

S.333 Amendment Proposals

S.333, as passed the Senate, pauses all activity in foreclosure actions against all residential properties during the emergency period, the only exception being if a court agrees to act in the case of an emergency pursuant to Administrative Order 49:

- Subsection (c) – stays pending foreclosure actions
- Subsection (d) – new foreclosure actions may be commenced, but are immediately stayed
- Subsection (e) – a court cannot issue a new writ of possession in a foreclosure action
- Subsection (f) – a writ of possession already issued in a foreclosure action is stayed

Two proposals before H.GHMA raise the issue of whether S.333 should make an exception for unoccupied properties. The proposals differ in scope:

- **Proposal “1.A.”**, preferred by lenders, would create a broad exception, under which S.333 would not apply to unoccupied properties:
 - Subsection (c) would not apply = pending foreclosure actions could continue (including foreclosure sales and confirmations)
 - Subsection (d) would not apply = new foreclosure actions could be commenced and would not be stayed
 - Subsection (e) would not apply = a court could issue a new writ of possession
 - Subsection (f) would not apply = a writ of possession already issued would not be stayed
- **Proposal “1.B.”**, preferred by Vermont Legal Aid, would create a narrow exception, under which S.333 would apply to all foreclosure actions, except in the case of pending action against an unoccupied property already at or beyond of the point of a foreclosure sale
 - Subsection (c) = would stay all pending foreclosure actions, except:
 - Would not stay a foreclosure sale, motion for confirmation, or confirmation order, concerning
 - Unoccupied property

<u>Proposal</u>	<u>Original Source</u>	<u>Explanation</u>	<u>Language</u>
<p>Proposal 1.A. (Foreclosure actions; unoccupied property)</p>	<p>Marcotte amendment, as modified in “annotated” S.333</p>	<p>Currently S.333 defines “Foreclosure” to mean <u>all</u> foreclosure actions, regardless of whether a property is occupied. By excluding unoccupied properties from the definition of “Foreclosure,” S.333 would not apply to <u>any</u> foreclosure action that involves unoccupied property.</p>	<p>(a) <u>Definitions. As used in this section:</u> * * *</p> <p>(3) “Foreclosure” refers to an action brought under 12 V.S.A. chapter 172 against a dwelling house, as defined in 12 V.S.A. § 4931(2), <u>except that “Foreclosure” does not include an action in which the dwelling house is unoccupied.</u></p>
<p>Proposal 1.B. (Foreclosure actions; unoccupied property)</p>	<p>H.GHMA amendment 4/22/20, as proposed by VLA</p>	<p>Subsection (c) stays all pending foreclosure actions. This proposal makes an exception for <u>pending</u> foreclosure actions involving <u>unoccupied property</u>, at the point of a foreclosure sale or confirmation of a sale.</p>	<p>(c) <u>Pending foreclosure and ejectment actions.</u> (1) <u>Upon the effective date of this act, all pending actions for ejectment under 12 V.S.A. chapter 169, actions for foreclosure under 12 V.S.A. chapter 172, and any outstanding orders in those actions that could lead to execution of a writ of possession against a tenant or resident are stayed until the end of the emergency period, provided that this subsection does not stay a foreclosure sale, a motion for confirmation, or a confirmation order concerning an unoccupied property.</u></p>

Other Proposals

<p>Proposal 2 (Clarifying residents protected by eviction moratorium)</p>	<p>H.GHMA amendment 4/22/20, as proposed by stakeholders</p>	<p>Adds language in Sec. 1, subdivision (a)(2), to clarify that the term “ejectment” also refers to an action against a resident of a mobile home park.</p>	<p>(a) <u>Definitions. As used in this section:</u> * * * (2) <u>“Ejectment” refers to an ejectment action brought under 9 V.S.A. chapter 137 and 12 V.S.A. chapter 169 against the tenant of a residential dwelling unit, or under 10 V.S.A. chapter 153 against a mobile home park resident.</u></p>
<p>Proposal 3 (Clarifying the timing of new actions)</p>	<p>Marcotte amendment, as modified in “annotated” S.333</p>	<p>Adds language in Sec. 1, subsection (d), to clarify that a “new” action is an action that is filed (i) during the emergency period and (ii) after the effective date of this act. The purpose is to avoid any confusion about whether an action filed on or after March 13, but before the effective date of this act, is considered “pending” under subsection (c) or “new” under subsection (d).</p>	<p>(d) <u>New foreclosure and ejectment actions. During the emergency period, after the effective date of this act, a landlord may commence an ejectment action pursuant to 9 V.S.A. chapter 137 and 12 V.S.A. chapter 169, and a residential mortgage lender may commence a foreclosure action pursuant to 12 V.S.A. chapter 172, subject to the following:</u></p>