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MORTGAGE FORECLOSURES RESUME IN NATION'S 2ND LARGEST COURT SYSTEM

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On January 11th, 2021, Judge Moshe Jacobius, Presiding Judge of the Chancery Division in the Circuit Court of Cook County, Illinois, entered General Administrative Order 2020-15 (GAO) which opened the door for thousands of mortgage foreclosure cases pending throughout Cook County, Illinois to partially resume through Judgment of Foreclosure. As the Nation's 2nd largest court system, this GAO marks a significant step forward in the administration of foreclosure cases.

The GAO adopts much of the "new normal" we have all grown to accept since the pandemic wreaked havoc on our daily lives. Court hearings in the entire division will be held remotely either by video or teleconference as much as possible. Thus far, Zoom has been the means of appearing in the Circuit Court of Cook County and aside from minor technical issues that sprout from time to time, the administration of cases has been effective and allowed some progress to occur. The GAO further states that after a Judgment of Foreclosure is entered, the case will be automatically stayed until further order of the court. No foreclosure sales shall be scheduled or held until further order of the court.

The GAO places new requirements for law firms prosecuting cases on behalf of foreclosing Plaintiffs. The GAO calls for a Notice to Residents of COVID-19 Declaration provided through Illinois Executive Order 2020-72, as amended by Executive Order 2020-74. The notice must be sent to any individual known to live at the subject property (the property subject to foreclosure) along with an additional notice addressed to "Resident or Tenants" at the property. Once the notice is sent, the Plaintiff must wait 30 days prior to proceeding with a Motion for Judgment of Foreclosure. On newly filed cases, Plaintiff must send the notice within 14 days of service of process or within 30 days of filing the foreclosure complaint, whichever date occurs sooner. Responses to the notice should be sent to Plaintiff's firm within 30 days of the date of the letter. Within 14 days of the expiration of the 30-day period, Plaintiff shall file an affidavit of compliance attaching any response received. If a resident returns a form declaration attesting that he or she is a covered person, the Court shall immediately enter an order staying the foreclosure and will set the case for status to keep the court advised on the status of the case as a whole.

The GAO also allows vacant or abandoned foreclosures to proceed in the normal course, including through foreclosure sale, provided that Plaintiff provides proof the property is vacant. Surprisingly, foreclosures on commercial properties are subject to the same restrictions as the GAO places on residential properties, in that, once a judgment of foreclosure is obtained the case may not proceed to sale.

In short, the GAO in Cook County now allows for thousands of foreclosures to proceed. As cases had been on hold since March 2020, this is a welcome sign which could set the example of how to create flexibility and administer cases while protecting those who may be impacted by Covid-19 at the same time.