

COVID-19 UPDATE

Forbearance Eviction Provisions of the CARES Act

As part of the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act” or “CARES”), Congress has established mechanisms for mortgage forbearance, foreclosure and eviction related matters. The following is a summary of those mechanisms created by CARES and what actions other governmental authorities have taken with regard to housing issues caused by the COVID-19 emergency.

Section 4022. Foreclosure Moratorium and Consumer Right to Request Forbearance

This section of CARES applies to Federally backed mortgage loans, which includes any loan which is secured by a first or subordinate lien on residential real property designed for the occupancy of 1 to 4 families that is: (a) insured by the Federal Housing Administration under title II of the National Housing Act; (b) insured under section 255 of the National Housing Act; (c) guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992; (d) guaranteed or insured by the Department of Veterans Affairs; (e) guaranteed or insured by the Department of Agriculture; made by the Department of Agriculture; or (f) purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

During the covered period, which began upon the enactment of CARES and ends on the sooner of (a) termination of the national emergency related to COVID-19, or (b) December 31, 2020, a borrower with a Federally backed mortgage loan who is experiencing financial hardship due, directly or indirectly, to the COVID-19 emergency may request forbearance on said loan, regardless of delinquency status. The borrower may request forbearance by (a) submitting a request to its servicer and (b) affirming that the borrower is experiencing a financial hardship because of the COVID-19 emergency. Upon request, such forbearance shall be granted for up to 180 days with the option to extend for an additional period of 180 days at the request of borrower, provided that at the borrower may request the forbearance period be shortened.

During the period of forbearance, no fees, penalties or interest, beyond the amounts scheduled as if the borrower made all contractual payments, shall accrue on borrower’s account. Upon receipt of a request for forbearance, the servicer shall, with no additional documentation other than borrower’s attestation of financial hardship and with no fees, penalties or interest, provide the requested forbearance.

Additionally, with the exception of vacant or abandoned property, the servicer of a Federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure processes, move for a foreclosure judgment or order the sale of, or execute a foreclosure-related eviction or foreclosure sale for at least a 60 day period beginning March 18, 2020.

Section 4023. Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans

During the covered period, a multifamily borrower with a Federally backed multifamily mortgage loan, being a loan (a) secured by a lien on a residential multifamily real property designed for occupancy of 5 or more families and (b) insured, guaranteed, supplemented or assisted by any officer or agency of the Federal government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, experiencing financial hardship due to the COVID-19 emergency may request a forbearance. Such request may be made by a multifamily borrower, who was current on its payments as of February 1, 2020, orally or in writing, by affirming its financial hardship,

Upon receipt of borrower's request, the servicer shall: (a) document the financial hardship; (b) provide forbearance for up to 30 days; and (c) extend the forbearance for up to 2 additional 30 day periods upon borrower's request. A multifamily borrower shall have the option to discontinue forbearance at any time.

A multifamily borrower that receives forbearance, may not: (a) evict or initiate eviction of a tenant on the applicable property solely for nonpayment of rent or other fees; (b) charge any late fees, penalties or other charges to a tenant for late payment of rent; (c) require tenant to vacate an applicable property before the date that is 30 days after borrower provides tenant notice to vacate; and (d) may not issue a notice to vacate, under (a) above, until after expiration of the forbearance.

Section 4024. Temporary Moratorium on Eviction Filings

For 120 days, starting on the date of enactment of CARES, the lessor of a covered dwelling may not, (a) make any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling for nonpayment of rent or other fees or charges or (b) charge fees, penalties or other charges to a tenant related to such nonpayment of rent.

A covered dwelling means a dwelling that is (A) occupied by a tenant (i) pursuant to a residential lease or (ii) without a lease or with a lease terminable under state law and (B) is on a covered property. A Covered property is a property that (A) participates in (i) covered housing program (pursuant to section 41411(a) of the Violence Against Women Act) or (ii) the rural housing voicer program under section 542 of the Housing Act of 1949 or (B) has a (i) federally backed mortgage loan or (ii) Federally backed multifamily mortgage loan.

The lessor of a covered dwelling may not require a tenant to vacate a covered dwelling for 30 days after the date on which lessor provides the tenant with a notice to vacate. Further, lessor may not issue a notice to vacate during the 120 day period referenced above.

Additional Governmental Agency Action

Per a March 18, 2020 release, the Federal Housing Finance Agency ("FHFA") has directed Fannie Mae and Freddie Mac to suspend foreclosures and evictions for at least 60 days due to the COVID-19 emergency. Such suspension applies to homeowners with a single family mortgage backed by either Fannie Mae or Freddie Mac. Additionally, FHFA has called for Fannie Mae and Freddie Mac to provide payment forbearance for up to 12 months due to hardships caused by COVID-19.

In a subsequent release by FHFA on March 23, 2020, the FHFA announced that Fannie Mae and Freddie Mac will offer multifamily property owners mortgage forbearance on the condition that they suspend all evictions for renters unable to pay rent due to the impact of COVID-19. Such eviction suspension shall last for the duration of any

forbearance for the property owner. This forbearance option is available for all multifamily properties with Fannie Mae or Freddie Mac multifamily mortgage affected by the COVID-19 emergency.

A second March 23, 2020 release highlighted the FHFA's authorization of Fannie Mae and Freddie Mac to enter into additional dollar roll transactions. Per the release, a "dollar roll transaction" provides mortgage-backed securities investors with short-term financing of their positions, providing liquidity to such investors.

On April 15, the FHFA and the Consumer Financial Protection Bureau announced ("CFPB") announced a joint Borrower Protection Program which enables the FHFA and CFPB to share servicing information to protect borrowers during COVID-19 emergency. Under the program, the CFPB makes complaint information and other tools available to the FHFA and the FHFA will make available to the CFPB information about forbearances, modifications and other loss mitigation initiatives undertaken by Fannie Mae and Freddie Mac.

The CFPB has taken steps to protect and assist consumers such as "making it easier for consumers to receive pandemic-relief payments; informing consumers about their options as it relates to mortgage forbearance; ensuring consumers will be able to continue to send remittance transfers without disruption; releasing a policy statement outlining the responsibility of credit reporting companies and furnishers; and, providing needed flexibility to enable financial companies to work with customers in need."

Michigan Specific Actions

In addition to actions taken by Congress and federal agencies, 36th District Court Chief Judge William McConico issued an order, effective March 16, 2020, putting a moratorium on evictions in the City of Detroit during the COVID-19 outbreak. At the state level, on March 20, 2020 Governor Whitmer, citing the need for citizens to self-quarantine and self-isolate, signed Executive Order 2020-19 preventing any person from "remov[ing] or exclud[ing] from a leased residential premises or residential premises held under an forfeited executory contract a tenant, vendee of a forfeited executory contract or a person holding under a tenant or vendee" with the exception of people who pose a substantial risk to another person or an imminent and severe risk to the property. These restrictions include the a stay on denying a mobile home owner to their mobile home, except when such tenancy has been terminated due to the home owner posing a substantial risk to another person or an imminent and severe risk to property. Executive Order 2020-19 became effective immediately upon the Governor's release and continues through April 17, 2020 at 11:59 PM. Through Executive Order 2020-54, Executive Order 2020-19 has been rescinded and all protections listed above have been extended until May 15, 2020 at 11:59 PM.

For questions, please reach out to:

Max Mittleman
248.727.1479
mmittleman@jaffelaw.com



The foregoing is only a general summary and is being provided with the understanding that Jaffe Raitt Heuer & Weiss, P.C. is not rendering legal, tax or other professional advice, positions or opinions on specific facts or matters and, therefore, assumes no liability whatsoever in connection with its use.