

Florida Governor Limits Mortgage Foreclosure and Eviction Relief to Non-Payment Defaults and Single-Family Mortgagors and Residential Tenants

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On July 29, 2020, Florida Gov. Ron DeSantis signed Executive Order 20-180, extending residential mortgage foreclosure and eviction relief afforded by Executive Order 20-94 to September 1, 2020. The executive order specifically **limits** the relief to single-family mortgagors and residential tenants adversely affected by COVID-19, clarifying some of the questions surrounding prior executive orders.

In the foreclosure context, the order suspends and tolls any statute providing for “final action” at the conclusion of a mortgage foreclosure proceeding when the proceeding arises from non-payment of a mortgage by a single-family mortgagor “adversely affected” by COVID-19.

Likewise, the order suspends and tolls any statute providing for “final action” at the conclusion of an eviction proceeding when the proceeding arises from non-payment of rent by a residential tenant “adversely affected” by COVID-19.

Thus, the moratorium does **not** preclude the mere filing or prosecution of an action for residential foreclosure or eviction, although, because it does not define what “final action” means, there could be a dispute as to whether a plaintiff in a residential foreclosure or eviction action is allowed to obtain a final judgment, sell the property at a foreclosure sale, and get certificates of sale and title and a writ of possession issued.

The order defines “adversely affected” by COVID-19 as “loss of employment, diminished wages or business income, or other monetary loss realized during the Florida State of Emergency directly impacting” the ability of a single-family mortgagor to make mortgage payments or a residential tenant to make rent payments.

The moratorium does not apply to residential foreclosures and evictions where non-payment is not at issue. Thus, if non-payment is not an issue or the non-payment predates or is not related to the COVID-19 pandemic emergency, the executive order does not preclude residential foreclosure and eviction actions from being filed or proceeding to finality.

Even where the executive order applies, it explicitly states that all missed mortgage or rent payments are due when the borrower or tenant is no longer affected by COVID-19.

Importantly, the executive order contains no express moratorium on foreclosure or eviction in connection with commercial properties, including the foreclosure of a commercial loan secured by a residential property as the borrower in such circumstances would not be a “single-family mortgagor.”