

## NEWS ALERT

# COMMUNITY BANKING GROUP



## Covid-19 Impact On Commercial Foreclosures In Massachusetts And Connecticut

By Robert E. Kaelin, Chelsea R. Sousa and Anthony R. Leone | April 3, 2020

Lenders have already begun, and will continue to face, difficult conversations with distressed borrowers who have been impacted by the coronavirus crisis (“COVID-19”). The following offers some practical considerations that Lenders should be mindful of when assessing, initiating, or continuing foreclosure proceedings against commercial borrowers in Massachusetts and Connecticut in light of COVID-19.

### 1. Courts Are Closed In Massachusetts and Connecticut For Non-emergency Matters

Per order of the Supreme Judicial Court, Massachusetts courts are now closed until at least May 4, 2020. The only matters that will be heard in-person in Massachusetts state courthouses are **emergency matters** (and that cannot be held via video conference). Moreover, pursuant to Governor Baker’s COVID-19 Order No. 21, gatherings of more than 10 people are also prohibited in the Commonwealth until May 4, 2020.

Since March 27, 2020, and until further notice, some Connecticut Superior Courthouses are operating on a limited basis, while other courthouses have been ordered completely closed. Of the courthouses still operating, only “**Priority One Business Functions**” are being heard. Foreclosure proceedings are not considered Priority One, and thus, are not being heard. Until further notice, the Judicial Branch’s Support Enforcement Services (SES) offices, along with the call center, are closed statewide due to the COVID-19 crisis.

Pursuant to Governor Lamont’s Executive Order No. 7G (2), most statutes of limitation in Connecticut are suspended for the duration of the pandemic (unless earlier modified or terminated by the Governor), including: all statutory (1) location or venue requirements (2) time requirements, statutes of limitation, or limitations and deadlines relating to service of process, court proceedings, and court filings, and (3) all time requirements or deadlines related to the Supreme, Appellate and Superior courts or their judicial officials to issue notices, hold court, hear matters, and/or render decisions. In addition, effective March 30, 2020, per the order of Judge James W. Abrams, Chief Administrative Judge for Civil Matters, all deadlines contained in Civil Scheduling Agreements and Case Management Orders have been suspended until such time as Judicial Branch operations are fully restored.

### 2. There Are Currently No Known Moratoriums On Commercial Foreclosures In Massachusetts or Connecticut

While on March 18, 2020, the U.S. Department of Housing and Urban Development issued a “Foreclosure and Eviction Moratorium” Mortgagee Letter concerning residential mortgages, neither the federal government nor Massachusetts or Connecticut currently have explicit moratoriums on commercial foreclosures. Notably, certain state and local governments have begun to implement foreclosure moratoriums applicable to commercial foreclosures (see, e.g., New York Governor Cuomo, Executive Order, 202.8, signed on March 20, 2020 “There shall be no enforcement of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days.”). We expect Massachusetts and Connecticut could soon issue similar Executive Orders.

### 3. Considerations In Light Of Stay-at-home Orders, Court Closures And Potential Moratoriums

As a result of the stay-at-home orders and court closures noted above, even in the absence of commercial foreclosure moratoriums, Lenders cannot meaningfully proceed with commercial foreclosure proceedings at this time in either Massachusetts or Connecticut. While in Massachusetts court intervention is not necessary for borrowers who are corporations or LLCs, given the prohibitions on gatherings discussed above, the practical reality is that a lender risks a borrower raising issues regarding whether proceeding with a foreclosure sale under these circumstances is commercially reasonable. Moreover, because Massachusetts courts remain closed, it is possible that a borrower could claim that restrictions on meaningful access to courts to seek injunctive relief to stop foreclosures results in a violation of due process.

Again, there is no current ban on initiating a commercial foreclosure in either Connecticut or Massachusetts. However, once stay-at-home orders are lifted and courts do reopen, there is the practical reality that courts will be inundated with rescheduling current existing matters, as well as having to absorb a larger than normal volume of new cases (of all kinds that were not filed during the COVID-19 crisis). As a result, it will take the courts and attorneys longer than usual to move foreclosure proceedings along. Therefore, given the broad economic impact on the business of many borrowers, it may be prudent for lenders to consider some of the following in lieu of legal proceedings:

- Begin to evaluate current loans based on industry type and correlated probable impact by COVID-19. If the borrower was already in default, COVID-19 presumably just made things a lot harder to work-out its defaults.
- Consider and explore whether there are any Government relief programs that might be available to the borrower as part of a work-out.
- Evaluate internal policies and procedures for forbearance agreements and loan modifications.
- Create template forbearance questionnaire form(s) for borrowers seeking relief.
- Have template forbearance agreements in place with specific consideration of COVID-19 issues.

At the end of the day, given these unprecedented times, things are likely to be changing rapidly. Similar to the 2008 Economic Crisis, there is going to be a need for Lenders, to the extent feasible, to work with distressed borrowers as much as possible rather than seek to resort to pursuing a commercial foreclosure.

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