

CARES Act Relief for Residential Landlords and Tenants

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As detailed in previous alerts, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) establishes unprecedented economic relief programs for small, medium, and large businesses. These programs will provide trillions of dollars in loans and loan guarantees to businesses and nonprofits. But the CARES Act also provides relief for residential mortgage holders—both individuals and multifamily borrowers—and tenants, as well as credit reporting protection.

Protections for Individual Residential Borrowers

During the COVID-19 emergency (defined as running from March 13, 2020 to the earlier of the termination of the declared national emergency or December 31, 2020), a borrower with a federally backed mortgage loan who is experiencing a financial hardship due, in whole or in part, to the COVID-19 emergency may request a forbearance on their loan obligations. The borrower may request a forbearance regardless of any delinquency status. To request the forbearance, the borrower needs only to submit the request to his or her mortgage servicer and affirm that the borrower is experiencing a financial hardship during the emergency.

Upon receiving the forbearance request, the mortgage servicer must grant a 180 day forbearance with no additional documentation required. The borrower may also request an additional 180 day forbearance, which the servicer must grant. Additionally, the borrower may request that either forbearance period be shortened, which the servicer must grant. During any forbearance, no fees, penalties, or interest (beyond regularly calculated or scheduled amounts) shall accrue on the borrower's account.

Furthermore, except for vacant or abandoned properties, a servicer of a federally backed mortgage loan may not initiate foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or sale for at least 60 days beginning on March 18, 2020.

Protections for Multifamily Property Borrowers

Multifamily borrowers with federally backed multifamily mortgage loans who were current on their payments as of February 1, 2020, may also request an oral or written request for a forbearance affirming that the multifamily borrower is experiencing a financial hardship during the COVID-19 emergency. Upon receiving the request, the mortgage servicer must document the financial hardship and provide a 30 day forbearance. The servicer must also grant up to 2 additional 30 day forbearance periods, provided that the borrower makes the request at least 15 days prior to the end of the current forbearance period. The borrower may also elect to discontinue the forbearance at any time.

If a multifamily borrower receives a forbearance, then for the duration of the forbearance period the borrower may not evict, or initiate the eviction of, a tenant solely for nonpayment of rent or other fees and may not charge the tenant late fees, penalties, or other charges for late payment of rent. Furthermore, the multifamily borrower may not issue a notice to vacate a dwelling unit until after the end of the forbearance period, and cannot require the tenant to vacate the dwelling unit until 30 days after that notice is issued.

Moratorium on Eviction Filings

For 120 days from the passage of the CARES Act, i.e. March 27, 2020, landlords of a “covered dwelling”—i.e. a dwelling occupied by a tenant that is on a property with a federally backed mortgage loan—may not initiate (or cause to be initiated) an eviction proceeding for nonpayment of rent or other fees or charges. The landlord also may not charge a tenant fees, penalties, or other charges related to nonpayment of rent. Furthermore, landlords may not issue a notice to vacate for the same 120-day period, and when issued the notice may not require the tenant to vacate until 30 days after the notice.

Credit Reporting Protections

Finally, the CARES Act amends the Fair Credit Reporting Act by inserting language providing that if a furnisher of credit makes an accommodation to a customer with respect to one or more payments on a credit obligation, and if the customer meets its obligations under the accommodation, the furnisher must report the credit obligation or account as current. Previously delinquent accounts may still be reported as delinquent. However if the customer cures the prior delinquency the furnisher must report the obligation or account as current.

Provided by the Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients on a myriad of others issues related to the outbreak. We have established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.