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Insights

Moratorium on Indiana Residential Foreclosures and Evictions Extended Through August 14, 2020

July 31, 2020

By: C. Daniel Motsinger

On July 30, 2020, pursuant to Executive Order 20-39, the Governor of Indiana extended the prohibition on filing foreclosure actions or proceedings involving residential real estate or property through August 14, 2020. The Governor's directive does not impact the federal "Foreclosure and Eviction Moratorium in Connection with the Presidentially-Declared COVID-19 National Emergency," which announced an immediate foreclosure and eviction moratorium for all FHA-insured single-family mortgages through August 31, 2020. Executive Order 20-39 provides as an exception that "a lending institution is no longer prohibited from instituting a foreclosure action where the property is vacant or abandoned or where there is a specific immediate and serious injury, loss or damage to the property, however, foreclosures for nonpayment of mortgages are not permitted until on or after August 15, 2020." The directive encourages lending institutions to establish "reasonable payment plans" for past due mortgage payments.

The Executive Order similarly continues through August 14, 2020, the prohibition on filing eviction actions or proceedings involving residential rental property, with a similar exception to permit landlords to institute an emergency eviction or possessory claim under the limited circumstances set forth in Ind. Code §32-31-6, i.e., where there is a risk of specific immediate and serious injury, loss or damage to property. Otherwise, eviction actions for nonpayment of rent for residential rental property are not permitted until on or after August 15, 2020. The directive likewise encourages lending landlords, tenants and property owners to establish "reasonable payment plans" for past due rent payments.

Takeaway: Executive Order 20-39's August 14, 2020 foreclosure and eviction moratorium extension mirrors the similar tolling period established by the Indiana Supreme Court's March 23, 2020 Order and its May 29, 2020 Order Extending Trial Courts' Emergency Tolling Authority and Setting Expiration of Other Emergency Orders, whereby the Indiana Supreme Court ordered that "no interest shall be due or charged during this tolled period" on Indiana state-court judgments. Because of the Governor's and Indiana Supreme Court's orders, August 15, 2020, now looms large as a "D-Day" for the resumption of creditor consumer enforcement actions in Indiana.

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