

FLORIDA CIRCUIT COURTS ORDERED TO MOVE PENDING FORECLOSURE CASES

Florida's Supreme Court has mandated that most foreclosure cases will now either be considered a streamlined case or a general civil case under a recently ordered amendment.

On March 9, 2021, the Florida Supreme Court issued Amendment 10 to the Comprehensive COVID-19 Emergency Measures for Florida Trial Courts. This administrative order was issued to create a new requirement for case management in certain civil cases, including foreclosures. The new section is entitled Case Management and Resolution. This new amendment requires the Chief Judges of each Florida Circuit Court to issue an administrative order directing the Circuit Court Judges to "actively manage their civil cases." Every case is to be reviewed to determine if it is complex, streamlined, or general. Most foreclosure cases will be either a streamlined case or a general civil case.

Every streamlined or general civil case will have a case management order issued that specifies deadlines for service of complaints and deadlines for adding new parties. There will also be discovery deadlines, pretrial motion deadlines, a mediation deadline, and a projected trial date. These deadlines are to be strictly enforced by the judges.

Starting May 28, 2021, the case management orders will be issued. The order directs all Judges to conclude litigation as soon as it is reasonably and justly possible to do so, to take charge of all cases at an early stage, to control the progress of the case until it is resolved, and to apply a firm continuance policy allowing continuances only for good cause shown. There was no exception for foreclosure cases in the order.

Florida Supreme Court Chief Justice Charles Canady commented on March 30, 2021, at a Bar Virtual Town Hall meeting, when he said the of the new amendment, "... the administrative orders are for "certain categories" of civil cases and will feature "aggressive case management." People are going to have to understand that when they come to court ... they need to be ready to go. If they're not ready to do that, then they probably shouldn't be filing a complaint ... That's with a high level of generality."

On April 13, 2021, the Florida Supreme Court again revised the order by adding Amendment 12 to the Comprehensive COVID-19 Emergency Measures for Florida Trial Courts. The Chief Justice's change made an exception for the cases "subject to a statutory stay or moratorium preventing the prosecution of the case." Due to this change, the judges are to issue case management orders within 45 days after the stay or moratoria ends.

Based on the amendments, an increase is expected in case management conferences scheduled by the Florida Courts and orders setting pending foreclosure cases for trial. One issue, the Florida judges will not have knowledge of the investor type or the federal moratoria applying to the pending cases on their dockets. Servicer's counsel will need to inform the court whether the case is subject to a moratorium. This can be done by filing a certification of the investor to preclude the judge from issuing a case management order or the servicer could await the receipt of a case management order and file a motion to stay the case due to the moratorium.

It is anticipated that the Florida judges may deny stays for conventional loans and push those cases to judgment and sale. Some Florida judges, prior to the order, were already moving

the pending foreclosure cases forward regardless of loan type and the corresponding moratorium. It is in the discretion of the judge as to whether to stay a foreclosure case, even if covered by a moratorium; as the legal authority of investor moratoria, CFPB rules, and Federal CDC orders over a Florida Circuit Court is at issue. Therefore, although some judges will force pending foreclosure cases forward using these case management orders, it is expected many judges will honor the moratoria, based on the exception as set forth in the Supreme Court Order.

Servicers will need to be ready to move forward with their foreclosure cases if a continuance is denied by the judge or be ready to voluntarily dismiss their cases, if necessary. Remembering, upon voluntarily dismissal of a case, opposing counsel attorney fees may be due. This may be a repeat of the same issues during the Great Recession, a backlog of cases and Judges becoming more proactive to clear their dockets. Will history repeat itself? Most likely it will look a little different; only time will tell.



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