

# Foreclosure & COVID19 Forbearance Update

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# Foreclosure Update

## Pre-COVID 19 Rule Changes

Since April 29, 2019, Governor Murphy has signed **TWELVE** Bills impacting mortgage foreclosures.

The materials provided include an outline of all twelve bills, including a description of the related provisions.

For Today's purposes, we have grouped the Bills by impact to highlight those that most relate to bankruptcy.

# Foreclosure Update

## Pre-COVID19 Rule Changes

### Direct Bankruptcy Impact

- Assembly Bill 5001 #2  
Statute of Limitations
- Assembly Bill 5002 #3  
Superior Lien Priority
- Senate Bill 3413 #4  
Expedited FC process
- Assembly Bill 5096 #5  
Superstorm Sandy
- Senate Bill 3464 #9  
Modified Sheriff Sales

### Indirect/No Bankruptcy Impact

- Senate Bill 362 #6 – NOI – Affordable Housing Restriction NOI service and disclosures (effective 6/25/19)
- Senate Bill 3416 #1 – NOI – Lender licensed or exempt under NJRMLA (effective 4/29/19)
- Assembly Bill 5000 #12 – NOI Sent to Department of Community Affairs
- Assembly Bill 4999 #8 – Municipal Notice Requirements (effective 7/28/19)
- Senate Bill 3411 #10 – NOI – NOI good for 180 days and limit on LOP reinstatements (effective 8/1/19)
- Assembly Bill 664 #11 – Codifies Mediation and includes NOI mediation disclosures (effective 11/1/19)
- Assembly Bill 4997 #7 – Licensing requirement for Servicers (effective 7/28/19)

# Foreclosure Update

## Pre-COVID19 Rule Changes

### Assembly Bill 5001 #2 Statute of Limitations

- N.J.S.A. § 2A:50-56.1 requires that the SOL to file a foreclosure complaint be calculated three (3) ways with the shortest date being the applicable limit to commence foreclosure:
  - **Six (6) years from the stated maturity date** within the Note and Mortgage (unless extended in writing)
  - **Thirty-Six (36) years from the recording date of the Mortgage** (so long as the mortgage itself does not provide for a period of repayment in excess of thirty (30) years)
  - **Twenty (20) years from the date of a default** unless extended in writing.
- This bill amends the Statute of Limitations for Foreclosure under N.J.S.A. § 2A:50-56.1
  - By reducing the time period within which a foreclosure must be for based upon a default on the loan from twenty (20) years to six (6) years from the date of a default.
  - This reduction to 6 years only applies to mortgages originated on/after April 29, 2019.

# Foreclosure Update

## Pre-COVID19 Rule Changes

### Assembly Bill 5002 #3 Superior Lien Priority

- This bill expands the limited priority authorized under the Condominium Act, N.J.S.A. § 2A:46-8B-21, to now include most other forms of common interest community associations, including HOA's, with the exception of cooperatives.
- Previously, an Association could claim a one-time limited priority amount of six (6) months of regular dues (no late fees, special assessments, attorney fees, etc.) every five (5) years if recorded and the mortgage lender receives prior written notice if filed prior to the lender's lis pendens.
- Now, **this bill increases the amount of that limited priority afforded to these Associations by making the six (6) month priority amount automatically renewable each year for up to five (5) years.**

# Foreclosure Update

## Pre-COVID19 Rule Changes

### Senate Bill 3413 #4 Expedited FC process

- This bill amends and expands the types of evidence that will support a request for an expedited foreclosure of a vacant and abandoned property to also include a statement by representatives of common ownership community (Condo, HOA, etc).
- This bill also extends the deadline for the Sheriff to sell the property under the expedited process from sixty (60) days to now ninety (90) days and mandates that if a Sheriff cannot meet this 90 day timeframe, the lender must file a motion requesting the appointment of a Special Master to sell the property.
- Also, permits the filing of a request for to expedite the foreclosure post-judgment and requires that the lender include a certification that the property is vacant and abandoned.

# Foreclosure Update

## Pre-COVID19 Rule Changes

### Assembly Bill 5096 #5 Superstorm Sandy

- Amended N.J.S.A. § 52:15D-13 by extending the Superstorm Sandy Mortgage Forbearances and Foreclosure Stays (which have already been granted to Sandy Impacted Homeowners).
- The Mortgage Forbearances under the previous statute were set to expire the earlier of:
  - One (1) year from issuance of a certificate of occupancy;
  - July 1, 2019; or
  - Expiration of 10 days following a sheriff's sale.
- However, A5096 amended the expiration of the Mortgage Forbearances to the earlier of:
  - One (1) year from issuance of a certificate of occupancy;
  - **July 1, 2022**; or
  - Expiration of 10 days following a sheriff's sale.
- Likewise, homeowners who had been granted a stay of foreclosure proceedings, which were previously set to expire on the earlier of one (1) year from issuance of a certificate of occupancy or July 1, 2019, will now expire on the earlier of one (1) year from issuance of a certificate of occupancy or **July 1, 2022**.

# Foreclosure Update

## Pre-COVID19 Rule Changes

### Senate Bill 3464 #9 Modified Sheriff Sales

- Extends the **length of each Sheriff's adjournment from fourteen (14) days to twenty-eight (28) days.** (not exceeding 30 days).
- Previously adjournments were unlimited for the Plaintiff and limited to two (2) for the debtors. This bill now limits adjournments to:
  - **Two (2) for the Debtor(s);**
  - **Two (2) for the Lender;**
  - **One by consent of the Lender and Debtor;**
  - **Additional by Court order.**
- Now requires **Plaintiff to prepare the Sheriff's deed:**
  - Each Sheriff wants their own format, preferences, requirements;
  - Third Party purchasers requesting changes.
- Requires the Sheriff to conduct the sale within 150 days (previously required to schedule a sale within 120 days) and authorizes the lender to seek the appointment of a special master if the Sheriff is unable to conduct a sale within 150 days of receiving a Writ.



## Foreclosure Update

## POST-COVID 19 STATUS

## New Jersey Supreme Court

# New Jersey Supreme Court Entered Administrative Orders Regarding COVID-19

### 3<sup>rd</sup> Omnibus Order (5/28/20)

- The Office of Foreclosure resumed consideration of non-dispositive motions.
- Final judgments may not be processed.
- Tolling for the computation of time has ended.
- Tolling for lack of prosecution has ended.

### 4<sup>th</sup> Omnibus Order (6/11/20)

- Extends all existing deadlines to June 28, 2020.
- All matters are being filed, with the exception of entry of final judgments
- Landlord Tenant Complaints may resume being filed
- *The State Health Emergency is scheduled to expire 7/4/20 and we do not know what to expect from the State/Court.*

# Foreclosure Update

POST-COVID 19  
STATUS

GSE Status

FANNIE MAE/FREDDIE MAC have extended the hold placed on foreclosure activity through September 1, 2020.

The hold prevents creditors' counsel from performing certain milestones in a foreclosure, such as:

- commencement of new foreclosures,
- entry of a final judgments of foreclosure, and/or
- scheduling/conducting sheriff's sales.



Bankruptcy  
COVID19  
Update

C.A.R.E.S. Act  
& Mortgage  
Forbearances

Section 4022 of The C.A.R.E.S. Act granted forbearance eligibility to borrowers who claim to have been impacted by the COVID19 Pandemic with mortgages:

- Owned by Fannie, Freddie Mac, VA, FHA, USDA, HUD
- Federally Insured
- 1-4 Family Units – regardless of delinquency status and without further documentation on impact
- 5+ Family Units – current at the time of the pandemic

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C.A.R.E.S. Act  
& Mortgage  
Forbearances

## C.A.R.E.S. Act Forbearance Basics

### 1-4 Family Units

- Up to two 180 day forbearances;
- Debtor must request;
- Regardless of delinquency status, and
- No documentation on impact.

### 5+ Family Units

- Up to three 30 day forbearances;
- Must have been current at the time of the pandemic; and,
- Restricts borrower's ability to evict nonpaying tenants.

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C.A.R.E.S. Act  
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Forbearances

## C.A.R.E.S. Act Forbearance Basics

### CREDIT REPORTING

Section 4021 of the law revises Section 623(a)(1) of the Fair Credit Reporting Act (15 USC 1681s-2(a)(1))

Effective January 31, 2020, until the later of 120 days after March 27 or 120 days after the date the national emergency is terminated.

When an COVID19 related accommodation is made and the borrower makes payments or is not required to make payments, the creditor must report the loan obligation as current.

**If the loan was delinquent before the accommodation period began and/or charged off, the creditor can continue to report the obligation as delinquent and/or charged off.**

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C.A.R.E.S. Act  
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Forbearances

## THE C.A.R.E.S. ACT – 4 KEY ISSUES

1. Forbearance v. Deferment
2. District of New Jersey Noticing Procedures
3. Next Steps for Debtors/Debtors' Counsel
4. Forbearance Review Informational Chart

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C.A.R.E.S. Act  
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Forbearances

FORBEARANCE v. DEFERMENT

- A Forbearance is NOT a Deferment.
- Debtors request forbearances without counsel and may believe they have been granted a deferment.
- Debtors may eventually be offered, or obtain a deferment.
- Deferment may constitute a change in mortgage terms that the court needs to review/approve.

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C.A.R.E.S. Act  
& Mortgage  
Forbearances

DISTRICT OF NEW JERSEY FORBEARANCE NOTICING

- Lenders are required by General Order (5/1/2020) to file Forbearance Notices on the Docket and Claims Registry.
- The Notice of Mortgage Forbearance (Local Mandatory Form) specifies:
  - Impacted Property;
  - Current Payment Amount; and,
  - Length of Forbearance.
- Burden rests with the Debtor(s) to affirmatively resolve the accrued payments and/or seek extension.
- There is no waiver of prior delinquencies.



Bankruptcy  
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C.A.R.E.S. Act  
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Forbearances

WHAT'S NEXT FOR DEBTORS/DEBTORS' COUNSEL

Debtors who do not qualify for a deferment will be reviewed for other repayment options including, but not limited to:

- Repayment plans inside of a bankruptcy
  - stipulation payments
  - rolling arrears into a modified plan;
- Repayment plans outside of a bankruptcy; and,
- Loan modification.

**The GSE's have Published Programs/Waterfalls.**

**Many conventional loans are eligible for similar reviews/programs.**

Bankruptcy  
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C.A.R.E.S. Act  
& Mortgage  
Forbearances

Forbearance Review  
Informational Chart

Does it sound like you need  
a flow-chart to understand  
this review information?

Not sure what a waterfall is?

Not to worry, the Flow Chart  
by the National Consumer  
Law Center is in your  
materials!

