

Real Estate Alert: How to Protect Your Multifamily Apartment Business by Seeking Relief Under COVID-19-Related Laws

Amidst the COVID-19 Crisis, multifamily apartment owners may be able to obtain relief on many levels, from different resources. The relief may include mortgage forbearance in return for the promise to suspend eviction of tenants, loan forgiveness or grants for the purpose of covering payroll, or other tax benefits.^[1] This Alert focuses on the resources multifamily apartment owners can use to ease the pressure of their mortgage payment during this difficult time. In short, while different state and federal laws or regulations are in place to protect renters and property owners, or otherwise offer economic stabilization, different banks have different processes and policies. As such, you should contact your lender as soon as possible to discuss forbearance, deferment, a loan grant, waiving amortization payments or other relief your particular lender may be offering for different purposes, in order to better address any difficulties you may be facing as a result of the COVID-19 crisis.

Multifamily Apartment Owners

To keep renters in their apartments, and to support multifamily property owners during the coronavirus national emergency, the Federal Housing Finance Agency (FHFA) is announcing that Fannie Mae and Freddie Mac (the Enterprises) will offer multifamily property owners mortgage forbearance with the condition that they suspend all evictions for renters unable to pay rent due to the impact of coronavirus. The eviction suspensions are in place for the entire duration of time that a property owner remains in forbearance.^[2] The forbearance is available to all multifamily properties with an Enterprise-backed performing multifamily mortgage negatively affected by the coronavirus national emergency.

Section 4023 of the "Coronavirus Aid, Relief, and Economic Security Act", or the "CARES Act," which was signed into effect on March 27, specifically allows a multifamily property owner borrower, which has a federal-backed mortgage loan, to request forbearance from its lender to its mortgage payment obligations, upon showing a financial hardship during the COVID-19 emergency. Upon such request from the borrower, the lender shall document the financial hardship, and then provide a forbearance for up to 30 days. Further, the lender may extend the forbearance for up to two additional 30-day periods upon request. In exchange, any borrower that receives a forbearance may not, for the duration of the forbearance, evict or initiate the eviction of any tenant solely for nonpayment, nor otherwise charge any late fees, penalties, etc. during the forbearance period. The CARES Act also imposes additional restrictions on owners, specifically, owners may not issue any notices to vacate to its tenants. No notice to vacate can be issued until the forbearance period is over, and the owners then have to give tenants at least a 30-day prior notice. For Fannie Mae or Freddie Mac-backed mortgage loans, the requirements are more specifically discussed below.

The above restrictions only apply to multifamily owners who seek relief for mortgage payment forbearance, and Section 4024 of the CARES Act imposes a 120-day temporary moratorium, from March 27, 2020 to July 26, 2020, on eviction filings applicable to all multifamily property owners whose property has a federally backed mortgage loan, or otherwise participates in certain federal housing programs, such as under the Violence Against Women Act of 1994 and the rural housing voucher program under section 542 of the Housing Act of 1949. Notwithstanding the above, New Jersey has halted *all* residential eviction proceedings from March 19, 2020 to May 18, 2020. For eviction proceedings which were already initiated, the enforcement of the judgment is stayed for the above-referenced time period. Similarly, New York has also halted all residential evictions from March 20, 2020 to June 18, 2020.

For multifamily apartment owners who are currently in the process of seeking to obtain a mortgage at this time, the Federal Housing Administration also announced that it is directing Fannie Mae and Freddie Mac to ease their standards for both property appraisals and verification of employment.

If your mortgage is with Fannie Mae:

- Effective March 24, 2020, Fannie Mae announced pandemic relief for COVID-19-related issues, including forbearance on monthly mortgage payments, including late fees, delinquency advances, and has further updated its asset management property inspection guidance.
- If your mortgage is backed by Fannie Mae, you should reach out to your lender to request forbearance. If your lender determines a forbearance is necessary, the lender has been delegated the authority to execute a forbearance agreement for up to three monthly payments, beginning with the first missed monthly payment, provided the missed payment did not occur before April 1, 2020. In the released guidance to lenders, which had an effective date as of March 24, 2020, *Fannie Mae did not specifically list "hardship" as one of the requirements*, but rather left it to the discretion of individual lenders to determine whether the forbearance would be necessary to the borrowers.
- If granted, the forbearance would require the Borrower to be subject to the following:
 - Require the Borrower to bring the mortgage loan current by the earlier of:
 - 12 months after the end of the forbearance period, ;or
 - The Borrower's receipt (or lenders receipt on the Borrower's behalf) of business income insurance proceeds (or any other assistance or relief program proceeds), per the forbearance agreement
 - Require the Borrower to suspend all evictions of tenants who have been financially impacted by the event for the longer of:
 - Until July 25, 2020 or
 - Until the Mortgage Loan is brought current
 - However, notwithstanding the above, New York and New Jersey have suspended all residential eviction proceedings for 90 days and 60 days respectively.
 - Require the Borrower to permit the affected tenants to repay any missed rent payments over a period of no more than 12 equal monthly installments, without late charges, together with the affected tenant's regular monthly rent, to the extent permitted by applicable law.
 - Be documented on the required forbearance agreement form as provided by the lender, without modification and executed by an authorized representative of the Borrower and lender.
- During the forbearance, Fannie Mae:
 - Will refrain from taking any adverse action against the Borrower to give lender and the Borrower time to determine the status of the property and its operations (including the status and amount of any insurance claims); and
 - Must approve any forbearance or continuation exceeding three months; and
 - Is waiving the late charges.

For more information regarding Fannie Mae COVID-19 updates, please [click here](#).

If your mortgage is with Freddie Mac:

Under the Freddie Mac program, multifamily owners whose properties are financed or backed with a Freddie Mac multifamily fully performing loan can defer their loan payments for 90 days upon *showing hardship as a consequence* of the COVID-19 crisis and then by obtaining lender approval. In turn, Freddie Mac is requiring landlords to cease eviction actions against tenants where such eviction action is based solely on non-payment of rent during the forbearance period. Freddie Mac has not released any more specific lender guidance as of March 28, 2020.

For more information regarding Freddie Mac COVID-19 updates for multifamily apartment owners, please click [here](#).

Single-Family Owners

If you have rental residential/single-family holdings, Fannie Mae and Freddie Mac have also suspended foreclosures and evictions on single-family homes as of March 18, 2020, until at least May 17, 2020. Additionally, Fannie Mae and Freddie Mac have also provided that in addition to forbearance of mortgage payments for up to 12 months, they have also waived assessments of penalties and late fees, and have also advised lenders to suspend negative reporting to credit bureaus.

On March 28, 2019, New Jersey also announced a new mortgage forbearance program, which offers single-family homeowners a 90-day grace period for mortgage payments, suspends reporting derogatory tradelines, and establishes a 60-day moratorium against initiating foreclosure sales or evictions for *all* residential property. If the property has a federal-backed mortgage, the property is subject to a further 120-day moratorium on evictions.

Other Relief Available

Additionally, multifamily apartment owners should also consider other relief generally available to businesses. Loan grants and forgiveness are available to cover payroll related costs under the federal CARES Act. For more details, please click [here](#).

Businesses in New Jersey might also be eligible for a loan grant from \$1,000 to a maximum of \$5,000, via a New Jersey Economic Development Authority ("NJEDA") Small Business Emergency Assistance Grant, if the business meets the below essential requirements, among others:

- Has 1 to 10 full time employees;
- Certifies it will not furlough or lay off any employees from the time of application through six months after the end of the declared emergency;
- Illustrates financial hardship and impact due to COVID-19.

No fees will be collected by the NJEDA and funding will be fully disbursed as quickly as possible upon approval. Applications are anticipated to be opened the week of March 30.