As the coronavirus emergency causes the shutdown of cities and towns and forces businesses to close, millions of consumers are facing a sharp decrease or loss of their income for the foreseeable future. Without stable housing, people will be unable to avoid infection by practicing social distancing and those who get a mild infection will not have a place to convalesce where they can avoid infecting others. Maintaining housing is more important than ever.

On the federal level, the CARES Act provided for a moratorium on foreclosures until May 17, 2020 and provides forbearance of monthly payments for up to a full year for certain federal mortgages. Other programs and lenders allow more or less time. See NCLC’s Major Consumer Protections Announced in Response to COVID-19 and Coronavirus Emergency: What Consumers Need to Know About Mortgage Relief.

There is much more that states should do to help consumers remain in their homes.

Not all loans are covered by the CARES Act and, for those that are, the relief is minimal and temporary. States should provide additional protections to keep consumers safe in their homes at such a critical time, both during and after the emergency period.

The state supreme judicial courts can issue emergency orders, governors can issue emergency or executive orders, and attorneys general and regulatory agencies can issue emergency regulations that provide:

A 180-day moratorium on all mortgage foreclosure-related actions, including:
- The acceleration of a home-secured loan;
- The commencement or continuation of any judicial foreclosure proceedings, including hearings, trials, scheduling conferences, mediations, entry of judgment, and foreclosure sale. The CARES Act only provides a 60-day moratorium beginning March 18, 2020 and only for federally backed mortgages;
- The service, filing, recording, or publication of any documents related in any way to non-judicial foreclosures;
- The tolling of all foreclosure-related deadlines, including filing deadlines and redemption periods for judicial and non-judicial foreclosures;
- The commencement or continuation of post-foreclosure eviction or ejectment proceedings, including the execution of writs of possession or ejectment; and
- A stay of all judicial and non-judicial foreclosure activities for the duration of all forbearance periods provided to borrowers.

A mandatory judicial foreclosure process

From March 1, 2020, the date the federal government declared the national emergency until 180 days after the government declares this emergency to be over; mortgage servicers and lenders should be prohibited from conducting non-judicial foreclosures. During this period, a foreclosure sale may proceed only upon a court’s review and approval of the foreclosing party’s implementation of forbearance and other relief options available for COVID-19 hardships.
A requirement that lenders and servicers offer accessible and uniform forbearance agreements, including automatic assistance for delinquent borrowers, and review for multiple post-forbearance options

*Condition the right to foreclose on requirements that lenders and servicers must:*

- Allow any borrower experiencing a financial hardship due to COVID-19 to obtain a forbearance of payments for at least 180 days based on a simple written or oral request, with the option to renew for an additional 180 days;
- Allow the borrower, and not the servicer, determines the length of the initial and renewal forbearance period;
- Allow borrowers to make payments toward the loan during the forbearance period without termination of the forbearance agreement;
- Automatically place borrowers who are 60 or more days delinquent into forbearance, with borrowers able to request an extension for 120 days and then an additional 180 days;
- Provide forbearance regardless of whether the borrower’s default preceded the pandemic and even if the loan is subject to a bankruptcy or foreclosure proceeding;
- Give borrowers—before they agree to a forbearance—a complete and accurate description of the forbearance options and procedures for requesting forbearance as well as the post-forbearance options for repayment of the missed payments;
- Prohibit assessment of any late fees, penalties, additional interest, or other charges due to failure to make scheduled payments in connection with forbearances;
- Continue paying or advancing the amounts due under existing escrow accounts;
- Prohibit demands of lump-sum payments of arrears at the end of forbearance for lump-sum payment (including principal, interest, and escrow amounts that came due during the forbearance);
- At least 30 days before the end of a final forbearance period, review borrowers for, and offer eligible borrowers, all loss mitigation options that include:
  - Deferral of all arrearages (including escrow advances) into a non-interest bearing lien payable when the loan is paid off at the end of the loan repayment term; or
  - Extension of the loan repayment term for a number of months equivalent to the forbearance period; and
  - For borrowers who cannot afford to resume pre-forbearance payments, review for a modification of the loan with arrearages capitalized, deferred, or forgiven.
- Provide such forbearance and post-forbearance relief options for all loans secured by the borrower’s principal residence, with the exception of open-end credit obligations; and
- Provide notices in English and Spanish and communicate about COVID-19 forbearance and loss mitigation in a borrower’s preferred language where the servicer regularly communicates with the borrower in that language.
Narrow exceptions and broad legal consequences

- Provide that servicers and lenders may only be exempted from compliance with these requirements upon proving that a contractual provisions or applicable law prevents them from providing the forbearance and loss mitigation measures described above; and
- Declare that non-compliance with these emergency measures, including failure to disclose all reinstatement options in a timely and accurate manner, shall be a basis for imposing liability under the state’s unfair and deceptive practices act and unfair debt collection statutes and shall be a defense to a foreclosure action.

Questions? Please contact National Consumer Law Center attorneys Geoff Walsh gwalsh@nclc.org or Andrea Bopp Stark astark@nclc.org.

For more information, please visit NCLC’s COVID-19 & Consumer Protections online resources.