

# CHAPTER 13 SYMPOSIUM 2021

## SESSION ONE

### FORECLOSURE, FORBEARANCES AND CARES ACT - OH MY!

&

### LIFE AFTER COVID-19

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## **COVID19 MORTGAGE FORBEARANCE UPDATE**

### The C.A.R.E.S. Act - Take I (Highlights)

#### **Mandatory Mortgage Forbearances [Section 4022]**

- Impacts: Federally backed or insured mortgages (Fannie, Freddie, VA, HUD, USDA and/or FHA/HUD/USDA insured).
- 1-4 Family - Up to 2 x 180-day forbearance periods without regard for delinquency status
- 5+ Units - Up to 3 - 30-day forbearance periods for non-delinquent accounts
- Must be requested by Debtor (watch out for sunset)

#### **Extended (84-Month) Plans**

- Debtor(s) who have already confirmed a Chapter 13 plan on the day of enactment, but have directly or indirectly suffered a material financial hardship due to COVID19 are permitted to file a modified plan to extend the term of repayment beyond 60 months, up to 84 total months. [11 USC §1329(d)(1)]
- This provision sunsets one year from March 27, 2020.

### C.A.R.E.S. Act - Take II (Stimulus Bill Passed 12/21/2020, Signed 12/28/2020)

#### **CARES ACT Forbearance Claims**

- Supplemental Claim for the amounts not received by eligible creditors due to a CARES Act Forbearance Plan. [11 U.S.C. §501(f)(1)(A)]

- Only eligible creditors can file CARES ACT Forbearance Claims. [11 U.S.C. §501(f)(2)(A)]
- If those payments are deferred, restructured or modified, the eligible creditor should include a copy of said agreement along with the filed claim. [11 U.S.C. §501(f)(2)(B)]
- The Claim should be filed within 120 days of the expiration of a CARES ACT forbearance plan. [11 U.S.C. §502(b)(9)(C)]

### **Modified plans to address Forbearance Claims**

- Debtors are permitted to file modified plan pursuant to 1329 to address CARES Act Forbearance claims. [11 U.S.C. §1329(c)(1)]

### **Requests for a Modified Plan**

- The Standing Chapter 13 Trustee or a party in interest may request a Debtor file a modified plan under the provision above by motion should a Debtor fail to do so after 30 days from the filing of the claim. [11 U.S.C. §1329(c)(2)]
- The provisions relating to modified plans sunset one year after enactment.

### **Discharges Permitted Regardless of Certain Mortgage Arrears**

- Section 1328 was modified to permit the Court to issue a discharge to a Debtor who:
- Is behind on less than 3 mortgage installment payments on or after 3/19/2020; or,
- is within an action forbearance plan at the time of discharge.
- This provision sunsets one year after enactment.

### **ADDITIONAL RESOURCES:**

#### **Plain Language - CFPB Website:**

The Consumer Finance Protection Bureau (CFPB) maintains online resources in plain language that explains the basic concepts involving C.A.R.E.S. Act and COVID19 Mortgage Forbearances. The presentation includes videos that might be useful in explaining the concepts to your clients.

Source: <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/>

#### **Loss Mitigation Flow Chart - National Consumer Law Center's Website:**

The National Consumer Law Center has published a very useful flowchart that signals the loan modification related publications/guidance applicable to your client's loan per investor. An updated for is attached. Visiting this form online provides you with access to the hyperlinks to said publications/guidance.

Source: [https://www.nclc.org/images/pdf/special\\_projects/covid-19/COVID19\\_Mortgage\\_Chart.pdf](https://www.nclc.org/images/pdf/special_projects/covid-19/COVID19_Mortgage_Chart.pdf)

## **NEW JERSEY SHERIFF SALES AND EVICTIONS - Residential**

### **SHERIFF SALES**

County by County updates as to the status of sheriff sales.

- Some counties not presently holding any sheriff sales.
- Some counties holding sheriff sales, but limited to vacant/abandoned.
- Most counties require special pleadings to be filed or certifications to be submitted to move for sheriff sale.  
Certifications from the attorney- best to contain an inspection report based on objective evidence.

Courts frequently take into consideration the status of a sheriff sale when deciding whether to grant an MFR, Certification of Default or other hearing.

Properties are being sold to 3<sup>rd</sup> parties at a higher rate.

- Reduced number of properties are available for sale
- Investors are looking to buy properties.
- Single family residences are increasing in value (social distancing).
- Harder for a borrower to get a property back after the gavel falls if the property is sold to a 3<sup>rd</sup> party.

### **EVICTIONS**

*All Counties. As of January, 2021 - no evictions.*

## New Jersey Moratorium

March 9, 2020 - Governor Murphy declares a Public Health Emergency and State of Emergency in Executive Order 103. To date, the emergency has been renewed approximately every 30 days.

On March 19, 2020, Governor Murphy signs Executive Order 106 which bars evictions.

The eviction stay of Executive Order 106 follows the expiration of Executive Order 103. Unless ordered otherwise, the NJ bar on evictions expires 2 months *after* expiration of the public emergency. At present, the earliest a sheriff can enforce a writ of possession is March 20, 2021.

- Eviction litigation can be initiated and orders can be entered during the stay.
- A sheriff will not act on an order.
- A Court can issue an order to allow the eviction in the interest of justice.  
Examples: criminal activity, dangerous conditions, code violations, hazards, etc.
- If there is a good reason to evict (other than for non-payment), you can move the Court to have the sheriff enforce the writ of possession.

## FEDERAL LAW -CDC

On September 4, 2020, the Centers for Disease Control and Prevention (CDC) issued a national moratorium on most evictions for nonpayment of rent.

The Order was effective on September 4, 2020.

Set to expire on December 31, 2020

Extended to January 31, 2021

For purposes of NJ, Governor Murphy's Executive Order 106 is more expansive.

The CDC Order does not relieve the parties from their contractual rights and responsibilities. Persons are still required to pay rent and follow all the other terms of their lease and rules of the place where they live. Persons may be evicted for reasons other than not paying rent.

**FEDERALLY BACKED LOANS (Foreclosures and evictions)**

**Fannie Mae, Freddie Mac, FHA**

FANNIE MAE and FREDDIE MAC- March 18, 2020

Fannie Mae Letter LL-2020-02

Freddie Mac Bulletin 2020-4

Moratorium now extended to January 31, 2021

FHA (Fair Housing Administration)- March 18, 2020

Mortgage Letter 2020-04

Moratorium now extended to February 28, 2021.

Suspends all new foreclosures. Suspends all foreclosures in process. Suspends all evictions. Does not apply to vacant/abandoned properties.

## ADDRESSING FORECLOSURES, FORBEARANCES & THE CARES ACT IN A COVID ENVIRONMENT - FROM THE DEBTOR'S SIDE

### DEALING WITH COVID

#### ADVISING CLIENTS:

- Extending Plans vs Suspending Payments - there has been a balancing act to be done with trying to do a COVID plan extension vs. suspending trustee payments. Especially when an employment or income issue has not yet been resolved.

- Sunset of COVID Extensions - now the big question is whether or not it is worth it, modify the Chapter 13 plan for a COVID extension before the sunset provision of March 27. Realistically, as long as the debtor has legitimate grounds to request the extension, it is probably worth it just in case they need it. Worst case scenario, the plan can always be paid off early even if it was extended.

- Does the COVID extension need to be filed or confirmed before the March 27 sunset? - this is a question that has not been definitively answered yet. However, if we look at the language in the CARES Act, Sec. 1113(b)(1)(C) "...for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if...the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and the modification is approved after notice and a hearing."

- If we compare that language to the language used in the bankruptcy code provision involving extending the automatic stay, §362(c)(3)(B) wherein Congress stated "...the Court may extend the stay in particular cases...after notice and a hearing completed before the expiration of the 30-day period..."

- The language used in the CARES Act provision specifically lacks the requirement to have the hearing completed prior to the expiration date. It seems to me, based upon the comparison of the language used by Congress in the two provisions

it would seem that the modified plan requesting the extension must be filed prior to the March 27 deadline, but not necessarily confirmed prior to the deadline.

## Foreclosures and Evictions

- Evictions - It has been easier to advise clients on possible evictions because the eviction moratorium under Executive Order 106, currently, expires 2 months after expiration of the public emergency.

- Although the Executive Order has not expressly barred Sheriff Sales, it does seem that the Sheriffs have erred on the side of caution and simply not held the sales. This has made it difficult to advise clients on possible Sheriff Sales, due to the fact that the sale technically can take place under the law.

## - Tax Sale Certificates in the Plan

- General practice pointer - remember when extending a Chapter 13 plan it is important to update the interest amortization to the new plan length. It is something that is easily overlooked but could have big consequences to the overall plan payment.

## Appropriations Act

### - Significant Changes

- 1 - Courts may grant a discharge to debtor who have defaulted on up to 3 monthly residential mortgage payments. This is in Section 1001(b) of the Appropriations Act, and requires the debtors to show that the missed payments

were directly or indirectly caused by a COVID-19 related hardship. This provision gives Courts the discretion to grant the discharge, not a requirement. (provision ends December 27, 2021)

2 - CARES Act relief cannot be denied to a person based on them having filed for bankruptcy. The specific relief would be a Foreclosure Moratorium, Forbearance, or an Eviction Moratorium. (provision ends December 27, 2021)

3 - Mortgage Servicers can file a late supplemental proof of claim for payments that were forborne, deferred or otherwise modified under the CARES Act. The claims must describe the forbearance agreement or loan modification and a copy of the forbearance agreement or loan modification. And the claim must be filed no later than 120 following the end of the forbearance. (provision ends December 27, 2021)

4 - Any part in interest (aka the mortgage servicer) can move to modify the Chapter 13 plan in order to pay the supplemental proof of claim for payments forborne, deferred or otherwise modified under the CARES Act. (provision ends December 27, 2021)

5 - Utility companies are prohibited from discontinuing utility services to an individual debtor, even if the debtor fails to provide the utility company with adequate assurance of payment, so long as the debtor pays the utility company for services rendered in the twenty-day post filing period and continues to make the regular post-petition utility payments. (provision ends December 27, 2021)



## OFFICE POLICIES

- Screening Employees - the NJ State Health Department and CDC have implemented requirements in order to keep employees and clients safe including:

1. employee self-assessments / health questionnaires
2. temperature screenings

- Open door policies - we have been keeping interior doors open whenever possible, so people do not have to touch door handles. But whenever door handles are touched, they are immediately disinfected.

- Handwashing / Sanitizer

- Masks

- Plastic barrier for receptionist

- Working from home

## LIFE AFTER COVID

### WHAT STAYS AND WHAT GOES:

TELEPHONIC 341 HEARINGS - This has been a silver lining in the practice. I am finding more clients are able to appear at the 341 hearing on the first listing, and also the clients have a greater feeling of comfortability with the process because, for the most part, they are in a familiar setting which brings them comfort.

SANITATION PROCEDURES - these are generally good practices that help keep an office running at full capacity on a going forward basis.

WORKING FROM HOME - I think that these policies will vary the most office to office. There are certainly advantages to having people in the office, but other advantages to working from home. I think that because the technology to allow working from home has been adopted by most, there will be more working from home on a sporadic basis.

HEALTH SCREENINGS - these probably will go away after all of this is over.