INDIANA
SUPREME COURT

251 N Illinois St | Ste 800
Indianapolis, Indiana 46204

Office of Judicial Administration

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To: Trial Court Judges
Circuit Clerks

From: Jeff Wiese, IOCS Deputy Director
Michelle Goodman, Supervisor

Date: May 27, 2020

RE: Updated Status of Foreclosure and Eviction proceedings with Federal Directives and State Executive Order

IOCS has received questions related to recent Federal and State directives regarding foreclosures and evictions. To address these questions, we are providing updated overview of these documents with links to the documents. Below are some additional considerations.

Summary of directive, executive order, and laws:

- On May 14, 2020, the U.S. Department of Housing and Urban Development extended the directives issued March 18, 2020, as follows:
  - A moratorium on foreclosure and evictions for all FHA-insured Single-Family mortgages through June 30, 2020. This applies to the initiation of foreclosure actions and to the completion of foreclosures in process.
  - Evictions from properties secured by FHA-insured Single-Family mortgages are also suspended through June 30, 2020.
  - The deadline of first legal action and reasonable diligence timeliness are extended by 90 days from the date of expiration of the moratorium.
  - Foreclosure and eviction suspension applies to homeowners with a Fannie Mae or Freddie Mac backed single family mortgage.

- On May 21, 2020, the Governor issued Executive Order 20-28 (effective May 22, 2020 at 12:00 a.m.) provides the following:

- Prohibits filing of evictions and foreclosures on residential real estate or property as provided for in Executive Order 20-06 and extended by other orders, until 11:59 p.m. on June 30, 2020.
- Evictions for nonpayment of rent or foreclosures for nonpayment are not permitted until on or after July 1, 2020.
- Exceptions:
  - Landlord may file an emergency eviction or possessory claim under IC 32-31-6 permitting evictions for specific immediate and serious injury, loss or damage to the property.
  - Lending Institution may file a foreclosure action for property that is vacant, abandoned, or for specific immediate and serious injury, loss or damage to the property.

- On March 27, 2020, U.S. Congress passed the Coronavirus Aid, Relief, and Economic Security "CARES" Act. Section 4024 places a 120-day moratorium, beginning the date of the enactment, on residential evictions from specified properties that are associated with federal subsidies or federally back mortgages.

Guidance for Indiana Courts:

- Courts should inquire at initial hearing if the eviction property is included in an above listed moratorium.
- There are searchable tools available to litigants:
  - National Low Income Housing Coalition: https://nlihc.org/federal-moratoriums (limited database)
  - Fannie Mae: https://www.knowyouroptions.com/rentersresourcefinder
  - Freddie Mac: https://myhome.freddiemac.com/renting/lookup.html
- New Filings: The courts and clerks should continue to accept all case filings submitted. Article 1, Section 12 of the Indiana Constitution requires that "all courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law..." To implement this constitutional provision, the Indiana Supreme Court adopted Ind. Trial Rule 72 which required that "trial courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning process and of making and directing all interlocutory motions, orders, and rules."
- Cases filed prior to the new Federal and State Directives: AR 17 approved orders provide a general tolling provision for all case types and authorizes the courts to handle matters impacting individual right to liberty interests and emergency

matters during the period of the orders. The ability to stay proceedings that are not emergencies is also permitted under this provision. When exercising your judicial discretion, you may want to consider, among other things, the need to protect public health and safety, the need to protect property from substantial loss of value, etc.

- The Governor's Executive Order obligates parties to continue paying rent/making mortgage payments and complying with other obligations under a tenancy or mortgage during the state of emergency. Failure to meet these obligations would be issues for future hearings on damages.

WELCOME TO INDIANA COURTS

THE COURT, INCLUDING THE JUDGE, THE CLERK, AND ALL COURT STAFF, MUST REMAIN IMPARTIAL. THEY DO NOT TAKE SIDES IN ANY MATTER COMING BEFORE THE COURT. THEY WILL GIVE THE SAME SORTS OF INFORMATION TO PERSONS ON BOTH SIDES OF A CASE.

CAN PROVIDE	CANNOT PROVIDE
* **We can** provide you with a telephone number of local lawyer referral services.	* **We cannot** provide legal advice or legal interpretations. Only a lawyer can give you legal advice.
* **We can** explain and answer questions about how the court works.	* **We cannot** advise you whether or not you should bring your case to court or give you an opinion about what will happen if you bring your case to court.
* **We can** provide you general information about court rules, procedures and practices.	* **We cannot** advise you what to say in court.
* **We can** provide you information from your case file.	* **We cannot** let you talk to the judge outside court or talk to the judge for you about what will happen in your case.
* **We can** provide a copy of the small claims manual and court forms that are available and instructions on how to complete them.	* **We cannot** fill out a form for you or tell you what words to use in your court papers.
* **We can** review your papers for completeness by checking for signatures, notarization, correct county name, and correct case number.	* **We cannot** sign an order or change an order signed by the judge.

REMEMBER: The Court and court staff do not know the answers to all questions about court rules, procedures and practices. They have been instructed not to answer questions if they do not know the correct answer. Information you provide to staff is not confidential.

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Exhibit 1