



MAY 18, 2020 UPDATE – PROCESS FOR COMPLYING WITH SOUTH CAROLINA SUPRME COURT ORDER TO RESUME FORECLOSURE HEARINGS, FORECLOSURE SALES, AND EVICTIONS ON MAY 15, 2020

After subsequent communications between our firm and several Equity Court Judges as well as reviewing the proposed Certification form with a highly-respected ethics law firm in South Carolina, the below/hyperlinked CARES Act Certification form will be used, beginning today (May 18, 2020), on all foreclosure cases in which we are instructed to proceed. With the extension of the foreclosure moratorium, excepting vacant or abandoned properties, for all Federally-backed loans until June 30, 2020, our firm will request written authorization for you, our valued clients, prior to proceeding with completing and filing the below/hyperlinked CARES Act Certification form. The process that our firm will follow to obtain this information from you is outlined in further detail below.

IMPORTANT NOTE-UPDATED (MAY 18, 2020): Our firm has a follow-up telephone conference call with representatives of Black Knight this morning (May 18, 2020), to discuss creating a South Carolina-specific process in Loansphere for tracking and compliance with the Foreclosure/Evictions Resumption Order. We will update you as we receive additional information.

[Updated CARES Act Certification Form - CLICK HERE](#)

MAY 13, 2020 UPDATE – PROCESS FOR COMPLYING WITH SOUTH CAROLINA SUPREME COURT ORDER TO RESUME FORECLOSURE HEARINGS, FORECLOSURE SALES, AND EVICTIONS ON MAY 15,

2020

Yesterday, the South Carolina Supreme Court issued the a revised CARES Act Certification form to be filed, in its substantive form, in all newly filed foreclosure cases and pending foreclosure cases, beginning on May 15, 2020. Our firm led the efforts to organize the state foreclosure bar to obtain this substantive revision and clarification from both the Equity Court Judges and the South Carolina Supreme Court as to substantive language to be included within the Court-mandated CARES Act Certification. After additional discussions with the state foreclosure bar and several Equity Court Judges, as well as receiving guidance from one of the top ethics counsel in South Carolina, the below, hyperlinked CARES Act Certification form, which complies in full with Rule 11(c) of the South Carolina Rules of Civil Procedure, will be used as further outlined below.

The key components of the CARES Act Certification to be substantively provided to the Equity Courts are whether subject mortgage loan is (1) not a Federally-backed loan or (2) a Federally-backed loan that is not currently on a CARES Act forbearance plan and confirming that the CARES Act foreclosure moratorium has expired, effective May 18, 2020. The process that our firm will follow to obtain this information from you, our valued clients, is outlined in further detail below. This information must be received prior to our execution of the CARES Act Certification form.

IMPORTANT NOTE: Our firm had a telephone conference call with representatives of Black Knight on May 5, 2020, to discuss creating a South Carolina-specific process in Loansphere for tracking and compliance with the Foreclosure/Evictions Resumption Order. Black Knight is currently reviewing, and we hope to receive a response as to its formal implementation very soon.

MAY 11, 2020 UPDATE – PROCESS FOR COMPLYING WITH SOUTH CAROLINA SUPREME COURT ORDER TO RESUME FORECLOSURE HEARINGS, FORECLOSURE SALES, AND EVICTIONS ON MAY 15, 2020

As outlined in our two (2) previous Eblasts below, the South Carolina Supreme Court, on April 30, 2020, issued **South Carolina Supreme Court Administrative Order 2020-04-30-02 (“Foreclosure/Evictions Resumption Order”)** which states that **Master-in-Equity courts statewide shall resume foreclosure hearings, foreclosure sales, and eviction actions beginning May 15, 2020.** Foreclosure referrals, first legals, etc. have continued to proceed since the March 18, 2020 moratorium, where permitted by the lender-servicer and the CARES Act. **Therefore, beginning May 15, 2020, the remainder of the foreclosure actions (orders of reference, hearings, and judicial sales) shall proceed.**

On May 6, 2020, the South Carolina Supreme Court issued a supplement to its previous

Foreclosure/Evictions Resumption Order which included Court-approved forms that comply in full with the CARES Act Certification requirement (see below for additional information regarding compliance with the CARES Act Certification requirement). Attached below/hyperlinked is the May 6th Order entitled, Supreme Court Administrative Order 2020-05-06-01.

The May 6th Order further states: “For evictions and foreclosures filed before the date of this Order, the Certification of Compliance must be submitted along with the initial filing. For evictions and foreclosures filed before the date of this Order, the Certification of Compliance must be filed with the court prior to proceeding with the eviction or foreclosure. If a party required to file a Certification of Compliance neglects to do so the eviction or foreclosure shall terminate without further action taken.”

Our firm led the efforts to organize the state foreclosure bar to obtain clarification from both the Equity Court Judges and the South Carolina Supreme Court as to the language included within the Court-mandated CARES Act Certification. As a result of those efforts, the revised CARES Act Certification has been approved by the Master-in-Equity Judges, effective immediately, for all pending foreclosure cases and foreclosure cases to be subsequently filed with the Court. We anticipate that the South Carolina Supreme Court/South Carolina Court Administration will officially publish this new certification form this week.

Additionally, for all foreclosure cases pending an executed foreclosure deed and/or third-party sale proceeds from the Equity Court as of March 18, 2020, the below/hyperlinked Post-Sale CARES Act Certification will be submitted to the Court in order for it to complete the foreclosure case.

Below is a synopsis of the process to ensure full compliance with this CARES Act Certification requirement.

CARES Act Certification - The Foreclosure/Evictions Resumption Order further states that the “judge shall require the person or entity pursuing eviction or foreclosure to certify in writing that the real estate at issue is not subject to the limitations and requirements of the CARES Act. If the real estate is subject to the restrictions of the CARES Act, the eviction or foreclosure proceeding shall terminate without any action taken.”

Beginning on Monday, May 18, 2020 (or earlier if the real estate is vacant/abandoned or the subject mortgage is not a Federally-backed loan) for all pending foreclosure actions and beginning immediately for all new foreclosure cases filed from today forward, our firm will request confirmation from you in writing as to whether the subject real estate/mortgage loan is on a CARES Act forbearance plan. Based on our receipt of that written confirmation from you, our firm will execute and file with the Court the attached below/hyperlinked “Certificate of Compliance with The Coronavirus Aid, Relief, and Economic Security Act”.

Although the case may be showing as “active” in your case management system (i.e., Loansphere, Tempo, etc.), we will still request confirmation from you in writing for each “active” case/referral before completing and filing with the Court the “Certificate of Compliance with The Coronavirus Aid, Relief, and Economic Security Act”. As consistent with certification requirements in previous Supreme Court Administrative Orders involving foreclosure actions, the foreclosure attorney may reasonably rely on information provided by the lender-servicer client to complete the certification

IMPORTANT NOTE: Our firm had a telephone conference call with representatives of Black Knight on May 5, 2020, to discuss creating a South Carolina-specific process in Loansphere for tracking and compliance with the Foreclosure/Evictions Resumption Order. Black Knight is currently reviewing, and we hope to receive a response as to its formal implementation very soon.

**UPDATE – PROCESS FOR COMPLYING WITH SOUTH CAROLINA SUPREME COURT
ORDER TO RESUME FORECLOSURE HEARINGS, FORECLOSURE SALES, AND
EVICTIONS ON MAY 15, 2020**

As outlined in our Eblast from May 1, 2020 below, the South Carolina Supreme Court, on April 30, 2020, issued South Carolina Supreme Court Administrative Order 2020-04-30-02 (“Foreclosure/Evictions Resumption Order”) which states that Master-in-Equity courts statewide shall resume foreclosure hearings, foreclosure sales, and eviction actions beginning May 15, 2020. Foreclosure referrals, first legals, etc. have continued to proceed since the March 18, 2020 moratorium, where permitted by the lender-servicer and the CARES Act. Therefore, beginning May 15, 2020, the remainder of the foreclosure actions (orders of reference, hearings, and judicial sales) shall proceed.

To ensure full compliance with the requirements of the Foreclosure/Evictions Resumption Order, our firm led the efforts to organize the state foreclosure bar for a telephone conference meeting on Friday (May 1, 2020), and based on that meeting, below is an outline of several important process changes to ensure full compliance with the Supreme Court’s mandates within the new Order:

1. **CARES Act Certification** - The Foreclosure/Evictions Resumption Order further states that the “judge shall require the person or entity pursuing eviction or foreclosure to certify in writing that the real estate at issue is not subject to the limitations and requirements of the CARES Act. If the real estate is subject to the restrictions of the CARES Act, the eviction or foreclosure proceeding shall terminate without any action taken.”

Beginning on Monday, May 18, 2020 (or earlier if the real estate is vacant/abandoned or the

subject mortgage is not a Federally-backed loan), our firm will request confirmation from you in writing as to whether the subject real estate/mortgage loan is on a CARES Act forbearance plan. Based on our receipt of that written confirmation from you, our firm will execute and file with the Court the attached below/hyperlinked “Certificate of Compliance with Administrative Order 2020-04-30-02”.

Although the case may be showing as “active” in your case management system (i.e., Loansphere, Tempo, etc.), we will still request confirmation from you in writing for each “active” case before completing and filing with the Court the “Certificate of Compliance with Administrative Order 2020-04-30-02”. As consistent with certification requirements in previous Supreme Court Administrative Orders involving foreclosure actions, the foreclosure attorney may reasonably rely on information provided by the lender-servicer client to complete the certification, and completing the certification does not heighten the foreclosure attorney’s Rule 11 standards and does not arise to the same standard as a sworn statement.

NOTE: Our firm has been in contact with Black Knight to discuss creating a South Carolina-specific process in Loansphere for tracking and compliance with the Foreclosure/Evictions Resumption Order. As we obtain additional information from Black Knight, we will continue to update you.

2. **Court-mandated Dismissal of any Foreclosure Case on a CARES Act Forbearance Plan** - The Foreclosure/Evictions Resumption Order further states “if the real estate is subject to the CARES Act, the eviction or foreclosure proceeding shall terminate without any action.” The phrase “terminate without any action” is being interpreted as meaning that any pending foreclosure case where the subject mortgage loan has been placed on a CARES Act forbearance plan must be dismissed without prejudice.

Once our firm confirms from you in writing that the COVID-19 or other CARES Act “hold” within your case management system means that the subject mortgage loan is on an active CARES Act forbearance plan, we will prepare and file with the Court a dismissal of the foreclosure case without prejudice, per the Foreclosure/Evictions Resumption Order. Attached below/hyperlinked are examples of a “Stipulation of Dismissal per Administrative Order 2020-04-30-02” and an “Order of Dismissal per Administrative Order 2020-04-30-02”, depending on the status of the foreclosure case.

NOTE: Our firm has been in contact with Black Knight to discuss creating a South Carolina-specific process in Loansphere for tracking and compliance with the Foreclosure/Evictions Resumption Order. As we obtain additional information from Black Knight, we will continue to update you.

3. **Notices of Foreclosure Hearing** – Per the Foreclosure/Evictions Resumption Order and the Supreme Court’s April 22, 2020 *Amended Order Regarding Operation of the Trial Courts During the Coronavirus Emergency*, foreclosure hearings may proceed either by video conference (i.e., WebEx), telephone conference, or in person, strictly subject to the “social distancing” mandates. The attendance preference required by the specific Master-in-Equity Court will be provided, along with dial-in instructions, within the Notice of Hearing.

Attached below/hyperlinked are three (3) Notice of Hearing examples as follows:

- a. Notice of Hearing for hearings to be conducted via telephone conference, which includes the telephone conference call-in number and password. The password will be changed for every county hearings block, and the password will be redacted (per Rule 41.2, SCRCP) within the Notice of Hearing that is filed with the Court.
- b. Notice of Hearing for hearings to be conducted via video conference (WebEx), which will include the WebEx meeting number and password, as provide by the Master-in-Equity Court. The password will be changed for every county hearings block, and the password will be redacted (per Rule 41.2, SCRCP) within the Notice of Hearing that is filed with the Court.
- c. Notice of Hearing for hearings to be conducted in-person, as the county courthouse. Per the Foreclosure/Evictions Resumption Order, the in-person Notice of Hearing will state that everyone attending the hearing must wear a mask or other facial covering.

As our valued clients, we will ensure that your interests are always protected and served in South Carolina. We will advise you as we learn additional information and obtain further clarification.

May 6th South Carolina Supreme Court Order (RE: Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act in Evictions and Foreclosures Forms)

CARES Act Certification Form (pending foreclosure cases and foreclosure cases to be filed)

CARES Act Certification Form (post-sale foreclosure cases pending foreclosure deeds/3rd party funds, as of 3/18/2020)

UPDATE – PROCESS FOR COMPLYING WITH SOUTH CAROLINA SUPRME COURT ORDER TO RESUME FORECLOSURE HEARINGS, FORECLOSURE SALES, AND EVICTIONS ON MAY 15, 2020

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1. CARES Act Certification - The Foreclosure/Evictions Resumption Order further states that the “judge shall require the person or entity pursuing eviction or foreclosure to certify in writing that the real estate at issue is not subject to the limitations and requirements of the CARES Act. If the real estate is subject to the restrictions of the CARES Act, the eviction or foreclosure proceeding shall terminate without any action taken.”

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