



MARYLAND COMMISSIONER OF
FINANCIAL REGULATION
INDUSTRY ADVISORY
REGULATORY GUIDANCE



December 18, 2020

Revised March 29, 2021

Governor Hogan's Executive Order Number 20-12-17-02

Interpretational Guidance Regarding Foreclosure and Repossession

On December 17, 2020, Maryland Governor Larry Hogan issued [executive order number 20-12-17-02](#) (the "Order") amending and restating previous executive orders issued April 3, 2020, number 20-04-03-01, as further amended and restated on October 16, 2020 by Order 20-10-16-01.

The following binding interpretational guidance in the form of FAQs are intended to provide guidance regarding the scope, implementation, 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 ~~February March April~~ May 4, 2021 (the first business day after January 31, 2020), however the Commissioner may extend the suspension of the operations of the NOI Electronic System beyond that date in accordance with the Order. *(This paragraph has been revised to reflect the change in restart date announced March 29, 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 with a copy submitted to the Commissioner through the NOI Electronic System 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 the Re-Start Date. 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: 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.

Q8: If the Servicer offered a Borrower relief that meets the CARES Act requirements and criteria (as provided for under the Order) on or after the Governor's March 5, 2020 Declaration of State of Emergency and Existence of Catastrophic Health Emergency ("Declaration"), or if a borrower has been put on a CARES Act compliant forbearance plan or equivalent forbearance plan, must the written notice be sent in order to comply with Section IV?

A: As long as the Borrower was either (i) offered relief that meets the CARES Act requirements and criteria (as provided for under the Order) between the date of the Declaration and October 16, 2020; or (ii) placed on a CARES Act Forbearance plan or equivalent forbearance plan on or after the Declaration, whether currently in effect or previously expired, the Servicer is not required to send a new notice or make any additional offers of relief.

If the Servicer offered relief to the Borrower on or after the Declaration that 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.

For purposes of this Q8, “offered relief” means the Servicer notified the borrower of their ability to obtain a forbearance by any reasonable means of notification intended to actually be received by the borrower, such as, but not limited to, whether alone or in combination, by letter to the last known address of the borrower, by notice placed conspicuously on the billing statement, by email to the last known email address of the borrower that is known to accept email messages, through phone conversations with the borrower, or by text message to the last known phone number of the borrower that is known to accept such messages.

Q9: Under the Order, is a Borrower entitled to request forbearance at any time prior to the foreclosure sale?

A: A Borrower is entitled to request forbearance at any time within 90 days of the date of the written offer of forbearance contemplated under the Order. After 90 days, the Borrower may request forbearance but, under the Order, the Servicer is not required to provide forbearance to the Borrower upon receipt of such request unless the Servicer is required to provide such relief after such filing under any other applicable law, rule, regulation, or practice. The Servicer must clearly notify the Borrower of any termination date of the offer of forbearance.

Q10: 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.

Q11: 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.

Q12: 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.

Q13: 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.

Q14: Does the Order apply to subordinate liens and open-ended lines of credit?

A: Yes.

Q15: 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.

Q16: May interest be charged on the unpaid balance of a Non-Federal Mortgage Loan beyond the amount scheduled or calculated as if the Borrower made all contractual payments on time and in full 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.

Q17: How will a servicer or secured party certify to the Commissioner that the requirements of Section IV were met?

A: Certification mandated under Section IV will be required at the time of submitting a Notice of Foreclosure (as defined in RP § 7-105.2(a)(4)), not at the time when submitting a copy of the NOI to the Commissioner through the NOI Electronic System. Servicer's or secured parties will be required to provide the certification electronically through the State's Foreclosure Registration System. The Commissioner has developed a method of electronic certification that will be effective in the State's Foreclosure Registration System on the Re-Start Date. The certification language can be found in "[Exhibit A](#)" attached hereto.

CHATTEL LOANS (AUTOMOBILES AND MOBILE HOMES)

Q18: 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.

Q19: What is meant by "self-help" repossession?

A: A self-help repossession is any action by a creditor or its agents to take possession of collateral that can be undertaken without first obtaining an order or similar directive issued by a Court of competent jurisdiction.

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.

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

Governor Hogan's Executive Order Number 20-12-17-02
Interpretational Guidance Regarding Foreclosure and Repossession

EXHIBIT A

Certification required by Executive Order number 20-12-17-02

Executive order number 20-12-17-02 (the “Executive Order”), issued by Governor Larry Hogan on December 17, 2020, provides that a sale of “Residential Property” (as defined in RP § 7-105.1(a)(12)) made pursuant to RP § 7-105, RP §§ 7-105.1 through 7-105.10, or the Maryland Rules, shall not have the effects described in RP § 7-105(c) unless the Mortgage Loan’s Servicer complies with Paragraph IV of the Executive Order. The Executive Order requires the Commissioner to obtain a certification of such compliance from the Servicer or secured party at the time of the filing of a Notice of Foreclosure (the “Certification”). The Executive Order will remain in effect until the state of emergency is terminated and the proclamation of the catastrophic health emergency is rescinded, or until rescinded, superseded, amended, or revised by any subsequent order(s). Capitalized terms not defined herein have the meanings assigned to such terms in the Executive Order.

The Commissioner, pursuant to authority provided for in the Executive Order, has issued binding Interpretational Guidance Regarding Foreclosure and Repossession interpreting, in-part, Paragraph IV of the Executive Order (the “Regulatory Guidance”). The Commissioner has posted the Regulatory Guidance to the Commissioner’s website. The Regulatory Guidance may periodically be modified, updated or otherwise amended.

On November 12, 2020, the Maryland Court of Appeals filed its Fourth Amended Administrative Order Lifting the Suspension during the Covid-19 Emergency of Foreclosures, Evictions, and Other Ejectments Involving Residences (the “Court Order”). The Court Order requires a party seeking to advance a foreclosure of Residential Property to file a verified Declaration of Exemption from Moratorium confirming, among other things, compliance with any extant applicable executive orders (the “Declaration”).

If the individual making the Certification is an agent of the Servicer or secured party, the individual may derive their knowledge, information and belief to make the statements in Section 3 of the Certification on one of the following: 1) reasonable reliance on the Declaration, if executed by a duly authorized officer or employee of the Servicer or secured party; 2) reasonable reliance on written representations made by a duly authorized officer or employee of the Servicer or secured party confirming the statements made in the Declaration or otherwise necessary to establish compliance with the Executive Order, as interpreted by the most current version of the Regulatory Guidance posted on the Commissioner’s Website; or 3) reasonable and documented due diligence conducted by the individual or individual’s employer confirming the statements made in the Declaration or otherwise necessary to establish compliance with the Executive Order, as interpreted by the most current version of the Regulatory Guidance posted on the Commissioner’s Website (the “Methods of Compliance Validation”).

The certifier should review the Executive Order, current Regulatory Guidance, Court Order, and any other relevant materials prior to proceeding and seek professional guidance to the extent needed.

CERTIFICATION

BY CHECKING THE BOX BELOW AND SUBMITTING THIS NOTICE OF FORECLOSURE, THE INDIVIDUAL FILING THIS NOTICE OF FORECLOSURE CERTIFIES, ACKNOWLEDGES, AND AFFIRMS TO THE COMMISSIONER, UNDER THE PENALTIES OF PERJURY, THE FOLLOWING:

1. The contents of this Certification are true to the best of the certifier's knowledge, information, and belief.

 2. The individual making this Certification:
 - a. Is over 18 years of age and competent to certify to the matters set forth herein;
 - b. Is the secured party or an employee or agent of the Servicer or secured party;
 - c. If an employee or agent of the Servicer or secured party, is authorized by the Servicer or secured party to make this Certification on behalf of the Servicer or secured party to the same effect as if the Servicer or secured party had given this Certification itself; and
 - d. If an agent of the Servicer or secured party, is making the statements in Section 3 of this Certification pursuant to the Methods of Compliance Validation.

 3. If this Notice of Foreclosure relates to a Mortgage Loan for which the Servicer filed its Notice of Intent to Foreclose with the Commissioner on or after [Insert Re-Start Date] the Servicer or secured party has either:
 - a. Complied with Paragraph IV of the Executive Order, as interpreted by the most current version of the Regulatory Guidance posted on the Commissioner's Website as of the date this Certification is made; or
 - b. Has received a court order finding the property to be vacant and abandoned as defined under RP § 7-105.18, and the Servicer or secured party is proceeding in compliance with RP § 7-105.18.
- I knowingly check this box and confirm my intent to make the above certification.