



MARYLAND COMMISSIONER OF
FINANCIAL REGULATION
INDUSTRY ADVISORY
REGULATORY NOTICE



October 16, 2020

**FORECLOSURE UPDATE:
NEW EXECUTIVE ORDER ISSUED BY GOVERNOR HOGAN**

*****NOTE: The October 16, 2020 Executive Order (number 20-10-16-01) has been replaced and superseded by the December 17, 2020 Executive Order (number 20-12-17-02)*****

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 Order seeks to extend the protection of the CARES Act to non-federally backed mortgage loans and it continues the existing moratorium on foreclosures until January 4, 2021.

The foreclosure provisions of the Order are in Paragraphs IV and V of the Order.

Paragraph IV **provides that the suspension of the Notice of Intent to Foreclose Electronic System will continue until January 4, 2021** and it prohibits the Commissioner of Financial Regulation from accepting new Notices of Intent to Foreclose until that date.

Additionally, paragraph IV of the Order states that, effective January 4, 2021 and until the state of emergency is terminated and the catastrophic health emergency is rescinded, a foreclosure that does not meet the conditions described below will not be fully effective under Maryland law. To that end, in order to file a Notice of Intent to Foreclose, a loan servicer must certify that they have met the conditions set out in paragraph IV of the Order including:

- With respect to a mortgage or deed of trust that is a “federally backed mortgage loan”, as defined in Section 4022(a)(2) of the CARES Act:
 - The Servicer must send a written notice to the Borrower stating the Borrower’s right to request a forbearance under Section 4022(b) of the CARES Act at least 30 days prior to sending a notice of intent to foreclose pursuant to RP § 7-105.1(c); and
 - The Servicer must comply with all of its obligations owed to the Borrower under the CARES Act or otherwise imposed by the federal government or a government sponsored enterprise.

- With respect to a mortgage or deed of trust that is *not* a “federally backed mortgage loan”, as defined in Section 4022(a)(2) of the CARES Act:
 - The Servicer must notify the Borrower in writing of the Borrower’s right to request a forbearance for a period of up to 180 days, which may be extended for an additional period up to 180 days, if the borrower is experiencing a financial hardship due to the COVID-19 emergency;
 - The Servicer must provide such forbearance without requiring the Borrower to provide additional documentation other than an attestation to a COVID-19 related financial hardship, and without requiring any fees, penalties or interest; and
 - The Servicer must not accrue on the Borrower’s account any fees, penalties, or interest beyond the amounts scheduled as if the Borrower made all contractual payments pursuant to the terms of the loan.

With respect to a mortgage or deed of trust, whether federally-backed or not federally-backed, secured by the property subject to foreclosure, the Servicer or Secured Party must provide a certification to the Commissioner of Financial Regulation with the submission of a Notice of Foreclosure (*see* Md. Code Ann. Real Property §7-105.2) that the Servicer has complied with paragraph IV of the order.

NOTE: The above summary is not exhaustive. See the full Order on the Governor’s website [here](#).

Furthermore, on June 3, 2020, Maryland Court of Appeals Chief Judge Mary Ellen Barbera, administrative head of the judicial branch in Maryland, issued an administrative order lifting the stay of all foreclosures of residential properties, subject to certain requirements relating to the CARES Act, effective July 25, 2020. That order was subsequently amended to address extensions of certain protections provided for through federal action.

While the lift-of-stay order addresses foreclosure actions which have been filed or which may be filed, it *does not* supersede, abrogate, or otherwise negate Governor Hogan’s Order of October 16, 2020 or any Order preceding it.

NOTE: Pursuant to Maryland Code, Real Property Article, Section 7-105.1(c)(3), and COMAR 09.03.12.02(E), a copy of the Notice of Intent to Foreclose shall be electronically submitted to the Commissioner through the System within 5 business days of mailing a Notice of Intent to Foreclose. Filing a copy of the Notice of Intent to Foreclosure with the Commissioner ***must be accomplished before*** a party is authorized to file an action to foreclose a mortgage or deed of trust on residential property. **Failure to comply with this requirement will subject a violator to the enforcement jurisdiction of the Commissioner and/or the Maryland Attorney General’s Office.**

Questions about this advisory may be directed to Cliff Charland, Director of Non-Depository Operations, at clifford.charland@maryland.gov or (410) 230-6167.

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.



Office of the Commissioner of Financial Regulation