MEMBER ALERT

Analysis of Gov. Newsom's Executive Order on COVID-19 from California MBA Legal Issues Committee Chairman

The following analysis is provided by Ian Rambarran, Chairman of the California MBA Legal Issues Committee. Rambarran is a Shareholder with Klinedinst PC.

On March 16, 2020, Governor Newsom issued Executive Order N-28-20 limiting evictions and foreclosures in California. The full Executive Order can be found here.

Executive Order N-28-20 is aimed at reducing potential public health issues related to foreclosures and evictions by keeping people in their homes and to provide hardship relief to people economically disenfranchised by COVID-19. Though the Order is not entirely precise, there are a few keys points to take away.

1. The Order authorizes local counties and cities to consider actions to halt evictions and foreclosures, if the reason for the default arises from COVID-19 related income issues.

COVID-19 related income issues are those caused by the reduction in compensable hours, layoffs, business income and consumer demand, as well as a lack of available income due to substantial medical expenses. The Order expressly recognizes that these income issues may have been caused by government imposed restrictions.

2. The Order requests that financial institutions halt judicial foreclosures and evictions, if the reason for the default arises from COVID-19 related income issues.

Though the effect of COVID-19 restrictions will begin to permeate the market for many borrowers and tenants in the next couple of weeks because of employer payment cycles, it would be best practice to reach out to borrowers who default to stay ahead of any concerns. Even basic notices on websites, billing statements, and newsflashes informing borrowers what programs are available would help alleviate some concerns.

3. The Order asks the Department of Business and Oversight to work with financial institutions to consider alternatives to foreclosures. At this time, it would be prudent to fine tune loss mitigation action plans to address borrower and DBO concerns before they reach

out to you. For example, imminent default or financial hardship should be strongly considered, forbearance plans with extended payment times or modifications with recapitalized missed payments would be worth considering.

The above restrictions are effective until May 31, 2020; however, it would certainly be prudent to halt all foreclosure and eviction activities until the effect of COVID-19 is understood nationally and locally.

Maintaining that course of action would support the public policy behind Executive Order N-28-20 and help to ensure public health and safety will be strengthened by keeping people in their homes. Finally, postponing foreclosure and evictions will be likely viewed as a positive industry contribution.