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CARES Act Summaries - Mortgages

The Act includes three general requirements: (1) servicers of Federally Backed Mortgages Loans must grant forbearances to borrowers who suffer financial hardship as a result of COVID-19; (2) servicers may not initiate or prosecute foreclosure proceedings on any such borrowers until May 17, 2020; and (3) landlords may not evict their tenants in properties secured by Federally Backed Mortgages Loans until May 17, 2020.

A “**Federally Backed Mortgage Loan**” includes any first or subordinate liens on residential properties (four or fewer families) or multi-family properties (five or more dwelling units), which are:

- Insured by the FHA under Title II of the National Housing Act;
- Insured under Section 225 of the National Housing Act;
- Guaranteed under Section 184 or 184A of the Housing and Community Development Act;
- Guaranteed or insured by the Department of Veterans of Affairs;
- Guaranteed, insured or made by the Department of Agriculture;
- Purchased or securitized by Freddie Mac or Fannie Mae;
- Or, for multi-family borrowers, “made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, 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 [Freddie Mac or Fannie Mae].”

Forbearances

Request Procedure for Single-Family Borrowers: A borrower with a Federally Backed Mortgage Loan may request a forbearance by: (1) submitting a request to their servicer; and (2) affirming that they are experiencing a financial hardship during the “COVID-19 Emergency” (that national emergency declared by the President on March 13, 2020). The Act does not specify if the request must be written, or if it may be oral. Other than the

affirmation, the servicer cannot require the borrower to provide any additional documentation further to the forbearance request. Upon receiving such a request, a servicer *must* grant the forbearance.

Request Procedure for Multi-Family Borrowers: The same requirements apply to multi-family borrowers, with a few additional/revised requirements. As a condition prerequisite to any forbearance request, a multi-family borrower must have been current on payments as of Feb. 1, 2020. A multi-family borrower has the option of making an *oral or written* forbearance request. If the borrower makes an oral request, the servicer must “document the financial hardship.”

Length of Forbearance for Single-Family Borrowers: The length of the forbearance is dictated by the borrower’s request. An initial forbearance may not last longer than 180 days, but it must be extended by the second 180-day period if a borrower so requests. The Act makes explicit that a borrower can request a shorter forbearance.

Length of Forbearance for Multi-Family Borrowers: The forbearance period is shorter for multi-family borrowers. A forbearance may not last longer than 30 days, though it must be extended twice, each time by 30 additional days, if the borrower so requests. Any additional request must be made during the “Covered Period” (see below) and at least 15 days prior to the end of the current forbearance period. Additionally, multi-family borrowers may discontinue a forbearance at any time.

Accrual of Interest and Imposition of Fees and Penalties: During a forbearance under the Act, the accrual of interest and the imposition of fees and penalties are allowed, but only so long as they are consistent with the existing loan documents. No *additional* interest, fees or penalties are permitted. Thus, any forbearance agreement that contemplates additional fees, penalties or interest would be violative of the Act and, for that reason, unenforceable.

Timeframe: The phrase “Covered Period” is undefined in the section of the Act relating to residential borrowers. It



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is defined, however, in the section relating to multi-family borrowers as the period between the enactment of the Act and the earlier of: (1) the end of the national emergency; or (2) Dec. 31, 2020. A best, reasonable reading is that this is also the definition of the “Covered Period” applicable to residential borrowers.

Moratorium on Foreclosures and Evictions

Foreclosures: Foreclosures are barred during the pertinent time period noted below. Specifically, a servicer may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or sale.

Exception: A servicer may foreclose on a vacant or abandoned property.

Evictions: Multi-family borrowers that receive a forbearance under this section of the Act may not evict, or even initiate an eviction, of a tenant solely for non-payment of rent or other fees or charges. There is no bar to evicting tenants for any other reason. However, a landlord may not require a tenant to vacate without first giving 30 days’ notice, which 30-day period cannot begin until after the expiration of the forbearance.

Timeframe: This moratorium lasts from March 18, 2020 through May 17, 2020.