



## Administrative Office of the Courts

FOR IMMEDIATE RELEASE

Aug. 2, 2021

Contact: Barry Massey, public information officer

[bmassey@nmcourts.gov](mailto:bmassey@nmcourts.gov)

505-827-4805; 505-470-3436

### **New court rules encourage mortgage servicers to work with borrowers to try to prevent foreclosures**

SANTA FE – The state Supreme Court today adopted rules to help New Mexicans facing the potential loss of their homes after the end of a federal foreclosure moratorium.

Under civil case procedures established by the rules, a foreclosing creditor cannot obtain a judgment against a homeowner until certifying that loan modification and "loss mitigation" negotiations were attempted with the borrower. Before the filing of a foreclosure case, the rules require that homeowners be given information about their loan and possible ways to avoid losing their house. The rules and related court forms become effective for cases filed on or after Sept. 7.

In a separate matter, the Court implemented a schedule for gradually lifting a suspension on consumer debt collection orders. Known as writs of garnishment and execution, the orders allow creditors to obtain a portion of a delinquent borrower's wages or to seize and sell certain personal property to repay a debt. State courts stopped issuing orders for debt collection in June 2020.

"We have reached a point in the COVID-19 pandemic where courts can normally process consumer debt cases and foreclosures in a fair and orderly manner," said Chief Justice Michael E. Vigil. "Today's orders by the Supreme Court balance the interests of economically distressed New Mexicans and their creditors, and will help courts cope with an expected increase in debt and foreclosure cases as pandemic-related consumer protections expire."

[Click here to view the orders, new rules and forms on the Supreme Court's website.](#)

### **FORECLOSURES**

The new rules require a notice to borrowers about loan modification and "loss mitigation" options before a foreclosure action can be filed in district court. These options could include forbearance agreements in which loan payments are suspended or reduced for a period of time. Additionally, homeowners must be provided with a list of resources where they can obtain help to avoid foreclosure, including legal services and possible financial assistance. The foreclosing

party must certify to the court that required information was provided. Later in the proceeding, before a court will enter a foreclosure judgment, a certification must be submitted about loss mitigation and loan modification negotiations with the borrower.

A federal foreclosure moratorium expired at the end of July, but the Federal Housing Administration announced last week that it was extending through Sept. 30 a moratorium on evictions for foreclosed borrowers living in federally insured, single-family properties.

## **CONSUMER DEBT**

With the economy rebounding from a downturn during the pandemic, courts will phase in the issuance of new debt collection orders based on when creditors obtained a judgment against a person owing them money. Older judgments will be addressed first by courts. The suspension on debt collection orders will be fully lifted on Feb. 1, 2022, when courts will issue writs of garnishment and execution in all cases regardless of when a creditor obtained a judgment.

Creditors will be required to file new applications for debt collection orders. Any applications pending when the suspension took effect last year are no longer valid.

Creditors can begin filing writ applications and courts will resume issuing debt collection orders according to the following schedule:

- Starting Sept. 1, 2021, for judgments entered in cases in 2016 or before.
- Beginning Oct. 1, for judgments filed in cases on or before Dec. 31, 2018.
- Effective Nov. 1, for judgments filed on or before Dec. 31, 2019.
- Effective Jan. 1, 2022, for judgments filed on or before Dec. 31, 2020.

The Court prepared its rules and orders after receiving recommendations earlier this summer from a committee of the Bankruptcy Section of the State Bar of New Mexico on issues that could arise when federal and state protections expire for people facing debt collections, foreclosure and eviction during the pandemic.

###