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Insights

FREDDIE MAC AND FANNIE MAE ADDRESS COVID-19 THROUGH MULTIFAMILY BORROWER RELIEF PROGRAMS

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SUMMARY

As the coronavirus and COVID-19 crisis continues to develop in the United States, Freddie Mac Multifamily ("Freddie Mac") and Fannie Mae have responded quickly to assist impacted borrowers, properties and their tenants. Both government agencies have a strong history of providing forbearance relief to their borrowers during periods of crisis and adopted similar programs immediately after Hurricane Harvey, Florence and Michael. Unlike the Hurricane Disaster Relief programs, the COVID-19 Relief programs are not restricted by FEMA designated affected counties, but rather are available to all borrowers who can demonstrate hardship as a consequence of the COVID-19 pandemic. This relief furthers the growing trend of governmental action providing temporary protections of tenancies at the national, state and local level.

Freddie Mac and Fannie Mae have implemented programs to offer forbearance for any loans secured by real property affected by the economic and regulatory impacts of COVID-19. Generally, a loan must be otherwise in good standing to be eligible for such relief. If forbearance is granted, certain monthly payment obligations will be postponed and the lender will not exercise rights and remedies in connection with any missed payments due to COVID-19 during the forbearance period. Under the forbearance program, a borrower must not evict a tenant as a result of such tenant's hardship resulting from the COVID-19 pandemic.

We anticipate that Freddie Mac and Fannie Mae, directly and through their primary and master servicers, will receive numerous relief requests which will be difficult to deny with a reasonable demonstration of hardship during this emergency.

Overview of Freddie Mac Multifamily Program

- The Freddie Mac Multifamily Program covers any loan for which the borrower demonstrates hardship that it and its tenants face as a consequence of the COVID-19 emergency.

- The pre-approved forbearance period is for up to ninety days (three (3) consecutive monthly payments).
- Monthly installments of interest, principal, impounds, and reserves will be postponed. Associated late charges and default interest will be waived.
- Borrowers must agree that during the forbearance period, it will not evict a tenant based solely on non-payment of rent occurring as a consequence of the COVID-19 emergency, whether it is caused by illness, job loss, reduced hours, temporary unpaid leave, or other similar circumstance.
- Borrowers must agree to a release of any claims it may have against the lender for any adverse effects on the borrower or the property arising out of or relating to the eviction restriction.
- Borrowers will be required to repay the missed payments over a 12-month period.
- Provided Borrowers are in compliance with the terms of the forbearance agreement, the loans will not be transferred to the special servicer during the forbearance period.
- Borrowers must use Freddie Mac's standard, non-negotiable form of forbearance agreement.
- Freddie Mac will reimburse servicers up to $750 for the completion of each forbearance agreement.

Overview of Fannie Mae Multifamily Program

- The Fannie Mae Multifamily Program covers any loan for which the borrower demonstrates a negative impact from the COVID-19 emergency. In order to approve a request for forbearance the servicer must certify to Fannie Mae, among other things, that the relief granted to the Borrower is necessary.
- Borrowers must suspend all evictions of tenants who have been financially impacted by COVID-19 for the longer of (i) 90 days after the date the forbearance becomes effective, or (ii) until the loan is brought current. Additionally, the borrower must permit affected tenants to repay missed rent payments over a period of no more than 12 equal monthly installments, without late charges, together with the affected tenant's regular monthly rent.
- The pre-approved forbearance period is up to three consecutive months, beginning with the first missed monthly payment, provided such missed payment does not occur prior to April 1, 2020.
- Monthly payments under the promissory note will be postponed.

- The Loan must be brought current within the earlier of (i) 12 months after the end of the forbearance period, or (ii) borrower's receipt of Business Income insurance proceeds or proceeds from any other assistance or relief program, as applicable.
- Fannie Mae is waiving late charges it is entitled to and is encouraging servicers to waive late charges.
- Fannie Mae will refrain from taking any adverse action against the borrower during the forbearance period to give the borrower time to determine the status of the property and operations (including the status and amount of any insurance claims).
- Borrowers must use Fannie Mae's standard, non-negotiable form of forbearance agreement. Prior to negotiations, Fannie Mae is requiring a pre-negotiation letter.
- Generally, the legal fee to be paid by the Borrower will be a flat fee of $750.

One of the primary goals of the above forbearance relief programs is to allow adequate time for the thousands of multifamily property owners to determine the extent to which COVID-19 will affect their properties and operations. Property owners may find themselves navigating complex and congested business income insurance coverage issues. Servicers should consider taking inventory of the existing insurance on affected properties, as well as its rights and responsibilities under the loan documents with respect to such claims.

Additionally, due to local "Stay at Home" orders and general social distancing practices, most borrowers are not in a position to comply with inspection requirements and the servicers are in the process of deferring inspection requirements for certain properties. Borrowers are encouraged to contact their servicers.

In order to expedite any request for a forbearance under the above programs, Borrowers should submit a written response to their loan servicer and include the following additional information: (i) a hardship letter, explaining the tenant profile and current or anticipated inability to pay, (ii) occupancy statistics for the property, (iii) a rent roll report identifying delinquent tenants (if available), and (iv) any other information relevant to a COVID-19 forbearance analysis.

For more information about this alert, please contact Tia Cottey in our Phoenix office (tia.cottey@bclplaw.com, 602-364-7012), Paul Donohue in our Charlotte office (paul.donohue@bclplaw.com, 704-749-8949), or Amy Simpson in our Dallas office (amy.simpson@bclplaw.com, 214 721 8043).

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