

## **West Virginia Foreclosures in the Age of Corona**

*By Russell Jessee and Sarah Ellis, Steptoe & Johnson PLLC*

Economic turmoil brought on by the coronavirus pandemic has created much concern about a potential rise in residential foreclosures.

On August 5, 2020, Governor Jim Justice followed his presentation on school reopening with a plea to avoid evictions and foreclosures. Addressing landlords and banks, he said, “You’ve got people that are on unemployment and everything and they’re waiting because now their checks and their payments are being somewhat suspended – those bonus dollars that they need very badly. . . . We absolutely need to help these people. And so, from the standpoint of our landowners, our landlords, and our banks, please give these people a pass for right now. They really, really need it.”

Then on August 8, 2020, President Donald Trump issued his Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners. The Executive Order observes that the CDC have concluded that the pandemic has led to increased unemployment that, in turn, “may lead to greater risk of eviction and homelessness or sharing of housing.” The CARES Act moratorium on certain evictions has expired, and evictions are expected to increase. “Accordingly, my Administration, to the extent reasonably necessary to prevent the further spread of COVID-19, will take all lawful measures to prevent residential evictions and foreclosures resulting from financial hardships caused by COVID-19,” the Executive Order States. The Executive Order then directs various Secretaries to evaluate additional moratoriums, identify available relief funds, and take other lawful actions to avoid evictions and foreclosures.

Other than these essentially aspirational statements, what more concrete constraints exist on residential single-family foreclosures in West Virginia?

Although other states have imposed foreclosure constraints, no West Virginia state law or regulation has been enacted to stop foreclosures in our non-judicial foreclosure state. In late March, Attorney General Patrick Morrissey warned landlords, but not banks, about unlawful evictions. Similar to a lack of new law of foreclosures, no state law prevents evictions during a state of emergency, but the Attorney General reminded landlords to follow the state’s landlord-tenant laws, designed to protect tenants’ due process rights. Those laws require landlords to seek evictions through magistrate courts. The closure of the state’s courts effectively halted evictions, and they were able to resume only as courts began reopening in June. For non-judicial foreclosures, however, the courts’ closure did not call a halt to proceedings in the same way that it did for evictions.

For federally backed loans, however, foreclosure moratoriums now have been extended through December 31, 2020 in response to the President’s August 8, 2020 Executive Order. Although the CARES Act 60-day moratorium expired in May, the following federal loan program have foreclosure moratoriums continuing.

- The **Federal Housing Finance Agency**, regulator of **Fannie Mae and Freddie Mac**, announced on March 18, 2020 a suspension of foreclosures for at least 60 days, and that suspension now has been extended three times, most recently through the end of 2020;
- The **FHA** set a foreclosure moratorium for FHA-insured single-family mortgages that now has been extended through the end of the year;
- The **VA**'s foreclosure moratorium on VA-guaranteed loans likewise has been extended through the end of the year; and
- The **USDA** also set a foreclosure moratorium on all Single Family Housing Direct Home Loans that also now runs through the end of the year.

These nationwide moratoriums all are set to expire on December 31, 2020, but they may be extended, depending on the rate of recovery.

For most federally backed loans, then, banks do not have to wrestle with foreclosure decisions at least until 2021. For other loans, no new West Virginia law or regulation limits a bank's right to pursue foreclosure during the coronavirus pandemic. The state's banks are left to weigh extra-legal considerations when deciding whether to forebear or foreclose on delinquent home borrowers.

In addition, on September 1, 2020, the Trump administration announced a nationwide eviction moratorium through the end of the year. The eviction moratorium is being [implemented by the Centers for Disease Control and Prevention](#), based on broad quarantine powers for the administration in the 1944 Public Health Service Act. Despite language in the CDC's order that indicates it applies more broadly than just the landlord-tenant context, the order states that eviction "does not include foreclosure on a home mortgage." Nonetheless, the public policy behind the CDC's order is another factor to consider when contemplating a residential foreclosure.

*Russell Jessee is a member in the Charleston office of Steptoe & Johnson PLLC. He heads the firm's Business Litigation Group. Russell defends banks and other businesses in all manner of disputes, and he strives to reach resolutions that make business sense for his clients. He does not litigate for the sake of litigation. Rather, he seeks efficient resolutions so clients can focus on what they do best—running their businesses. He can be reached at [Russell.Jessee@Steptoe-Johnson.com](mailto:Russell.Jessee@Steptoe-Johnson.com).*

*Sarah Ellis also is a member in the Charleston office of Steptoe & Johnson PLLC. Her love of business transactions stems from her childhood when she accompanied her dad, a real estate developer and contractor, to his office almost daily. In addition to transactions, Sarah works closely with banking clients on collateral, bankruptcy, and collection issues. She can be reached at [Sarah.Ellis@Steptoe-Johnson.com](mailto:Sarah.Ellis@Steptoe-Johnson.com).*