

# BURR ALERT

## Florida Governor Renews Housing Protections for Florida Families

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Florida, like the majority of the United States, has enacted several economic protections in response to the coronavirus pandemic, including eviction moratoriums for the non-payment of rent. On Wednesday, 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. These protections expire on September 1, 2020. Executive Order 20-180 provided a targeted set of protections for residential mortgagees and tenants.

### 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 under Florida law, and (b) an eviction cause of action under Florida law solely relating to the non-payment of rent by residential tenants due to COVID-19 related hardships. That order clearly stated that its purposes were to provide “targeted, temporary relief to Floridians with single-family mortgages,” and “targeted, temporary relief to Floridians with residential tenancies.”

Executive Order 20-94 was set to expire on May 17, 2020. Prior to its expiration, Governor DeSantis extended Executive Order 20-94 to June 2, 2020 by the signing of [Executive Order 20-121](#). Those protections were later extended to July 1, 2020 and August 1, 2020 by the signing of [Executive Order 20-137](#) and [Executive Order 20-159](#), respectively, before being extended by Executive Order 20-180. These Executive Orders added to the protections afforded to homeowners under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which already provided a process for forbearance and foreclosure protections on certain federally held mortgages.

### The Residential Foreclosure Process, Generally

Generally in Florida, a residential tenancy must be terminated by the landlord prior to the landlord's eviction of the tenant. If a landlord seeks to terminate a residential tenancy on the basis of the tenant's failure to pay rent, the landlord must first provide the tenant with three (3) day written notice demanding payment of all unpaid and past due amounts of rent. If the tenant does not pay the unpaid amount of rent within the three (3) day period, the landlord may terminate the tenancy. The landlord may then pursue an eviction proceeding in the county court where the premises is located.

Similarly, the foreclosure process in Florida involves the filing of a complaint in the county where the property is located. The parties then proceed through a mortgage foreclosure hearing process, and if

the mortgage holder is found to have cause to foreclose, a final judgment of foreclosure is issued. The final step of the foreclosure process is a judicial sale of the property.

## The Current State of Residential Protections

As explained above, the protections afforded by Executive Order 20-94 were much broader than the stated intentions of that order. The broad language afforded protections from all mortgage foreclosures for any reason. The order also left to counties across the state the task of determining how to implement the order, with some refusing to begin the foreclosure and eviction processes at all, while others have been more willing to move forward on a limited basis.

Executive Order 20-180 provided clarifying guidance on the issue. That order specifically amended the language of the mortgage foreclosure and residential eviction protections, now providing for the suspension or tolling of any statute providing 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 amended order notably narrowed those protections to persons adversely affected by the COVID-19 emergency. Those persons are those that have “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 [or residential tenant as applicable] to make mortgage [or rent as applicable] payments.”

## Impacts for Landlords and Tenants

The language of Executive Order 20-180 specifically provides protections from final causes of action at the conclusion of a residential mortgage foreclosure proceeding and a residential tenant eviction solely on the basis of non-payment of rent. Though this language likely opens the door for the residential foreclosure and eviction proceedings to move forward, individual jurisdictions may continue to interpret the Order in different ways, resulting in inconsistencies throughout the state.

Residential landlords and mortgage holders will also have to decide if moving forward with evictions and foreclosures is still in their best interest, or if they would be better served working with tenants and mortgagees to craft mutually beneficial solutions. Because each situation is unique, all involved parties should carefully consider all of the legal and practical ramifications of any such solution.

Stay up to date by monitoring the latest COVID-19 resources on our [CORONAVIRUS RESOURCE CENTER](#).

**To discuss this further, please contact:**

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