

DC Council Extends Foreclosure Moratorium, Shortens TOPA Tolling Period

2 Mar 2022

In October 2021, D.C. Council provided Mayor Bowser, under Act 24-178 ¹, the power to extend the foreclosure moratorium from November 5, 2021, to February 4, 2022. ² The purpose of this extension was to allow the Housing Assistance Funds ("HAF") Program to be implemented. The goal of the HAF program is to prevent mortgage delinquencies and defaults, foreclosures, loss of utilities or home energy services, and displacement of homeowners experiencing financial hardship, primarily due to the COVID-19 pandemic. ³

Delays in the implementation of the HAF program and the rise in the Omicron variant prompted the passage of the "Foreclosure Moratorium Extension Emergency Amendment Act of 2022" (the "Act"), which extended the moratorium through June 30, 2022.

The continued moratorium applies to any ⁴ 1) Residential foreclosure that may be initiated or conducted under section 539 ⁵; 2) Sale may be initiated or conducted under section 313(c) of the Condominium Act of 1976 ⁶; and 3) Judgment foreclosing the right of redemption shall be entered under D.C. Official Code § 47-1378. The moratorium is further extended for residential foreclosures through September 30, 2022, if the "homeowner or their representative applies for financial assistance to cure a debt or default with funds from the Department of Housing and Community Development's Homeowner Assistance Fund ("Homeowner Assistance Funds") or a similar government fund established to assist homeowners impacted by the COVID-19 public" ⁷ In order to gain this additional time, the homeowner must show certain proof and do so no later than 60 calendar days after July 1, 2022. ⁸

Though this emergency Act keeps the moratorium in place for all residential foreclosures, there are three exceptions under the Act.

First, the moratorium does not apply to buildings with more than five units ⁹.

Second, the moratorium does not apply to borrowers that are entities ¹⁰, as opposed to individuals. But there is one important exception: if the underlying mortgage is guaranteed by an individual, the moratorium does apply.

Third, the moratorium does not apply to non-resident borrowers. ¹¹ "This section shall not apply to a residential property at which neither a record owner nor a person with an interest in the property as heir or beneficiary of a record owner, if deceased, has resided for at least 275 total calendar days during the 12 months period immediately preceding October 1, 2021."

In addition to extending the foreclosure moratorium, the Act also tolled tenant deadlines under the Tenant Opportunity to Purchase Act ("TOPA"). TOPA provides that, before an owner may sell, demolish, or discontinue housing use of a rental accommodation, the owner must give tenants an opportunity to purchase and a right of first refusal to match a third-party contract. Tenants have the power to assign their opportunity to purchase to any party for any consideration a tenant deems acceptable in her sole discretion. ¹²

Although TOPA deadlines initially ceased to be tolled in August 2021, based on the Mayor's Public Health Emergency Declaration coming to an end in July 2021, due to the omicron variant the D.C. Council approved a new emergency

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extension of TOPA, once again tolling the deadlines for renters through February 15, 2022. The Act specifically notes, "The running of the time periods under sections 410(1) and 411(l) for tenants and tenant groups to submit a written statement of interest and tenant organizations to register to exercise rights and the time periods under sections 410(2) and 411(2) for tenants and tenant organizations to negotiate a contract of sale shall be tolled from the applicability date of the Foreclosure Moratorium Extension Emergency Amendment Act of 2022, passed on emergency basis on January 18, 2022 (Enrolled version of Bill 24-612), through February 15, 2022." ¹³ This emergency legislation is in place for 90 days, but the Council has already sent the "Foreclosure Moratorium Extension Temporary Amendment Act of 2022" to Mayor Bowser for review. This Temporary Act mirrors the Emergency Act, but if approved by Congress will be in effect for 225 days.

¹ Foreclosure Moratorium Extension, Scheduled Eviction Assistance, and Public Emergency Extension Emergency Amendment Act of 2021.

² See D.C. Code 42-815.05.

³ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund>.

⁴ Foreclosure Moratorium Extension Emergency Amendment Act of 2022 § 2(a)(l)(A-C).

⁵ D.C. Official Code §§ 42-815 and 42-81.

⁶ D.C. Law 1-89; D.C. Official Code § 42- 1903.13(c).

⁷ Foreclosure Moratorium Extension Emergency Amendment Act of 2022 § 2(a)(2)(A-D).

⁸ Id.

⁹ See D.C. Code § 42-815.01 (a), "the term "residential mortgage" means a loan secured by a deed of trust or mortgage, used to acquire or refinance real property which is improved by 4 or fewer single- family dwellings, including condominium or cooperative units..."

¹⁰ See D.C. Code § 42-815 (a) ..."but shall not include debts incurred, and currently obligating solely, an entity, as defined by § 29-101.02(10). D.C. Code § 29-101.02 (10)(A) defines "entity" as "(i) A business corporation; (ii) A nonprofit corporation; (iii) A general partnership, including a limited liability partnership; (iv) A limited partnership, including a limited liability limited partnership; (v) A limited liability company; (vi) A general cooperative association (vii) A limited cooperative association; (viii) An unincorporated nonprofit association; (ix) A statutory trust, business trust, or common-law business trust; or (x) Any other person that has a legal existence separate from any interest holder of that person or that has the power to acquire an interest in real property in its own name. The term entity under this provision does not include an individual. See § 42-815.01 (Right to cure residential mortgage foreclosure default); See also § 29-101.02 (Entity does not include The term "entity" does not include: (i) An individual; (ii) A testamentary or inter vivos trust with a predominantly donative purpose, or a charitable trust; (iii) An association or relationship that is not a partnership under the rules set forth in § 29-602.02(c) or a similar provision

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of the law of another jurisdiction; (iv) A decedent's estate; or(v) A government or a governmental subdivision, agency, or instrumentality.

11 Foreclosure Moratorium Extension Emergency Amendment Act of 2022 § 2(b).

12 TOPA now exempts single family dwellings from the Tenant Opportunity to Purchase Act of 1980 (TOPA) unless occupied by elderly or disabled tenants. TOPA also exempts single family dwellings with an Accessory Dwelling Unit and a single rental unit in a condo, co-op or homeowners' association. An owner of such an exempted unit must give tenants notice within three calendar days of soliciting or receiving an offer of sale. Elderly and disabled tenants who signed a lease to occupy such an exempted unit by March 31, 2018, and took occupancy by April 15, 2018, will have a limited opportunity to purchase or assign their rights. See TOPA Single-Family Home Exemption Amendment Act of 2017 (Bill 22-0315).

13 Foreclosure Moratorium Extension Emergency Amendment Act of 2022 § 510(b) (The Act initially proposed tolling deadlines being extended through February 28, 2022, but were negotiated down to February 15, 2022).

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8 Id.

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TAGGED: TOPA, Real Estate Law, foreclosure moratorium, COVID Policy