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MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION  
INDUSTRY ADVISORY  
REGULATORY GUIDANCE

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November 9, 2020

**Governor Hogan's Executive Order Number 2020-10-16-01**  
***FAQs Regarding Foreclosure and Repossession***

**\*\*\*NOTE: These *FAQs Regarding Foreclosure and Repossession* have been replaced and superseded by the *Interpretational Guidance Regarding Foreclosure and Repossession* issued December 18, 2020\*\*\***

On October 16, 2020, Maryland Governor Larry Hogan issued executive order number 20-10-16-01 (the "Order") amending and restating the previous executive order issued April 3, 2020, number 20-04-03-01. The following FAQs are intended to provide guidance on behalf of the Administration regarding the scope and applicability of the Order. Note that the definitions of terms contained in the Order govern this document.

**Q1: Where can I find a copy of Governor Hogan's Order?**

A: The Order is available [here](#).

**FORECLOSURES (NOTICES OF INTENT TO FORECLOSE)**

**Q2: When will the Commissioner resume accepting copies of Notices of Intent to Foreclose (NOIs) through the NOI Electronic System?**

A: The Commissioner will resume accepting NOIs on January 4, 2021.

**Q3: May I send an NOI to a Borrower while the NOI Electronic System is closed?**

A: No.

**Q4: May NOIs be sent to the Commissioner outside of the NOI Electronic System while the system is closed?**

A: No.

**FORECLOSURES (FORBEARANCES AND OTHER OBLIGATIONS)**

**Q5: Do the provisions of Section IV of the Order apply to a Mortgage Loan for which a NOI was sent to a Borrower prior to the closure of the NOI Electronic System under the Governor's executive order issued April 3, 2020, number 20-04-03-01?**

A: No. Section IV of the Order is intended to apply prospectively to any Mortgage Loan in which a copy of the NOI is submitted to the Commissioner after the NOI Electronic System reopens on January 4, 2021. The Order is not intended to apply to a Mortgage Loan for which an NOI was sent to the Borrower and a copy is submitted to the Commissioner through the NOI Electronic System prior to April 3, 2020.

**Q6: Does the Order mandate that a Servicer offer a Borrower a forbearance option in compliance with Section IV?**

A: No. A Servicer is not required to provide any of the relief provided for under Section IV of the Order. If a service fails to offer such relief, however, and it had not already sent an NOI to the borrower and submitted that NOI to Commissioner through the NOI Electronic System prior to April 3, 2020, it will be unable to pursue an effective foreclosure until the earlier of the time that it does comply with Section IV or the Order's mandate has terminated.

**Q7: The Order provides that with regard to a Federal Mortgage Loan, written notice of the right to request forbearance under the CARES Act must be provided at least 30 days prior to sending the NOI. Is there a similar timing requirement with regard to the written notice required for Non-Federal Mortgage Loans?**

A: Servicers are expected to adhere to the 30 day standard for both a Federal Mortgage Loan and a Non-Federal Mortgage Loan. The Order seeks equal treatment of Non-Federal Mortgage Loans and Federal Mortgage Loans.

**Q8: Must a Servicer receive a response to the written notice of the Borrower's right to request forbearance contemplated under Section IV prior to sending an NOI?**

A: No, so long as the Servicer waits 30 days from the issuance of the notice before sending the NOI.

**Q9: If a written notice regarding the right to a forbearance was sent on or after the Governor's March 5, 2020 Declaration of State of Emergency and Existence of Catastrophic Health Emergency ("Deceleration"), must another be sent in order to comply with Section IV?**

A: As long as the borrower was offered relief that meets the CARES Act requirements and criteria (as provided for under the Order) on or after the Declaration, the Servicer is not required to send a new notice or make any additional offers. If the forbearance relief offered in any earlier notice(s) was not compliant with the CARES Act requirements and criteria for forbearance relief, the Servicer must send additional written notice(s) offering additional forbearance relief so that if the complete relief package is compiled and evaluated in its entirety, it would meet the relief contemplated under the CARES Act and the Order.

**Q10: Under the Order, is a Borrower entitled to request forbearance at any time prior to the foreclosure sale?**

A: Yes. The Order gives a Borrower the right to request a forbearance “if the Borrower is experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency.” No distinction is made between cases in which foreclosure has been initiated and those in which it has not.

**Q11: Can a Servicer who maintains an escrow account for a Non-Federal Mortgage Loan require the Borrower to make escrow payments during the forbearance period?**

A: The Servicer must handle escrow accounts for a Non-Federal Mortgage Loan in the same manner as it does for a Federal Mortgage Loan.

**Q12: For Non-Federal Loans, is a Servicer required to defer forbore payments until the end of the loan?**

A: No. Servicers are to ensure that forbore payments are treated similarly to forbore payments on Federal Mortgage Loans. Further, Servicers are strongly encouraged to ensure that forbore payments on a Mortgage Loan are imposed in a fair, transparent, and affordable manner.

**Q13: Do the provisions of Section IV apply to vacant properties?**

A: Generally, yes. Vacancy alone does not exempt a Servicer from the requirement to offer forbearance. However, the provisions of Section IV *do not* apply if foreclosure is conducted pursuant to the provisions of RP §7-105.18. This statute permits expedited foreclosure if a secured party determines that a property is both vacant and abandoned based on criteria provided for therein, petitions the circuit court for leave to commence foreclosure immediately, and receives approval of the petition from the court. It is important to note, however, that the owner of a property may contest a determination of vacancy and abandonment; and should the owner prevail, the provisions of Paragraph IV would apply. Additionally, if the secured party cannot demonstrate to the court’s satisfaction that the property has been abandoned in accordance with the criteria in RP §1-105.18, the provisions of Paragraph IV would apply.

**Q14: If a county or municipality has issued a certificate of vacancy or certificate of property unfit for human habitation under RP §7-105.13, is a Servicer required to comply with Section IV and provide written notice of the right to request forbearance?**

A: Yes. In a foreclosure under RP §7-105.13, in which no NOI is required, a Servicer is expected to provide written notice of the right to request forbearance at least 30 days prior to filing an order to docket.

**Q15: Does the Order apply to subordinate liens and open-ended lines of credit?**

A: Yes.

**Q16: Does the Order apply to loans for commercial purposes which are secured by residential property, or to loans secured by residential property for which the borrower or property owner is a business organization?**

A: Generally, yes. However, the Order ***does not*** apply to loans for commercial purposes which are secured on residential property to the extent that the property is vacant and there is a reasonable belief that no individual intends to resume occupancy at the property during the pendency of the state of emergency and the catastrophic health emergency.

**Q17: May interest be charged on the unpaid balance of a Non-Federal Mortgage Loan during the forbearance period contemplated in the Order?**

A: No. A Servicer may accrue on the borrower's account ***only*** the amount scheduled or calculated as if all payments were made in accordance with the terms of the contract.

**Q18: How will a servicer or secured party certify to the Commissioner that the requirements of Paragraph IV were met?**

A: Certification mandated under Section IV will be required at the time of submitting a Notice of Foreclosure. Servicers or secured parties will be able to provide the certification through the State's Foreclosure Registration System. The Commissioner is developing a method of electronic certification that will be effective in the State's Foreclosure Registration System on January 4, 2021.

#### **CHATTEL LOANS (AUTOMOBILES AND MOBILE HOMES)**

**Q19: Does the Order rescind the prior ban on self-help repossession of cars and trucks?**

A: Yes, ***except*** that self-help repossession on a Chattel Home is still suspended.

**Q20: What is meant by "self-help" repossession?**

A: Self-help refers to repossession without legal proceedings such as through repossession.

For questions about this guidance, please contact Jedd Bellman, Assistant Commissioner for Non-Depository Supervision by phone at (443) 904-7045 or by email at [jedd.bellman@maryland.gov](mailto:jedd.bellman@maryland.gov).

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*The Office of the Commissioner of Financial Regulation, a division of the Maryland Department of Labor, is Maryland's banking and financial services regulatory agency. For more information, please visit our website at [www.labor.maryland.gov/finance](http://www.labor.maryland.gov/finance).*



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