

COVID-19 Mortgage Relief

Foreclosure Moratoria and Forbearance Options



*Because equal access to
justice is everyone's fight*

COVID-19, Foreclosure, and Race

- Homeownership is the greatest predictor of generational wealth across races.
- The last foreclosure crisis hit Blacks especially hard. In 2005, 44% of Chicago-area Black families owned homes. In 2015, that number dropped to 38%. And the disparity between white and Black homeownership in the area is growing.
- COVID-19 is also hitting Black communities hardest, both health-wise and economically.
- Even before COVID-19, foreclosure rates were elevated in Black communities, and problems with probate has blocked generational transfer of wealth.

Foreclosure Prevention Is Essential

- The CARES Act gives key relief to homeowners with federally-backed mortgage loans, but they have to ask for it.
- The Illinois Housing Development Authority (IHDA) is currently accepting applications for Emergency Mortgage Assistance (EMA). The deadline for applying is Friday at 6 pm!
- Families with probate issues must address them immediately!

Moratoriums

- CARES Act, Section 4022(c)(2): Except for vacant / abandoned property, moratorium on filing and advancing foreclosures through May 28, 2020.
- Fannie Mae, Freddie Mac, and FHA have extended their foreclosure moratoria until December 31, 2020.
- Presiding Judge Jacobius: “All mortgage foreclosure judgments, evictions in furtherance of a foreclosure, and foreclosure sales are stayed until September 21, 2020.” (Chancery GAO 2020-10 (Amended), IV(A)).

CARES Act, Section 4022 Forbearance

(b) FORBEARANCE

(1) IN GENERAL.—During the covered period, a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency may request forbearance on the Federally backed mortgage loan, regardless of delinquency status, by—

(A) submitting a request to the borrower’s servicer; and

(B) affirming that the borrower is experiencing a financial hardship during the COVID–19 emergency.

(2) DURATION OF FORBEARANCE.—Upon a request by a borrower for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower’s request, either the initial or extended period of forbearance may be shortened.

(3) ACCRUAL OF INTEREST OR FEES.—During a period of forbearance described in this subsection, no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract, shall accrue on the borrower’s account.

(c) REQUIREMENTS FOR SERVICERS.—

(1) IN GENERAL.—Upon receiving a request for forbearance from a borrower under subsection (b), the servicer shall with no additional documentation required other than the borrower’s attestation to a financial hardship caused by the COVID–19 emergency and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance, provide the forbearance for up to 180 days, which may be extended for an additional period of up to 180 days at the request of the borrower, provided that, the borrower’s request for an extension is made during the covered period, and, at the borrower’s request, either the initial or extended period of forbearance may be shortened.

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Official text of CARES Act: <https://www.congress.gov/bill/116th-congress/house-bill/748/text#toc-H4D5728D599DE43C1B10376E596A41BCE>

We're looking at...

- Who
- What
- When
- Where
- How

Who can request a forbearance?

- “[A] *borrower*...may request forbearance...”. CARES Act does not define “borrower.”
- “Borrower” should include heirs of deceased mortgagors.
 - Garn St. Germane Act: Lender cannot use death of original mortgagor as reason to accelerate the loan. (12 USC 1701j-3)
 - CFPB: A “confirmed successor in interest” (see 1024.38) shall be considered a “borrower” for servicing and loss mitigation regulations. (12 CFR 1024.30(d))
 - Fannie Mae, Servicing Guide D-4.01-02: <https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-D-Providing-Solutions-to-a-Borrower/>
 - Freddie Mac, Servicing Guide Section 9207.2: <https://guide.freddiemac.com/app/guide/section/9207.2>
 - FHA: “Mortgagors” can request loss mitigation (24 CFR Part 203), and National Housing Act defines “mortgagor” as “original borrower under a mortgage and his successors and assigns.” (12 USC 1707)

Who can request a forbearance (cont.)...

- “[O]f a *federally-backed mortgage*...”
 - Really, any government backing: Fannie Mae, Freddie Mac, FHA, VA, USDA
 - Same coverage as VAWA (not as broad as *federally-related* under RESPA and TILA)
- How to check:
 - Fannie Mae: <https://www.knowyouroptions.com/loanlookup>
 - Freddie Mac: <https://ww3.freddiemac.com/loanlookup/>
 - FHA
 - Reverse mortgages: Practically all reverse mortgages are FHA-insured Home Equity Conversion Mortgages (HECMs)
 - Forward mortgages: Check for notation on loan documents or call HUD National Servicing Center (NSC): 877-622-8525
 - VA: Check for notation on loan documents or call VA servicing center: 877-827-3702

What is the forbearance...

- Forward mortgages:
 - Pausing all mortgage payments for an initial period of up to six months; can be extended once to full year. Payments must be made up later.
 - What happens when the forbearance ends? Depends on what GSE / Agency is involved in the loan. Generally...
 - If have the money → Reinstatement
 - If hardship resolved → Deferment
 - If hardship persists → Loan modifications that recapitalize missed payments
 - All foreclosure activity must stop during forbearance (CFPB: 12 CFR 1024.41(g))
- Reverse mortgages:
 - Extending cure periods for defaults (borrower alive / deceased).
 - Stays all foreclosure activity during forbearance. (FHA ML 2020-06: <https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf>)
- No additional fees / interest beyond what is contractually scheduled if borrower was making payments. (CARES Act, 4022(c))

What is the forbearance (cont.)... GSE / Agency Guidance

- Fannie Mae: <https://singlefamily.fanniemae.com/servicing#servicing-promo>
- Freddie Mac:
 - Homeowner Info: <https://myhome.freddie.mac.com/getting-help/relief-for-homeowners.html>
 - Servicers (legal authority):
 - <https://sf.freddie.mac.com/working-with-us/servicing/overview>
- FHA (forward and reverse mortgages)
 - General Information: https://www.hud.gov/program_offices/housing/sfh
 - Mortgagee Letters (legal authority):
https://www.hud.gov/program_offices/administration/hudclips/letters/mortgagee
- VA
 - General: <https://www.benefits.va.gov/HOMELOANS/cares-act-frequently-asked-questions.asp>
 - Circulars: https://www.benefits.va.gov/HOMELOANS/resources_circulars_valeri.asp

After the Forbearance: Fannie and Freddie

Four options:

- Reinstatement (If have they money)
- Repayment Plan (If have the income)
- Deferment (If loan current when entered forbearance)
- Modification (If already behind or sustained loss of income)

After the Forbearance: FHA

- Borrower must be less than 30 days delinquent as of March 1, 2020 to unlock special COVID-19 loss mitigation options
 - Remember: Doesn't apply to the availability of the underlying forbearance
- COVID-19 loss mitigation options:
 - COVID-19 standalone partial claim
 - If borrower can resume normal payments
 - COVID-19 modification only
 - If borrower cannot resume normal payments
 - Terms: Only principal, interest, and escrow recapitalized; interest no greater than Market Rate (as defined by HUD), 30 years; PITIA payment should not increase.
 - COVID-19 partial claim and modification
 - If modification alone would increase PITIA payment and partial claims not exhausted
 - COVID-19 FHA-HAMP loan modification
 - If partial claim and modification are not affordable
 - Modified payment is tied to borrower's income, with reduced documentation requirements

When a borrower can request a forbearance...

- During the “covered period” (4022(b)(1))
 - Section 4023(f)(5) COVERED PERIOD: The term “covered period” means the period beginning on the date of enactment of this Act [Mar. 27, 2020] and ending on the sooner of—
 - (A) the termination date of the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act ([50 U.S.C. 1601](#) et seq.); or
 - (B) December 31, 2020.
 - So must request it during the President’s disaster declaration. Time is of the essence!
- “Regardless of delinquency” (4022(b)(1))
 - Can request a forbearance even during foreclosure.

Where a borrower must submit a request...

- Forbearance requests must be sent to the loan servicer.
(4022(b)(1)(A))
- If a foreclosure is pending, should also send the request to plaintiff's counsel and confirm foreclosure is put on hold.

How to request a forbearance...

- Borrower must...
 - Affirm they have been affected directly or indirectly by COVID-19 and
 - Request forbearance
- Form of request
 - Can be oral, but we'd recommend it be in writing.
 - “[T]he servicer *shall with no additional documentation required other than the borrower’s attestation to a financial hardship caused by the COVID–19 emergency...provide the forbearance.*”

How to request a forbearance (cont.)...

- If the servicer does not put the loan into forbearance, borrowers should send a Notice of Error (CFPB: 12 CFR 1024.35).
- If problem persists, no direct cause of action under CARES Act, but...
 - Can raise as RESPA counterclaim after NOE (12 USC 2605(f)).
 - Stop foreclosure through IL SCR 114
 - Remember *Bankers Life v. Denton*, 120 Ill. App. 3d 576 (3rd Dist. 1983) “[I]n order to effectively insure that the interests of the primary beneficiaries of the H.U.D. mortgage servicing requirements are being protected, mortgagors must be allowed to raise noncompliance with the servicing requirements as a defense to a foreclosure action.”

CVLS's New CARES Act Forbearance Hotline

- CVLS has created a new webpage to help homeowners request a CARES Act forbearance: <https://www.cvls.org/get-legal-help/covid-19-relief/>
- Tech-savvy homeowners can use the website on their own to check if they have a federally-backed mortgage and download request forms.
- People who want extra help can call our hotline or send us an email: 312-332-8785; COVID@cvls.org. A trained law student will call the person, answer any questions they have, and walk them through the process.

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MORTGAGE RELIEF AVAILABLE TO COVID19 AFFECTED HOMEOWNERS

Has COVID-19 made it hard to make your mortgage payments?

If you have a federally-backed mortgage and have been affected by the COVID-19 pandemic, you may be eligible for up to one year of deferred mortgage payments.

HOTLINE



(312) 332-8785

EMAIL



covid@cvls.org

WEBSITE



www.cvls.org/covid

Be ready to provide this information when you call or email:

- Name
- Phone Number
- Property Address
- Court Case Number (____CH____) if a foreclosure's been filed

All hotline calls will be directed to a voice mailbox.
We will contact you within 2 business days.

CARES ACT

Coronavirus Aid, Relief and Economic Securities Act

Bottom line...

- Get homeowners into a COVID-19 forbearance NOW!
- Federally-backed mortgages are 60 – 70% of mortgage loans in this country. If the delinquent loans are placed in forbearance, it will seriously blunt the impending foreclosure crisis.
- Homeowners should call 312-332-8785 or email COVID@cvls.org.
- Attorneys wanting to help struggling homeowners should contact Matt Hulstein.

Probate

- Banks are really bad at working with heirs of deceased mortgagors.
- Heirs have the ability to save the home from foreclosure, but they have to clear up title. This often requires probate.
- The courts will not allow a self-represented litigant to file a petition to probate an estate. They need a lawyer.
- If the homeowner has already died, they can call CVLS's Deceased Borrower Hotline: 312-332-8785 or email: cvls@cvls.org.
- If the homeowner is elderly and wants to ensure a safe transfer of the home when they die, they can call CEDL to set up a TODI: 312-376-1880.

Questions / Concerns / Corrections / Volunteer Interest...

Contact Matt Hulstein, CVLS Staff Attorney

312-332-8217 (office), 712-441-6267 (cell), mhulstein@cvls.org



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