

BURR ALERT

Florida Commercial Mortgage Holders Receive Foreclosure Clarification

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On July 29, 2020, Florida Governor Ron DeSantis signed [Executive Order 20-180](#), which extended the moratorium on residential tenant evictions and residential mortgage foreclosures in the state through the month of August. That order was narrowly tailored to apply only to residential mortgages and tenancies, effectively removing any protections that commercial mortgagees might have been able to claim under the original order.

Florida's Eviction Moratorium Timeline

The mortgage foreclosure and tenant eviction protections were put into place on April 2, 2020, when Governor DeSantis signed [Executive Order 20-94](#). That order provided for a 45-day suspension and tolling period for: (a) any statute providing for a *mortgage foreclosure action*, and (2) any statute providing for an eviction cause of action solely relating to non-payment of rent by *residential tenants*.

Those protections were extended three times (see [Executive Order 20-121](#), [Executive Order 20-137](#), and [Executive Order 20-159](#)) before ultimately being amended by Executive Order 20-180, which modifies the existing protections and provides for:

- (i) “final action at the conclusion of a mortgage foreclosure proceeding under Florida law solely when the proceeding arises from non-payment of a mortgage by a *single-family mortgagor* adversely affected by the COVID-19 emergency”; and
- (ii) “final action at the conclusion of an eviction proceeding under Florida law solely when the proceeding arises from the non-payment of rent by a residential tenant adversely affected by the COVID-19 emergency.”

The language of Executive Order 20-180 clearly limits any foreclosure protections afforded by the order only to residential mortgages. Accordingly, the last order that implicitly included foreclosure protections for commercial mortgagees (Order 20-159) expired on August 1, 2020. Commercial mortgagees may no longer claim protection from foreclosure under those orders.

Commercial Foreclosure Process, Generally

Florida's foreclosure process begins with the filing of a foreclosure complaint, whether the property is residential or commercial. That complaint is then served on the mortgagee, who has a chance to answer and raise defenses to the foreclosure. The foreclosure progresses through a judicial process. If the court determines that foreclosure of the property is warranted, the court will enter a final judgment of foreclosure and will schedule a judicial sale of the property.

Considerations for Commercial Mortgage Holders and Mortgagees

Because Executive Order 20-180 removed a commercial mortgagee's protections from foreclosure, commercial mortgage holders contemplating foreclosure of a defaulted property must now determine how they wish to proceed. Though the legal roadblock put in place by Governor DeSantis in Order 20-94 no longer remains in place, the uncertainty from the COVID-19 pandemic appears far from over. The holders of commercial mortgages may face challenges in trying to sell the foreclosed properties, and prolonged delays resulting from government office and court closures could present additional challenges.

Some commercial mortgage holders have instead opted to work with their respective mortgagees to craft alternate solutions that allow the mortgagee to remain in possession of the property, while reinstating payments to the mortgage holder. While these solutions may be practical, they do not come without their own legal considerations and requirements. Because each transaction is unique, mortgagors and mortgagees should carefully consider whether any given solution will work for any particular situation.

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To discuss this further, please contact:

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