

March 26, 2020 | COVID-19, Insights, Litigation & Dispute Resolution, Real Estate

Coronavirus Stimulus Bill Allows Forbearances and Temporarily Prohibits Foreclosures and Evictions on Properties with Federally Backed Mortgages

By: Rich May

Update 3/27/20: the CARES Act passed without any substantive changes affecting the below summary, only procedural changes relating to government oversight in its implementation. The final text of the Act can be found [here](#).

Late on the night of March 25, 2020, in response to the ongoing Coronavirus (COVID-19) Pandemic, the U.S. Senate passed the [883-page](#) CARES Act (the Coronavirus Aid, Relief, and Economic Security Act). The House of Representatives is expected to take up the bill on Friday.

While much attention in the \$2 trillion stimulus bill is focused on the [relief to American businesses and individuals](#), buried towards the end of the Act is a temporary moratorium on foreclosures and evictions of properties that have federally backed mortgage loans. It is estimated that the federal government invests in or insures over 90 percent of mortgages in the United States. Therefore, if these provisions become law they will have a significant impact on tenants, homeowners, landlords, and mortgage lenders across the country.

Borrower's Right to Request a Forbearance

The CARES Act Section 4022 provides that the owner of a 1 to 4 unit property with a "federally backed mortgage loan" may request forbearance by submitting a request to the borrower's servicer and affirming financial hardship directly or indirectly due to the COVID-19 emergency. The servicer cannot request any other documentation. A forbearance must be granted for up to 180 days and extended for an additional period of up to 180 days at the request of the borrower, though the initial or extended forbearance may be shortened at the request of the borrower. During the forbearance period, no interest, penalties, or fees may accrue beyond the amounts scheduled or calculated as if the borrower had made all payments in accordance with the terms of the mortgage contract.

Similarly, the CARES Act Section 4023 allows owners of multifamily homes (5 or more units) encumbered by a federally-backed multifamily mortgage loan to request forbearance



Related Services

[Commercial Real Estate](#)

[Litigation & Dispute Resolution](#)

for up to 30 days, with two additional 30-day extensions, if they are experiencing financial hardship due to the Coronavirus Pandemic. However, unlike with owners of 1 to 4 family properties, a multifamily owner/borrower must have been current on their payments as of February 1, 2020 in order to qualify for this relief. For the duration of the forbearance, multifamily borrowers may not evict or initiate the eviction of a tenant on the applicable property solely for nonpayment of rent or other fees. The multifamily borrower also cannot charge late fees or penalties for the same.

Moratorium on Residential Foreclosures

The CARES Act Section 4022 also prohibits the servicer of a “federally backed mortgage loan” from initiating any foreclosure process, moving for a foreclosure judgment or order of sale, or executing a foreclosure-related eviction or foreclosure sale for at least 60 days beginning on March 18, 2020. Vacant or abandoned properties are expressly excluded from this provision and foreclosures on such properties may continue.

This foreclosure prohibition only appears to cover residential properties (1 to 4 units). The Act in its current form, does not appear to have any similar prohibition against foreclosures of “federally backed multifamily mortgage loans” (5 or more units).

Eviction Moratorium

The CARES Act Section 4024 places a 120 day moratorium on evictions from the date of the enactment of the Act. Specifically, landlords cannot bring eviction actions to recover possession from tenants for nonpayment of rent or other fees, and landlords may not charge fees or penalties for nonpayment of rent. The landlord may not require a tenant to vacate before 30 days after the date on which notice to vacate is provided, and may not issue a notice to vacate until after the 120 day period described above.

The eviction moratorium applies to properties with either a “federally backed mortgage loan” or a “federally backed multifamily mortgage loan,” meaning residential properties of all sizes.

Definition of Federally-Backed Mortgages

As used above in Sections 4022-4024, the terms “federally backed mortgage loan” and “federally backed multifamily mortgage loan” as used above are defined broadly. In general, these terms refer to any mortgage insured, guaranteed, supplemented, protected, or assisted in any way by the US Department of Housing and Urban Development (HUD), Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994. Contact a Rich May attorney for further details on whether a mortgage qualifies as “federally-backed.”

Massachusetts Legislation

We previously wrote about [proposed legislation in Massachusetts](#) which would halt evictions and foreclosures. However, Massachusetts lawmakers appear to have shifted their focus instead toward drafting legislation that would provide a “crucial safety net” for

tenants and homeowners who are impacted by the Coronavirus pandemic. Ultimately, there is a de facto pause on evictions because the Massachusetts courts are effectively closed through April 21, 2020, such that no eviction cases (except for emergency matters) can proceed. Existing state law also provides a 90-day cure period for mortgage payment defaults.

Conclusion

If signed into law, the CARES Act will effectively halt the vast majority of foreclosures and evictions, and servicers will likely see many forbearance requests. It is anticipated that the CARES Act will be passed by the House of Representatives on Friday, March 27, 2020, however, it is possible that these provisions will undergo changes. Rich May will continue to monitor this and other legislative developments and provide further updates that may be relevant to our clients and community.

Anyone with questions can contact Rich May, P.C. attorneys [Nathaniel Donoghue](#) and [Jeff Loeb](#).

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Nathaniel Donoghue.