IN THE COURT OF APPEALS OF MARYLAND

FIFTH AMENDED ADMINISTRATIVE ORDER LIFTING THE SUSPENSION DURING THE COVID-19 EMERGENCY OF FORECLOSURES, EVICTIONS, AND OTHER EJECTMENTS INVOLVING RESIDENCES

WHEREAS, Pursuant to the Maryland Constitution, Article IV, § 18, the Chief Judge of the Court of Appeals is granted authority as the administrative head of the Judicial Branch of the State, including the closing of courts in the State of Maryland and non-court judicial facilities; and

WHEREAS, The Court of Appeals has approved Chapter 1000 of Title 16 of the Maryland Rules of Practice and Procedure setting forth the emergency powers of the Chief Judge of the Court of Appeals; and

WHEREAS, In instances of emergency conditions, whether natural or otherwise, that significantly affect access to or the operations of one or more courts or other judicial facilities of the State or the ability of the Judiciary to operate effectively, the Chief Judge of the Court of Appeals may be required to determine the extent to which court operations or judicial functions shall continue; and

WHEREAS, Due to the outbreak of the novel coronavirus, COVID-19, and consistent with guidance issued by the Centers for Disease Control and Prevention (CDC) and the Maryland Department of Health (MDH), an emergency exists for which measures continue to be required to mitigate potential for exposure for individuals visiting a court or judicial facility and judicial personnel; and

WHEREAS, The *Sixth Administrative Order Restricting Statewide Judiciary Operations Due to the COVID-19 Emergency*, filed November 24, 2020, authorizes the

courts' consideration or resolution of matters that can be addressed without a proceeding that involves testimony or argument; and

WHEREAS, The *Amended, Second, Third, and Fourth Amended Administrative Orders Lifting the Suspension During the COVID-19 Emergency of Foreclosures, Evictions, and Other Ejectments Involving Residences,* filed June 3, 2020, August 11, 2020, October 2, 2020, and November 12, 2020, lifted the judicial stay on foreclosures, evictions, and other ejectments involving residences effective July 25, 2020; and

WHEREAS, Foreclosures of residential properties, foreclosures of the rights of redemption of residential properties, executions on residential real property under levy or subject to a lien, and actions for possession (ejectments) of residential properties by ground lease holders present the strong likelihood of placing an undue burden on the defendant during the pendency of the emergency; and

WHEREAS, On March 18, 2020, the United States Department of Housing and Urban Development – Federal Housing Administration ("HUD-FHA"), the United States Department of Veterans Affairs ("VA"), the Federal Finance Housing Agency ("FHFA"), the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation "(Freddie Mac"), and the United States Department of Agriculture Rural Development ("USDA") each issued a separate moratorium to suspend foreclosures on residential property secured by mortgage loans backed, insured, or owned by these federal agencies or entities; and

WHEREAS, Some but not all of the moratoria issued by the federal agencies or entities include non-uniform exclusions of residential properties determined to be vacant or abandoned; and

WHEREAS, The federal moratoria initially were to expire on May 17, 2020, which deadline was extended through June 30, 2020, and then further extended; and

WHEREAS, An estimated 70% of residential mortgages are owned or backed by a federal agency; and

WHEREAS, Although the stay of all proceedings related to residential foreclosures imposed by the Administrative Orders was lifted on July 25, 2020, the determination as to whether a residential foreclosure is subject to a moratorium issued under federal or state authority is difficult, if not impossible, to ascertain from existing records,

NOW, THEREFORE, I, Mary Ellen Barbera, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Maryland Constitution, do hereby order this 24th day of November 2020, as follows:

Residential Evictions and Other Ejectments

(a) Any Complaint for Failure to Pay Rent (DC/CV082) filed from May 20, 2020, through August 24, 2020, must be accompanied by a Declaration of Compliance with the CARES Act; and

(b) The Declaration of Compliance certification shall be given in a form substantially similar to the Declaration of Compliance Form DC-CV113; and

(c) Except for those Landlord/Tenant matters to be heard in the District Court in Phases II and III as described in the Exhibit to the *Sixth Administrative Order Restricting Statewide Judiciary Operations Due to the COVID-19 Emergency,* filed November 24, 2020, the following shall apply, subject to any stay or moratorium imposed by law:

(1) for warrants of restitution issued by the courts and in effect on March 16, 2020, or where the time remaining for the filing of a petition for a warrant of restitution based on a judgment entered was at least one day and up to sixty days on March 16, 2020, sections (d) and (f) of the *Fifth Revised Administrative Order on the Emergency Tolling or*

Suspension of Statutes of Limitations and Statutory and Rules Deadlines Related to the Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters, filed November 24, 2020, (*Fifth Revised Order on Emergency Tolling or Suspension*) shall apply; and

(2) for petitions for a warrant of restitution pending or filed between March 16, 2020, and July 25, 2020, sections (h) and (i) of the *Fifth Revised Order on Emergency Tolling or Suspension* shall apply; and

(d) Unless prohibited by law, warrants of restitution are to be considered by the courts on a case-by-case basis; and

Residential Foreclosures

(e) In all actions to foreclose a lien on a residential property and in all actions to foreclose the right of redemption of a residential property after a tax sale that was initiated or pending during the emergency period, any party seeking to advance such an action on the basis that it is not then subject to a federal or state stay, moratorium, or forbearance shall file a verified Declaration of Exemption from Moratorium, setting forth facts to indicate:

(1) that the lien instrument is not owned, securitized, insured, or guaranteed by a federal agency or entity; and

(2) that the residential property is not subject to any federal or state moratorium or stay that restricts, in any way, an action to foreclose upon a lien on a residential property; and

(3) that the secured party is proceeding in compliance with all extant federal and state executive orders relating to the COVID-19 emergency with regard to residential foreclosures, including but not limited to forbearances; and

(4) the facts the secured party relies upon to support any claim that the lien is exempt from any moratorium or stay that may be in effect; and

(5) that the action may proceed; and

(f) The moving party must file an Amended Declaration of Exemption from Moratorium setting forth a material change in circumstance regarding the applicability of any stay or moratorium or requirement as described in Section (e) of this Order within fifteen days of such change; and

(g) To the extent that this Administrative Order conflicts with extant Administrative Orders, local judicial orders or memoranda, this Administrative Order shall prevail; and

(h) The *Fourth Amended Administrative Order Lifting the Suspension During the COVID-19 Emergency of Foreclosures, Evictions, and Other Ejectments Involving Residences*, filed on November 12, 2020, shall be and hereby is rescinded; and

(i) This Administrative Order will be revised as circumstances warrant.

/s/ Mary Ellen Barbera
Mary Ellen Barbera
Chief Judge
Court of Appeals of Maryland

Filed: November 24, 2020

/s/ Suzanne C. Johnson
Suzanne C. Johnson
Clerk
Court of Appeals of Maryland

Pursuant to Maryland Uniform Electronic Legal Materials Act (§§ 10-1601 et seq. of the State Government Article) this document is authentic.

Suzanne Johnson
2020-11-24
17:13-05:00

Suzanne C. Johnson, Clerk