

*Learn how
the CARES Act
affects you*

Webinar 4
CARES Act Implications for
Housing, Commercial Real
Estate, and Bankruptcy

Thursday, April 16, 2020
12:00 noon – 1:00 p.m. Central

- *Lisa Alexander*, Professor of Law and Co-Director, Program in Real Estate and Community Development Law
- *Luz Herrera*, Professor of Law and Associate Dean for Experiential Education
- *Wayne Barnes*, Professor of Law
- *Aric Short* (Moderator), Professor of Law and Director, Professionalism and Leadership Program



CARES ACT FREE WEBINAR SERIES

April 6, 7 and 13 • 12 NOON • Register at TAMULawAnswers.info



**TEXAS A&M UNIVERSITY
SCHOOL OF LAW**

CARES ACT: Housing and Mortgage Provisions

Lisa T. Alexander

Professor of Law, Texas A&M School of Law

**Co-Director, Program in Real Estate and Community
Development Law**



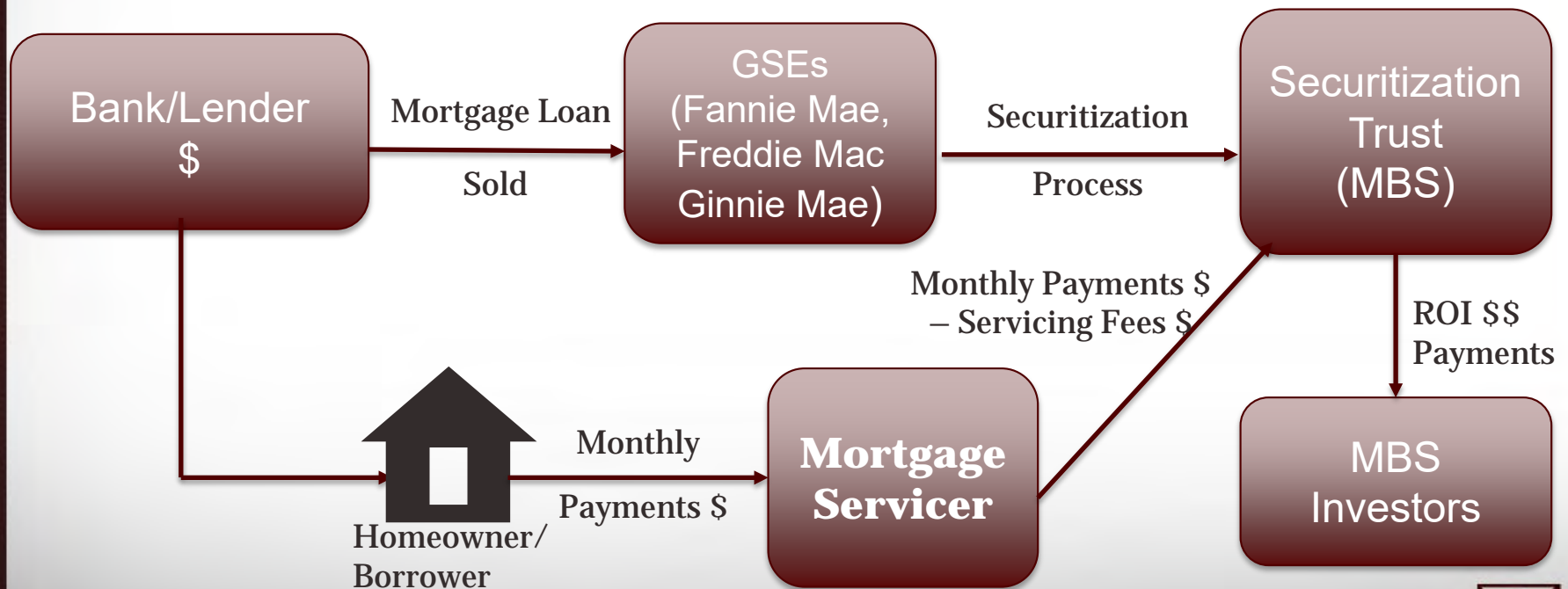
What is a federally-backed mortgage?

(Title IV Sec.4022(a)(2))

- **Any mortgage (or deed of trust) secured by a first or subordinate lien on residential real property insured, guaranteed, made, purchased, or securitized by one of the following federal agencies:**
 - (GSEs) – Fannie Mae, Freddie Mac, Ginnie Mae
 - FHA – Federal Housing Administration
 - HUD – U.S. Dept. of Housing and Urban Development
 - VA – Veterans Administration
 - USDA – U.S. Department of Agriculture
- **NOTE: These provisions do not apply to purely private mortgage loans.**

How Do I Know If My Mortgage is Federally-Backed?

- Call your mortgage servicer
- What is a mortgage servicer?



Mortgage Look Up Resources

- Nearly **50% of nation's mortgages are owned or backed by Fannie Mae or Freddie Mac.**
- Resources to find **whether your mortgage is federally-backed:**
 - Fannie Mae
 - Freddie Mac
 - Mortgage Electronic Registration System (MERS)
- Consumer Financial Protection Bureau

CARES ACT: Mortgage Provisions (Title IV Sec. 4022)

- **Two types of relief for homeowners with **federally-backed mortgages**:**
 - 1. A foreclosure moratorium**
 - 2. A temporary right to forbearance for homeowners who cannot pay their mortgage due to a COVID19 hardship.**

Foreclosure Moratorium

- Mortgage servicers or lenders **MAY NOT foreclose** a covered borrower's mortgage for failure to pay **for 60 days from March 18, 2020 ending on May 18, 2020.**
- **These provisions do not exempt foreclosures commenced before enactment of the Act or vacant and abandoned properties!**

Right to Forbearance

- An **individual borrower** with a **federally-backed mortgage**, experiencing a financial hardship due to the Covid19 emergency **MAY**:
 - **request from their mortgage servicer or lender for forbearance for up to 180 days, and an additional 180 days, at the request of the borrower, for a maximum of 360 days.**
 - **Proof of hardship is based solely on the borrower's attestation.**
 - Mortgage servicers or lenders **cannot charge additional fees, penalties, or interest, other than what they would normally charge if the loan was paid on time, during the period of forbearance.**



THIS IS **NOT** LOAN FORGIVENESS!

- This period of forbearance **DOES NOT GET RID OF YOUR OBLIGATION TO PAY!**
- It only **SUSPENDS YOUR NEED TO PAY DURING THE RELEVANT PERIOD.**
- **YOU WILL STILL BE RESPONSIBLE FOR ALL PAST DUE PAYMENTS AFTER THE FORBEARANCE PERIOD ENDS!**
- **SO PAY YOUR MORTGAGE IF YOU CAN!**

CARES ACT:

Renter Eviction Moratorium

(Title IV Sec. 4024)

- Restricts **landlords** of “**covered properties**” from filing **new evictions** for **nonpayment of rent** or
- **charging fees, penalties, or other charges** relating to **a tenant’s nonpayment of rent** for
- **120 days from March 27, 2020 (the enactment of the Act) ending on July 25,2020.**
- Landlords of “**covered properties**” also **MAY NOT evict tenants after the moratorium period expires without 30 days notice.**

WHAT IS A “COVERED PROPERTY”?

Title IV Sec. 4024(a) & 4023

- **VAWA Covered Housing Programs**
- **Department of Housing and Urban Development (HUD)**
 - Public housing (42 U.S.C. § 1437d)
 - Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f)
 - Section 8 project-based housing (42 U.S.C. § 1437f)
 - Section 202 housing for the elderly (12 U.S.C. § 1701q)3
 - Section 811 housing for people with disabilities (42 U.S.C. § 8013)
 - Section 236 multifamily rental housing (12 U.S.C. § 1715z-1)
 - Section 221(d)(3) Below Market Interest Rate (BMIR) housing (12 U.S.C. § 17151(d))
 - HOME (42 U.S.C. § 12741 et seq.)
 - Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.)
 - McKinney-Vento Act homelessness programs (42 U.S.C. § 11360, et seq.)
 - guaranteed under HUD’s Native American or Native Hawaiian Home Loan Guarantee programs.
- **USDA Programs**
- **Department of Treasury (Low-Income Housing Tax Credit – LIHTC)**
- **Rural Housing Voucher Program**
- **Properties with federally-backed mortgage loans (1-4 units)**
- **Properties with federally-backed multifamily mortgage loans (5+ Units)**

Multifamily Borrower Forbearance

- A **multifamily borrower** with a **federally-backed mortgage** current as of Feb 1, 2020, **experiencing a financial hardship due to Covid19 MAY:**
- Request **forbearance for up to 30 days; and extend the forbearance for up to 2 additional 30 day periods** provided that, the borrower's request for an extension is made during **the covered period, and, at least 15 days prior to the end of the first requested forbearance period.**
- A covered **multifamily borrower cannot evict tenants during the period of forbearance.**

THIS IS **NOT** RENT FORGIVNESS!

- This eviction moratorium **DOES NOT GET RID OF YOUR OBLIGATION TO PAY YOUR RENT!**
- It only **PREVENTS LANDLORDS FROM EVICTING YOU DURING THE RELEVANT PERIOD!**
- **YOU WILL STILL BE RESPONSIBLE FOR ALL PAST DUE PAYMENTS AFTER THE EVICTION MORATORIUM PERIOD ENDS!**
- **SO PAY YOUR RENT IF YOU CAN!**

State Resources

- **Texas – Eviction Moratoriums**
 - In any action for **eviction, no trial, hearing or other proceeding may be conducted and all deadlines are tolled until after April 30, 2020.**
 - **New filings may be accepted, but the time period in Rule 510.4(a)(10) is suspended, and issuance and service of citation may not occur until after April 30, 2020.**
 - **Supreme Court of Texas Order**

General Resources for Homeowners and Tenants

- Consumer Financial Protection Bureau
- National Housing Law Project
- HUD
- Texas Housers- Low Income Housing Information Service



TEXAS A&M UNIVERSITY
SCHOOL OF LAW

WATCH OUT FOR SCAMS!

Thank You
I Look Forward To Questions?





COVID-19 & Commercial Leases

Luz E. Herrera
Professor
Community Development Clinic

Eviction Moratoria

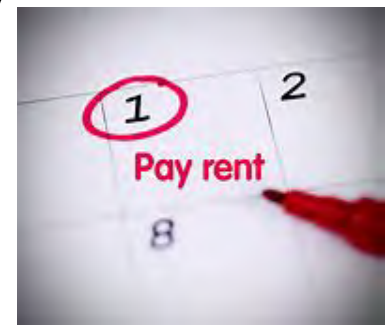
Most do not explicitly include commercial tenants, however, exceptions:

- Justice of the Peace Courts
- Collin County
- Dallas County
- Bexar County
- City of Austin



Rental Payments

- Few provisions to withhold rent. If you have the money, pay the rent. Few waivers.
- Landlord can begin eviction process for nonpayment of rent.
- If you don't have the money to pay the rent, contact with your property manager or landlord to request a forbearance or another accommodation.





Commercial Leases

Commercial Lease Agreement

This Commercial Lease Agreement ("Lease") is made and effective [Date], by and between [Landlord] ("Landlord") and [Tenant] ("Tenant").

Landlord is the owner of land and improvements commonly known and numbered as [Address of Building] and legally described as follows (the "Building"): [Legal Description of Building]

Landlord makes available for lease a portion of the Building designated as [Suite or Other Number of Leased Building] (the "Leased Premises").

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Term.

A. Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning [Start Date] and ending [End Date]. Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Lease term. If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Tenant shall make no other claim against Landlord for any such delay.

B. Tenant may renew the Lease for one extended term of [Renewal Term]. Tenant shall exercise such renewal option, if at all, by giving written notice to Landlord not less than ninety (90) days prior to the expiration of the Initial Term. The renewal term shall be at the rental set forth below and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

2. Rental.

A. Tenant shall pay to Landlord during the Initial Term rental of [Annual Rent] per year, payable in installments of [Monthly Rental Amount] per month. Each installment payment shall be due in advance on the first day of each calendar month during the lease term to Landlord at [Landlord's Designated Payment Address] or at such other place designated by written notice from Landlord or Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis. Tenant shall also pay to Landlord a "Security Deposit" in the amount of [Security Deposit].

B. The rental for any renewal lease term, if created as permitted under this Lease, shall be of [Annual Rent in Renewal Term] per year payable in installments of [Monthly Rental Amount] per month.

Lease agreements in Texas generally favor landlords.

Chapter 93 of the Texas Property Code governs.

Most landlords will work with good tenants to keep them.

Contracts

Impossibility

- Requires the non-occurrence of an event that was assumed when the contract was made.
- Foreseeable events at the time of contract formation will not excuse non-performance.
- Texas courts have interpreted “impossibility” to require more than just difficulty, hardship, or expense.
- The party claiming impossibility must have made “reasonable efforts to surmount the obstacle to performance”

Force Majeure

- Texas construes force majeure clauses narrowly – contract terms control.
 - The event could not have been foreseen or guarded against in the force majeure clause.
 - Force majeure claims not available “simply because performance has become more economically burdensome” than anticipated.
 - Does the clause enumerate “pandemic” or catch-all such as “or such other such events that are beyond the reasonable control of Tenant”?
-

Late Fees or Penalties

Landlords can charge late fees or penalties if the lease provides for them, unless there is an order limiting them.



Dallas County Order, 4/6/2020

“Landlords *should* cap late fees for delayed payment of rent at fifteen dollars (\$15) per month.” (italics added)

Lockouts



Permitted by Texas Property Code §93.002(c):

“A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:(3) changing the door locks of a tenant who is delinquent in paying at least part of the rent.”

Landlord must place a written notice on the tenant's front door stating:

1. the name; and
2. the address or telephone number of the individual or company that can provide tenant with the new key.

The new key must only be provided, during tenant's regular business hours, if the tenant pays the delinquent rent.

Negotiate



Landlord

Duty to Mitigate

Sublease or Assign?

Costly to find a new tenant

Tenant Type

Fixtures

“Keep Open” provisions

Lump Sum Payment

Lender Requirements

Tenant

Duty to Mitigate

Sublease or Assign?

Relocation or Termination

Tenant Improvements

Merchandise and Equipment

Security Deposit

Payment Plan / Rent Escalation

Health and Safety of Building

Eviction Process – Part I

Notice of Eviction



File Eviction



Eviction Hearing



Eviction Process – Part II

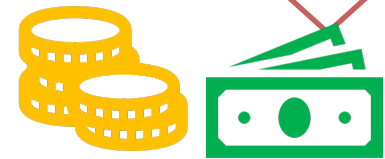
Writ of Possession



Eviction Appeal



Debt Collection



Other Issues

- Utilities
- Personal Guarantees
- Business Interruption Insurance
- Sell or Transfer Business
- CARES Act resources for Small Business





TEXAS A&M UNIVERSITY
SCHOOL OF LAW



tamulawanswers.info

Texas Law Help



TEXAS A&M
UNIVERSITY.



TEXAS A&M UNIVERSITY
SCHOOL OF LAW

Bankruptcy-related Provisions of the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”)

Professor Wayne Barnes



Types of Bankruptcy Cases

- Chapter 7 (straight liquidation)
 - (give up non-exempt assets, keep future income)
- Chapter 13 (individual repayment plan)
 - (give up 3 to 5 years of income, keep assets)
- Chapter 11 (Business Reorganization)
 - “normal” case (expensive, complex, many players have say, time-consuming)
 - new “Small Business Debtor Reorganization” subchapter

CARES Act

- CARES Act has provisions affecting bankruptcy:
 - for businesses, and
 - for individuals

CARES Act – for Business

- “Small Business Debtor Reorganization” subchapter
 - Became effective February 22, 2020 (enacted last year)
 - Simple, fast. Makes bankruptcy much more accessible and affordable for small businesses (like Chapter 13 for businesses)
 - Limited to businesses with total, noncontingent unsecured and secured debts of not more than \$2,725,625.
- **CARES Act: increases debt limit for eligible businesses to \$7,500,000 for one year.**
 - Effect is to allow many more businesses to take advantage of this accessible form of Chapter 11

CARES Act – for Individuals

- First, understanding the “means” test and how “disposable income” works in Chapter 13 bankruptcy.
- (see next slide)

Means Test for Individuals

(Chapter 7 liquidation or Chapter 13 repayment?)

1. If debtor's "**current monthly income**" (6-month average) is under the relevant median income, can file Chapter 7.

2. If debtor's "**current monthly income**" is over the relevant median income, then must further determine if debtor has enough "disposable income" (monthly income minus certain allowed expenses) to pay a certain formula amount of unsecured debts over five years (roughly 25%).
 - a. If have enough income (means), then individual is required to file Chapter 13 (**must commit the disposable income** to unsecured creditors for life of plan – usually 5 years).

 - b. If do NOT have enough income (means), then individual is allowed to file Chapter 7 (can keep future income).

CARES Act – for Individuals

- **Bankruptcy debtors (or soon-to-be-debtors) get to KEEP their stimulus payments from the CARES Act (\$1,200 per adult, etc.).**
 - not included in income for purposes of means test calculations (Ch. 7 vs. Ch. 13)
 - not included in “disposable income” for purposes of what must be paid to creditors in a Chapter 13 plan
 - Payments generally don’t go to creditors. Debtors keep the money.
 - **Note:** This is made explicit in the CARES Act for Chapter 13 cases. The Act does not explicitly provide that those who file Chapter 7 after receiving the stimulus money could keep it rather than be required to surrender it to creditors (if not spent yet). However, on April 8 the United States Trustee’s office issued a statement that Chapter 7 debtors should generally be allowed to keep stimulus payments free of creditors as well (https://www.justice.gov/ust/file/cares_act_recovery_rebate_notice.pdf/download).
- **Existing Chapter 13 debtors with confirmed plans, can have the court extend the plan to 7 years based on coronavirus difficulties (normal limit is 5 years).**



Summary/recap:

1. Increase eligibility for Chapter 11 Small Business Reorganization to \$7.5 million in debt
2. CARES Act payments not included in “income” or “disposable income” calculations (debtor keeps)
3. Existing Chapter 13 debtors can extend plans to 7 years





TEXAS A&M UNIVERSITY
SCHOOL OF LAW

NEED ADDITIONAL ASSISTANCE? The Tarrant County Bar Association offers free advice on “LegalLine”

LegalLine is a community service program offered twice a month by the Tarrant County Bar Association. Volunteer attorneys from the Tarrant County Bar Association offer free advice to Tarrant County residents on the 2nd and 4th Thursday of every month from 5–7pm.

As part of the Tarrant County Bar Association’s commitment to the public, local lawyers volunteer two hours of their time to answer questions covering a broad range of topics.

Anyone interested can sign up for an appointment time at tarrantbar.org

