

Federal and State Limits on Foreclosures in North Carolina in Response to COVID-19

UPDATE #3 (May 29, 2020): For more recent updates, refer to this [blog post](#).

UPDATE #2 (April 14, 2020): The Chief Justice of the North Carolina Supreme Court entered two orders in April of 2020.

- The [April 2nd](#) order directs that all proceedings, including proceedings before clerks of superior court, must be scheduled or rescheduled for a date no sooner than June 1 unless an exception to this directive applies. One exception includes if the proceeding will be conducted remotely; a remote proceeding may not be without the consent of each party. See April 2nd Order, Emergency Directive 1 and 3. This order extends the dates in the March 16 order discussed in the post below from April 15 to June 1.
- The [April 13th](#) order extends the date to file documents and to take certain acts to the close of business on June 1. This extends the dates in the March 19 order discussed in the post below from April 17 to June 1.

UPDATE #1 (March 30, 2020): On March 27, 2020, President Trump signed the [Coronavirus Aid, Relief, and Economic Security Act \("CARES Act"\)](#). Section 4022(c)(2) of the CARES Act provides that "a servicer of a Federally back mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020." This moratorium does not apply to a vacant or abandoned property. A "Federally backed mortgage loan" is defined in Section 4022(a)(2) as "any loan which is secured by a first or subordinate lien on **residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1- to 4- families** that is

1. insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 et seq.);
2. insured under section 255 of the National Housing Act (12 U.S.C. 1715z-20);
3. guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a, 1715z-13b);
4. guaranteed or insured by the Department of Veterans Affairs;
5. guaranteed or insured by the Department of Agriculture;
6. made by the Department of Agriculture; or
7. purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association."

The moratorium included in the federal CARES Act includes a broader array of federally backed mortgage loans than those discussed in the original post below.

Courthouses remain technically open in North Carolina. Some courthouses are on modified schedules; others are limiting who may enter the courthouse without an appointment or implementing screening measures at the courthouse door. (For current county by county updates, visit <https://www.nccourts.gov/covid-19-coronavirus-updates>.) However, clerks across the state are accepting filings. While many of us work at home, the clerks remain on the front lines of this crisis for the judicial branch. I want to start this post with a thank you to each of them for all they have done to turn the lights on each day in the courthouse and to keep the justice system open. I know they do so with risk to themselves and I am sincerely grateful for them.

Despite the fact that courthouses are technically open, it is not business as usual. This post identifies some of the limitations imposed on foreclosures at the federal and state level over the past week.

Federal Moratorium

On Wednesday, March 20, 2020, President Trump announced a moratorium on certain foreclosures. The moratorium is for 60 days (through May 17, 2020). It was implemented through the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA) to assist borrowers impacted by COVID-19. There are limited specifics available at this time on the details of the moratorium, but communications from HUD and FHFA indicate:

- The [HUD moratorium](#) applies to single family homeowners with Federal Housing Administration (FHA) insured mortgages. Specifically, it applies to homeowners with “FHA-insured Title II Single Family forward and Home Equity Conversion (reverse) mortgages.” It directs mortgage servicers to halt all new foreclosure actions and suspend all foreclosure actions currently in progress.
- The [FHFA](#) directed Fannie Mae and Freddie Mac to suspend foreclosures on single-family mortgages. In their letters to servicers, [Fannie](#) and [Freddie](#) directed servicers to suspend all foreclosure sales as of March 18, 2020. The suspension does not apply to mortgages on properties that have been determined to be vacant or abandoned.

Order from the Chief Justice of the North Carolina Supreme Court (effective March 16)

The federal directive comes in addition to two recent orders from Chief Justice Cheri Beasley of the North Carolina Supreme Court. In the [first order](#), dated March 13, 2020 and effective March 16, 2020, the Chief Justice declared under [G.S. 7A-39\(b\)\(2\)](#) that catastrophic conditions exist in all counties in the state due to the public health threat posed by COVID-19. The order directs superior and district court proceedings to be continued outside of 30 days from the issuance of the

order, subject to limited exceptions including:

- the proceeding will be conducted remotely,
- the proceeding is necessary to preserve the right to due process of law,
- the proceeding is for the purpose of obtaining emergency relief, or
- the senior resident superior court judge, the chief business court judge, or chief district court judge determines the proceeding can be conducted under conditions that protect the health and safety of all participants.

In a [subsequent clarifying memo](#) dated March 15, 2020, the Chief Justice stated that matters before the clerk, such as foreclosures and other special proceedings, “must be postponed.” The order clearly applies to power of sale foreclosure hearings before the clerk and appeal hearings before a superior court judge under [G.S. 45-21.16](#). It also applies to an action to enjoin (or stop) a mortgage sale filed by a property owner before a superior court judge under [G.S. 45-21.34](#). However, it may be possible for the action to enjoin to go forward given the exception in the Chief Justice’s order for proceedings for the purpose of obtaining emergency relief.

The Chief Justice’s order and memo, as applied to foreclosures, is broad. Unlike the federal moratorium, it is not limited to foreclosures of federally backed mortgage loans. It applies to all foreclosure proceedings, regardless of the type of property or loan.

The Chief Justice’s order directed proceedings to be continued to a date no sooner than 30 days from March 16. By contrast, the federal moratorium runs through May 17. Because the federal moratorium only applies to federally backed mortgage loans, certain commercial and multifamily (property with 5 or more dwelling units) foreclosure hearings could resume after April 15 (provided that the Chief Justice’s order is not extended).

Order from the Chief Justice of the North Carolina Supreme Court (effective March 19)

The Chief Justice entered a [second order](#) on March 19, 2020. That order extends the time to file all pleadings, motions, notices, and other documents and papers as well as the time to take all other acts that were due on or after March 16, 2020. Such documents and acts are “deemed to be timely” if they are filed before the close of business on April 17, 2020. For foreclosures, this means that after a foreclosure sale, a report of sale may be filed and any person may file an upset bid, but the upset bid period does not expire until the close of business on April 17, 2020.

For example, a foreclosure sale was held on March 13. The trustee filed the report of sale the same day. The filing of the report of sale starts the running of the 10-day upset bid period. Absent the Chief Justice’s order, the upset bid period would have run on March 23. However, the order now extends the time to file an upset bid on the property to the close of business on April 17. If no one files an upset bid, the upset bid period would run to the close of business on April 17. This is because the Chief Justice’s order does not prevent someone from filing an upset bid; it stops the

10-day time period from expiring between March 16 and the close of business on April 17.

If a person, let's say Jane, appeared on March 26 to file an upset bid related to the sale held on March 13, Jane could file the upset bid provided it otherwise meets the requirements of an upset bid (bid amount equal to the greater of \$750 or 5% more than the previous bid and other requirements in [G.S. 45-21.27](#)). If Tom appeared on April 11, he could upset Jane's bid if his bid also meets the statutory requirements. However, if Jane then files another upset bid on April 14, the 10-day upset bid period would fall on April 24, a date outside the period protected by the Chief Justice's order. As a result, the final time to file an upset bid on the property would be at the close of business on April 24.

Restrictions and guidance evolve each day in light of the current public health crisis. It is clear for any foreclosure in North Carolina to proceed in the near future it will require careful analysis as to why the restrictions imposed by the order of the Chief Justice and the federal moratorium do not apply. I will update this post as any new information becomes available; feel free to reach out to me directly with any information and I will consider adding it to the post. You can reach me at meredith.smith@sog.unc.edu.

Stay safe everyone.

Foreclosures: Quick Reference Guide (as of March 23, 2020)

- No foreclosure hearings until after April 15 unless an exception applies from the Chief Justice's order effective March 16
- Foreclosure sales are not expressly restricted by the Chief Justice's orders, but certain sales may be prohibited by the federal moratorium depending on the type of property and loan
- Reports of sale and upset bids may be filed but the upset bid period may not expire until at least close of business on April 17 in accordance with the Chief Justice's March 19 order

* [Note](#), while this post is focused on foreclosures, homeowners experiencing trouble paying a mortgage may contact their mortgage servicer to determine whether other relief programs may be available. In addition to guidance on foreclosures, [Fannie Mae](#) and [Freddie Mac](#) also published guidance last week about forbearance programs to reduce monthly payments or pause payments available for people who have suffered a loss of income.