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REAL ESTATE ADVISORY

CARES ACT: Key Provisions Impacting Real Estate

On March 27, 2020, President Trump signed an economic stimulus act titled the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act. The CARES Act includes economic stimulus provisions concerning an extremely wide range of business activity. The following is a brief outline of the key provisions concerning only one aspect of the CARES Act, namely its impacts upon real estate.

KEY TAKEAWAYS

- While the CARES Act will have some direct effects upon real estate owners, developers, lenders, tenants, and occupants, most of the impact will be an indirect result of simply keeping people employed and able to pay bills, such as rent and mortgage payments.
- Direct financial assistance is designed to help people pay their financial obligations in the short term, including mortgage and rental payments.
- Small business loans and grants will be made available to those companies that qualify as a way to ensure continued employment, but the funds those loans provide may also be used to pay mortgage interest, rent, and utility bills.
- Borrowers of certain federally backed mortgage loans who face economic difficulties may seek forbearance.
- There is a prohibition on foreclosures of all federally backed mortgage loans for a 60-day period.
- There is a prohibition on evictions due to a monetary default for a 120-day period if a landlord's mortgage is insured, guaranteed, or assisted by certain government programs.
- Businesses will be able to take advantage of net operating losses from prior years.
- Businesses will be allowed to write off costs associated with improvements to buildings instead of depreciating such improvements over the 39-year life of a building.

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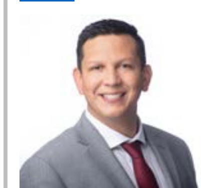

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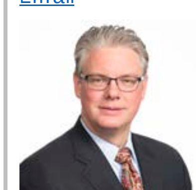

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WHAT'S NEXT

In addition to the foregoing, which should help provide relief and some liquidity, the real estate industry may expect additional action by the Federal Reserve and Treasury Department to help the real estate and mortgage industries, which may include use of emergency powers to prevent a credit crisis. Be sure to check our COVID-19 Resource Hub to stay up-to-date on new regulations and supplemental guidance regarding the CARES Act.

OTHER HIGHLIGHTS AND SUMMARY

Direct Financial Assistance: Individuals who earn $75,000 in adjusted gross income or less will receive direct payments of $1,200 each, with married couples earning up to $150,000 receiving $2,400 and an additional $500 per each child. The payments will scale down by income, phasing out entirely at $99,000 for singles and $198,000 for couples without children. These payments are designed to help folks pay their bills in the short term, including, importantly, mortgage and rental payments.

Keeping American Workers Paid and Employed Act: This act provides $350 billion in funding that will be used to create a Paycheck Protection Program to help small businesses. The primary purpose of the small business loans is to ensure continued employment, but the funds may also be used to pay mortgage interest (not prepayment or payment of principal), rent, and utility bills. Of course, this will result in funds going directly to landlords and lenders; provided, many landlords/tenants and lenders/borrowers may still expect to modify many of their existing agreements in the near future to address financial hardships. This may include forbearance, forgiveness, extensions, and other creative solutions.

Importantly, sole proprietors, independent contractors, and self-employed individuals are able to take advantage of the small business loans, which helps realtors and other real estate professionals.

Economic Injury Disaster Loans (EIDL) and Grants: A total of $10 billion in funding will be available to provide prompt advance payments or "grants" of $10,000 to small businesses that apply to the SBA for an EIDL. These small grants may be used to pay, among other things, business obligations, including rent and mortgage payments.

Foreclosure Moratorium and Loan Forbearance — Consumers/Single-Family Mortgagors: Beginning March 18, 2020, there is a 60-day moratorium on foreclosures and foreclosure-related evictions under single-family mortgages backed by the U.S. Department of Housing and Urban Development (HUD) and Fannie Mae and Freddie Mac (the Enterprises). The moratorium does not apply to vacant or abandoned property.

In addition, until the termination date of the coronavirus national emergency or December 31, 2020, (the "Covered Period"), whichever comes sooner, borrowers under single-family mortgages backed by HUD or the Enterprises who face economic difficulties as a result of the coronavirus may seek up to 180 days of forbearance, which period may be increased for up to an additional 180 days or decreased at the borrower's request. Such request may be submitted regardless of delinquency status at the time the request is made. During a period of forbearance, no fees, penalties, or interest beyond the amounts scheduled, as if the borrower had made all payments on time and in full, shall accrue.

Single-family units eligible for HUD and Enterprise-backed mortgages include: (i) primary homes or residences; (ii) condominium units in projects meeting presale, occupancy status, completion, and other requirements; and (iii) second/vacation homes consisting of one-unit dwellings suitable for year-round occupancy, occupied by the borrower for some portion of the year and over which the borrower has exclusive control. Residences that are primarily used to generate income will not qualify. In addition, in order to be eligible for HUD or Enterprise-backed financing, the original principal amount of the loan must not exceed applicable loan limits. The general maximum amount of loans HUD and the Enterprises can buy for 2020 is $510,400; however, in designated high-cost areas the maximum loan limit will be higher. High-cost areas in Colorado include Boulder County: $644,000; City and County of Denver: $575,000; Eagle County: $750,950; Pitkin County: $765,600; and Summit County: $625,500.

Loan Forbearance — Multi-Family: Similarly, during the Covered Period, borrowers under loans backed by HUD and the Enterprises for multifamily properties who face economic hardship due to the coronavirus and were current on their loan payments up until February 1, 2020, may seek up to 30 days of forbearance, which may be extended for up to two additional 30-day periods or decreased at the borrower's request. A multifamily borrower who receives a forbearance may not evict or charge late fees or penalties to tenants for nonpayment of rent, nor require a tenant to vacate on less than 30-days' notice, nor deliver a notice of eviction during the forbearance period.

Temporary Moratorium on Eviction Filings — Residential Landlords: For 120 days from the March 27, 2020, enactment of the CARES Act, borrowers under loans backed by HUD and the Enterprises for dwelling units, whether single-family or multifamily, may not evict or charge late fees or penalties to tenants for nonpayment of rent, nor require a tenant to vacate on less than 30-days' notice, nor deliver a notice of eviction.

Modifications for Net Operating Losses: There is a relaxation of requirements from the Tax Cuts and Jobs Act limiting the use of net operating losses (NOLs) from prior years. Businesses will be able to amend their returns to claim losses from 2018, 2019, and 2020, carried back five years, and the CARES Act temporarily removes the taxable income limitation, ensuring that the NOLs may be used to fully offset taxable income. This is widely viewed as a benefit to real estate developers and investors.

Technical Amendments for Qualified Improvement Property: There is a correction to the Tax Cuts and Jobs Act that will allow businesses to write off costs associated with improvements to buildings instead of depreciating such improvements over the 39-year life of a building. This is a benefit to retailers and was designed to remedy an error in previously passed legislation.

QUESTIONS

Please reach out to any member of our Real Estate team with questions about the direct and indirect effects of the CARES Act on the real estate industry. We are happy to help during this difficult time.

Sherman & Howard has prepared a summary of the small-business loan provisions of the CARES Act. The stimulus bill authorizes loans to small businesses, with the potential that a portion of loans (equal to eight weeks of payroll, rent/mortgage interest, and utility expenses) will be forgiven if employees are retained or rehired to pre-pandemic levels by June 30. For questions regarding the options or the application processes now available to small businesses dealing with COVID-19 disaster relief, please contact any member of our Corporate team.

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