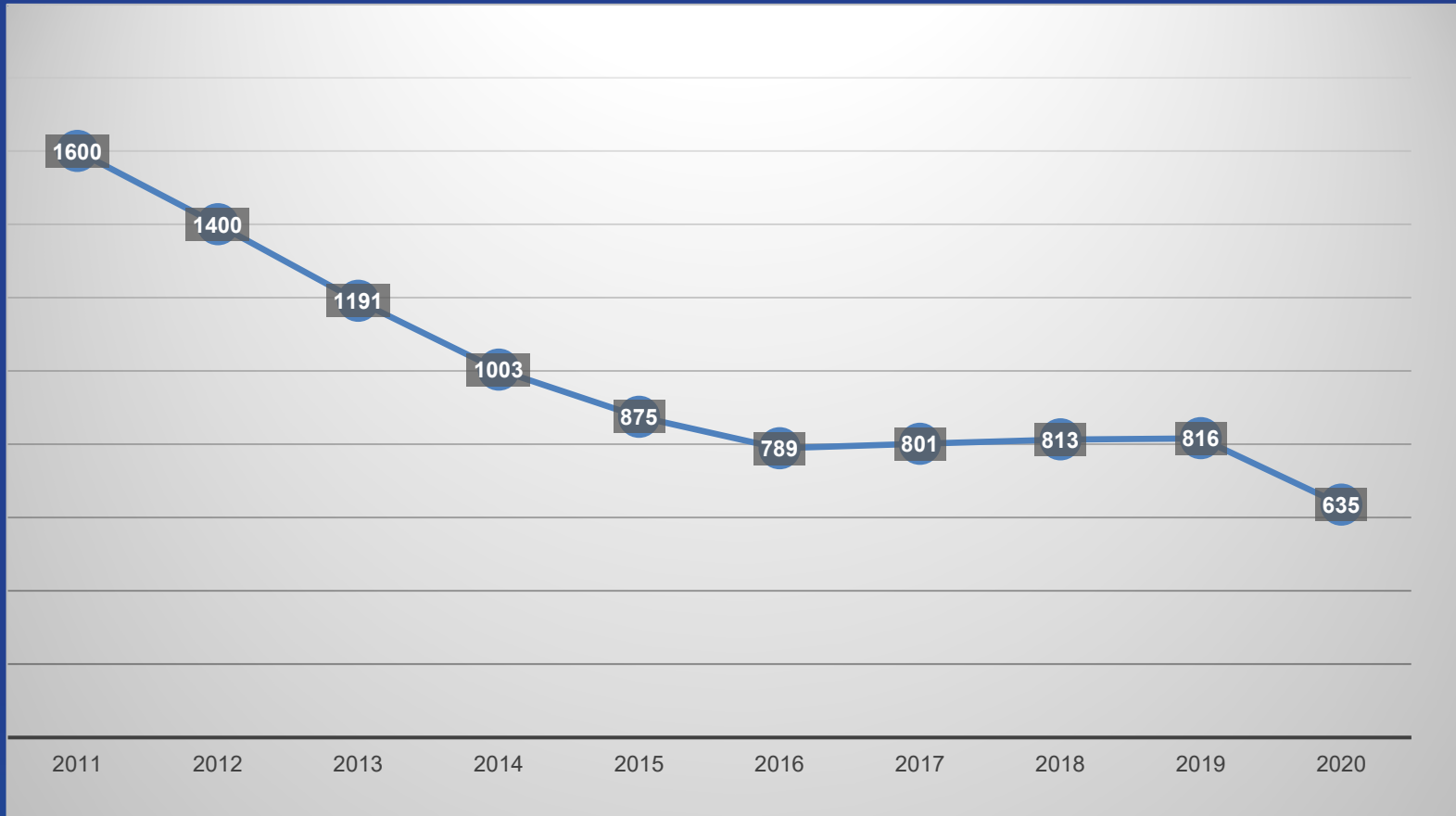
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Minnesota Average Monthly BK Filings



Eviction Moratorium

Executive Order 20-79

Executive Order 20-79 rescinded Executive Orders 20-14 and 20-73 and replaced them with a new eviction suspension, effective August 4, 2020.

It remains in effect until the peacetime emergency declared in Executive Order 20-01 is terminated or until it is rescinded by proper authority.

Prohibits evictions actions and lease terminations except where: (1) the tenant violates Minn. Stat. § 504B.171, subdivision 1, (2) the tenant seriously endangers the safety of other residents, (3) the tenant materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises: seriously endangers the safety of others, (4) the tenant materially violation of a residential lease by the following actions on the premises, including the common area and the curtilage of the premises: significantly damages property, (5) the tenant holds over after residential landlord termination of lease or nonrenewal of lease due to the need to move the property owner or property owner's family member(s) into the property and where the property owner or property owner's family member(s) move into the property within 7 days after it is vacated by the tenant. Written notice of intent to file an eviction action to the tenant at least 7 days prior to filing the action, or the specified notice period included in the lease, whichever is longer, or (6) writs designated as a priority execution under Minn. Stat. § 504B.365, subdivision 2.

Non-payment of rent is not an exception.

Redemption Period Reductions

Minnesota offers the ability to reduce the redemption period on properties which are vacant ***and*** abandoned.

- Can reduce the redemption period from 6 or 12 months to 5 weeks.
 - Requires a full judicial action
 - Can be completed prior to sale or after the sale

582.032 FIVE-WEEK REDEMPTION PERIOD; CERTAIN ABANDONED PROPERTIES.

§ Subdivision 1.Application.

This section applies to mortgages executed after December 31, 1989, under which there has been a default in the payment of money existing for at least 60 days as of the date of the filing of the complaint or motion provided for in this section. This section applies only when the mortgaged premises are:

- (1) ten acres or less in size;
- (2) improved with a residential dwelling consisting of less than five units which is neither a model home nor a dwelling under construction; and
- (3) not property used in agricultural production.

This section applies to foreclosures by action under chapter 581 and to foreclosures by advertisement under chapter 580.



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Pennsylvania and New Jersey



Impact of COVID-19 on Foreclosures: PA and NJ

Number of New Filings has drastically decreased – so what is happening with pending matters?

How large a decrease in PA? In Montgomery County, PA, 2020 foreclosure filings are down 80% from 2019

We will cover today:

- How are Courts handling cases?
- Conciliations / mediations
- Sheriff's sales in the COVID era
- Contested matters and remote technology
- Trials

“Holds” that are in place

The continuing federal moratorium

Certain county courts wish to move their dockets and are focusing on older cases: courts pushing to dispose of cases versus federal directive to hold files through January 2021

PA: the state hold expired August 31, 2020, so there is no prohibition on filing foreclosures on conventional loans

However, the state Supreme Court has left it to each local county court to make decisions on handling cases and making its own decisions related to COVID protections and protocols

NJ: there is no hold in place, but the various sheriffs are not conducting sales.

Mediations and Conciliations in the COVID-19 Era

How are mediations being conducted?

Pennsylvania has 67 counties, but only approximately 23 counties have some sort of mediation or conciliation process related to foreclosure cases

Certain counties mediation is required (I.e., Philadelphia)

In other counties a borrower has to affirmatively adopt into the program.

Conduct of Sheriff's Sales

In PA, a sale must be open to the public and public must have the right to bid at sales

In the COVID era, this creates numerous issues:

- How do you safely conduct a public sale?
 - Social distancing guidelines and other concerns
- What does “public” sale mean?
 - Can the sale be virtual?
 - Allegheny County sale being conducted via Microsoft Teams
 - Montgomery County sale conducted online – the October sale was the first sale in the county since February.
 - Most counties in NJ are NOT holding sales

State Relief Programs

With money from CARES Act, states are able to offer assistance to borrowers

Pennsylvania Housing Finance Agency (“PHFA”) handles assistance for borrowers

In PA, CARES Act funds used to provide relief up to \$1,000 per month for six months for qualified borrowers.

The application process for this program has now expired.

Impact on Appellate Foreclosure Decisions

Due to a lower volume of foreclosures, Appellate Courts have not issued as many decisions as in the past.

- October: 1 opinion issued
- November: 1 opinion issued

It is anticipated that there will be fewer mortgage foreclosure decisions through 2021 as the volume is much lower.

Impact of COVID on trial practice

Ability to do more via Zoom or remotely

Some counties are handling mediations remotely

Some evidentiary hearings or trials via Zoom or similar

- Saves trial time and expense
- So far the technology has worked well

No jury trials presently in either PA or NJ

Will this be the way of the future after COVID?

Prospects of future state moratorium

Pennsylvania:

With the election results, unlikely that a statewide blanket moratorium on foreclosure will pass the legislature

New Jersey:

By executive order or order of the state Supreme Court, various holds may be put in place



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Polling Question

- When will foreclosures proceed against borrower-occupied federally-insured loans in your particular state(s)? (can choose more than one)
 - February - March 2021
 - April - May 2021
 - June - August 2021
 - September 2021 or later

South Carolina



Loans that fall under the purview of the CARES Act?

- “The term ‘Federally backed mortgage loan’ includes any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1- to 4- families. . . .”
- Includes:
 - Fannie Mae and Freddie Mac (GSE’s), through the Federal Housing Finance Agency (“FHFA”)
 - United States Department of Agriculture (USDA loans)
 - Department of Veteran Affairs (VA loans)
 - Federal Housing Administration (FHA/HUD loans)

Options for borrowers after the CARES Act forbearance period expires

- If borrowers are in a position where their monthly payments are no longer affordable when the forbearance period ends, they can request a loan modification from their servicer to adjust the size of the monthly payments, mortgage loan term, and interest rate.
- “The combination of record levels of homeowner equity, extremely limited supply of homes for sale, and strong homebuyer demand should give many distressed homeowners an opportunity to sell their property rather than lose it to foreclosure.” - Rick Sharga, EVP at RealtyTrac

South Carolina

- The Chief Justice ordered that all previously scheduled terms of court (in all South Carolina courts) from March 23, 2020 through May 1, 2020 be canceled.
- Outcome of COVID 19: As of May 15, 2020, mortgagee may proceed with foreclosure/eviction actions using the South Carolina Supreme Court-mandated certification form showing that the mortgage loan is not subject to a CARES Act forbearance plan or subject to the foreclosure moratorium on Federally-backed mortgages by the various Federal agencies.
- A number of South Carolina foreclosure firms collaborated with the supreme court to create a “certification” for attorney use. Attorneys must certify whether the loan is federally-insured and if the loan is insured, the certification must state why foreclosure can proceed (usually, vacant or abandoned property).

- Legal impact result: South Carolina was one of the first states in the country that allowed foreclosure actions to proceed. Very few states were allowing foreclosures to go forward on May 15.
- Practical impact result: We still had court, mostly virtual, but some in-person appearances also—only with far fewer cases per court run. That remains the case today. Foreclosure firms still have to be ready to appear in all 46 counties during a time when many firms have trimmed staff.

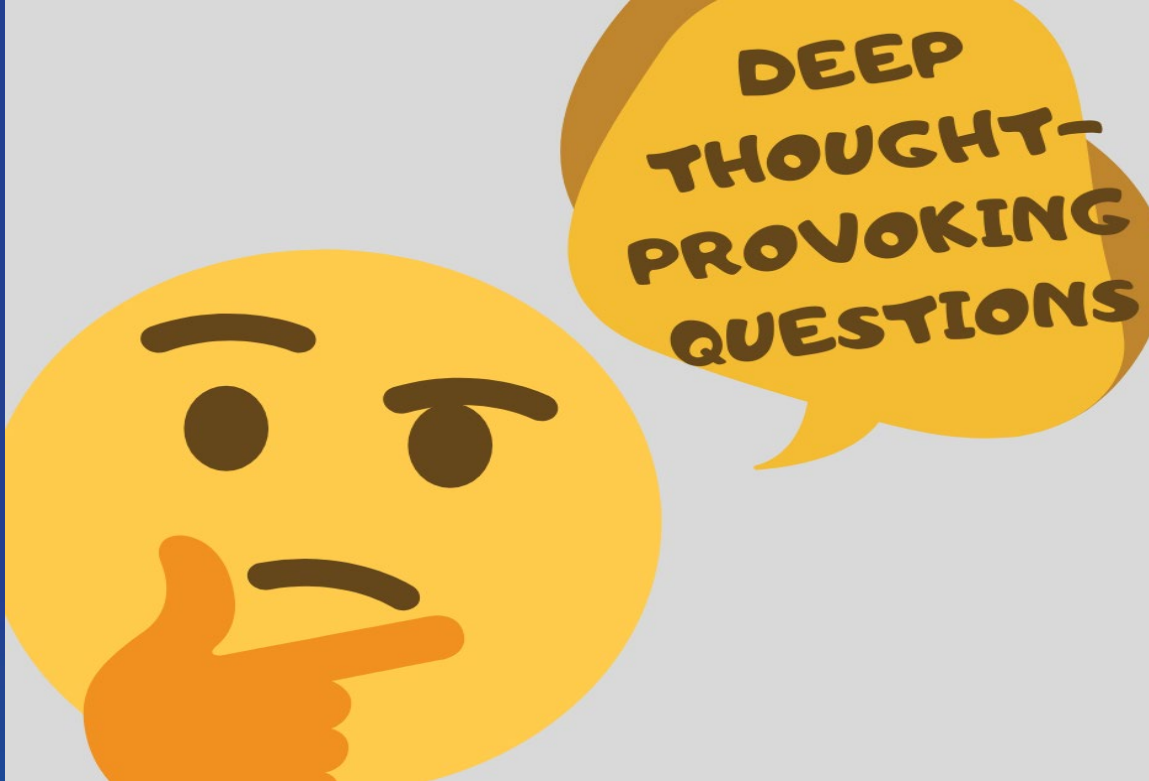
- SC supreme court order 2020-12-03-01
- IT IS ORDERED that the circuit courts statewide shall not commence any jury trials after December 4, 2020. Circuit Court Judges shall continue to preside over all other regularly scheduled hearings as assigned. Beginning with the week of December 7, 2020, all circuit court hearings currently scheduled, with the exception of trials by jury, shall proceed as previously scheduled. Where possible, the use of remote communication technology to conduct hearings is encouraged.
- No significant impact on foreclosures as all are non-jury in SC, however, if a borrower files a legal counterclaim, they can request a jury trial. If a proper counterclaim, jury issues must be tried BEFORE the foreclosure can proceed. Can create long delays.



Supreme court order 2020-07-30-01

Required Use of Protective Masks in County and Municipal Courthouses

More questions than answers?



Webinar Wrap-Up

Questions

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Mountain, 1-2:15 Eastern)

Law Firm & Service Provider Readiness – Planning for the Unknown

Thursday, December 17, 2020

12-1:15 Central Time (10-11:15 Pacific, 11-12:15

Mountain, 1-2:15 Eastern)

COVID-19 Restrictions and Borrower Defenses

Tuesday, December 15, 2020

12-1:15 Central Time (10-11:15 Pacific, 11-12:15

Mountain, 1-2:15 Eastern)

Post-Foreclosure Issues

Monday, December 21, 2020

12-1:15 Central Time (10-11:15 Pacific, 11-12:15

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