

**ADDENDUM**

- 1. Provision to protect CARES Act stimulus payments from attachment or seizure by creditors.**
- 2. Provision to protect DC residents with personal debts from debt collection during the public health emergency and for 60 days following.**
- 3. Provision to protect DC residents from suffering further credit report impairment and economic harms arising from the public health emergency.**
- 4. Reforms to Preserve Home Ownership**
  - A. Provision to prevent foreclosures on DC residents' homes during the emergency period and 120 days following.**
  - B. Proposed amendments to the mortgage deferment provision.**

**1. Provision to Protect CARES ACT Stimulus Payments from Attachment or Seizure by Creditors.**

**Draft Text:** Amend D.C. Official Code § 15-501 to add the following new section (F) to § 15-501(a)(7): payments received under Section 2201 of the CARES Act, Pub. L. No. 116-136, provided that this provision shall not apply to legal obligations to pay child support orders.

**Technical / Policy Note.** This provision would protect stimulus payments made under the federal Coronavirus Aid, Relief, and Economic Security Act or the “CARES Act” from attachment or seizure by a creditor.

The CARES Act provides for \$1200 payments to many Americans with an additional \$500 for each child. These funds are urgently needed by District residents to pay for basic needs during the economic and health crisis caused by the COVID-19 pandemic.

Currently, D.C. Code § 15-501 protects income from lifeline sources of income such as certain retirement accounts, social security, unemployment, disability, alimony, and veteran’s benefits from seizure by a creditor. The purpose of this provision is to ensure that individuals and heads of households can access these lifeline funds to pay for basic life necessities.

This provision would amend D.C. Code § 15-501 to exempt any payments received under the federal CARES Act from seizure, levy, or attachment by a creditor.

This proposal would protect individuals whose incomes were low enough to receive a stimulus payment under the CARES Act from having those critical relief funds forcibly taken through debt collection via a creditor attaching the funds from the recipient's bank account and ensure that the funds are available to meet critical necessities in this unprecedented crisis.

To avoid any potential conflict with federal law obligations concerning child support orders, the provision includes a carve out for legal obligations to make child support payments.

**2. Provision to protect DC residents with personal debts from debt collection during and immediately after the public health emergency period.**

**Comments on Proposed Text.** We support the efforts that the Council, at the suggestion of the Office of the Attorney General, has already made in this regard as reflected in Section 208 (Debt Collection) of the April 2, 2020 draft bill. In concert with the Office of the Attorney General, we offer several substantive and technical suggestions below.

- a. Amend Section (l) (1) to say (proposed new language underlined):

“(l)(1) Notwithstanding any other provision of this chapter, including subsection(a) of this section, this subsection shall apply to any debt or other past due balance owed or alleged to be owed by a DC resident, including, but not limited to, conduct and practices in connection with

the collection of obligations arising from consumer credit sales, consumer leases, and direct installment loans, including loans directly secured on motor vehicles or direct motor vehicle installment loans covered by Chapter 36 of Title 28."

b. In Section (l)(1)B), add after "or funds for the payment of a debt to a creditor" the phrase "including in previously initiated collection lawsuits".

Note: This fix will make clear that the pause on debt collection litigation activity also extends to debt collection suits filed and pending prior to the period of the COVID-19 emergency.

c. Move the substance of the current new subsection (m) to be part of subsection (l)

Note: doing so is substantively important for residents facing medical and other types of debt collections that fit within the broader scope from section (l) and not necessarily within the narrow scope of types of debt that the current subsection (m) arguably only covers.

d. In what is currently (m)(1) amend the first line to change "During a public emergency" to "During a public emergency and for sixty (60) days after its conclusion".

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**Technical / Policy Note:** this proposal is consistent with, for example, best state law practices in response to the current public health emergency [per the National Consumer Law Center](#) and, for example, [recently issued rules in Massachusetts](#) and in Illinois: Executive Order signed March 28, 2020 by Governor Pritzker suspending repossession of vehicles.

### **3. Provision to protect DC residents from suffering further credit report impairment arising from the public health emergency and related financial crises.**

**Draft Text.** a. For purposes of this subsection, a "COVID-19 alert" is an alert concerning a particular account for which the consumer has advised a credit reporting agency (CRA) that information related to that account in the consumer's report was the result of the economic impact of COVID-19.

b. Commencing from the first day in which the Mayor has declared in effect a public health emergency pursuant to Section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), CRAs, upon request from a District of Columbia resident, must include a COVID-19 alert in the consumer's credit report. Entities that generate credit-scoring models are prohibited from treating as a negative factor any COVID-19 alert tagged account. Users of credit reports are prohibited from

treating as a negative factor any adverse events or COVID-19 alert tagged accounts that occurred during the COVID-19 crisis.

c. During a public emergency and for sixty (60) days after its conclusion, any DC resident may defer any payments due on obligations (including obligations in settlement agreements or judgments from lawsuits) arising from consumer credit sales, consumer leases, and direct installment loans, including loans directly secured on motor vehicles or direct motor vehicle installment loans covered by Chapter 36 of Title 28, without incurring any late fees or increases in interest rates. This provision shall be construed to permit deferrals of payments, and it shall not be construed to extinguish any debt obligation.

d. The Office of the Attorney General shall have enforcement authority for Sections \_\_\_ - \_\_\_ of this legislation, and may seek injunctive relief as well as civil fines of up to \$5,000 per violation.

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**Technical / Policy Note:** The credit reporting proposal is consistent with, for example, best state law practices in response to the current public health emergency [per the National Consumer Law Center](#).

In addition, for the credit report-specific provisions, we have considered whether the Fair Credit Reporting Act (FCRA), 15 U.S.C. Section 1681 preempts the Council from providing these protections. It does not. The general preemption rule under Section 1681t(a) of the FCRA provides that the Act does not preempt state laws "except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency". There are exceptions to that rule. None are meaningfully applicable here.

For the debt payment deferral proposal, we have considered whether these temporary restrictions on debt obligations (none of which extend past the 60 days post-emergency period) are within the Council's police powers and consistent with the Contracts Clause of the U.S. Constitution in light of the present emergencies facing DC. They are. In the seminal decision on state emergency police powers of *Home Bldg. & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934), the Supreme Court evaluated this question as to a state statute enacted to combat the economic emergency posed by the Great Depression. The state law there extended the time period in which borrowers could pay back their debts on property to lenders. The Court held that the law was within the state's police powers and did not violate the Contracts Clause. The Court identified five key factors – all of which point here in favor of the validity of the emergency public health/economic emergency legislation proposed in this provision:

- (i) there was a genuine emergency, as there is here;
- (ii) the legislation was designed to help the public in general, as this proposal plainly is;
- (iii) the relief was narrowly tailored to the problem, as this targeted set of rules concerning debtors' rights is;
- (iv) the mortgagor's interests were not seriously undermined, just as here the creditors may resume debt collection practices later this year;

and (v) the legislation was temporary, as this bill by definition is.

More recently, the Court, for example, upheld against Contracts Clause challenge a state statute even in a non-emergency setting that retroactively altered the terms of a group of contracts – in that case, beneficiary designations made by one spouse to another in situations where the couple later divorces. *See Sveen v. Melin*, 138 S.Ct. 1815 (2018).

#### **4. Reforms to Preserve Home Ownership**

##### **4.A Provision to Prevent Foreclosures on DC Residents’ Homes During the Emergency Period and 120 days following.**

**Draft Text.** “Sec. XXX. Foreclosure prohibition.

“(a) Section 539 of An Act To establish a code of law for the District of Columbia, approved on March 3, 1901 (31 Stat. 1274; D.C. Official Code § 42-815) is amended by adding a new subsection (c-1) to read as follows:

“(c-1) Notwithstanding the provision of any other law, no foreclosure of a residential property subject to a power of sale provision shall be initiated or conducted while a public health emergency is in effect pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), or for 120 days thereafter.”

“(b) Section 539 of An Act To establish a code of law for the District of Columbia, approved on March 3, 1901 (31 Stat. 1274; D.C. Official Code § 42-816) is amended by adding a new paragraph to read as follows:

“Notwithstanding any other provision of this section, no foreclosure of a residential property shall be initiated or conducted while a public health emergency is in effect pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), or for 120 days thereafter.”

“(c) Section 313(c) of the Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Official Code § 42-1903.13(c)) is amended by adding a new paragraph (7) to read as follows:

“(7) Notwithstanding any other provision of this section, no foreclosure of a District residential property to enforce a condominium lien shall be initiated or conducted while a public health emergency is in effect pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), or for 120 days thereafter.”

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**Technical and Policy Note:** On March 27, 2020, the president signed the CARES Act into law. The law includes important and immediate protections for homeowners, including a moratorium on initiating and moving forward with foreclosures -- but only for those with federally-backed mortgage loans.

As a policy matter, these foreclosure protections should be extended to all homeowners, regardless of whether their mortgages are federally-backed. And as a practical matter, determining whether a mortgage is federally-backed (including knowing whether a mortgage that was *at one time* federally-backed *remains* federally-backed today, given the regularity of mortgage sales and assignments) – such that a homeowner could even raise this in defense of an improper foreclosure – is a cumbersome and complicated process. It requires checking a patchwork of sources to try to ascertain if a loan is backed by Fannie Mae, Freddie Mac, the Federal Housing Administration (FHA), Veterans Affairs (VA), or the U.S. Department of Agriculture’s Rural Home Service (RHS). In many cases this requires internet access, the ability to navigate the District’s public land records, and the ability to review and analyze loan documents and assignments. The Council and Mayor can simultaneously eliminate this unfair burden, level the playing field, and preserve housing for District residents by simply prohibiting the initiation and execution of foreclosures during and immediately after the pandemic for all homeowners across-the-board.

The policy reasons underlying preventing foreclosures during the emergency and the time period immediately thereafter are compelling. Doing so would help to avoid wealth loss, large deficiencies and plummeting home and neighborhood values spurred by foreclosure auctions going forward at severely depressed prices in a pandemic or immediate post-pandemic environment. A limited-scope foreclosure moratorium would prevent the permanent loss of title in a city already fighting to stem the tide of displacement and would help to preserve multi-generational homes and homeownership by District residents of color. It would recognize that homeowners with short or medium-term hardships (including but not limited to hardships directly caused by the COVID-19 crisis) are often able to resume making payments if given the time, resources, and support to work things out – but that all of that is substantially more challenging, and in some cases unrealistic, during a pandemic when widespread office closures, school closures, and job instability are the norm. A moratorium on foreclosures would give homeowners the ability to negotiate payment plans and other solutions to avoid foreclosure when they are not in a crisis environment, able to work again, and the offices they need to work with are fully functioning. And adding a limited amount of time on the back-end of the health crisis recognizes that the economic recovery will lag far beyond the end of the health emergency.

While court measures to continue hearings (scheduled before May 15, 2020) and the Mayor’s order to close non-essential business operations (through April 24, 2020) provide some significant immediate protection, much more is needed. Without legislation, judicial and non-judicial foreclosures can still and will be initiated if not based on a federally-backed mortgage. For example, mortgage lenders can easily and remotely continue to e-file new cases, and at least one major auction house in the District currently lists several properties to be auctioned just days after the April end date of the Mayor’s order to close non-essential business, even though all signs point to the pandemic conditions continuing and escalating beyond that date.

Prohibiting foreclosures from being initiated and conducted during the District’s public health emergency is critical for protecting the health and stability of District homeowners, many of whom are elderly, low-income, or otherwise vulnerable. Allowing foreclosures to move forward during the current health emergency increases risk all-around: process servers may be going to homes to try to deliver court paperwork; homeowners may travel to court trying to answer a summons and unaware of the court’s current operating status; and vulnerable homeowners are at increased risk of falling victim to foreclosure rescue scams. Allowing foreclosures to move forward increases the number of residents who will be facing evictions in the future and will have a destabilizing impact on individuals and families.

Providing foreclosure relief would *not* enable homeowners to shirk their debts. It would prevent the destabilizing impact of foreclosure during a pandemic and immediately thereafter. Mortgage and other debts would still exist and need to be addressed. Homeowners already have a variety of powerful incentives to pay their home-related debts - building or maintaining credit, building equity and generational wealth, avoiding debt collection harassment, having peace of mind, and avoiding eventual loss of shelter (even if evictions are temporarily stayed).

#### **4B. Proposed Amendments to Mortgage Relief (Deferment) Provision.**

We recommend the following changes, reflected in the below redline, to the current bill’s provisions in Section 204 regarding mortgage relief/deferment.

##### **Proposed Amended Language.**

Sec. 204. Mortgage relief.

(a) In accordance with section 5(b)(15) of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2301(b)(15)), and notwithstanding any provision of the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1101 *et seq.*) (“Mortgage Lender Act”), or any provision of District, during a period of time that the Mayor has declared a public emergency pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14- 194; D.C. Official Code§ 7-2304.01) and for 60 days thereafter, a mortgage servicer that holds mortgage servicing rights to a residential mortgage loan

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or commercial mortgage loan, shall develop a deferment program for borrowers that, at a minimum:

(1) Grants at least a ~~180~~-day deferment of mortgage payments for borrowers;

**Deleted:** 90

(2) Permanently waives any late fee, processing fee, or any other fees accrued during the public health emergency; and

(3) Does not report to a credit bureau any delinquency or other derogatory information that occurs as a result of the deferral.

(b) ~~A borrower experiencing a financial hardship due, directly or indirectly, to the public health emergency may apply for a deferment, regardless of delinquency status, by:~~

(1) ~~submitting a request to the borrower's servicer; and~~

**Deleted:** The mortgage servicer shall establish application criteria and procedures for borrowers to apply for the deferment program. The mortgage servicer shall approve each application in which a borrower...

(2) ~~affirming that the borrower is experiencing a financial hardship during the public health emergency.~~

**Deleted:** Demonstrates to the mortgage servicer evidence of a financial hardship resulting from the public health emergency; and

(c) ~~Upon receiving a request for a deferment from a borrower under subsection (b), the mortgage servicer shall with no additional documentation required other than the borrower's attestation to a financial hardship caused by the public health emergency and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the deferment, provide the deferment for up to 180 days, which may be extended for an additional period of up to 180 days at the request of the borrower, provided that, the borrower's request for an extension is made during the public health emergency or 60 days thereafter, and, at the borrower's request, either the initial or extended period of deferment may be shortened. The deferment offer shall be provided in writing and shall clearly explain that the deferred payments are to be repaid at the end of the original loan term, through a term~~

**Deleted:** Agrees in writing to pay the deferred payments at the end of the original term of the mortgage loan, or as otherwise agreed to by the applicant and the mortgage servicer.¶



extension equal to the number of months deferred unless otherwise agreed by the borrower and the mortgage servicer.

(d)(1) A mortgage servicer who receives a request for deferment pursuant to this section shall retain a record of the request, whether approved or denied, for at least 3 years after final payment is made on the mortgage or the mortgage is sold, whichever occurs first.

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(2) Upon request, a mortgage servicer shall make a record of a request for deferment available to the Commissioner.

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(e) A person or business whose request for deferment is denied may file a written complaint with the Commissioner. The Commissioner is authorized to investigate the complaint in accordance with section 13 of the Mortgage Lender Act.

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(f) A borrower receiving a mortgage deferral pursuant to subsection (b) of this section on a property that has a commercial or residential tenant shall reduce the rent charged for the property to any tenant during the period of time in which there is mortgage deferral in place in an amount proportional to the reduced mortgage amount paid by the lender to the mortgage servicer.

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(g) For the purposes of this section, the term:

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(1) “Commercial mortgage loan” means a loan for the acquisition of real property, or a loan secured by collateral in such real property, that is owned or used by a person or business for the purpose of generating profit, and shall include real property used for single-family housing, multifamily housing, retail, and office space.

(2) “Commissioner” means the Commissioner of the Department of Insurance, Securities, and Banking.

(3) “Mortgage servicer” means an entity that has mortgage servicing rights.

(4) “Mortgage servicing rights” means the right under a contractual agreement between the mortgage lender and a mortgage servicer for the mortgage servicer to receive scheduled periodic payments from a person or business pursuant to the terms of a mortgage loan and performs other services in connection with the mortgage, including maintaining account records and communicating with the borrower.

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**Technical and Policy Note:** The provision of forbearance relief (or “deferment,” as described in the mortgage relief provision in the draft supplemental emergency legislation) to those experiencing a financial hardship due to the health emergency is an important protection for District homeowners. Still, it is critical that such relief be paired with a moratorium on initiating and conducting foreclosures (see above). Providing deferment of mortgage payments alone would be insufficient because, among other reasons, it would not reach those homeowners in danger of foreclosure due to homeowners association fees, condominium fees, or property taxes. It also would provide relief only to those who know to affirmatively request it and are able to do so; automatic protection against foreclosure is necessary to provide relief to the most vulnerable District homeowners, including those who are elderly, infirm, isolated, and may lack access to technology and other resources.

The draft mortgage deferment provision itself should also be amended to more closely align with the substantive and procedural protections of the federal CARES Act forbearance provision. First, the allowable deferment should extend to 180 days, rather than 90, with the borrower’s option to extend an additional 180 days. This length of time reflects the reality of the economic hardships borrowers are and will be facing and will reduce the burden on servicers who would otherwise receive multiple successive deferment requests.

Second, the process for requesting relief must be streamlined in order to make relief accessible to borrowers across a variety of servicers and to alleviate the immense burden servicers will be under in processing massive volumes of requests. To do this, the existing draft requirement that individual servicers establish application processes should be eliminated and replaced with a streamlined request process that tracks the one set forth in the CARES Act: requiring only that borrowers request a deferment from their servicers and affirm that their financial hardship is due to the public health emergency. The primary goal should be to streamline the procedures so that servicers, who are working remotely and scrambling to keep pace with the rapidly increasing workload, can timely assist impacted borrowers and provide much needed relief.

Finally, with a streamlined request process, servicers should be required to timely review and respond to requests for deferment and to disclose to borrowers in writing at the time of the deferment offer the options for repayment of the deferred amounts after the completion of the

deferral period (for example a loan modification, a term extension, or a balloon payment due at loan maturity).

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