



COVID-19 and Home Mortgage Foreclosures

Prepared by: Ethan Lauer, Staff Attorney

In an effort to control the recent COVID-19 pandemic, many units of government have instituted various requirements designed to limit close human interaction, such as “shelter in place” orders. The success of these requirements depends at least in part on individuals remaining in their homes at most times.

These requirements, however, have also contributed to job loss, layoffs, and other lost household income. In an effort to prevent loss of homeownership, the federal and state governments have taken several actions to assist mortgagees who might otherwise be in jeopardy of foreclosure. This issue brief will describe those actions relevant to Wisconsin.

JUDICIAL FORECLOSURE IN WISCONSIN

Depending on the jurisdiction, foreclosure may be either a judicial or administrative proceeding. Wisconsin requires a judicial proceeding. Briefly, the steps in a judicial foreclosure include the filing of a complaint by the lender, the possible filing of an answer by the borrower, a judgment of foreclosure by the court, a redemption period during which the borrower may refinance or sell the property to “redeem” it, and finally, if the borrower does not redeem the property, a sheriff’s sale of the property at auction. [See ch. 846, Stats.]

Wisconsin courts recently have taken emergency actions that could delay various aspects of a judicial foreclosure. On March 22, 2020, the Wisconsin Supreme Court issued an order postponing, with limited exceptions, in-person circuit and appellate court proceedings until April 30, 2020. The order directed courts to remain open and to utilize available technologies to conduct proceedings remotely.¹ If some aspect of a foreclosure proceeding required an in-person appearance or if remote technology was not available to all participants, the foreclosure proceeding likely would be postponed as a result of this order. In addition, if some aspect of a foreclosure proceeding required a jury trial, the proceeding must be rescheduled to a date after May 22, 2020, pursuant to a separate Supreme Court order regarding jury trials generally.²

In light of this order, which states that it is intended to be interpreted broadly for protection of the public, court staff, and judges from the risks associated with COVID-19, the courts in some counties have reduced or suspended nonessential proceedings. For instance, circuit courts in the judicial district that includes seven counties in northeastern Wisconsin are conducting hearings only on matters specified as essential to maintaining the critical day-to-day operations of those courts.³ Because foreclosure proceedings are not specified as essential, it appears that any foreclosure proceeding in that judicial district would be stayed until April 30, 2020.

EMERGENCY ORDER #15

On March 27, 2020, the Governor and the secretary-designee of the Department of Health Services issued Emergency Order #15. Among other provisions, this order prohibits the following:

- A mortgagee from commencing a civil action to foreclose upon real estate.
- A mortgagee from requesting or scheduling a sheriff’s sale of the mortgaged premises.
- A sheriff from conducting the sale of a mortgaged premise.
- A sheriff from acting on any order of foreclosure or executing any writ of assistance related to a foreclosure.

The order, which does not apply to abandoned premises, remains in effect for 60 days.⁴

FEDERALLY BACKED MORTGAGES

The federal government issues some home mortgages and, together with the government-sponsored enterprises known as Fannie Mae and Freddie Mac, insures or guarantees other home mortgages issued by private lenders (collectively, “federally backed mortgages”). The primary federal agencies involved in mortgages for residential real property designed principally for the occupancy of between one and four families are the U.S. Departments of Agriculture (USDA), Veterans Affairs (VA), and Housing and Urban Development (HUD).⁵

Moratoria Imposed by Federal Agencies

On March 18, 2020, USDA, HUD, Fannie Mae, and Freddie Mac each announced a 60-day moratorium on foreclosures of any federally backed mortgage on a single-family residence.⁶ Under these moratoria, a lender may not initiate a foreclosure nor complete a foreclosure already in process. Although VA did not impose a moratorium, it strongly encouraged its mortgage servicers to observe a 60-day moratorium for any borrower affected or potentially affected by COVID-19.⁷

Moratoria Imposed by Federal Legislation

The federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law on March 27, 2020. The CARES Act provides that, unless the property is vacant or abandoned, the servicer of a federally backed mortgage may not initiate any foreclosure proceedings, move for a foreclosure judgment or order of sale, or execute a foreclosure sale for 60 days beginning on March 18, 2020. [Pub. L. 116-136; DIV. A, SEC. 4022 (c) (2).]

In addition, the borrower of a federally backed mortgage who experiences a financial hardship due, directly or indirectly, to the COVID-19 emergency may request a period of up to 180 days during which the borrower does not have to make payments on the loan. Although the borrower would have to account for the missed payments at some point after that period, no additional fees or penalties would accrue during the period. At the borrower’s request, the period may be extended for another 180 days. [Pub. L. 116-136; DIV. A, SEC. 4022 (b) and (c) (1).]

¹ Supreme Court of Wisconsin, *In Re The Matter of Remote Hearings During the COVID-19 Pandemic*, Mar. 22, 2020.

² Supreme Court of Wisconsin, *In Re The Matter of Jury Trials During the COVID-19 Pandemic*, Mar. 22, 2020.

³ Hon. James A. Morrison, Chief Judge, 8th Judicial District, *Notice Clarifying Temporary Measures for Courthouse Operations in 8th Judicial District Regarding COVID-19 Public Emergency*, Mar. 27, 2020.

⁴ Emergency Order #15 may be viewed in its entirety at:

https://docs.legis.wisconsin.gov/code/register/2020/771B/register/emergency_orders/phe_2020_emergency_order_15/phe_2020_emergency_order_15. This order also imposed a moratorium on certain eviction proceedings. For more information on that aspect of the order, see [Legislative Council, COVID-19 and a Moratorium on Evictions, Issue Brief \(Apr. 2020\)](#) and Legislative Reference Bureau, *Evictions During a Declared Public Health or Other Emergency*, Report Vol. 4, No. 1 (Apr. 2020).

⁵ A large majority, perhaps around 70 percent, of residential home mortgages are federally backed, with Fannie Mae and Freddie Mac owning or guaranteeing nearly 50 percent. A borrower may contact the mortgage servicer (the entity to which mortgage payments are submitted) to determine whether his or her mortgage is federally backed. A borrower also may visit a loan lookup website to determine whether Fannie Mae (<https://www.knowyouroptions.com/loanlookup>) or Freddie Mac (<https://www3.freddie.com/loanlookup/>) owns the mortgage. In addition, the federal Consumer Financial Protection Bureau established the following website to help a borrower determine mortgage ownership: <https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>.

⁶ For example, HUD, Mortgage Letter 2020-04, *Foreclosure and Eviction Moratorium in Connection with the Presidentially-Declared COVID-19 National Emergency*, Mar. 18, 2020.

⁷ VA, Circular 26-20-8, *Foreclosure Moratorium for Borrowers Affected by COVID-19*, Mar. 18, 2020.