

Prepared by Jacqueline Simms-Petredis and Adam Knight

March 2020

COVID-19 (or Coronavirus) is set to dramatically change the foreclosure and eviction process across the United States for the next 60-90 days and likely beyond.

Government agencies, states, and servicers are moving to impose and adopt policies to provide foreclosure and payment relief to borrowers and homeowners during this period. The policies and assistance programs are likely to vary from state to state as governments enact differing policies.

As such, this Bulletin is a non-exhaustive compilation of information available as of March 20, 2020 and may be updated from time to time as regulators amend their guidance, impose new restrictions or requirements, and as states and loan servicers announce their own updated policies.

Housing and Urban Development (HUD)

On March 18, 2020, HUD issued Mortgagee Letter 2020-4. This letter relates to HUD's imposed moratorium on foreclosure and eviction as part of the declared COVID-19 National Emergency. The mortgagee letter and guidance contained in the letter applies to all FHA Title II Single Family and Home Equity Conversion Mortgages (reverse mortgages).

In relation to starting and completing foreclosures, the applicable guidance update is as follows:

- Properties secured by FHA-insured Single Family mortgages are subject to a moratorium on foreclosure for a period of 60 days.
- The moratorium applies to the **initiation of foreclosures and to the completion of foreclosures in process**. Similarly, evictions of persons from properties secured by FHA-insured Single Family mortgages are also suspended for a period of 60 days.
- In addition, deadlines of the first legal action and reasonable diligence timelines are extended by 60 days.

As noted in bold, no actions to either initiate or complete a foreclosure should occur within the next 60 days on all HUD-insured loans. This amounts to a moratorium on trials, summary judgments, foreclosure sales, writs of possession, or other activity taken to complete a foreclosure proceeding. There is also a corresponding 60-day extension of due diligence timelines and first-legal timelines.

Notably, there is no apparent exception to the policy relating to consent judgments or other borrower agreements.

Mortgagee Letter Link can be found [here](#).

Fannie Mae and Freddie Mac

On March 18, 2020, Fannie Mae issued Lender Letter LL-2020-02 and Freddie Mac issued Bulletin 2020-4. The Fannie Mae Letter and Freddie Mac Bulletin their updated servicing guidelines initiated in response to the declared COVID-19 National Emergency.

In their updated guidance, Fannie Mae and Freddie Mac issued identical policies requiring that: “Servicers must suspend all foreclosure sales for the next 60 days. This foreclosure suspension does not apply to mortgage loans on properties that have been determined to be vacant or abandoned.”

The Fannie Mae and Freddie Mac suspensions do not appear to apply to continuing foreclosure proceedings to judgment, but rather appear to limit the suspension to foreclosure sales. This would appear to permit hearings on motions for summary judgment and trials during the period so long as the property did not go to a foreclosure sale. However, such actions may be determined to be not in compliance with the spirit of the rules.

Also, there is no exception for consent judgments where the property is occupied.

Note the exception to foreclosure suspension where a property has been determined to be vacant or abandoned. In any attempt to utilize this exception, care should be given to confirming existing status. Servicers should not rely on old data or inspection information and should renew their determination the property is vacant or abandoned. Further, servicers should heavily document the determination including inspection dates, photos, or other information.

Fannie Mae Bulletin can be found [here](#).

Freddie Mac Bulletin can be found [here](#).

Veterans Benefits Administration (VA) Loans

On March 18, 2020, the VA issued Circular 26-20-8 establishing its own foreclosure moratorium guidance to servicers in response to the declared COVID-19 National Emergency.

In relation to starting and completing foreclosures, the applicable guidance is as follows:

- Although the loan holder is ultimately responsible for determining when to initiate foreclosure, and for completing termination action, VA **strongly encourages** loan holders to establish a sixty-day moratorium beginning March 18, 2020, on completing pending foreclosures or initiating new foreclosures on loans.
- Due to the widespread impact of COVID-19, loan holders **should consider** the impact of completing an eviction action when choosing to retain a property instead of conveying to VA.
- VA requests holders not expose Veterans and their families to additional risk through an eviction action, if at all feasible.

The VA guidance contains no clear moratorium on initiation of completion of any foreclosure action. Rather, the VA Circular only encourages servicers to impose a 60-day moratorium or suspension on

completing or initiating foreclosures. As such, there is no apparent mandate from the VA to take any specific action in response to the COVID-19 outbreak.

This said, and given the guidance from HUD, Fannie Mae, and Freddie Mac, it is advisable to follow a consistent policy amongst borrowers and, as such, servicers should impose internal suspensions to initiate or complete foreclosures relating to VA loans. If there are due diligence and first-legal concerns, these should be addressed on a case-by-case basis because, unlike the HUD guidance, there is no corresponding extension of due diligence or first-legal deadlines in the VA guidance.

VA Circular can be found [here](#).

STATES

- [New York](#) – As of March 19, 2020, reports indicate that New York is suspending foreclosure for a 90-day period in response to COVID-19. In addition, New York intends to implement some mortgage relief requirements and possible payment waivers based on financial hardship.
- [California](#) – As of March 19, 2020, the governor issued an executive order permitting cities and local governments to impose foreclosure and eviction restrictions.
- [Maryland](#) – The Maryland courts have imposed a hold on foreclosure of residential properties during the COVID-19 outbreak and national emergency.
- [Florida](#) – Florida has not yet imposed a moratorium on foreclosures or evictions. However, some cities (such as Miami) have statements from police that they will not carry out evictions during the COVID-19 outbreak. We expect more state-level guidance in the upcoming days.
- At this time, state and local action continues to vary and we expect that to continue in the near future. Research should be performed for specific action which may or may not occur relating to non-government insured loans.

Loss Mitigation

Although not discussed in this bulletin, Fannie Mae, Freddie Mac, and VA have all set forth additional guidance relating to loss mitigation in light of the COVID-19 outbreak. Further, servicers (including Ally Bank and Bank of America) have initiated additional loss mitigation procedures for borrowers affected by COVID-19.

Stay up to date by monitoring the latest COVID-19 resources on our [CORONAVIRUS RESOURCE CENTER](#).

To discuss this further, please contact:

[Jacqueline Simms-Petredis](#) at (813) 367-5751 or jsimms-petredis@burr.com

[Adam J. Knight](#) at (813) 367-5747 or aknight@burr.com

or the Burr & Forman attorney with whom you normally consult.

Burr & Forman publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm. If legal advice is sought, no representation is made about the quality of the legal services to be performed or the expertise of the lawyers performing such service.