California Department of Business Oversight Issues COVID-19 regarding Customer Hardship Forbearance

On the evening of March 23, the California Department of Business Oversight (DBO) issued *Guidance to Financial Institutions During the Covid-19 Pandemic*. The Guidance discusses a number of issues facing financial institutions whose customers may be suffering from loss of income or other financial hardship as a result of the COVID-19 pandemic. The Guidance can be found HERE.

Foreclosures/Evictions

The Guidance first notes that Governor Newsom's Executive Order N-28-20 requested that commercial and residential mortgage lenders and servicers place a moratorium on foreclosures and evictions when the foreclosure or related eviction arises out of a substantial decrease in household or business income, or substantial out-of-pocket medical expenses, which were caused by the COVID-19 pandemic or by any government response to COVID-19.

Practices Related to Borrowers Facing COVID-19 Related Hardship

Closely mirroring guidance from Federal bank regulators, the Guidance then stated that the DBO encourages financial institutions to adopt the following practices:

- Waiving certain fees, such as:
    - Automated teller machine (ATM) fees for customers and non-customers,
    - Overdraft fees,
    - Late payment fees on credit cards and other loans, and
    - Early withdrawal penalties on time deposits;
- Increasing ATM daily cash withdrawal limits;
- Easing restrictions on cashing out-of-state and non-customer checks;
- Increasing credit card limits for creditworthy borrowers; and
- Offering payment accommodations, such as allowing borrowers to defer or skip some payments or extending the payment due date, which would avoid delinquencies and negative credit bureau reporting caused by COVID-19-related disruptions.

DBO Refraining From Regulatory Criticism

The Guidance then offered the following statements regarding the DBO refraining from regulatory criticism:

- The Department emphasizes that prudent efforts to modify the terms on existing loans for affected customers will not be subject to examiner criticism. For example, when appropriate, a financial institution may restructure a borrower's debt obligations due to temporary hardships resulting from COVID-19 related issues. Such cooperative efforts can ease cash flow pressures on affected borrowers, improve their capacity to service debt, and facilitate the financial institution's ability to collect on its loans.
- Financial institutions may also ease terms for new loans to affected borrowers, consistent with prudent banking practices, and consult Federal Housing Administration guidance on loss mitigation options. Such practices may help borrowers to recover or maintain their financial capacity and enhance their ability to service their debt.
- The Department recognizes there may be other accommodations that could assist customers and communities in responding to challenges from COVID-19. The Department supports and will not criticize efforts to accommodate customers in a safe and sound manner.
- The Department will refrain from citing violations directly arising from any late mortgage recordation due to the closure of a county recorder's office related to COVID-19.

Other Guidance

The Guidance then reminds financial institutions that the fair lending and borrower requirements of the California Homeowner Bill of Rights remain in effect.

Finally, the Guidance then discusses certain regulatory oversight and reporting issues that can be found by clicking the above link to the Guidance.

If we can be of assistance and to discuss various options and specific situations, please feel free to contact any of the Buchalter Mortgage Banking Industry Group Attorneys below.

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