

**CARES Act: Provisions Impacting Landlords and Tenants**

As the economic ramifications of COVID-19 enter into a new month, many individuals will likely be unable to keep current on monthly mortgage or lease payments. The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) provides certain multifamily landlord and tenants with economic benefits during this unprecedented global pandemic. Section 4023 of the CARES Act contains several provisions that assist borrowers of federally backed multifamily mortgage loans due to the COVID-19 outbreak. Section 4024 of the CARES Act also provides multifamily tenants with economic relief, to the extent the property involves backed by certain federally sponsored mortgage loans.

**Forbearance Eligibility for Borrowers and Landlords**

Section 4023 of the CARES Act provides multifamily borrowers and with protections and rights for forbearance of loan payments under federally backed residential mortgages for residential multifamily properties predominantly designed for the residency of five (5) or more families if the loan is: (i) purchased or securitized by Fannie Mae or Freddie Mac; (ii) made in connection with a program administered by the Department of Housing and Urban Development (“HUD”) ; or (iii) insured by any agency of the federal government. For the purposes of Section 4023, loans for temporary financing such as construction loans are not eligible for forbearance.

In order to be eligible for the Section 4023 economic protections, a borrower must: (i) submit an oral or written request for forbearance affirming that the borrower is experiencing financial hardship; and (ii) the borrower must have been current on its payments as of February 1, 2020. Section 4023 does not define “financial hardship” for the purposes of requesting forbearance, nor does it outline the type of diligence that is to be provided to the servicer, thus it is likely unclear as to whether servicers may exercise discretion in granting the forbearance

**Forbearance Parameters and Timeframes for Borrowers and Landlords**

The initial forbearance period is for 30 days, which can be extended for up to two additional 30-day periods, so long as the extension request is made 15 days prior to the expiration of the then-current 30-day forbearance period. A borrower’s right to request the above initial forbearance and an extension of the initial forbearance period expires on the earlier of: (i) termination of the national emergency concerning COVID-19; or (ii) December 31, 2020. A borrower may discontinue the forbearance at any time.

During the period of forbearance, the borrower/landlord may not: (i) evict or initiate the eviction of a tenant solely for nonpayment of rent or other fees or charges; (ii) charge any late fees, penalties or other charges to a tenant for late payment of rent; or (iii) issue a notice to vacate. Following expiration of the forbearance, a borrower that receives a forbearance may not require a tenant to vacate before the date that is thirty days after the date on which the borrower provides the tenant with a notice to vacate. Landlords that fit under the classifications above subject themselves to liability and potential lawsuits if they violate these provisions.

### **Temporary Moratorium on Eviction Filings**

Regardless of whether a landlord has requested a forbearance under Section 4023 of the CARES Act, landlords in multi-family properties that have Fannie Mae, Freddie Mac or other federally backed mortgage loans cannot, within 120 days of the date of the CARES Act, institute an eviction action based on non-payment of rent or of other charges or fees due to landlord or charge fees, penalties or other charges related to nonpayment of rent. Following the expiration of the 120-day moratorium, the landlord also cannot issue a notice to vacate during such period or require a tenant to vacate until 30 days after the landlord gives the tenant a notice to vacate.

The interpretation and implementation of the CARES Act is evolving. It is important for landlords to be aware of these provisions and their rent collection practices to avoid costly litigation and liability during and after the 120-day moratorium. Vandennack Weaver will continue to provide updates as necessary. Please contact us if you have any questions.