DECEMBER 2020 UPDATE

FORECLOSURES, EVICTIONS, & UTILITY CUTOFFS:

EXPIRING PROTECTIONS FOR PEOPLE FACING HARDSHIP DURING THE PANDEMIC

BY JASON BAILEY & COTY MONTAG | DECEMBER 2020
As 2020 comes to a close, many measures designed to protect homeowners and renters have already expired or are set to expire soon. However, the economic impacts of the pandemic have not lessened, as millions of people across the nation continue to struggle to pay their mortgage, rent, and utility bills. Widespread loss of housing will continue to worsen the pandemic as families struggle with the loss of means to social distance, isolate, and ensure basic cleanliness through daily access to facilities to bathe, shower, and wash their hands. Indeed, new research has confirmed that the expiration of eviction moratoriums and other renter protections in many states over the summer led to hundreds of thousands of additional COVID-19 infections and thousands of additional deaths.

This update bulletin provides details on the federal assistance programs set to expire soon. We urge homeowners and renters in need of assistance to take advantage of any available programs.
The Impact of the COVID-19 Pandemic on Communities of Color

As of December 9, approximately 287,000 people in the United States have died of the coronavirus, with more than 15.3 million infections nationwide. There is no question that persons of color have been disproportionately affected by the pandemic: the Centers for Disease Control and Prevention ("CDC") has estimated that Black, Latinx, and Native American people are respectively 3.7, 4.1, and 4.0 times more likely than White people to be hospitalized due to COVID-19 and 2.8, 2.8, and 2.6 times more likely to die from coronavirus.

The disproportionate health impacts of the virus on the nation’s Black population also have economic effects. Black workers, particularly women, have been disproportionately impacted by job losses over the last several months. As a result, Black homeowners and tenants are at a higher risk of losing their homes through foreclosure and eviction during the crisis. The Urban Institute has detailed the disproportionate economic impacts from the pandemic on Black and Latinx households.

Foreclosure and Eviction Moratoriums

HOMEOWNERS: MORATORIUMS ON FORECLOSURES FOR FEDERALLY BACKED MORTGAGES EXTENDED UNTIL DECEMBER 31 OR JANUARY 31

The Coronavirus Aid, Relief, and Economic Security ("CARES") Act, a $2 trillion stimulus aid package, was enacted on March 27, 2020. Under the Act, the federal government provided relief for some homeowners who have been affected by the coronavirus pandemic.
There are several key homeowner protections that expire soon:

**CARES Act Moratorium:**

If you have a federally backed home mortgage loan by the U.S. Department of Housing & Urban Development’s (“HUD”) Federal Housing Administration (“FHA”), the Veterans Administration (“VA”), or the United States Department of Agriculture (“USDA”), you are protected from foreclosure until at least December 31.

**Federal Agency Moratoriums:**

The Federal Housing Finance Agency (“FHFA”) has extended the moratoriums on foreclosure for single-family loans backed by the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) until January 31, 2021. As of the date of issuance of this update, neither FHA, VA, nor USDA have extended their moratoriums beyond December 31.

For either applicable deadline, a lender or servicer may not initiate a judicial or non-judicial foreclosure or finalize a foreclosure judgment or sale against you until after the applicable deadline has passed.

**Ability to Pause Payments**

You have the right to request and obtain a forbearance to pause your mortgage payments for 180 days (with a possible extension of another 180 days) if you have experienced financial hardship due to the pandemic. You should request the forbearance from your lender or servicer immediately or by December 31.
For more information on the relief that may be available to homeowners, visit the Consumer Financial Protection Bureau’s website.

RENTERS: REMAINING EVICTION MORATORIUMS EXPIRE ON DECEMBER 31 OR JANUARY 31

Moratoriums on evictions for renters were established in the CARES Act and by several federal agencies—CDC, HUD (for FHA), VA, USDA, and FHFA (for Fannie Mae and Freddie Mac). As discussed below, some have expired, some expire December 31, and some have been extended to January 31.

1. CDC MORATORIUM

On September 21, the CDC issued an agency order to temporarily halt residential evictions. This national eviction moratorium applies to nearly all U.S. tenants. The order will expire on December 31. In implementing the order, the CDC recognized the grave health impact unhoused persons pose during a global pandemic. Indeed, the order states, “evictions threaten to increase the spread of COVID-19 as they force people to move, often into close quarters in new shared housing settings with friends or family, or congregate settings such as homeless shelters.” The order places the responsibility on the tenant to submit a declaration to their landlord to protect them from eviction through the end of the year. In the declaration, renters must claim that they are unable to pay rent due to income loss or medical expenses; make less than $99,000 individually or $198,000 as a family in 2020 or received a stimulus check; attempted to access any sort of government rental assistance funds; and, if evicted, would become homeless or would have to move into a crowded or substandard living situation. It is important to note that the declaration is sworn testimony, meaning that you can be subject to criminal prosecution for any false or misleading statements.

The CDC moratorium does not cancel or stop rent from being owed. It allows late fees to accumulate and permits landlords to evict tenants for non-financial reasons. Renters must, in good faith, continue to pay their rent if they can and can still be evicted for conduct that would otherwise violate their lease agreement or negatively impact the health and safety of the apartment building, home, or community. Additionally, it is important to keep in mind that the CDC moratorium has been applied inconsistently by courts, with many judges refusing to apply it, and subsequent CDC guidance has allowed housing providers to
initiate eviction proceedings, leading many tenants to preemptively leave their homes despite the protections of the order. Importantly, the CDC order does not override or supersede stronger state or local eviction protections.

2. CARES ACT

The CARES Act provided for a federal eviction moratorium for renters in certain types of properties, including single-family and multifamily properties with a federally backed mortgage loan; properties covered under the Violence Against Women Act (which includes public housing, the Section 8 Housing Choice Voucher Program, and project-based public housing); properties subject to the Rural Housing Voucher Program; and properties participating in the Low Income Housing Tax Credit. For most types of properties, the CARES Act eviction moratorium expired this summer. However, the Act’s eviction protections for rental properties with federally backed mortgages still apply through December 31.

For more information on whether you may be protected from eviction by the CARES Act, visit the Consumer Financial Protection Bureau’s website.

3. AGENCY ISSUED MORATORIUMS

The FHA, VA, and USDA have not extended their eviction moratoriums beyond December 31, as of the date of the issuance of this update.

Tenants living in properties acquired by Fannie Mae or Freddie Mac through foreclosure or a deed-in-lieu of foreclosure transaction are protected from eviction through January 31. If your landlord receives relief from mortgage payments on your rental home, you may be protected from eviction for a longer period.
While the moratoriums prohibit eviction during the time they are in effect, they do not relieve you of the ultimate obligation to pay rent, and you still may be evicted for reasons other than the non-payment of rent.

Visit the Eviction Lab or the National Low Income Housing Coalition for more information on the CDC moratorium and state housing policies related to evictions during the pandemic, and the National Housing Law Project for additional resources on housing protections during the COVID-19 pandemic. If you need legal assistance, visit lawhelp.org for further details on services that may be available to you.

AS OF DECEMBER 9, 2020

287,000

people in the United States have died of the coronavirus

Nearly 15.3 million infections nationwide, and may be at least 10 times higher

BLACK AND LATINX PEOPLE ARE 2.8X more likely to die from the coronavirus
The Thurgood Marshall Institute is a multidisciplinary center within the NAACP Legal Defense Fund. Launched in 2015, the Institute complements LDF’s traditional litigation strengths and brings critical capabilities to the fight for racial justice, including research and targeted advocacy campaigns. The Institute also houses LDF’s Archives—a collection of materials chronicling the legal history of the Civil Rights Movement.

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