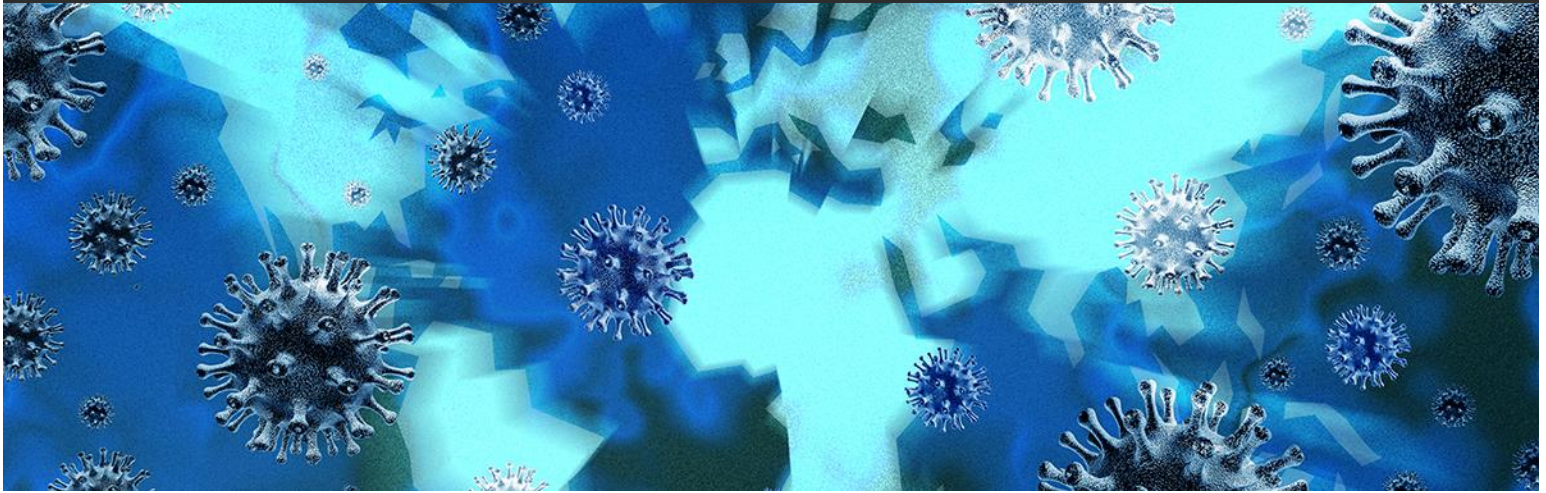


Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019



April 2, 2020

Mortgage Foreclosure Moratorium – Potential Pitfalls and Mitigating Litigation Risks

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) became law. In addition to providing relief to various industries and businesses, the \$2 trillion stimulus package placed several temporary moratoriums, prohibitions, and limitations of the rights of lenders and servicers of federally-backed loans. These include moratoriums on foreclosures and evictions, instituted mandatory forbearance obligations, and significantly relaxed loan modification requirements. These mandates may create a variety of litigation risks for distressed and delinquent loans. This Alert provides a brief outline of the obligations created by the CARES Act, identifies some potential litigation concerns, and discusses certain considerations for minimizing risk of exposure.

Key Provisions of the CARES Act

- Initial Moratorium on residential foreclosures
 - Temporary 60-day moratorium on foreclosures or foreclosure-related evictions
 - Applies to all “Federally backed loans”
 - This includes HUD, FHA, VA, Dept of Ag, Fannie Mae/Freddie Mac owned or securitized
 - Includes initiating “any foreclosure process,” which appears to include all stages of judicial and non-judicial foreclosures or post-foreclosure evictions
- Forbearance Mandate

- For single-family borrowers, 180 days immediately, plus additional 180 days upon request of borrower
 - Forbearance available regardless of delinquency status
- For multi-family borrowers, 30 days immediately, plus right to two additional 30-day extensions
 - Forbearance only available if borrower current as of February 1, 2020
- Servicers have an affirmative obligation to provide notice of forbearance right to borrowers
- Additional Eviction Moratorium
 - 120-day moratorium on evictions for federally-backed properties
 - Applies to all property insured, guaranteed, supplemented, protected, or assisted in any way by HUD, FHA, VA, Dept of Ag, Fannie Mae/Freddie Mac, or under USDA Rural Development Voucher Demonstration Program, Violence Against Women Act of 1994
- Loan Mods
 - Loan mods may be made for COVID-19 hardship without categorization as “troubled debt restructuring” until the earlier of 60 days after expiration of national emergency order or December 31, 2020
- State Regulations and Private Loan Guidelines This Alert only discusses NY and CA guidelines as examples of additional state action related to the COVID-19 pandemic. Lenders and servicers may wish to be diligent in reviewing any state-issued COVID-19 mandates, prohibitions, regulations, and guidelines for any state where they service debts.
 - New York
 - Governor Cuomo issued Executive Order 202.9, which mandated that any bank subject to DFS to grant 90-day forbearances.
 - The New York Department of Financial Services (NYDFS) issued regulations regarding application of executive order
 - Does not apply to New York-licensed branches of agencies of foreign banks
 - Only applies to residential mortgages
 - Although NYDFS guidance encourages not charging interest or providing negative credit reporting during forbearance period, there are no explicit prohibitions
 - California
 - Governor Newsom issued an executive order authorizing local governments to impose limits of residential and commercial foreclosures and evictions resulting from COVID-19 hardship
 - Governor Newsom also reached an agreement with numerous financial institutions to provide additional relief
 - 90-day mortgage forbearances, with no interest or fees during forbearance period and no negative credit reporting
 - 60-day moratorium on initiating foreclosure sales or evictions

Potential Litigation Pitfalls

The broad scope and application of the CARES Act creates a variety of potential litigation risks. Though each case should be evaluated on an individual basis, these are some issues lenders and servicers should be aware of with pending matters:

- Ongoing foreclosures
 - There is no exception in the law for ongoing foreclosures
- Scope of application
 - Not limited to just FHA loans, includes loans owned OR securitized by Fannie Mae or Freddie Mac
- Prohibition on charging penalties, interest, fees, etc. during forbearance period
- Prohibition on demanding additional evidence of financial hardship for forbearance requests
- After expiration of foreclosure moratorium, may wish to review and, if necessary, adjust default calculations used for trustee's sale notices and judicial foreclosure motions
- There may be an uptick in debt validation letters and qualified written requests after moratorium and forbearance periods expire

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

Authors

This GT Alert was prepared by:

- [Michele L. Stocker](#) | +1 954.768.8271 | stockerm@gtlaw.com
- [Jacob D. Bundick](#) | +1 702.599.8038 | bundickj@gtlaw.com
- [Michael R. Hogue](#) | +1 415.655.1303 | hoguem@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.† Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. Milan.* Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.* Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. †Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ‡Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*