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NEWSLETTER

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By now, most are aware that with the newly passed CARES act, foreclosures on federally-backed mortgages are on hold through at least May. Many are under the misimpression however, that foreclosures are uniformly halted for non-federally related mortgages as well.

Mortgage loans which are not federally-backed are not subject to the moratorium imposed by the CARES act, but are instead regulated at the state level through a piecemeal approach which varies greatly from state to state. Texas goes even further in this regard, leaving the decision to move forward with foreclosures to individual counties.

In Texas, the location of foreclosure proceedings is designated by each county's respective Commissioner's Court. Because Texas has not issued an outright ban on foreclosures statewide, the decision to hold foreclosure sales remains a discretionary judgment. For instance, due to social distancing precautions, Dallas County elected to cancel April's scheduled foreclosure sale. South of Dallas County however, the less populated Tyler County held their regularly scheduled monthly sale. Because the decisions to schedule foreclosure sales are based on changing public health concerns, the situation remains dynamic. These highly variable circumstances should be carefully monitored by lenders and servicers who wish to maximize foreclosure outcomes.

In rare circumstances, lenders and servicers may be at risk during such foreclosure cancelations because of Texas' four-year statute of limitations. In times past, parties who wished to foreclose during a similar shutdown would ordinarily lose this right if the statute ran during the shutdown period. However, new statutory rights have been afforded to lenders and servicers, granting them an unprecedented opportunity to minimize risk and extend the foreclosure limitations.

In 2014, the United States District Court for the Southern District of Texas held in *Callan v. Deutsche Bank Trust Company Americas* that Texas lenders had a unilateral right to rescission of acceleration. This landmark case granted lenders the ability to forestall the running of the usual four-year statute of limitations to initiate foreclosure proceedings set forth in *Tex. Civ. Prac. & Rem. § 16.035*. In June of 2015, the holding in *Callan* was codified as *Tex. Civ. Prac. & Rem. § 16.038*. It provides that "[i]f the maturity date of a series of notes or obligations or a note or obligation payable in installments is accelerated, and the accelerated maturity date is rescinded or waived in accordance with this section before the limitations period expires, the acceleration is deemed rescinded and waived and the note, obligation, or series of notes or obligations shall be governed by Section 16.035 as if no acceleration had occurred". Mortgage servicers with scheduled May 5th foreclosures in Texas counties may want to consider acceleration rescission as an option to extend their ability to enforce the rights of mortgage holders.