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*The Legal Effects of The  
Covid Congressional Relief  
Bills and Federal Agency  
Mandates on The Real  
Estate Market*

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The Apex Jurist, [www.ApexJurist.com](http://www.ApexJurist.com) is  
Published by ApexCLE, Inc.  
[www.ApexCLE.com](http://www.ApexCLE.com)

119 South Emerson St., # 248  
Mount Prospect, Illinois 60056

#### Ordering Information:

Copies of this monograph may be ordered direct from the publisher for \$64.95 plus \$4.25 shipping and handling. Please enclose your check or money order and shipping information. For educational, government or multiple copy pricing, please contact the publisher.

#### Library of Congress Cataloging-in-Publication Data

ApexCLE, Inc.

1. ApexCLE, Inc. 2. Law-United States – Guide-books.
  3. Legal Guide 4. Legal Education.
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# *About the Presenter*

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## ERICA MINCHELLA

Erica Minchella is a graduate of Loyola University School of Law and has practiced law for more than 35 years. She concentrates her time, talents and passion on assisting clients to be well-informed about their real estate decisions, whether they are buying a home or an investment, as well as helping them get out of debt and to build a solid financial future.

Her field of expertise includes the spectrum of conventional and distressed real property issues for both residential and commercial properties, foreclosure defense, short sale transactions, sales out of decedent's estates and personal and land trusts and counseling her clients in re-establishing their credit and becoming debt free and mortgage free. She also advises investors in need of exit strategies for real estate deals gone sour as well as those who see the current market as a great place to invest, as well as home buyers who are purchasing conventional and distressed real estate.

For five years in a row, Erica has been named a Leading Lawyer by the Leading Lawyers Network and has been named a Super Lawyer for 2017 and 2018, she has an AV Rating from Martindale Hubble from both colleagues and the judiciary. The extent of her mentoring younger attorneys in her areas of concentration as well as marketing and law office management has been acknowledged in the Kathryn Barisa Rinella Mentoring Award, given to her by the Justinian Society of Lawyers.

Erica is actively involved in her community and profession serving as president of the Association of Foreclosure Defense Attorneys (Founder and President), and Illinois State Bar Association Real Estate Section Council (past chair) and the Board of Directors of IRELA. She regularly speaks at continuing legal education programs on real estate issues. Erica is a Commissioner on the Village of Skokie Economic Development Commission. Her business association memberships include the Justinian Society of Lawyers, Small Business Advocacy Council, and Women's Council of Realtors. She is on the drafting committee for revisions to the Multi-Board Contract.

She has maintained her Real Estate License for over 28 years. The mother of two grown children, she has been married for over 34 years to her husband, Jim.

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# Course Description

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## Course Presentation

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This course provides an in-depth examination of the process and procedure of the rental and mortgage assistance programs and their effects on real estate.

This course provides an intellectual foundation and introduces a set of learning skills essential for success in the legal profession and for life beyond. The course will provide opportunities for careful reading, for creative and critical thinking, for oral and written communication, and for engaging with others in a shared conversation about stimulating material.

## Course Material

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This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.

## Course Learning Objectives and Outcomes

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This course is designed to provide the following learning objectives

After this course, the Participant will understand the duties, roles and responsibilities of foreclosure and eviction moratoria.

After this course, the Participant will learn practice tips on the best practices for helping delinquent property owners.

After this course, the Participant will develop an understanding about the impact of Covid legislation on real estate.

The participant will also gain skills on considering solutions for property owners who were impacted by non-payments during Covid.

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.



## **Timed Agenda: Presenter Name: Erica Minchella**

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**CLE Course Title: The Legal Effects of The Covid Congressional Relief Bills and Federal Agency Mandates on The Real Estate Market**

<b>Time Format (00:00:00 - Hours: Minutes: Seconds)</b>	<b>Description</b>
00:00:10	ApexCLE Company Credit Introduction
00:00:20	The Legal Effects of The Covid Congressional Relief Bills and Federal Agency Mandates on The Real Estate Market
00:00:32	CLE Erica Minchella Introduction
00:01:16	CLE Substantive Material Presentation Introduction
00:02:32	COVID-19 Federal Emergency Rental Assistance Program Act - Has had an impact on the Rental Market
00:02:44	Part of the American Rescue Plan Act, enacted March 11, 2021 (H.R. 1319 - 117th Congress (2021-2022))
00:03:08	Established by the Consolidated Appropriations Act of 2021 (H.R. 133 – 116th Congress (2020))
00:05:26	Homeowner Assistance Fund
00:05:43	Provided within the American Rescue Plan Act (id.)
00:08:31	FHFA Foreclosure and REO eviction moratoria
00:09:07	Federal Housing Finance Agency (FHFA) extended the foreclosure and real estate owned (REO) eviction moratoria
00:10:05	Moratoria only apply to properties acquired by the GSE through foreclosure or deeds-in-lieu of foreclosure.
00:10:23	Non GSE lenders proceeding forward with collection on their notes - Homeowner can't refinance property
00:13:16	Borrowers in a Covid-19 forbearance plan as of February 28, 2021 were given up to eighteen months to remain in forbearance.
00:14:35	The deferral plan allows borrowers to defer payments until the home is sold, refinanced or at mortgage maturity.

00:15:56	CDC Eviction Moratorium (Order under Section 361 of the Public Health Service Act (42.U.S.C. 264) and 42 Code of Federal Regulations 70.2) Upheld by Supreme Court
00:16:15	Covered Persons
00:17:19	Covered Properties
00:17:55	Extensions of Moratorium Deadline January 2022
00:18:42	Statement of Intent by renter
00:21:27	THE GRIM REALITIES
00:21:39	Tenets Who Can't Pay Their Rent Also Can't or Won't Move
00:29:08	Landlord Issues
00:30:55	Homeowner Assistance
00:32:04	Real Estate Taxes
00:34:51	Predicting the Future
00:35:58	Tenet has no incentive right now
00:37:22	Landlords are not being offered Solutions
00:38:32	Federal Moratorium on Foreclosures Extended to 2022
00:43:27	HAMP (Making Home Affordable) 2009/2010 - Effective Going Forward
00:43:48	Mortgage Debt Forgiveness Act - 2009/2010 Has been extended for years
00:44:50	HAMP (Making Home Affordable)
00:46:13	Short Sales
00:51:19	New Changes CFPB GUIDELINES (Consumer Financial Protection Bureau)
00:54:44	CFPB Wanted to Avoid Repeat of the 2008 Problems that Developed with the Financial Crisis - Just Finalized Amendments to Federal Mortgage Servicing Requirements (Guide all Consume Mortgages) - Implemented August 31, 2021
01:00:38	Presenter Closing - Summary Final Statements
01:01:19	ApexCLE Company Closing Credits
01:01:25	End of Video

## Course Material

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### I. COVID-19 Federal Emergency Rental Assistance Program Act

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#### A. Part of the American Rescue Plan Act, enacted March 11, 2021 (H.R. 1319 – 117<sup>th</sup> Congress (2021-2022))

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1. Provided 21.6 billion as an additional round of the US Treasury Department's Emergency Rental Assistance Program (<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program>)
2. Established by the Consolidated Appropriations Act of 2021 (H.R. 133 – 116<sup>th</sup> Congress (2020))
3. Funding was for state, and was given to county and municipal governments with populations over 200,000 residents
4. 12 million people were feeling insecure about their housing and the real possibility of facing eviction.
5. Was available under the following criteria:
  - a. At least one tenant qualified for unemployment or had experienced a reduction in household income or had experienced significant costs or hardship due to Covid-19
    - i. New York see *Abuelafiya v. Orena*, 2021 WL 4234080 (Tenants were not experiencing housing instability, and, thus, were ineligible for the Emergency Rental Assistance Program).
  - b. Demonstrated a risk of homelessness or housing insecurity
  - c. Had a household income at or below 80 percent of the area's median income.

6. Landlords or eligible households could apply for 12 months with a 3 month extension possible (<https://www.nahb.org/advocacy/industry-issues/emergency-preparedness-and-response/coronavirus-preparedness/key-housing-provisions-in-covid-19-relief-package/rental-assistance-in-covid-19-relief-package>)

## II. Homeowner Assistance Fund

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### A. Provided within the American Rescue Plan Act (id.)

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1. Allowed for \$10 billion in homeowner assistance ([https://www.hud.gov/sites/dfiles/Main/documents/Factsheet\\_Housing\\_Provisions\\_American\\_Rescue\\_Plan\\_Act-2021.pdf](https://www.hud.gov/sites/dfiles/Main/documents/Factsheet_Housing_Provisions_American_Rescue_Plan_Act-2021.pdf))
2. Provided direct assistance for mortgage payments, property taxes, property insurance, utilities and other housing related costs.
3. Assistance is provided directly to states and territories
4. Allowed homeowners to stay in their homes during the pandemic as well as provide for solutions to retaining property at the end of the pandemic.

## III. FHFA Foreclosure and REO eviction moratoria

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### A. Federal Housing Finance Agency (FHFA) extended the foreclosure and real estate owned (REO) eviction moratoria to June 2021

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(<https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Forbearance-Period-and-Foreclosure-and-REO-Eviction-Moratoriums.aspx>)

1. Moratoria only apply to properties acquired by the GSE through foreclosure or deeds-in-lieu of foreclosure.
2. Borrowers in a Covid-19 forbearance plan as of February 28, 2021 were given up to eighteen months to remain in forbearance.
3. The deferral plan allows borrowers to defer payments until the home is sold, refinanced or at mortgage maturity.

#### IV. CDC Eviction Moratorium (Order under Section 361 of the Public Health Service Act (42.U.S.C. 264) and 42 Code of Federal Regulations 70.2)

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- A. On March 24, 2020 The Center for Disease Control (CDC) issued “Temporary Halt in Residential Evictions to Prevent the Further Spread of Covid-19”

<https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>

1. Covered persons:
  - a. An individual who has used best efforts to obtain available government assistance for rent or housing
  - b. Individual earning less than \$99,000 annually or \$199,00 jointly
  - c. Unable to pay full rent due to loss of income, hours, layoff or extraordinary medical expenses
  - d. Individual is using best efforts to make payments
  - e. Eviction would render individual homeless or force individual to move to close quarters in congregate or shared living
2. Covered properties:
  - a. Residential property in any jurisdiction

- i. Florida see *Brown v. Secretary, U.S. Department of Health and Human Services*, 4 F.4th 1220, 2021 WL 2944379 (Landlords were not entitled to preliminary injunction against enforcement of moratorium on eviction of tenants for nonpayment of rent, under CARES Act)
- 3. Extended through June 30, 2021. Biden Administration seeking to extend through September, 2021
  - a. Texas see *Terkel v. Centers for Disease Control and Prevention*, 521 F.Supp.3d 662, 2021 WL 742877 (CDC's pandemic-related temporary nationwide moratorium on residential evictions exceeded the federal government's commerce power)
- 4. Provided relief to estimated 30-40 Million people
- 5. Added “Statement of Intent”
- 6. Evictions started before September 4, 2020 and not completed were subject to the Order
- 7. To obtain protection tenant must provide a completed and signed copy of a Declaration Form stating their protections and risk factors
- 8. Does not protect people engaged in criminal activity or in commercial property

## V. The grim realities

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### A. Tenants who can't pay their rent also can't or won't move

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- 1. Not all tenants who qualified for rental assistance applied, leaving landlords without any revenue stream

2. Not all tenants who qualified applied on a timely basis and were denied as funds ran out.
3. Tenants who were working and could pay, chose not to pay.
  - a. Consider the reality – landlords would have to chase them for payment, eviction records are sealed, they can save their money. It is all to the tenants' benefit.

## B. Landlord issues

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1. While eviction moratoria were in place, those who put the moratoria in place did not provide funding for mortgage payments, utilities, real estate taxes, sewer and water, garbage pickup – all items for which the landlord had to pay irrespective of whether he was receiving rent or not.
  - a. New York see *Smart Coffee, Inc. v. Sprauer*, 140 N.Y.S.3d 376, 2021 N.Y. Slip Op. 21004 (Landlord engaged in illegal lockout of commercial tenant during COVID-19 pandemic)
2. Landlords were faced with an inability to evict and, although there was a moratorium on GSE foreclosures, there were not on privately held mortgages which were both proceeding forward with foreclosures and suits on the Note without a foreclosure.

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## C. Homeowner assistance

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1. While the forbearance programs were put in place for GSE loans, it has been unclear what the implications are for loans when the forbearance period ends.
  - a. Are loans due?
  - b. Are balances deferred?

- c. What is required for real estate taxes and insurance?
- d. How are the loans assumed?
- e. What happens to the balance at the end of the term? Is it due as a balloon payment or is it reamortized?

#### D. Real Estate Taxes

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- 1. Municipalities are facing huge financial burdens from Covid shut downs and are now looking at real estate taxes as the place to generate additional revenues.
- 2. Burden is put on property owners.

### VI. Predicting the future

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#### A. Federal moratorium on foreclosures extended to 2022

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- 1. Will only impact Fannie Mae and Freddie Mac loans
- 2. Will delay solutions for delinquent homeowners and small multi-unit owners (4 units and less)
- 3. If a Chapter 13 could be a solution, the increased debt – and homeowners’ belief that they can ride this out – will make the payments in a Chapter 13 unaffordable.
- 4. Return to HAMP (Making Home Affordable) is not necessary for the government to provide at this time, so lenders are following their own guidelines and denying most modifications, teeing up properties for foreclosures.
  - a. Government doesn’t need to dictate to lenders what they should do to solve the delinquencies.
  - b. When foreclosures start again, it will make sense to have HAMP as an option, it doesn’t make sense to do so now.



c. Property owners who have not gotten rent or government assistance may not be in foreclosure, but they may deplete their savings, fall behind on payments for city services, garbage disposal, utilities and other obligations. What is the breaking point?

## B. Short Sales

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1. Lenders are more likely to accept short sales than modifications
  - a. It allows them to cash out the loan at the best value.
  - b. It is a faster solution than a foreclosure or modification
  - c. They exercise control over the amount they receive
2. With the inflation in pricing due to low inventory and high demand when a property sells “as is” the value is lower and the desirability can make it difficult to make the value meet the debt.
3. There will always be people facing life changes (marriage, divorce, family size changes, medical issues) that will make selling at an inconvenient time cause a need for a short sale.

# Resources

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## Resources Specific to this Course

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In addition, please see the resources cited within the material.

## Resources for the Legal Professional

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ABA Center for Professional Responsibility - [www.abanet.org/cpr](http://www.abanet.org/cpr)

Chicago Bar Association - [www.chicagobar.org](http://www.chicagobar.org)

Commission on Professionalism - [www.2civility.org](http://www.2civility.org)

Judicial Inquiry Board - <http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar - [www.ilbaradmissions.org](http://www.ilbaradmissions.org)

Illinois Department of Financial and Professional Regulation - [www.idfpr.com/default.asp](http://www.idfpr.com/default.asp)

Illinois Lawyers' Assistance Program, Inc - [www.illinoislap.org](http://www.illinoislap.org)

Illinois State Bar Association - [www.isba.org](http://www.isba.org)

Illinois Supreme Court - [www.state.il.us/court](http://www.state.il.us/court)

Lawyers Trust Fund of Illinois - [www.ltf.org](http://www.ltf.org)

MCLE Program - [www.mcleboard.org](http://www.mcleboard.org)