



March 27, 2020

Update #10
Congress Enacts Eviction Moratorium for Most Rent Evictions and Expands Mortgage Forbearance Program

Friends:

Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“the Act”). As part of the Act, Congress enacted a 120-Day Eviction Moratorium that applies to nearly all nonpayment cases. In short, if the owner has a “federally-backed” mortgage on the property, you are subject to the 120-Day rent eviction moratorium. Moreover, if you operate a subsidized property or have voucher tenants, you are also subject to the moratorium.

In addition, Congress expanded the mortgage forbearance program that was initially restricted solely to mortgages backed by Fannie Mae and Freddie Mac. A discussion of this expansion appears later in the update.

Section 4024: Temporary Moratorium on Eviction Filings

The COVID-19 eviction moratorium is for rent-based evictions and will extend for 120 days from the date of the enactment of the legislation. During the 120-day period:

The lessor of a covered dwelling may not (1) make, or cause to be made, any [court] filing ... to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or (2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

• **What properties fall under the COVID-19 eviction moratorium?**

The moratorium applies to “covered properties.” A “covered property” includes:

1. Most subsidized housing including: public housing; Section 8 Housing Choice Vouchers; Section 8 project-based housing; Section 202 housing for the elderly; Section 811 housing for the disabled; Section 236 multifamily rental housing; Section 221(d) Below Market Interest Rate; HOME; Housing Opportunities for People with AIDS (HOPWA); McKinney-Vento Act programs; Rural Development Multifamily Housing; and Low-Income Housing Tax Credit properties.
2. The rural housing voucher program under Section 542 of the Housing Act of 1949.

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3. Properties that have a federally backed mortgage loan. These are mortgage loans designed for occupancy by 1-4 families.
4. Properties that have a federally backed multifamily mortgage loan. These are mortgage loans designed for the occupancy of 5 or more families.

With respect to the mortgage programs referenced in 3 and 4, any loan “that is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association” are considered “covered properties.” In addition to Freddie Mac and Fannie Mae mortgages, FHA backed and HUD backed loans clearly fall within the definition of “covered properties.”

- **If my property is included in the moratorium, what are the restrictions on evicting tenants?**

Any “covered property” **cannot** for 120 days from enactment of the legislation-

1. Evict or initiate the eviction of a tenant solely due to nonpayment of rent or other fees or charges; OR
2. Charge any late fees, penalties or other charges to a tenant associated with the late payment of rent.

- **What are the restrictions on notices to tenants for nonpayment of rent during the moratorium?**

Any “covered property” cannot send any notice for eviction based on nonpayment of rent until the 120 day period expires. Additionally, after the 120 days expires, any notice sent for nonpayment of rent must give the tenant 30 days to vacate the property.

Please note, it is not entirely clear whether “covered properties” can evict tenants for violations unrelated to nonpayment. Our recommendation is that landlords continue to send notices of termination and file detainers for conduct evictions; however, this guidance is subject to change.

If you are unsure whether your property is a “covered property” that falls under the moratorium, contact your mortgage lender to determine whether your loan fits into one of these categories. In addition, feel free to contact our firm with any questions.

Section 4023: Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans

- **Which properties are eligible to participate in this program?**

Multifamily properties with a federally backed multifamily mortgage loan experiencing a financial hardship due, directly or indirectly, due to the COVID-19 emergency and that was current on its payments as of February 1, 2020, may request forbearance of mortgage obligations.

- **What is a Federally backed multifamily mortgage loan?**

The act defines a “federally backed multifamily mortgage loan” in the same manner as described on the previous page.

- **How does my property apply for participation?**

The primary borrower can submit an oral or written request for forbearance to the property’s mortgage servicer. The borrower will need to affirm and verify that the property is experiencing a financial hardship due to the COVID-19 emergency.

- **Once my property applies for relief, how will the request be processed?**

Once a loan servicer receives an oral or written request for forbearance, the servicer will document the financial hardship and provide forbearance to the multifamily property for up to 30 days.

- **When can my property apply for forbearance?**

A multifamily property can apply for mortgage forbearance until the sooner of (i) the day that the national emergency for COVID-19 as declared by the program ends or (ii) December 31, 2020.

- **Can the initial 30 day forbearance period be extended for any amount of time?**

The initial 30 day forbearance period can be extended for 2 additional 30-day periods during the covered period. The multifamily borrower can discontinue or stop the forbearance at any time.

- **If my property participates in the mortgage forbearance program, what are the restrictions on evicting tenants?**

A multifamily property that participates in the mortgage forbearance program **cannot, for the entire duration of the forbearance-**

1. Evict or initiate the eviction of a tenant solely due to nonpayment of rent or other fees or charges; OR
2. Charge any late fees, penalties or other charges to a tenant associated with the late payment of rent

- **What are the restrictions on notices to tenants for nonpayment of rent during the time my property is receiving a mortgage forbearance?**

A multifamily property that is receiving mortgage forbearance cannot send any notice for eviction based on nonpayment of rent until the period of the forbearance expires. Additionally, after the forbearance expires, any notice sent for nonpayment of rent must give the tenant 30 days to vacate the property.

This legislation is expansive. Should you have any questions or concerns regarding the above information, please do not hesitate to contact our office.

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Sincerely,

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