

Chapman Client Alert

March 27, 2020

Current Issues Relevant to Our Clients

CARES Act Provisions Affecting Consumer Lenders

H.R. 748 better known as the CARES Act or more informally as the \$2 trillion stimulus bill signed by President Trump on March 27, 2020, contains one important provision for all consumer lenders and another two provisions related to federally-backed mortgage loans.

Credit Reporting

Section 4021 of the law revises Section 623(a)(1) of the Fair Credit Reporting Act (15 USC 1681s-2(a)(1)) and affects any consumer lender who furnishes credit reporting information due to an accommodation for hardships resulting from the COVID-19 virus. Accommodation is defined very broadly to include any deferral of payments, partial payments, forbearances, or any modification of a consumer loan.

Since federal banking agencies are recommending that financial institutions work with borrowers during this time of national emergency, this new law is particularly important as lenders try to assist borrowers. The new provision applies from 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 accommodation is made and the borrower makes payments or is not required to make payments, the creditor must report the loan obligation as current. However, if the loan was delinquent before the accommodation period began, the creditor can continue to report the obligation as delinquent. However, if the borrower brings the account current, the creditor must report the obligation as current. The exception is a charge off, which may continue to be reported as a charge off.

Creditors and servicers reporting credit information need to follow the new requirements when a loan modification or accommodation is made. However, it is left up to creditors to determine if and what kind of an accommodation is made, if any.

Federally-Backed Mortgage Loans

For single family (1-4 units) mortgage loans that are guaranteed or insured by the federal government (including residential mortgage loans purchased or securitized by Fannie Mae and Freddie Mac), Section 4022 of the CARES Act provides certain forms of relief for borrowers experiencing hardship due to COVID-19. This applies to both first lien and subordinate lien mortgage loans but only federally related mortgage loans.

The borrower may request a forbearance regardless of delinquency status by submitting a request to the loan servicer. All the borrower needs to do is affirm that they have a hardship due to COVID-19. No further documentation is required. However, forbearance is not defined so there appears to be some discretion with the lender. Upon request, the servicer **MUST** grant a forbearance for up to 180 days and extend it for up to another 180 days at the request of the borrower. The borrower may also request that the period be shortened. The length of time also appears to be within the discretion of the servicer.

During a period of forbearance, no fees, penalties or interest beyond the amounts scheduled or calculated (assuming that the borrower makes all payments on time and in full) may be accrued on the borrower's account. In addition, other than as to vacant or abandoned property a servicer may not initiate any judicial or nonjudicial foreclosure proceeding, move for judgement or order of sale or perform a foreclosure related eviction or foreclosure sale for at least 60 days beginning on March 18, 2020, or mid-May 2020.

Multi-family properties (5 or more units) are dealt with in Section 4023 of the legislation. Again, the provisions only apply to loans that are federally-backed (guaranteed or insured) and which are current on February 1, 2020. Unlike 1-4 family federally-backed mortgages, this provision allows the servicer to document the financial hardship. The forbearance is for only up to 30 days subject to extension for

two additional 30 day periods upon the request of the borrower. The request must be made by the borrower at least 15 days prior to the end of the forbearance period. This provision applies only until the termination date of the national emergency or December 31, 2020 whichever comes sooner.

Again, these provisions only apply to federally-backed mortgage loans. But if applicable, these rules must be followed.

For More Information

If you would like further information concerning the matters discussed in this article, please contact any of the following attorneys or the Chapman attorney with whom you regularly work:

Marc P. Franson

Chicago
312.845.2988
franson@chapman.com

Matthew C. Stone

Charlotte
980.495.7308
mstone@chapman.com

Chapman and Cutler LLP

Attorneys at Law · Focused on Finance®

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