LEWIS ROCA

WHAT BORROWERS NEED TO KNOW ABOUT MORTGAGE FORBEARANCE DURING THE COVID-19 PANDEMIC

By Linda Mitchell and Drew Wilson on 04/30/2020
Posted in COVID-19, Real Estate

COVID-19 and the subsequent stay-at-home/safer-at-home orders that have been in place for approximately the last 6-weeks resulted in severe financial strain on many borrowers who have either lost their jobs, been furloughed, experienced a significant reduction in their income as a result of cutting hours or have witnessed a decline in business. Many of these borrowers can no longer afford to make their monthly mortgage payments, and are wondering what options may be available during this unprecedented time. Through the efforts and initiatives implemented by the current administration, borrowers do have a few options.

The "Coronavirus Aid, Relief, and Economic Security (CARES) Act," provides options to holders of federally backed mortgage loans in order to help them make it through this current crisis. First, the CARES Act provides for a moratorium on all foreclosures until May 17, 2020. It also provides the right for a borrower to request a forbearance for federally backed mortgages (that is mortgages that are owned by Fannie Mae or Freddie Mac) for up to 180 days. Borrowers then have a right to request an extension of this forbearance for an additional 180 days for 360 days total. A lender cannot foreclose on a property during this forbearance period. Borrowers who request this forbearance will not have additional fees, penalties, or interest (beyond the amounts scheduled in their mortgage) accrue during this period. Borrowers do not need to submit additional documentation to qualify for the CARES Act forbearance other than their claim to have a pandemic-related financial hardship.

What is a Forbearance?

A forbearance is an agreement by the lender to refrain (i.e. forbear) from exercising its rights and remedies for a period of time following any non-payment or other default. Borrowers need to understand that the amounts owed during the forbearance period are not simply forgiven, but instead continue to accrue during the forbearance period. Moreover, other obligations remain in place, which means that forbearance does not postpone amounts due for property taxes or insurance, absent a change in the law or the issuance of state or county executive orders to change the amount and timing of those payments. There will be no impact to the borrower's credit during the forbearance period and foreclosures are prohibited. However, at the end of the forbearance period, all amounts that are owed become due immediately.

Who Can Obtain a Forbearance?

Most conventional mortgages are backed by the federal government and are subject to CARES Act forbearance as long as they are federally backed conventional loans for a single-family home, and under $510,000 for most areas and $765,600 for high-cost areas. As of 2015, just over 50% of all home loans were federally backed. Freddie Mac offers a tool to determine if a loan is federally backed. Borrowers may also contact Fannie Mae, or their mortgage service provider directly to determine if their mortgages are federally backed.

Even if the CARES Act does not apply to the payment obligation, the possibility exists that the creditor may have established payment or forbearance alternatives that are similar to those offered under the CARES Act.

Considerations and Other Options

Borrowers should consider the benefits of paying creditors on schedule – if they can. This is because, under normal circumstances, forbearance builds a balloon payment obligation that becomes due when the forbearance period ends. At that point, the borrower must pay the entire amount that is in arrears. If the borrower does not pay, the creditor may have the discretion to exercise its rights and remedies including foreclosure which could result in negative marks on the borrower's credit. That said, the Federal Housing Finance Agency recently announced that federally backed mortgages would not be subject to a lump sum repayment. Even if a borrower does not have a federally backed mortgage, creditors may be willing to work with borrowers to repay the amount that they owe as a result of the forbearance. The available choices include:

- An immediate lump sum repayment
- Lump sum repayment at the end of the loan
- Increased payments over the span of several months during a "catch up" period
- Modification of the loan amount/interest rate to incorporate the amount owed into the loan itself

The possibility exists that the creditor will wait until the end of the forbearance period to determine whether and on what terms to offer a payment plan. It may be that the borrower will be unable to retain the property when the forbearance period ends. In some instances where the value of the debt exceeds the value of the property, a short sale might be the only option. In other circumstances, foreclosure may be inevitable. Because repayment plans are not addressed until after the forbearance period ends, forbearance creates an air of uncertainty as to whether borrowers will be able to find a satisfactory path to resolve the debt.

If a mortgage is not federally backed, the lending institution may have a broader set of choices to address the needs of borrowers. For example, a creditor may offer the potential for a mortgage deferral which commonly means a borrower would not need to pay all amounts due at the end of the forbearance period and instead the lender agrees to "tack" the amount due under the deferral to the end of the loan, with the loan simply extended by the number of months of the deferral. Most deferral periods are less than 180 days of forbearance under the CARES Act, but the deferral approach can offer significant certainty and stability for borrowers and to enable them to plan ahead for the future.

Communication is Key

In order to request a forbearance, borrowers need to contact their lending institution or other creditor where they make their monthly payments. It is important to note that forbearances are not automatic. Borrowers should simply not stop paying, but should first speak with their creditors.

As discussed above, some creditors have other options for how to deal with loans that are not federally guaranteed. The bottom line is simple: as soon as the borrower determines that they will not be able to make the next payment, they should contact the lender immediately. The delay or failing to take affirmative steps to protect the relationship with the creditor could quickly eliminate some of the best options for the borrower.

For more information contact Drew Wilson at dwilson@lewisroca.com, Linda Mitchell at lmitchell@lewisroca.com.

Tags: COVID-19 Rapid Response Team, Real Estate