

Are Lenders Permitted to Require Lump Sum Payments at the End of a Mortgage Forbearance Period?

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As a result of the COVID-19 pandemic and its negative financial effect across the country, thousands of homeowners are struggling to keep up with their mortgage payments. This has caused many of them to seek assistance from their lenders or mortgage servicers. Specifically, borrowers are requesting mortgage forbearances or other similar forms of assistance. According to the Mortgage Bankers Association, the number of loans in forbearance increased from 5.95% on April 12, 2020 to 6.99% as of April 19, 2020.^[i] These figures are a steep increase from the week of March 2, 2020 where only 0.25% of loans were in forbearance.^[ii]

While lenders and mortgage servicers are helping those affected by COVID-19 by temporarily suspending mortgage payments, a concern with many forbearance programs is that some require borrowers to make up all missed payments in one lump sum at the end of a designated forbearance period. This may be problematic for borrowers who have either lost their job or have received pay-cuts and fear that they will not be in a position to make a large payment at the end of the forbearance period. While both the federal and state governments have taken steps to prevent lenders from commencing foreclosure proceedings during this crisis, until recently, there was little guidance as to how governmental and quasi-governmental entities will require lenders to address the deferred mortgage payments.

Federal Housing Finance Authority's Guidance About Lump-Sum Payments At The End Of Forbearance Periods

On April 27, 2020, Mark Calabria, the Director of the Federal Housing Finance Authority, announced that borrowers in forbearance with Fannie Mae or Freddie Mac backed mortgages would not be required to repay their missed payments in one lump sum.^[iii] Director Calabria stated, “[d]uring this national health emergency, no one should be worried about losing their home”^[iv] While Director Calabria acknowledged that his statements only covered Fannie Mae or Freddie Mac mortgages, he encouraged all mortgage lenders to adopt a similar approach. This announcement was reiterated by the CEOs of both Freddie Mac and Fannie Mae who also announced on April 27th that homeowners would not be required to make lump sum payments.^[v] Freddie Mac CEO David Brickman made it clear that “if you are a homeowner seeking forbearance and Freddie Mac owns your loan, you are never required to make up missed payments in a lump sum.”^[vi] Similarly, Fannie Mae CEO Hugh R. Frater said “[w]e want every homeowner who is struggling because of this pandemic to know they have mortgage options. We do

not require a homeowner to repay missed payments all at once at the end of a forbearance plan”[vii] In all three of these announcements, each organization confirmed that there are multiple options for repayment which include the implementation of repayment plans, payment deferrals or loan modifications.

The Lack Of Guidance As To Non–Federally Backed Mortgages

As stated above, the Federal Housing Finance Authority’s announcement does not apply to privately owned mortgages or those that are not federally backed by Fannie Mae or Freddie Mac. However, elected officials in certain states have spoken out against these lump-sum payments. New Jersey Governor Phil Murphy requested that lenders and servicers add deferred payments to the backend of a loan instead of a lump sum payment.[viii]

On April 20, 2020, New York State Senators Todd Kaminsky and Brian Kavanagh proposed legislation that would provide homeowners the option to extend the life of their mortgage by the amount of time that their mortgage was in forbearance.[ix] Elected officials at the federal level have also spoken about the issue. Representative Kathleen Rice of New York’s 4th Congressional District has stated that she is supportive of protecting homeowners in forbearance and prohibiting lenders from demanding lump sum payments at the end of a forbearance period, regardless of whether the homeowner has a federally backed loan or not.[x]

Conclusion

The Federal Housing Finance Authority has made it clear that homeowners with federally backed mortgages are not required to make lump sum payments at the end of their forbearance period. While the statement does not apply to all loans, lenders who have indicated that they may require lump sum payments at the end of the forbearance period are quickly gaining negative attention. In light of this, we expect that legislation may soon be introduced at both the state and federal levels which seeks to prohibit lenders from requiring borrowers facing financial hardship resulting from the COVID-19 pandemic to catch up on their deferred loan payments in one lump sum or within a short period of time.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. Feel free to contact Thomas S. Baylis at 516.357.3748 or via email at TBaylis@cullenllp.com, Douglas Bohn at 516.357.3879 or via email at DBohn@cullenllp.com, or Roxanne L. Tashjian at 516.357.3704 or via email at RTashjian@cullenllp.com.

Footnotes

[i] Share of Mortgage Loans in Forbearance Rises to 6.99%, Adam DeSanctis, Mortgage Bankers (April 27, 2020) Association, <https://www.mba.org/2020-press-releases/april/share-of-mortgage-loans-in-forbearance-increases-to-699>.

[ii] *Id.*

[iii] “No Lump Sum Required at the End of Forbearance” says FHFA’s Calabria, (April 27, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/No-Lump-Sum-Required-at-the-End-of-Forbearance-says-FHFAs-Calabria.aspx>.

[iv] *Id.*

[v] Freddie Mac: Lump Sum Repayment is Not Required in Forbearance, (April 27, 2020), <https://freddiemac.gcs-web.com/news-releases/news-release-details/freddie-mac-lump-sum-repayment-not-required-forbearance>; Fannie Mae Reminds Homeowners They Are Not Required To Repay Missed Payments All At Once, (April 27, 2020) <https://www.fanniemae.com/portal/media/corporate-news/2020/covid-19-mortgage-options-7010.html>.

[vi] Freddie Mac: Lump Sum Repayment is Not Required in Forbearance, (April 27, 2020), <https://freddiemac.gcs-web.com/news-releases/news-release-details/freddie-mac-lump-sum-repayment-not-required-forbearance>.

[vii] Fannie Mae Reminds Homeowners They Are Not Required To Repay Missed Payments All At Once, (April 27, 2020) <https://www.fanniemae.com/portal/media/corporate-news/2020/covid-19-mortgage-options-7010.html>.

[viii] After Confusion Over Lump Sum Payments, Homeowners Finally Get Clarification On Mortgage Forbearance, Dima Williams, (April 27, 2020), <https://www.forbes.com/sites/dimawilliams/2020/04/27/no-you-do-not-have-to-pay-a-lump-sum-at-the-end-of-mortgage-forbearance/#165385854d38>.

[ix] Federal, State Lawmakers Propose Substantial Mortgage Relief Plan for New York Homeowners, (April 20, 2020), <https://www.nysenate.gov/newsroom/press-releases/brian-kavanagh/federal-state-lawmakers-propose-substantial-mortgage-relief>.

[x] *Id.*; Lawmakers: Homeowners need more time on missed payments, Maura McDermott, Newsday (April 20, 2020, 6:10 pm), <https://www.newsday.com/business/coronavirus/homeowner-mortgage-payment-pandemic-1.43997114>.

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