

BURR ALERT

South Carolina Moratorium on Evictions and Foreclosure Due to COVID-19

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Key Takeaway: This article is intended to provide a brief outline of South Carolina eviction and foreclosure procedures, specifically as it relates to the COVID-19 pandemic.

On March 18, 2020 the South Carolina Supreme Court issued an order suspending foreclosures and evictions until May 1. These suspensions were subsequently extended to May 15th by a Supreme Court Order dated April 30th. Unlike other states, these orders did not limit the application to residential evictions and foreclosures and therefore, whether intentionally or not, applied to commercial evictions and foreclosures as well. The original March 18th order provided an exception to the moratorium in cases involving harm to person or property or if essential services would be disrupted. The April 30th order lifting the moratorium allowed the court to accept application for ejectment, schedule hearings, and issue writs or warrants of ejectment beginning May 15th.

The April 30th order also stated “that the judge shall require the person or entity pursuing eviction or foreclosure to certify in writing that the real estate at issue is not subject to the limitations and requirements of the federal Coronavirus Aid, Relief, and Economic Security Act. If the real estate is subject to the restrictions of the Coronavirus Aid, Relief, and Economic Security Act, the eviction or foreclosure proceeding shall terminate without any action taken.” It appears that South Carolina put the onus on landlords seeking eviction to verify that the residential tenant is not in a “covered property” under the CARES act, which includes any property with a federally backed mortgage.

South Carolina’s orders did not provide guidance on deferrals, acceleration or partial payments after default, unlike other states.

While we will have to see how South Carolina courts will handle evictions and foreclosures going forward due to the continuing hardships suffered both by residential and commercial tenants, a statement by South Carolina Supreme Court Chief Justice Donald W. Beatty indicates that the courts may require some evidence of inability to make rent or mortgage payments. Chief Justice Beatty’s statement reads as follows:

“On March 19, 2020, I ordered courts to reschedule evictions and delay foreclosure proceedings through May 1, 2020. I issued this order understanding the negative impact the COVID-19 pandemic may have on institutions and individuals, and on the basis that increased housing insecurity and homelessness would worsen the threat posed by the illness.

It has come to my attention that some people are taking advantage of this devastating crisis by declining to make rent or mortgage payments. I want to remind people who are able to pay their rents

and mortgages that they should continue to make their payments. My order did not relieve people of their personal responsibilities or financial obligations.

As of now, the moratorium on evictions and foreclosures is scheduled to end on May 1, 2020, and at that time any evictions or foreclosures may proceed. As we all work together to fight the spread of COVID-19, I will continue to monitor conditions and consider how to address evictions and foreclosure proceedings during this public health emergency.”

Since the moratorium was lifted, several cities in South Carolina have seen high numbers of eviction filings. With the two month delay due to COVID-19 and the sheer number of cases filed, it remains to be seen how the courts will actually treat such cases. From a commercial lease perspective, it is advisable that landlords work to negotiate with tenants to come to agreeable terms. The pandemic will, unfortunately, remain in the state for much longer than originally anticipated. Reworking a current lease or negotiating a new lease will both require attention to terms relating to the pandemic.

South Carolina Evictions Generally

While the South Carolina Supreme Court issued a temporary moratorium on evictions and foreclosures, the procedures for such actions have not been modified as a result of the pandemic. Below is just a brief take on evictions in South Carolina generally.

In order to pursue eviction under South Carolina law, the landlord must first terminate the tenancy. The landlord must have legal cause to do so. Legal cause in South Carolina may be failure to pay rent, the term of the tenancy has ended, or the terms and conditions of the lease have been violated. For residential rental agreements, nonpayment of rent within five days of the due date constitutes legal notice to the tenant that the landlord has the right to begin ejectment proceedings. South Carolina Code Section 27-37-10 requires landlord to provide a five-day notice to pay rent. If landlord includes the following language in the lease, landlord is not required to provide the five-day notice upon a failure of tenant to pay rent: “If you do not pay your rent within five days of the due date, the landlord can start to have you evicted. You will get no other notice as long as you live in this rental unit.” For violations of the lease other than nonpayment of rent landlord must provide a fourteen (14) day notice to cure.

Once the required notice period has expired, if applicable, the landlord may submit application to any magistrate having jurisdiction for the issuance of a written rule requiring tenant to vacate the premises or show cause why the tenant should not be ejected before the magistrate within ten (10) days after service of a copy of the rule.

Interestingly, unlike other states, acceptance of partial rent does not prevent ejectment from continuing in South Carolina. According to South Carolina Code Section 27-37-150, acceptance by the landlord of any rent, whether it shall have accrued at the time of issuing the ejectment ruling or subsequently accrues, does not operate as a waiver of the landlord’s right to insist upon ejectment, nor as a renewal or extension of the tenancy.

In the commercial context, where a landlord sues for possession and the tenant raises defenses or counterclaims, the tenant is required to pay the landlord all rent which becomes due after issuance of the ejectment ruling as rent becomes due and the tenant is required to pay landlord all rent allegedly owed prior to the issuance of the ejectment rule.

Lastly, South Carolina allows collection of rent by distraint. According to South Carolina Code Section 27-39-210, a landlord may apply to a magistrate with jurisdiction for the seizure and sale of tenant property to satisfy past due rent. Satisfaction of rent by distress or distraint are considered extraordinary remedies and only apply to past due rent and cannot be used to satisfy an acceleration clause in a lease.

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To discuss this further, please contact:

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