

Revised August 27, 2020

Frequently Asked Questions about Chapter 65 of the Acts of 2020, An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency¹

Background

[Chapter 65 of the Acts of 2020](#) (“Chapter 65”), *An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency*, was signed into law on April 20, 2020, and became effective immediately. Chapter 65 establishes a temporary moratorium on foreclosures on a 1-4 family owner-occupied residential property in Massachusetts; provides residential mortgage borrowers that have experienced a financial impact from COVID-19 with a right to obtain a forbearance on their mortgage payments for up to 180 days; and amends the in-person counseling requirements for prospective reverse mortgage loan borrowers in response to the Governor’s declaration of a state of emergency due to COVID-19 on March 10, 2020. Chapter 65 also includes additional provisions relating to a moratorium on non-essential evictions for residential dwellings and small business premises units.

For more information regarding the moratorium on non-essential evictions, please refer to emergency regulations promulgated by the Executive Office of Housing and Economic Development available [here](#) and the regulatory guidance issued by the Department of Housing and Community Development available [here](#).

Provided below are responses to several questions relating to the implementation of Chapter 65. The Division of Banks notes that Chapter 65, like the federal CARES Act², is intended to provide relief to those borrowers who are financially impacted by COVID-19. If you have not been adversely impacted by COVID-19, you are expected to continue to meet your mortgage obligation.

Foreclosure Moratorium and Forbearance Period

- 1. I understand that Chapter 65 temporarily stops residential foreclosures and allows me to request a forbearance period on my residential mortgage loan if I have experienced a negative financial impact due to the COVID-19, but when do these protections go into effect?**

The new law included an emergency provision that ensured that the law went into effect immediately. The foreclosure moratorium, the ability to request a forbearance, and other emergency provisions included in the new law are now in effect.

¹ This Frequently Asked Questions document was first issued on April 24, 2020. Questions No. 14-20 were added as of May 1, 2020. Questions Nos. 1, 3, and 27 were updated on August 27, 2020 to reflect that the foreclosure moratorium which was scheduled to expire on August 18, 2020 was extended and will now expire on October 17, 2020, or forty-five (45) days after the COVID-19 emergency declaration is ended, whichever is sooner.

² Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136.

The foreclosure moratorium was originally set to expire on August 18, 2020. However, on July 21, 2020, the foreclosure moratorium was extended for an additional sixty (60) days and is now set to expire on October 17, 2020, or forty-five (45) days after the COVID-19 emergency declaration has been lifted, whichever is sooner, unless extended by the Governor. More information on the moratorium extension is available [here](#). Also, after such expiration date, your lender/servicer will not be **required** to grant a forbearance period, but borrowers struggling with making their mortgage payment are always encouraged to communicate with their lender/servicer to determine if any modified repayment options may be available at that time.

2. I have defaulted on my mortgage loan and already received a 90-day Right to Cure notice from my mortgage servicer. May I still obtain forbearance on my mortgage payments under Chapter 65?

If you have experienced a financial impact as a result of COVID-19 and affirm this to your lender/servicer, you are entitled to a forbearance period of up to 180 days, so long as you make the request for forbearance while the new law remains in effect. Please note that if you would like a forbearance, you are not required to obtain a forbearance that lasts a full 180 days. You may request and obtain a forbearance that lasts for a shorter time period. You should discuss this directly with your lender/servicer.

3. I have defaulted on my mortgage loan. Can my lender begin foreclosure proceedings and foreclose on my home?

No. As of the effective date of Chapter 65, lenders/servicers are prohibited from moving forward with foreclosure until either October 17, 2020, or 45 days after the Governor lifts the COVID-19 state of emergency, whichever is sooner, unless extended by the Governor. Please be sure to monitor the 'COVID-19 Resources' section of the Division of Banks webpage available [here](#) for any updates on this timeframe.

[Note: The prohibition on proceeding with a foreclosure contained in Chapter 65 that was set to expire on August 18, 2020 was extended on July 21, 2020 for an additional sixty (60) days and is now set to expire on October 17, 2020, or forty-five (45) days after the COVID-19 emergency declaration has been lifted, whichever is sooner, unless extended by the Governor.]

4. Foreclosure proceedings have already started on my home, do I need to do anything to stop any further foreclosure proceedings?

Under Chapter 65, your lender/servicer is required to automatically stop moving the foreclosure proceedings forward; however, you should reach out to your servicer to confirm that foreclosure proceedings have stopped and explore any alternatives to foreclosure that may be available to you.

5. I am current on my mortgage, but I was recently laid off from my job when my employer reduced staffing due to the impact of the COVID-19 pandemic. Due to my loss of income, may I request forbearance even if my mortgage is not in a delinquent status?

Yes. Borrowers who have experienced a negative financial impact due to COVID-19 may request a forbearance period from their servicer regardless of the delinquency status of the mortgage loan.

6. Will I be automatically enrolled in a forbearance plan if I miss a mortgage payment or if I do not request forbearance from my lender/servicer?

No, the forbearance is not automatic. You need to contact your lender/servicer to request a forbearance and affirm that you have experienced a negative financial impact due to COVID-19.

7. Are all Massachusetts residential mortgage loan borrowers eligible for the forbearance relief included in Chapter 65?

No. Although the moratorium on mortgage foreclosures applies to all 1-4 family owner-occupied residential properties, the forbearance provisions in Chapter 65 only apply to mortgage loan borrowers that have experienced a financial impact from COVID-19, requested a forbearance from the mortgage loan servicer, and affirmed that they have experienced a COVID-19 financial impact.

8. I obtained a 180-day forbearance pursuant to Chapter 65. What does this mean?

This means that the monthly mortgage payments that you would otherwise have been required to pay to your lender/servicer are not required to be made for a period of 180 days. If your mortgage was not in default prior to the forbearance period, the mortgage will not go into default by reason of your missed monthly mortgage payments during the 180-day forbearance period. **A forbearance does not mean that these monthly mortgage payments are forgiven. You still owe the mortgage loan payments, but they will be added to the end of the mortgage loan term (see next Question and Answer).**

9. What happens to the monthly payments that I will miss during the forbearance period?

Under the law, unless you and your lender/servicer agree otherwise, those monthly payments will be added to the end of your loan term. For example, if the original term of your mortgage loan is 30 years (360 monthly payments), the total of these payments will be added to the end of that period. Please note, however, that you and your lender/servicer are free to come to another agreement as to how you will repay these monthly mortgage payments. It is important to make sure that you clearly understand the terms of the agreement on making up the missed payments and that you ask additional questions of the lender/servicer if you need further clarification.

10. Will the monthly mortgage payments that I defer during the forbearance period be reported by my lender/servicer to the consumer reporting agencies as missed payments?

No. Chapter 65 specifically directs the creditors and mortgagees that they shall not provide negative mortgage payment information to the consumer reporting agencies related to mortgage payments that are deferred during the forbearance period provided by this law.

11. I have experienced a negative financial impact due to COVID-19, and I have already contacted my lender to discuss the possible options available to me to modify my monthly mortgage payments, including a temporary payment plan that does not include forbearance. If I believe a temporary payment plan is a better option for my circumstances, does this new law require me to enter into a forbearance period?

No. The new law allows you to request forbearance if you submit a request to your servicer affirming that you have experienced a negative financial impact due to COVID-19 and requires that the servicer shall grant your request under those circumstances. However, if you believe that a temporary payment plan is preferable to forbearance based on your circumstances and your ability to meet the modified payment obligations of the temporary payment plan, then the law does not require you to accept a forbearance period and you may proceed with the option that you believe is best for you.

12. I had an escrow waiver included in my mortgage agreement with my lender/servicer whereby I am responsible to pay my property taxes and insurance on my own in addition to my monthly mortgage payments. In addition to delaying my monthly mortgage payment, does the forbearance postpone my property tax and insurance obligations that may become due during the forbearance period?

No. If you have not escrowed for taxes and insurance as part of your mortgage, these obligations will continue to accrue and become due according to the schedule for such charges and may become due during the forbearance period. If you have the means to make these payments as they become due, you are encouraged to continue to submit those payments in a timely manner to avoid any penalties that may result from late payment of those additional expenses.

13. In addition to the principal and interest due on my mortgage loan, my monthly mortgage payment also includes amounts escrowed for real estate taxes and insurance. If I request and obtain a forbearance pursuant to Chapter 65, does the forbearance include the escrowed amounts collected to satisfy real estate tax payments and insurance premiums that are owed to third parties?

You should not presume that escrow amounts will be deferred during the forbearance period. It is important to make sure that you clearly understand the terms of the agreement of the forbearance. If you are unable to afford the escrow payments during the forbearance period, you should make sure that during your communications with your lender/servicer regarding the forbearance request that you ask the lender/servicer to review the escrow payment obligations during the forbearance period and work out an agreement with regard to these amounts and the timeframe for repayment.

14. Can my lender or servicer charge additional fees, penalties, or interest beyond what is contractually due under my existing mortgage agreement?

No. Chapter 65 specifically states that “Fees, penalties or interest beyond the amounts scheduled and calculated as if the (borrower) made all contractual payments on time and in full under the terms of the mortgage contract shall not accrue during the period of forbearance...”

15. If I am granted a forbearance and my lender/servicer adds the forbearance amounts to the end of my mortgage loan, should I sign an extension agreement with the lender/servicer changing the maturity date on the recorded mortgage?

The Division recommends that lenders/servicers and borrowers memorialize any forbearance entered into pursuant to Chapter 65. Lenders/servicers should also consult with legal counsel, as appropriate. Borrowers may also want to consult with legal counsel or to seek assistance that may be available from credit counseling organizations with regard to any questions.

16. I purchased a four-family residential property that I use as my primary residence while I rent the other units to tenants. Do the foreclosure and forbearance provisions of Chapter 65 apply to my mortgage loan?

Yes. The foreclosure and forbearance provisions of Chapter 65 apply to a mortgage loan made primarily for personal, family, or household purposes. Residential property is defined, in part, as real property on which there is a dwelling with accommodations for four or fewer separate households and occupied, or to be occupied, in whole or in part by the borrower. In your situation, you are making a personal use of the property as your primary residence and the property does not exceed the four-unit maximum.

17. The foreclosure and forbearance provisions of Chapter 65 both refer to a mortgage on residential property as defined in G.L. c. 244, § 35B. Does this mortgage loan definition include commercial real estate loans on multifamily properties?

No. The foreclosure and forbearance provisions of Chapter 65 apply to a mortgage loan made primarily for personal, family, or household purposes. The applicable definition of 'residential property' specifically excludes properties that are not owner-occupied, investment properties, and residential properties that are taken in whole or in part as collateral for a commercial loan.

18. Do the foreclosure and forbearance provisions of Chapter 65 only apply to first lien mortgages on residential properties, or do they also apply to second lien mortgage loans, home equity lines of credit, and home improvement loans if the lender secures the loan or line of credit with a mortgage on the property?

The foreclosure and forbearance provisions of Chapter 65 are not limited to first lien mortgage loans. The provisions of Chapter 65 apply to mortgage loans on residential property as defined by G.L. c. 244, § 35B.

19. If I was delinquent on my mortgage loan payment(s) prior to the COVID-19 Emergency Declaration Order issued on March 10, 2020 and the enactment of Chapter 65, am I ineligible for a forbearance under Chapter 65?

No. A delinquency on your mortgage payment(s) prior to the declared emergency and the enactment of Chapter 65 will not disqualify you from the forbearance relief provisions of the new law. However, in order to obtain the forbearance you will be required to request a forbearance from your mortgage loan servicer and affirm in good faith that your current inability to make your mortgage payment(s) is due to your experiencing a financial impact from COVID-19.

20. May a lender/servicer require written affirmation from a borrower that he or she has experienced a financial impact from COVID-19?

The lender/servicer may require the borrower to affirm in writing that he or she has experienced a financial impact from COVID-19.

Reverse Mortgages

- 21. I was told in the past that if I wanted to obtain a reverse mortgage loan, then I would need to attend an in-person counseling session pursuant to a requirement in Massachusetts law. I may be interested in obtaining a reverse mortgage, but I am concerned that this in-person counseling session would require me to deviate from the physical distancing directives that I have been trying to follow during this COVID-19 emergency. Did the new law include anything that would address my concern?**

Yes. The new law includes a temporary accommodation that specifically addresses your concern. The reverse mortgage counseling session which would otherwise have been required to be conducted in-person in the past, may now be completed by synchronous, real-time video conference or by telephone. This is a temporary provision in light of the physical distancing directive and will expire upon the termination of the COVID-19 emergency at which point the in-person requirement would be reinstated.

- 22. If I attend a real-time video conference or telephonic reverse mortgage counseling session, will I need to attend an in-person counseling session after the COVID-19 emergency is terminated?**

No. The real-time video conference or telephonic counseling session is in lieu of the in-person counseling session, and you will not be required to attend an in-person counseling session at a later date.

- 23. This new law states that the counseling organization that provides the real-time video conference or telephonic reverse mortgage counseling must be approved by the Executive Office of Elder Affairs. How do I know if the counseling organization with whom my counseling session is scheduled has been approved by the Executive Office of Elder Affairs?**

The Executive Office of Elder Affairs maintains a list of approved reverse mortgage counsellors. The list of approved counsellors is available by following the link provided [here](#).

Other Implementation Considerations

- 24. Chapter 65 provides that a mortgagor on a residential mortgage loan experiencing a financial impact from COVID-19 has the right to request and obtain a forbearance of up to 180 days. Does this right to a forbearance period affect the notice requirements or process set forth in G. L. c. 244, § 35A with regard to the mortgagor's right to cure a mortgage default?**

No. The right to a forbearance created by Chapter 65 is entirely separate from the right to cure requirements of G.L. c. 244, § 35A. Lenders and servicers must continue to adhere to the requirements of G. L. c. 244, § 35A and 209 CMR 56.00 *et seq.*

- 25. Chapter 65 provides that a mortgagor on a residential mortgage loan experiencing a financial impact from COVID-19 has the right to request and obtain a forbearance of up to 180 days. Does this right to a forbearance change the requirements or process with respect to borrowers of "certain mortgage loans," who have a right to request a loan modification?**

No. The right to a forbearance created by Chapter 65 is entirely separate from the requirements of G. L. c. 244, §35B and 209 CMR 56.00 *et seq* applicable to mortgagors of “certain mortgage loans.” Lenders and servicers must continue to adhere to the applicable requirements of G. L. c. 244, § 35B and 209 CMR 56.00 *et seq*.

- 26. With respect to a borrower who has already defaulted and received the 90-day Right to Cure notice, if the borrower exercises her right to a forbearance period of up to 180 days, is the borrower’s time to cure (if any remaining) tolled during the period of forbearance? In this situation, must the lender/servicer send another Right to Cure notice following the forbearance period?**

With respect to the first question, the answer is no. The 90-day right to cure process is entirely separate and the two time periods will run concurrently. With respect to the second question, the answer is also no. The lender/servicer does not need to send another Right to Cure notice following the conclusion of the forbearance period.

- 27. With respect to a borrower who has defaulted on a mortgage loan, received the 90-day Right to Cure notice, and also then exercised his right to a forbearance period of up to 180 days, what happens if the borrower does not cure the default during the 90-day right to cure period?**

The borrower remains in default. The mortgagee, however, may not take any steps in the foreclosure process, however, until the foreclosure moratorium set forth in Chapter 65 has concluded. The foreclosure moratorium will expire on October 17, 2020, or 45 days after the COVID-19 emergency declaration has been lifted by the Governor, whichever is sooner. Please be advised, however, that the Governor may extend the foreclosure moratorium for increments not exceeding 90 days, but in no event to a date later than 45 days after the COVID-19 emergency declaration has been lifted.

[Note: The prohibition on proceeding with a foreclosure contained in Chapter 65 that was set to expire on August 18, 2020 was extended on July 21, 2020 for an additional sixty (60) days and is now set to expire on October 17, 2020, or forty-five (45) days after the COVID-19 emergency declaration has been lifted, whichever is sooner, unless extended by the Governor.]

- 28. With respect to a borrower who has defaulted on a mortgage loan, received the 90-day Right to Cure notice, and also thereafter exercised his right to a forbearance period of up to 180 days, what happens if the borrower cures the default during the 90-day right to cure period and forbearance period?**

The borrower has cured the default and is now current. The payments subject to the forbearance will be added to the end of the loan term, unless otherwise agreed by the lender/servicer and the borrower.

- 29. For mortgagors who exercise their right to a forbearance and whose mortgage payments include escrowed amounts for taxes and insurance, how should this be handled?**

The lender/servicer should ensure that the mortgagor has a clear understanding of any third party charges associated with taxes and insurance that would become due during the forbearance period. If the lender/servicer and the mortgagor have agreed that only amounts attributable to principal and interest will be deferred during the forbearance period, the lender/servicer must

ensure that the terms of the forbearance agreement clearly express the mortgagor's continued responsibilities for submitting the escrow amounts to the lender/servicer during the forbearance period.

30. What if a mortgagor defaulted on his/her mortgage payments prior to the effective date of Chapter 65?

If the borrower affirms that he/she has experienced a financial impact as a result of COVID-19, the lender/servicer must grant the request for a forbearance up to 180 days.