



To: All WFG Policy Issuing Agents; All WFG Title Examiners and Officers
From: WFG Underwriting Department
Date: March 12, 2021
Bulletin No. NB 2021-02
Subject: CARES Act Moratorium on Foreclosures – Insuring Foreclosed Properties

A National Emergency was declared related to COVID-19 effective March 13, 2020. In response to COVID, the federal government and many states and even some local governments have instituted moratoria on foreclosures and or evictions with multiple variations on their applicable rules.

COVID-19 and the CARES Act

On March 27, 2020¹, the United States enacted the Coronavirus Aid, Relief and Economic Security Act (“[CARES Act](#)”). Section 4022 of the CARES Act allowed a borrower on a federally backed mortgage secured by a one-to-four family mortgage to request up to 180 days of forbearance from loan payments. This forbearance could be extended for an additional 180 days. Section 4023 establishes similar forbearance rights for multi-family properties secured by a Federally Backed Multifamily mortgage loan.

The CARES Act also established a nationwide moratorium on foreclosures or evictions on certain mortgages. During the moratorium, the holder of the mortgage may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order or sale or execute a foreclosure related eviction or foreclosure sale. The Centers for Disease Control issued a separate prohibition on certain evictions.

Extensions of the Foreclosure and Eviction Moratoriums

Those moratorium periods have been extended a number of times and the current federal restrictions have most recently been extended through June 30, 2021. There are separate state and federal eviction moratoria which also seemingly apply to the final step in a foreclosure

Underwriting Requirements

¹ This is not a typo. Congress set an effective date before the law passed.

If a foreclosure was completed prior to March 1, 2020, it should be evaluated under the normal foreclosure review standards for that state.

No foreclosure completed after March 1, 2020 may be insured without written underwriting approval.

WFG will consider insuring foreclosures completed after March 1, 2020 if there is a sufficient showing that neither the CARES Act nor any of the state and local moratoriums restrict the foreclosure or eviction.

How can I tell if the CARES Act restricts a particular foreclosure?

The 3-part test under the CARES Act is:

1. The property securing the mortgage is either:
 - a. Residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1- to – 4 families? In an abundance of caution, until shown otherwise, we include family farms with a home within this; OR
 - b. Multifamily residential property designed for occupancy by 5 or more families.

If the property is raw land or commercial with no residential component, the CARES Act Moratorium doesn't apply.

2. The property was vacant or abandoned before March 18, 2020, the effective date of the CARES Act, or the start of the foreclosure process (whichever is later). If so, then the CARES Act Moratorium does not apply. The difficulty is in finding acceptable proof of a state of affairs that may be almost a year ago.

The test is always a date in the past. So, the best evidence will be an On-Site Inspection Report dated prior to the start of foreclosure or March 18, 2020 (whichever is later) indicating the inspector confirmed that the property was vacant or abandoned.

Current inspection reports/certifications or post-foreclosure affidavits do not provide suitable evidence as to whether the prior owner may have vacated the property under improper threats or not understanding their rights or the protections of the moratorium.

We would also rely on a final judicial determination that the property was vacant such that the CARES Act didn't prevent a foreclosure – if the defendant appeared and made that allegation. We will generally not rely on such an order if the defendant was defaulted or a statement that “the CARES Act doesn't apply” is thrown into the boilerplate recitals in the order.

3. The loan to be foreclosed is a first priority or subordinate “Federally Backed Mortgage Loan”?

The definition is very broad and includes any loan “made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government” or purchased, guaranteed or securitized by Fannie Mae or Freddie Mac.

Identifying a Federally Related Mortgage Loan is not easy. Mortgages insured under various federal programs are made in favor of a bank, a credit union, a mortgage company, or other financial institution and have no facial mention of federal backing. So, we have to look very closely at these, because we know most residential mortgages are federally backed.²

Some information to gather and evaluate before contacting your underwriter about a particular foreclosure:

- Ask the foreclosing lender what proof they can supply that the mortgage was not a Federally Backed Mortgage Loan.
- Does the mortgage documentation name any federal government agency? FHA- Federal Housing Administration; HUD – Housing and Urban Development, VA- Veterans Affairs; SBA-Small Business Administration, RD-Rural Development; and PIH- Office of Public and Indian Housing, USDA - Department of Agriculture, etc. If so, it’s a presumed to be a Federally Related Mortgage Loan.
- Examine the documents surrounding the purchase of the property and the most recent refinance. If there was a down payment assistance, SHIP mortgage or other assistance, can you confirm that no part of it was from a federal grant?
- Did the mortgage documentation use Fannie Mae or Freddie Mac form documents? If so, we start with the presumption that it was a Federally Related Mortgage Loan and need to ask the mortgage holder or servicer to provide evidence that there was never a federal guaranty or enhancement of the mortgage. It is often difficult to prove a negative.
- As to 1-4 family loans processed on Fannie Mae or Freddie Mac forms, comparing the initial mortgage principal amount to the applicable “conforming loan limit” may provide additional indicators as to whether the mortgage in question is a Federally Related Mortgage Loan. Fannie and Freddie are not permitted to purchase any loan that exceeds the applicable conforming loan limit. The FHFA provides tables of the

² In recent years, between 60% and 90% of each year’s residential mortgage originations were federally backed and will be subject to the moratorium.² Housing Finance Policy Center, “Housing Finance at a Glance” November 2020. Chart Page 8. https://www.urban.org/sites/default/files/publication/103273/housing-finance-at-a-glance-a-monthly-chartbook-november-2020_0.pdf

applicable conforming loan limits since July 1, 2007 at:

<https://www.fhfa.gov/DataTools/Downloads/Pages/Conforming-Loan-Limits.aspx>.

As you review this, keep in mind that the limits are higher in certain high cost areas, and differ depending on the number of units in a property.

- If the purchaser after the foreclosure or the foreclosing lender has sufficient information, have them check the Fannie Mae <https://www.knowyouroptions.com/loanlookup> and Freddie Mac <https://www3.freddiemac.com/loanlookup/> lookup tools and print out the results for you. These tools are only supposed to be used by or with the approval of the owner of the property, and require the last four digits of the borrower's social security number.
- If the foreclosure was in the name of the trustee of a mortgage backed security, it is advisable to check the security offering documents to see if the mortgages making it up were government enhanced in some manner. Ginnie Mae has a separate Disclosure Data Search tool which will show whether a given pool was federally enhanced at https://www.ginniemae.gov/investors/investor_search_tools/Pages/default.aspx

If it is not a Federally Related Mortgage Loan (and that's a pretty sweeping definition), then the CARES Act moratorium doesn't apply. But the great majority of residential mortgages will be subject to the CARES Act moratorium.

I Think my Mortgage is Exempt from the CARES Act Moratorium. What Next?

If after evaluating a foreclosure, you believe it is not covered by the CARES Act moratorium, please contact the WFG underwriter for the state in which the property is located. They can assist you in reviewing the evidence you have found for CARES Act applicability and assist you in navigating the myriad state and local foreclosure restrictions that may also apply.

Here are some resources to help in evaluating the state and local restrictions.

- Perkins Coie has published an excellent and current index of the various restrictions around the country. <https://www.perkinscoie.com/en/news-insights/covid-19-related-eviction-and-foreclosure-ordersguidance-50-state-tracker.html#national>
- As has the National Consumer Law Center. <https://www.nclc.org/issues/foreclosures-and-mortgages/covid-19-state-foreclosure-moratoriums-and-stays.html>.
- Justia.com also has a resource at <https://www.justia.com/covid-19/50-state-covid-19-resources/eviction-mortgage-foreclosure-relief-during-covid-19-50-state-resource/>.

NO FORECLOSURE MAY BE INSURED WITHOUT WRITTEN APPROVAL OF A WFG UNDERWRITER.

The COVID restrictions will present underwriting challenges for many months, if not years as we sort out the legal effect of steps toward a foreclosure taken in violation of the forbearance rights and foreclosure moratoria. We expect the courts and various financial regulators³ will aggressively enforce both the letter and spirit of the restrictions and would not be surprised to see completed foreclosures “unwound” after the fact and substantial damages and fines assessed against those involved.

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The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.

³ See Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act, April 3, 2020. https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf