

Client Alert

Multi-Family Property Forbearance Relief Under Fannie Mae and Freddie Mac

The Federal Housing Financing Agency (FHFA) has set forth a plan to provide for Fannie Mae and Freddie Mac to forbear on the collection of mortgage payments for up to three (3) months from owners of multi-family properties. In order to qualify, the owners of multi-family properties must agree to suspend evictions for the non-payment of rent for tenants claiming financial difficulty due to the effects of COVID-19. The forbearance option for the property owner, thus, is an indirect means by which the government can reduce the displacement of individuals from their rented homes during the pandemic by incentivizing the suspending or tabling eviction actions.

How does one commence the forbearance request process? Since Fannie Mae and Freddie Mac do not originate or service loans themselves, any multi-family property owner looking to avail themselves of this new forbearance option should first contact their mortgage lender.

In Supplement 20-04 of the Fannie Mae multifamily guide and what Freddie Mac is calling its “Nationwide COVID-19 Relief Plan,” Fannie Mae and Freddie Mac explicitly authorize mortgage lenders to: directly accept requests for forbearance; evaluate the legitimacy of the request by collecting to the lender’s satisfaction due diligence documentation from a borrower; enter into pre-negotiation letters; and enter into forbearance agreements for up to three (3) missed monthly payments.

At least with respect to Fannie Mae’s proclamation, this delegation of authority to mortgage lenders to enter into forbearance agreements has a time limit of August 31, 2020. After August 31, 2020, mortgage lenders will no longer have the authority from Fannie Mae to enter into these forbearance agreements. As such, it is advisable for property owners to start the request process with a mortgage lender sooner rather than later as these institutions will inevitably begin to become inundated with requests.

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We recommend that property owners speak with their mortgage lender about: the process that they will be putting in place under their grant of delegation authority; the application they will have formulated for use; and the due diligence documentation they will be requiring to evaluate forbearance requests. While lenders may wind up adopting similar procedures, with the process being de-centralized, by placing the mechanics of it in the hands of each lender, variations among lenders may arise such that a property owner with multiple loans from multiple lenders will need to educate themselves on, and adapt to, in order to maneuver through the process without undue delay.

Another important constraint is the date April 1, 2020. A property owner looking to benefit from a negotiated forbearance agreement under Fannie Mae's plan must not have the first missed monthly payment prior to April 1, 2020 if seeking a deferral. Thus, property owners can only make requests for deferments of missed monthly payments originally due on or after April 1, 2020.

For those new to the concept of a forbearance agreement, it should be emphasized that payments are deferred, but not forgiven. The forbearance agreements offered under these COVID-19 relief plans are no different. Any borrower that enters into a forbearance agreement must bring the loan back to current, meaning making up the deferred payments and paying on time the non-deferred payments, by the earlier of (i) twelve (12) months from the end of the deferment period or (ii) the borrower's receipt (or mortgage lender's receipt, if paid directly to a mortgage lender) of Business Income insurance proceeds (or any other assistance or relief program funds).

The timeframes for bringing the loan current and how long the mortgage lenders have delegation authority are not the only priority items to keep in mind. There are, additionally, timeframes regarding the affected tenant that a property owner will need to know. The suspension of eviction proceedings must last until the longer of (i) ninety (90) days after the forbearance agreement effective date or (ii) until the mortgage loan is brought current, which, as we indicated, must be brought current no later than twelve (12) months from the end of the deferment period. Also, with respect to the interactions of the property owner with its tenants, the forbearance agreements will include a provision whereby the borrower consents, upfront, to allow tenants affected by the COVID-19 pandemic to re-pay any missed rent payments over a period of no more than twelve (12) equal monthly installments, without late charges, together with that tenant's regular monthly rent.

As an added benefit, Fannie Mae and Freddie Mac will waive late fees due to it during the forbearance period. Fannie Mae is even encouraging mortgage lenders to suspend collection of late fees owing by the borrowers to the lenders. However, there will be some fees attendant to the forbearance agreement process to borrowers: any expenses, including reasonable attorneys' fees, related to executing a forbearance agreement and fees charged for a pre-negotiation letter.

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One final point about Fannie Mae's relief plan is that forbearance agreements of longer than three (3) months are in fact contemplated. However, unlike the three (3) month maximum forbearances, which mortgage lenders have plenary authority to enter into, forbearances proposed to exceed three (3) months will require the consent of Fannie Mae.

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