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## What to Do If You're Facing Foreclosure or Falling Behind on Your Mortgage in the COVID-19 Era

Note: This article was last updated on April 27, 2020 and some of the information included may no longer be up-to-date.

**\*\*\*If you have any questions about this information or your situation, please call our office. The situation is changing rapidly, and while we are trying to keep information as up-to-date as possible, please call for the most up-to-date information.\*\*\***

### **I Already Have Been Sued for Foreclosure. What Is Going to Happen Next in My Case?**

The New York State Unified Court System has ordered all court cases except “essential” matters to be put on hold. Foreclosure cases are not “essential” matters, so these cases are being rescheduled to later this year. Additionally, New York Governor Andrew Cuomo issued an executive order on March 20, 2020 stating there shall be no “enforcement of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days.” This means your lender can’t move ahead on the foreclosure case until the Court System changes its order or the Governor changes his executive order.

If you have questions about your case, you can contact the court’s Coronavirus Telephone Hotline at 833-503-0447.

### **I’m Behind on My Mortgage But I Haven’t Been Sued Yet. What Will Happen Next?**

Normally, a lender could start a foreclosure case by filing a summons and complaint in the Supreme Court where the property is located. However, as of March 23, 2020, the courts have ordered no court papers can be filed unless it’s an “essential” matter. Foreclosures are not an “essential” matter, so your lender should not be able to start a new foreclosure action against you

now. That should continue to be true until the court changes its order.

In the unlikely event that you are served with a foreclosure summons and complaint during this period, you have the right to raise legal defenses in an “answer.” The answer explains your side of the story. It says which statements you disagree with in the complaint and tells the court any defenses and claims that you have. Ultimately, if you are living in your house and it is your primary residence, you get an opportunity to put in an answer later on after your first settlement conference. In all residential foreclosure cases, the court is required to schedule a settlement conference with a homeowner. The purpose of the settlement conference is to give the homeowner an opportunity to try to reach a settlement with the lender. If you attend the settlement conference, you then have thirty (30) after your first settlement conference to submit your answer.

If you get served court papers to start a foreclosure action against you, and you would like to put in an answer after your first settlement conference, the New York Courts have more information about preparing an answer here:

<https://www.nycourts.gov/courthelp/Homes/foreclosureAnswering.shtml>

You can complete an answer with this online program:

<https://www.nycourts.gov/courthelp/DIY/foreclosureAnswer.shtml>

## **My House Was Scheduled to be Sold in a Foreclosure Auction Soon. What is Going to Happen?**

As of March 20, 2020, New York Governor Andrew Cuomo issued an executive order prohibiting “enforcement of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days.” As a result, it appears no foreclosure auctions can be held for 90 days from the date of that order.

As of March 16, 2020, no foreclosure auctions can be held in the Sixth Judicial District, which covers Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego, Schuyler, Tioga and Tompkins counties. You can see the order here.

As of March 16, 2020, no foreclosure auctions can be held in the Seventh Judicial District, which covers Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne, and Yates counties. You can see the order here.

As of March 16, 2020, no foreclosure auctions can be held in the Eighth Judicial District, which covers Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming counties. You can see the order at the end of the article.

## **Can't Pay Your Mortgage Due to COVID-19? Here's What to Do.**

As unemployment and economic hardship increase with the COVID-19 pandemic, you may be facing problems paying your mortgage. Many, but not all, lenders are creating options for helping homeowners facing economic hardship because of COVID-19.

One of the main options that most banks are offering is something called a forbearance. Forbearance is not forgiveness of the mortgage payments you are behind on. A forbearance is a reduction or suspension of your mortgage payments for a set amount of time until you get back on your feet. At the end of your forbearance, some lenders will require you to pay the full amount of those reduced or deferred payments. Some lenders will add an extra amount to your monthly payments. Some lenders will add those mortgage payments to the end of your loan. And some lenders will require you to apply for a loan modification once your forbearance has expired.

A loan modification is the most common way that homeowners catch up on their mortgage payments and avoid foreclosure. With a loan modification you keep your original contract with the bank, but you agree to modify or change some of the terms of that agreement. The bank might change your interest rate. In a loan modification, the bank is taking the missed payments, the interest, penalties, late fees, court costs and attorney fees, the advances on your escrow account for taxes and insurance and coming up with a new principal balance. They are running that principal balance through their guidelines and looking at your income to see if you qualify for a modified payment under their rules. Your unpaid principal balance is definitely going to change. Your payment amount is also certain to change. The bank might change how long you have to pay on the loan.

If you qualify, most banks require a trial period plan (TPP) first. This is an experiment to see if you can get back on track and make your payments at the new amount. If you successfully make your payments in the TPP, then you'll be signing a permanent modification.

If you don't have an escrow account to cover property taxes, condo fees or homeowners insurance, a forbearance also won't address those bills.

### **Here's a rundown of what major lenders are offering to homeowners in trouble:**

**All Federally Backed Loans:** Federally backed loans include Fannie Mae, FHA, Freddie Mac, USDA and VA loans. If your mortgage is a federally backed mortgage, the Coronavirus Aid, Relief, and Economic Security (CARES) Act prevents your lender from foreclosing on you for 60 days after March 18, 2020. This includes starting a foreclosure lawsuit against you or finalizing a foreclosure judgment or sale.

Specifically, the CARES Act prohibits lenders and servicers from beginning a judicial or non-judicial foreclosure against you, or from finalizing a foreclosure judgment or sale, during this period of time. The CARES Act also gives you the right to request a forbearance for up to 180

days. You also have the right to request one extension for another up to 180 days. You must contact your loan servicer to request this forbearance and have a hardship because of COVID-19. You do not need to submit additional documentation to qualify. There are more details about each of these types of loans below.

**Bank of America:** Homeowners affected by COVID-19 and with Bank of America mortgages and home equity lines of credit can request to defer payments, with payments added to the end of the loan. Bank of America has promised there will be no negative credit reporting for homeowners. Bank of America also has halted foreclosure sales and evictions.

**Fannie Mae Loans:** Fannie Mae provides mortgage insurance to lenders protecting them from the risk that a loan may become delinquent. This means lenders backed by Fannie Mae have to follow its rules. And on March 18, 2020, Fannie Mae ordered a 60-day moratorium on lenders to hold any foreclosure auctions.

Fannie Mae also ordered lenders to offer forbearance options if homeowners are facing a financial hardship because of COVID-19. This means Fannie Mae must reduce or suspend your payments. Under Fannie Mae's rules, your lender is authorized to offer an initial forbearance plan term of up to 6 months, and grant an extension of the initial forbearance plan term of up to 6 additional months. Fannie Mae is accepting verbal statements of the homeowner being impacted by coronavirus.

Fannie Mae also has ordered lenders to not report negative activity related to your mortgage to the credit reporting bureaus if you fall behind because of COVID-19.

You can go to this online lookup to find out if your loan is a Fannie Mae loan:

<https://www.knowyouroptions.com/loanlookup>

**Federal Housing Administration (FHA) Loans:** FHA provides mortgage insurance, protecting lenders from the risk that a loan may become delinquent, for regular mortgages as well as reverse mortgages (FHA is the main provider of reverse mortgages in the United States). This means that lenders backed by FHA have to follow its rules. And on March 18, 2020, FHA ordered a 60-day moratorium on lenders starting foreclosures. FHA also ordered a 60-day halt of lenders continuing the foreclosure of any FHA loans they have already started. FHA also has reminded lenders that there are workout options for homeowners who have fallen behind. An example of one of those options is a special forbearance for unemployed borrowers.

As of April 1, 2020, FHA announced a special forbearance program for homeowners negatively affected by COVID-19. The initial forbearance may be up to six months and can be extended up to another six months. All late charges, fees and penalties have to be waived during a forbearance. Suspended payments during a forbearance can't be reported as delinquent to the credit reporting agencies.

At the end of a forbearances, borrowers can get a second mortgage from their lenders called a "partial claim" to address the principal, interest, taxes, and insurance they owe; this mortgage will not require payments and will only have to be paid if the property is sold or transferred.

If you aren't sure if you have a FHA loan, you should check your loan documents to see if they reference FHA or the U.S. Department of Housing and Urban Development (HUD) (of which FHA is part). You also can call the FHA's National Servicing Servicing at 1-800-CALL FHA (800-225-5342) to find out if your loan is a FHA loan.

**Freddie Mac Loans:** Freddie Mac provides mortgage insurance on mortgages, protecting lenders from the risk that a loan may become delinquent. This means lenders backed by Freddie Mac have to follow its rules. And on March 18, 2020, Freddie Mac ordered a 60-day moratorium on lenders to hold any foreclosure auctions on any homes except for those that are vacant or abandoned.

Freddie Mac has told lenders to offer forbearance options if you are facing a financial hardship because of COVID-19. This means Freddie Mac must reduce or suspend your payments by offering payment relief for a forbearance up to 12 months. Freddie Mac also is requiring lenders to waive penalties and late fees. Freddie Mac also has told lenders to offer special loan modifications if you are facing a financial hardship because of COVID-19 that are usually only offered during natural disasters.

In a loan modification, you will still have your original contract with the bank, but you are entering an agreement with your bank to modify or change some of the original terms of your agreement with the bank. In a loan modification, the bank is taking the missed payments, the interest, penalties, late fees, court costs and attorney fees, the advances on your escrow account for taxes and insurance and coming up with a new principal balance. They are running that principal balance through their guidelines and looking at your income to see if you qualify for a modified payment under their rules.

Freddie Mac also has ordered lenders to not report to credit bureaus if you are on an active forbearance plan, repayment plan or trial period plan as a result of a COVID-19 related hardship.

It is our understanding Freddie Mac is accepting verbal statements of homeowners being impacted by coronavirus.

You can go to this online lookup to find out if your loan is a Freddie Mac loan:  
<https://ww3.freddie.mac.com/loanlookup/>

**Mr. Cooper:** Mr. Cooper has announced the foreclosure and evictions proceedings have been suspended for 60 calendar days from March 18, 2020. Mr. Cooper administers some federally backed loans like Fannie Mae, Freddie Mac, FHA, VA and USDA and is following the rules of those programs. Mr. Cooper also has announced it is "offering mortgage assistance plans and payment relief for eligible customers impacted by the national emergency." Application for pandemic-related assistance can be done online here.

**M&T Bank:** M&T has announced that homeowners impacted by COVID-19 might be eligible for payment relief by making changes to the current loan payment amount or deferring a payment and adding it to the end of the loan.

**Ocwen/PHH:** As of March 20, Ocwen and its subsidiary, PHH, report that they may have the following options for customers who fall behind on their mortgage due to COVID-19:

- Payment forbearance with repayment options
- Suppressing negative credit reporting
- Waiving late fees
- Postponing the foreclosure sales process

As of April 5, Ocwen says specifically that it intends to grant homeowners three months of forbearance initially and that it will move the missed payments to or near the loan's maturity as a non-interest bearing balance.

PHH says homeowners facing hardship due to COVID-19 can email [covid19assistance@mortgagefamily.com](mailto:covid19assistance@mortgagefamily.com) or call 1-800-936-8705 to begin the assistance process. PHH is warning that the turnaround time may be as long as one week.

It is our understanding that homeowners who apply for a hardship forbearance can get a forbearance for 90 days with reinstatement expected at the end of that period. If homeowners can't fully reinstate, then they can apply for other loss mitigation options like a loan modification.

**USDA Loans:** The USDA provides mortgage insurance through the Section 502 Guaranteed Loan Program to help lenders provide low- and moderate-income households the opportunity to own houses in rural areas. This means lenders have to follow the USDA's rules. Under the CARES Act, you have the right to request a forbearance for up to 180 days. You also have the right to request one extension for another up to 180 days. You must contact your loan servicer to request this forbearance and have a hardship because of COVID-19. You do not need to submit additional documentation to qualify.

**Veterans Administration (VA) Loans:** The VA already was encouraging lenders to extend forbearances to homeowners who are facing a financial hardship because of COVID-19. The VA also is encouraging lenders to waive late charges and suspend reporting to credit bureaus of mortgage loans where homeowners have fallen behind because of COVID-19. Under the CARES Act, you have the right to request a forbearance for up to 180 days. You also have the right to request one extension for another up to 180 days. You must contact your loan servicer to request

this forbearance and have a hardship because of COVID-19. You do not need to submit additional documentation to qualify.

**Other Loans:** If your loan is not covered by any of these categories, you should talk to your lender directly about what options are available to you.

On March 21, 2020, Governor Cuomo ordered that any bank that is regulated by New York State's banking regulator, the New York Department of Financial Services (DFS), needs to offer 90-day forbearances for people who have financial hardship as a result of the COVID-19 pandemic. The Governor also authorized DFS to issue emergency regulations to ensure that applications "shall be granted in all reasonable and prudent circumstances solely for the period of such emergency." You should be aware that, if you can afford your mortgage, you should keep paying your mortgage, and the governor's order does not mean that all homeowners are getting relief from having to pay their mortgage.

In these emergency regulations, DFS says that banks regulated by New York must make an option available to homeowners to get payment relief through a forbearance. Homeowners have to demonstrate financial hardship because of the COVID-19 pandemic. Lenders have been ordered to process these applications no later than 10 business days after getting all the information they "reasonably" require to process your application.

If your application for a forbearance is denied, you may file a complaint with DFS by calling 1-800-342-3736 or going online to <http://www.dfs.ny.gov> if you think your application was wrongly denied.

Importantly, if your loan is federally chartered or is backed by the federal government like a FHA, Fannie Mae, Freddie Mac, USDA or VA loan, the DFS rules don't apply and the rules your lender needs to follow are the rules under those programs. Additionally, many banks are not regulated by the DFS and don't have to follow these rules.

As well, on March 19, 2020, DFS asked mortgage companies to:

- Postpone foreclosures for 90 days;
- Refraining from reporting late payments to credit rating agencies for 90 days;
- Offering homeowners an additional 90-day grace period to complete trial loan modifications, and ensuring that late payments during the COVID-19 pandemic do not affect their ability to obtain permanent loan modifications;
- Waiving late payment fees and any online payment fees for a period of 90 days.

On April 24, 2020, the New York Attorney General asked mortgage servicers to:

- Automatically waive late fees and place homeowners in a three-month forbearance as soon as a payment is missed, whether or not this action requested by the homeowner;
- Permit homeowners to renew their 90-day forbearance agreements for up to one year, and provide these extensions based on a verbal or written affirmation that a homeowner's hardship is COVID-19 related without requiring additional documentation;
- Provide a complete and accurate description of post-forbearance options when placing homeowners into a forbearance plan or responding to homeowners' requests;
- Ensure adequate staffing and resources to process homeowners' questions and requests; and
- Develop and be prepared to implement long-term solutions that ensure affected homeowners can easily resume payments at the end of these forbearance periods.

Last Reviewed: April 27, 2020

 [COVID 19 Press Release 3.17.20.pdf](#)

 [Administrative Order - 8th Judicial District - 3.16.20.pdf](#)

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