

PUBLICATION

Does the Florida Governor's Executive Order Stay Commercial Foreclosure Cases?

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On April 2, Florida Governor Ron DeSantis issued Executive Order Number 20-94 (the "Order"), which purports to "suspend and toll any statute providing for a mortgage foreclosure cause of action under Florida law for 45 days." While it appears that the intent and spirit of the Order is that it apply to "single-family mortgages" as is recited in several paragraphs of the preamble of the Order, Section 1 of the Order does not explicitly limit its application to single family mortgage foreclosures. Section 2 of the order, which addresses eviction actions, is limited solely to residential tenancies, which implies that the Governor could have limited Section 1 to single-family residential mortgages if that was his intent. The fact that he did not use similar language in Section 2 leads to a reasonable interpretation that both residential and commercial mortgage foreclosure actions are stayed for 45 days.

As of the writing of this Alert, at least one judicial circuit in Florida has concluded that all mortgage foreclosure actions are stayed. The Ninth Judicial Circuit (Orange and Osceola Counties) has issued [Administrative Order 2020-11](#), in which Chief Judge Donald A. Myers, Jr. has directed the clerks "to suspend all actions related to mortgage foreclosure causes of action, cancel all pending mortgage foreclosure sales, and suspend all actions related to residential eviction causes of action filed in their respective jurisdictions through and until 12:00 a.m. on Tuesday, May 19." Other judicial circuits are likely to issue similar administrative orders. It is not clear whether or not the clerk will refuse to accept pleadings filed in foreclosure actions while the Order is in effect. However, the website that conducts online foreclosure sales in the majority of Florida counties is showing sales as being canceled in several jurisdictions.

While there are state constitutional issues that call into question the validity of the Order, barring a clarification from the Governor, the practical effect of this Order is that all foreclosure proceedings, including commercial foreclosures, will be stayed for at least 45 days. It also remains to be seen how bankruptcy courts may interpret the Order. While it is extremely doubtful that the Governor could mandate that a federal bankruptcy court take or not take any action, debtors' counsel may take the position that a motion for relief from stay to pursue a state court foreclosure action should be stayed until the Order expires in 45 days.

This is developing and fluid issue. Should you have any questions regarding the Order, please contact Zach Bancroft at zbancroft@bakerdonelson.com or David Levin at dlevin@bakerdonelson.com.