

Client Alert

April 2020

CARES ACT: Forbearance of Federally Backed Multifamily Mortgage Loan Payments and Temporary Moratorium on Eviction Filings

The widespread economic disruptions caused by the novel coronavirus (COVID-19) have left many residential tenants nationwide struggling to make rental payments, and, in turn, their landlords may also be struggling to make mortgage loan payments. In its sweeping stimulus act, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), signed into law by President Trump on March 27, 2020, Congress provided some relief to multifamily borrowers and tenants.

Under Section 4023 of the CARES Act (Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans), borrowers with a federally backed multifamily mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request a forbearance of mortgage loan payments during the “covered period.” The covered period begins on the date of enactment of the act (March 27, 2020) and ends on the earlier of the termination of the COVID-19 emergency or December 31, 2020. “Federally backed multifamily mortgage loans” include loans (other than temporary financings such as construction loans) (i) secured by a first or subordinate lien on residential multifamily real property designed for 5 or more families and (ii) made, insured, guaranteed or assisted by HUD, or purchased or securitized by Fannie Mae or Freddie Mac. To qualify, the multifamily borrower must be current on its debt service payments as of February 1, 2020.

The borrower must submit either an oral or written request for forbearance to its loan servicer affirming that it is experiencing a financial hardship during the COVID-19 emergency. While the CARES Act does not contain further guidance regarding how a borrower must demonstrate financial hardship, Fannie Mae has issued guidance for lenders addressing the CARES Act and borrower requests for forbearance related to COVID-19.¹ The guidance, which is similar to the forbearance provisions in the CARES Act, authorizes lenders to enter into forbearance agreements with borrowers if certain requirements are met, including the execution of a pre-negotiation letter with the borrower and Fannie Mae. Under Fannie Mae’s guidance, lenders are required to conduct due diligence and obtain proof of a borrower’s financial hardship. Freddie Mac has also issued similar guidance.² Freddie Mac’s guidance requires borrowers to submit a hardship letter explaining their circumstances and to attach a tenant delinquency and forbearance report demonstrating the effect of the COVID-19 emergency on the property’s operation and performance. Freddie Mac has developed a standard, non-negotiable forbearance agreement. The guidance requires borrowers to comply with all other terms and conditions of the loan documents and all laws, rules, regulations and requirements of any governmental authority having jurisdiction over the property. Therefore, borrowers must continue to pay all taxes and any insurance premiums required under the terms of their loan documents.

Upon receipt of a request for forbearance from a multifamily borrower, a loan servicer is required to provide a forbearance for up to 30 days and extend the forbearance period for up to two additional 30-day periods upon the request of the borrower, provided that a request for an extension is made (i) during the

¹ Available at https://mfguide.fanniemae.com/node/14026?view=recent_guide_communication.

² Available at <https://mf.freddie.mac.com/COVID-19/>.

covered period and (ii) at least 15 days prior to the end of the forbearance period. The borrower may discontinue the forbearance at any time.

During the forbearance period, the borrower may not (i) evict any tenants solely for nonpayment of rent or other fees or charges; (ii) charge any fees, penalties or other charges for late payment of rent; or (iii) vacate tenants without providing at least 30 days' notice to vacate, and such notice may not be issued until after the expiration of the forbearance period.

A related provision of the act, Section 4024 (Temporary Moratorium on Eviction Filings), provides a temporary moratorium on evictions of tenants living in multifamily and single-family properties with federally backed mortgages. Pursuant to Section 4024, during the 120-day period beginning on March 27, 2020, lessors of such properties may not evict tenants of a covered dwelling for nonpayment of rent, or charge fees, penalties or other charges related to such nonpayment of rent. In addition, lessors may not vacate tenants of covered dwellings without providing at least 30 days' notice to vacate, and such notice to vacate may only be issued after the expiration of the 120-day moratorium on evictions. Importantly, the eviction moratorium in Section 4024 applies to lessors regardless of whether a lessor participates or applies for a forbearance of its mortgage loan payments under Section 4023. Lessors should also be aware that certain state and local laws may provide for additional restrictions on tenant evictions during the COVID-19 emergency.

Please feel free to contact us with any questions regarding the CARES Act. Please also visit our [Coronavirus \(COVID-19\) Resource Center](#).

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