

Insights

U.S. COVID-19: THE CARES ACT - FORBEARANCES AND MORATORIUMS RELATING TO RESIDENTIAL PROPERTY

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The Coronavirus Aid, Relief, and Economic Security, or “**CARES Act**”—the third emergency bill that Congress has prepared in response to the Coronavirus (COVID-19) pandemic—was signed into law Friday, March 27, 2020. Bryan Cave Leighton Paisner lawyers have been analyzing the law and have put together some highlights on the possible impact of the CARES Act and how it may affect residential real estate.

Sections 4022, 4023 and 4024 of the CARES Act modify the relationship between renters, borrowers and lenders for certain residential properties that have a sufficient nexus with federal programs. Most importantly, the CARES Act provides certain borrowers with forbearances on loan payments and a moratorium on foreclosures and provides certain renters with forbearances on rent payments and a moratorium on evictions.

Relief for Residential Borrowers with “Federally Backed Mortgage Loans”

Relief for 1-4 family properties (Section 4022):

The CARES Act includes a blanket moratorium (except with respect to a vacant or abandoned property) on servicers of 1-4 family FMBLs initiating, moving for judgement on or executing a foreclosure for 60 days beginning on March 18, 2020.

In addition to the foreclosure moratorium, the CARES Act provide residential borrowers with certain federally backed mortgage loans (“**FBML(s)**”) who are experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency, the right to request forbearance of an FBML.

- **Who may apply?** Any borrower, regardless of delinquency status
- **How to apply?** By submitting a request to the borrower’s servicer affirming that the borrower is experiencing a financial hardship due to the COVID-19 emergency. **For 1-4 family properties the servicer is required to provide the forbearance without any documentation other than borrower’s attestation**

- **Forbearance Duration?** Up to 180 days with a right to extend for an additional 180 days (and the borrower may shorten the period at its option at any time)
- **Effect of Forbearance?** During the forbearance, no fees, penalties or interest (other than regularly scheduled interest) will accrue on the borrower's account

Relief for 5 or more family properties (Section 4023):

While there is no foreclosure moratorium for multifamily borrowers, the right to request forbearance of an FBML is available.

- **Who may apply?** Only borrower's whose loan was current as of February 1, 2020
- **How to apply?** By submitting a request to the borrower's servicer affirming that the borrower is experiencing a financial hardship due to the COVID-19 emergency
- **Forbearance Duration?** Up to 30 days with a right to extend for two additional 30 day periods, provided extension requests must be made at least 15 days prior to the end of the current forbearance period (and the borrower may shorten the period at its option at any time)
- **Effect of Forbearance?** The multifamily borrower section does not speak expressly to the effect, but it is likely it will be treated the same as under the 1-4 family program, i.e. no accruals other than regularly scheduled payments
- **Additional Restrictions on multifamily borrowers?**
 - Borrower may not evict (or initiate an eviction) or charge late fees or penalties solely for the nonpayment of rent or other fees or charges for the duration of the forbearance
 - Borrower may not issue a notice to vacate for the duration of the forbearance
 - Borrowers may not require a tenant to vacate until 30 days after the issuance of a notice to vacate

Moratorium on Residential Evictions

Under the CARES Act (Section 4024) Section 4024, lessors of "covered dwellings" may not:

- Make any filing with a court to initiate an action to recover possession of any covered dwelling from a tenant for the nonpayment of rent or other fees or charges (or charge late fees or penalties in respect of nonpayment) During the 120 days after the enactment of the CARES Act
- Issue a notice to vacate During the 120 days after the enactment of the CARES Act

- Require a tenant to vacate the covered dwelling until 30 days after the issuance of a notice to vacate

The devil may be in the details and affected parties will likely focus on what counts as a “covered dwelling” under the law. Generally any residential building that either (i) has an FBML, (ii) participates in a covered housing program (as defined in the Violence Against Women Act), or (iii) participates in the rural housing voucher program (pursuant to the Housing Act) should be covered.

Scope of Relief Programs

As with many of the programs created or amplified by the CARES Act, the ability for business or individuals to apply for relief is of a limited duration. For example loan forbearances may only be requested until the earlier of (i) the termination of the COVID-19 national emergency or (ii) December 31, 2020.

Furthermore, there are restrictions on the scope of the CARES Act programs (e.g. for 1-4 family borrowers, only specific government programs qualify loans as FBMLs whereas for multifamily borrowers any loan that is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by and officer or agency of the Federal Government qualifies) and various exceptions to the program (e.g. for multifamily borrowers “temporary financings such as construction loans” do not qualify as FBMLs).

Next Steps for Affected Parties

Players in the residential real estate space should continue to follow developments as the relevant agencies promulgate guidance (see e.g. [FreddieMac Covid19 Guidance](#)) and contact their attorneys and advisors as needed as interpretive norms continue to develop regarding the gaps and ambiguities in the CARES Act (e.g. how deferred payments are ultimately to be treated).

Additional CARES Act Information

Bryan Cave Leighton Paisner’s legislative affairs team has provided an overview of the CARES Act and other congressional emergency measures [here](#). Two alerts that provide an in-depth look at CARES Act provisions relevant to lenders are available [here](#) and [here](#) and a legislative overview of the CARES Act tax provisions can be found [here](#). The firm’s continuing analysis of COVID-related legal issues is housed [here](#).

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