

The Federal Foreclosure Moratorium is Extended

May 27, 2020

Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, PL 116-136, enacted March 27, 2020, a federally backed mortgage loan was subject to a foreclosure moratorium from March 18, 2020, through May 17, 2020. That moratorium has expired, and there is no federal legislative prohibition on foreclosures.

However, agencies have taken action to keep the foreclosure moratorium in place for federally backed mortgage loans – those insured or guaranteed by a governmental agency, such as the Department of Agriculture, Federal Housing Administration, or Department of Veterans Affairs; or, made by the Department of Agriculture; or purchased or securitized by Fannie Mae or Freddie Mac. That foreclosure moratorium is scheduled to expire on June 30, 2020.

The Agencies' Foreclosure Moratorium

The federal agencies who make, insure, guarantee, purchase, and/or securitize the mortgages that are subject to a CARES Act foreclosure moratorium established their foreclosure moratorium before the enactment of the CARES Act. The agencies' guidance varied from barring specific activities to potentially blanket moratorium on all foreclosure-related activity.

On March 18, 2020, the Federal Housing Finance Agency (FHFA) announced that it directed Fannie Mae and Freddie Mac to “suspend foreclosures” for at least 60 days due to the coronavirus national emergency. See [FHFA News Release dated March 18, 2020](#). No guidance, other than to “suspend” foreclosures, was provided. Fannie Mae and Freddie Mac complied with the FHFA's directive.

Fannie Mae issued [Lender Letter LL-2020-02](#) on March 18, 2020, addressing the impact of COVID-19 on servicing the loans that it purchased or securitized, which stated that except for vacant or abandoned property, 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 foreclosure sale.

Similarly, Freddie Mac issued [Bulletin 2020-4](#) on March 18, 2020, providing temporary servicing guidance related to COVID-19 for loans that it purchased or securitized, which stated that servicers must suspend all foreclosure sales for the next 60 days. In its April 8, 2020, [Temporary Servicing Guidance Related to COVID-19](#), Freddie Mac clarified that its moratorium included initiation of any judicial or non-judicial foreclosure process, moving for foreclosure judgment, or moving for an order of sale, other than for vacant or abandoned property. Freddie Mac's moratorium appears to potentially be broader than Fannie Mae's guidance, because after

announcing a “suspension” on March 18, 2020, it clarified on April 8, 2020, what its guidance “included,” while Fannie Mae’s guidance appears to list the milestones subject to the moratorium.

On March 18, 2020, HUD issued [Mortgagee Letter 2020-04](#), which announced its moratorium on foreclosures for FHA-insured Title II Single Family forward and HECM (reverse) mortgage programs. The moratorium applied to the initiation of foreclosures and the completion of foreclosures in process.

On March 18, 2020, the VA issued [Circular 26-20-8](#), which strongly encouraged mortgage servicers to establish a 60-day foreclosure moratorium on loans that they service. On April 8, 2020, the VA issued [Circular 26-20-14](#), which provided that except for vacant or abandoned property, a servicer of a loan guaranteed or insured by the VA 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 foreclosure sale.

Finally, the USDA issued its [moratorium](#) against initiating or completing foreclosures in process for all USDA Single-Family Housing Guaranteed Loan Program loans for 60 days from March 19, 2020.

The CARES Act Foreclosure Moratorium

The CARES Act foreclosure moratorium applied to “federally backed mortgage loans,” which were defined as follows:

“The term ‘Federally backed mortgage loan’ includes any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1- to 4- families that is—

(A) insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

(B) insured under section 255 of the National Housing Act (12 U.S.C. 1715z–20);

(C) guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a, 1715z–13b);

(D) guaranteed or insured by the Department of Veterans Affairs;

(E) guaranteed or insured by the Department of Agriculture;

(F) made by the Department of Agriculture; or

(G) purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.”

See [CARES Act](#), § 4022(a)(2).

A loan subject to the CARES Act foreclosure moratorium must meet four requirements: (1) secured by a first or subordinate lien, (2) on residential real property, (3) with occupancy of one to four units, and (4) made,

guaranteed, or insured by the FHA or HUD, the VA or the USDA, or purchased or securitized by Fannie Mae or Freddie Mac. There was a separate provision for residential multi-family loans. See CARES Act, § 4023.

The CARES Act foreclosure moratorium applied to specific foreclosure-related events.

“Except with respect to a vacant or abandoned property, a servicer of a Federally backed mortgage loan 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 foreclosure sale for not less than the 60-day period beginning on March 18, 2020.”

See CARES Act, § 4022(c)(2).

That is, under the CARES Act, the foreclosure moratorium prevented a mortgage servicer from:

- Initiating any judicial or non-judicial foreclosure process
- Moving for a foreclosure judgment or order of sale
- Executing a foreclosure-related eviction or foreclosure sale

Vacant or abandoned property were excluded from the foreclosure moratorium.

The CARES Act was silent as to whether actions could be taken to further an initiated foreclosure, prepare it for entry of judgment, or complete the sale.

The Extension of the Agencies’ Foreclosure Moratorium

Immediately prior to the May 17 expiration of the CARES Act foreclosure moratorium, each of the agencies extended their specific moratorium through June 30, 2020, and either preserved or modified the original scope.

On May 14, 2020, the FHFA announced that Fannie Mae and Freddie Mac are “extending their moratorium on foreclosures” until at least June 30, 2020. See [FHFA Press Release dated May 14, 2020](#). The announced goal was to “protect[] homeowners and renters with an Enterprise-backed mortgage and provide[] certainty for families.”

Fannie Mae updated its [Lender Letter LL-2020-02](#) to extend through June 30, 2020, the “suspension of foreclosure-related activities and the requirement that servicers file motions for relief from the automatic stay in bankruptcy cases.” Specifically, the updated lender letter provides, “[d]uring the period of the extension, servicers may not, except with respect to a vacant or abandoned property, initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure sale. This suspension does not apply to mortgage loans secured by properties that have been determined to be vacant or abandoned.”

On May 14, 2020, Freddie Mac issued [Bulletin 2020-16](#) which extends the foreclosure moratorium through June 30, 2020. It applies to “all foreclosure actions, including foreclosure sales,” and includes “initiation of any judicial or non-judicial foreclosure process, move for foreclosure judgment or order of sale.” The moratorium does not apply to properties that have been determined to be vacant or abandoned. It appears that Freddie Mac’s

moratorium is potentially broader than Fannie Mae's moratorium because it is a foreclosure moratorium that *includes* specific acts, while Fannie Mae's moratorium *applies* to specific acts.

On May 14, 2020, HUD issued [Mortgagee Letter 2020-13](#), which extended its moratorium on foreclosures for FHA Title II Single Family mortgage programs, except for mortgages secured by vacant or abandoned properties. Specifically, "[t]he moratorium applies to the initiation of foreclosures and to foreclosures in process," apparently broadening the scope of the existing moratorium from completion of foreclosures in process to "foreclosures in process."

On May 14, 2020, the VA issued [Circular 26-20-18](#), extending its foreclosure moratorium through June 30, 2020. "The moratorium applies to the initiation of foreclosures, and to the completion of foreclosures in process." It does not appear to apply to the intermediate phases of the foreclosure process, as long as the servicer does not complete the foreclosure.

Finally, on May 14, 2020, the USDA issued its [bulletin](#) extending the previously-announced foreclosure moratorium through June 30, 2020. The USDA added an exception where the servicer has documented that the property is vacant or abandoned and did not otherwise change the scope of the moratorium.

Now What?

Servicers preparing or proceeding with foreclosure actions should carefully review the appropriate agency's guidance before advancing to the next milestone or completing the foreclosure process. While the guidance uniformly prevents initiation and completion of a foreclosure action, some of the guidance prevents advancing the process while other guidance bars specific acts. In light of the intent of the agencies' actions, servicers are cautioned against initiating, advancing, or completing non-judicial or judicial foreclosure actions on federally backed mortgage loans without further review of all relevant guidance.

While the agencies' foreclosure moratoriums do not apply to vacant or abandoned property, each agency has different methods for determining whether properties are vacant or abandoned.

Unless extended, the agencies' moratoriums expire on June 30, 2020. Servicers of non-federally backed mortgage loans, and after June 30, 2020, servicers of federally backed mortgage loans, still may not be able to proceed with foreclosures due to state and local orders, regulation, and moratorium. Many states and localities have foreclosure moratorium in effect, and courts at all levels are barring the prosecution of judicial foreclosure actions.

Servicers are cautioned to review federal, state, and local guidance and regulations issued by the executive, legislative, and judicial branches of government, as well as any regulations or guidance issued by any administrative agencies, bureaus, or departments before proceeding with the foreclosure process.

As always, if you need help understanding or interpreting these guidelines, or have other related questions, please contact McGlinchey's [COVID-19 CFS Litigation Task Force](#).

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