

Foreclosure and Forbearance Under the CARES Act

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The CARES Act, which became law on March 27, 2020, imposes important restrictions on foreclosure activity by servicers of federally-backed mortgage loans.

It also grants expansive rights to borrowers to seek forbearance of their loans for the next 12 months. Here are the key takeaways:

Foreclosure Moratorium

The foreclosure moratorium applies to all federally-back mortgage loans securing residential real property. These include mortgages and deeds of trust purchased by Fannie Mae and Freddie Mac, insured by HUD, the VA, or the USDA, or directly made by the USDA.

The moratorium runs to May 18, 2020. During that time, a servicer of a federally-back mortgage loan cannot (1) initiate a judicial or non-judicial foreclosure, (2) notice and conduct a foreclosure hearing, or (3) conduct a foreclosure sale or execute a foreclosure-related eviction. The Act does not exempt foreclosure proceedings commenced before its enactment.

Forbearance Rights

Borrowers with a federally-back mortgage loan may contact their servicer and request forbearance if they are experiencing financial hardship due to the COVID-19 emergency. The hardship can be direct or indirect and forbearance can be requested regardless of delinquency status. Proof of hardship is based solely on an attestation from the borrower. A servicer cannot require additional documentation.

The Act states the forbearance "shall" be granted for up to 180 days and "shall" be extended at borrower's request for an additional 180 days. During the forbearance period, the servicer cannot charge or collect any fees, penalties, or interest beyond what could be charged if the borrower made all payments timely.

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