



SPONSOR: Sen. Lockman & Rep. K. Williams

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 254

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO RESIDENTIAL MORTGAGE
FORECLOSURES DURING THE COVID-19 RECOVERY PERIOD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The General Assembly finds and declares all of the following:

(1) On March 12, 2020, Governor John C. Carney declared a State of Emergency for the State effective as of March 13, 2020, due to the serious public health threat created by the novel coronavirus, COVID-19.

(2) On March 24, 2020, Governor John C. Carney issued the Sixth Modification of the March 12, 2020 Declaration of a State of Emergency for the State. This modification, among other things, stayed certain legal actions relating to residential mortgage foreclosures, prevented charging interest and late fees in certain situations, and extended deadlines.

(3) Continuation of residential mortgage foreclosure protections during the COVID-19 recovery period are in the public interest.

(4) Given the rapidly evolving market conditions and needs, it is also in the public interest to give the Governor the flexibility to impose less restrictive protections or suspend protections to ease the transition back to normal operations.

(5) It is in the public interest to continue the protections in this Act or any lesser restrictions the Governor may impose in a subsequent modification to the Declaration of a State of Emergency related to the protections in this Act, based on changing market conditions and needs.

Section 2. Amend Subchapter XI, Chapter 49, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5062E. Residential mortgage foreclosure protections during the COVID-19 recovery period.

(a) As used in this section:

(1) "COVID-19" means any of the following:

a. Severe acute respiratory syndrome coronavirus 2.

b. The disease caused by severe acute respiratory syndrome coronavirus 2.

(2) “COVID-19 order” means a modification to the COVID-19 State of Emergency Declaration or another order issued by the Governor under Chapter 31 of Title 20 and relating to the COVID-19 state of emergency.

(3) “COVID-19 state of emergency” means the state of emergency declared effective by the Governor as of Friday, March 13, 2020, at 8:00 a.m. Eastern Standard Time under the COVID-19 State of Emergency Declaration, and any subsequent state of emergency relating to COVID-19.

(4) “COVID-19 State of Emergency Declaration” means the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat issued by the Governor on March 12, 2020.

(5) “COVID-19 recovery period” means the period beginning immediately upon termination of the COVID-19 state of emergency and continuing until the sixty-first day following the termination of the COVID-19 state of emergency.

(6) “State of emergency” means as defined in § 3102 of Title 20.

(b) During the COVID-19 recovery period, a residential mortgage foreclosure action may not be commenced against an owner-occupied 1- to 4-family primary residential property unless the mortgage is held by the seller of the subject property who does not hold more than 5 such mortgages.

(c) Late fees or excess interest may not be charged to, or made to accrue, on a residential mortgage account if an individual fails to make a residential mortgage payment during the COVID-19 recovery period.

(d) For residential mortgage foreclosure actions commenced before the COVID-19 state of emergency, all deadlines, including those related to the Automatic Residential Mortgage Foreclosure Mediation Program established under § 5062C of this title, will be extended until at least the thirty-first day after the termination of the COVID-19 state of emergency. A late fee or interest may not be charged to, or made to accrue, on the balance due on the mortgage that is the subject of the residential mortgage foreclosure action under this subsection.

(e) A sheriff’s sale on residential property on which a judgment of foreclosure was issued may not proceed until at least the thirty-first day after the termination of the COVID-19 state of emergency.

(f) An action of ejectment or writ of possession on residential property sold at a sheriff’s sale may not commence until at least the thirty-first day after the termination of the COVID-19 state of emergency.

(g) Except as otherwise provided in this section, an individual is not relieved of the obligation to make mortgage payments or to comply with any other obligation that an individual may have under a residential mortgage.

(h) Except as otherwise provided in this section, all other provisions of this chapter remain in effect.

(i) Subject to paragraph (j)(1) of this section, subsections (a) through (f) of this section supersede any protections relating to residential mortgage foreclosures contained in a COVID-19 order.

53 (j) (1) The Governor may, based on an evaluation of market needs or conditions, issue a COVID-19 order that
54 does the following as it relates to a protection under subsections (a) through (f) of this section:

55 a. Modifies the protection to impose a less restrictive protection that transitions back toward the
56 applicable law that was in effect before the COVID-19 State of Emergency Declaration. The less restrictive
57 protection applies during the COVID-19 recovery period.

58 b. Suspends the protection. The suspended protection does not apply during the COVID-19 recovery
59 period.

60 (2) Nothing in this subsection limits the Governor's power under Chapter 31 of Title 20. However, a
61 residential mortgage foreclosure protection in a COVID-19 order that does not comply with paragraph (j)(1) of this
62 section does not apply after the termination of the COVID-19 state of emergency.

63 Section 3. This Act expires on the sixty-first day following the termination of the COVID-19 state of emergency,
64 unless terminated or extended by subsequent action of the General Assembly.

65 (1) For purposes of this Section, "COVID-19 state of emergency" means as defined in Section 2 of this Act.

66 (2) Within 7 days of the termination of the COVID-19 state of emergency, the Governor shall provide notice
67 of the termination to the Registrar of Regulations. The Registrar of Regulations shall publish the notice in the next
68 issue of the Register of Regulations.

SYNOPSIS

 This Act ensures that the consumer protections for Delawareans related to residential mortgage foreclosure put in place during the COVID-19 state of emergency do not cease immediately upon the lifting of the COVID-19 state of emergency, but instead continue for a short period of time during the COVID-19 recovery period. The COVID-19 recovery period runs until the sixty-first day following the termination of the COVID-19 state of emergency.

 This Act is intended to set the ceiling for what restrictions may be placed on residential mortgage foreclosures during the COVID-19 recovery period. This Act is written to give the Governor flexibility to carry out the legislative will of protecting Delawareans while not regulating property more than necessary given the market needs and conditions. If additional executive orders are issued to further ratchet down or slowly ease the transition back to normal operations, those are the protections that will be in effect during the COVID-19 recovery period.

 This Act sunsets on the sixty-first day following the termination of the COVID-19 state of emergency.

Author: Senator Lockman