

Frequently Asked Questions Regarding the Governor's Executive Order Providing Protections from Foreclosures and Evictions through Aug. 31, 2020

1. When can I start foreclosure under these 4 scenarios:

A. No Act 91 or Act 6 notice has yet been sent. Do I wait until Sept. 1 to send it?

Yes, and, even if a notice is sent prior and the debtor received it, it will be deemed to have been sent Sept. 1, 2020.

B. An Act 91 or Act 6 was sent prior to the first Order dated May 11, but the 30th day is after May 11, 2020. So I can start foreclosure September 1?

No, the remaining time is added to the Sept. 1, 2020 date, thus if a notice still had a period of 10 days remaining, the new date would not be September 1, 2020 but you may commence on September 11, 2020.

C. An Act 91 or Act 6 notice was sent, and the 30th day expired prior to May 11, 2020. Again, start foreclosure September 1?

If all statutory requirements have been satisfied as of the May 11, 2020 effective date of the Executive Order, then the ability to proceed in the judicial proceedings would be based upon judicial orders and rules of Court and you should refer to the orders in the judicial district in which your matter is proceeding.

D. The homeowner has vacated the property and the home is now vacant.

The Executive Order is designed to protect individuals from being evicted. If a property is vacant or abandoned then the Executive Order does not apply and foreclosure proceedings can occur to allow the creditor to take possession of vacant property to protect the asset and prevent blight.

2. Does the Executive Order prevent a creditor taking possession of property per an agreement with the debtor.

No, if a mortgagee agrees to surrender the property in lieu of foreclosure then the Executive Order does not apply and the agreement between the mortgagor and a mortgagee controls. Thus, "cash for keys" and similar arrangements can continue allowing the creditor to take control of the property.

3. If a tenant waived the statutory notice requirements, will the EO still suspend the eviction process?

No, because the Order only extends the notice timeline, it does not impact evictions where the tenant has waived his or her right to receive a notice.