



# TRENT LAW FIRM, PLLC

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## LOAN MODIFICATION DURING THE COVID-19 PANDEMIC

1. Using These Templates: These forms were created by our team at Trent Law Firm for use by Iowa Credit Union League. ICUL will then distribute them accordingly to Iowa credit unions. These are designed to be templates for credit unions to serve as a starting point to provide member relief while ensuring safe and sound practices are in place. This should be done in conjunction with review by their own internal leadership team and by own legal counsel (whether at Trent Law, via in-house counsel or via current counsel) to determine if these templates meet the needs for the individual credit union's note and mortgage products, internal policies and bylaws. A credit union's specific information may completely change the analysis of the appropriate next steps. As such, this information should merely be a starting point.

Although Trent Law Firm is delighted to provide personalized advice and recommendations about Covid-19 related issues (or about any other issues credit unions are facing), Trent Law Firm is also compelled to state the really obvious--that an attorney-client relationship has not been formed with any individual credit union simply by receiving these forms from ICUL. If a credit union would like to discuss any personalized representation or if a credit union needs any guidance, feel free to call Trent Law at 319.277.1610 or emailing Brooke Trent at brooke@TrentLawIowa.com. To provide a bit of background about this project and these documents, please watch [this](#) ICUL webinar from April 8, 2020 on loan modification.

2. Purpose of Emergency Loans: The use for these types of loans instead of a more traditional mortgage modification is explained more fully in the above cited webinar. However, the summary is this: a traditional mortgage modification may not be practical right now due to the added burdens of the requirement of notarizing the documents (during social distancing), the expense of remote notary & recording, the risks of junior lienholders and losing priority, the fact that some members may not be able to pay even a reduced amount, and (depending on your membership) the sheer volume of members who need help immediately.

To avoid some of those issues, one solution is to provide an emergency loan. These emergency loans have no collateral, which means the major downside to this product is that the emergency loan is unsecured while being utilized to pay down a secured debt. However, if the credit union does not want to foreclose a mortgage and if a member cannot even pay monthly escrow payments, then an emergency loan like this may be ideal especially for small amounts. The funds from such a loan may be kept in a separate savings account to then auto-pay the mortgage (including escrow).

If desired, a credit union may use this template for underlying debts other than mortgages. This template was drafted broadly enough that it can also be used for HELOCs; however, a business decision may need to be made of whether a member is eligible if she is under her HELOC lending limit or if a more formal HELOC modification should be made to lower, increase or cease additional draws. It may be advisable in a situation where a member has not reached their HELOC lending limit to allow a more informal forbearance (such as a letter acknowledging the debtor's ability to have late fees waived for a few months that was discussed in the webinar); that would enable the credit union to still have the secured debt and would then

hopefully allow the member to simply use the HELOC without making some of those monthly payments until she was able to be “back on her feet.”

These emergency loans are NOT “the only answer” to credit union loan modification, but they are one of many tools in the toolbox that should be considered for certain members.

3. Terms: Although this may seem obvious, a credit union may not charge a higher interest rate in the emergency loan than in the original loan (or else it may trigger all the requirements of a refinance). Likewise, if a credit union is giving a deferral in any way (regardless of the level of formality), the loan should not be reported as past due to any credit bureaus.
4. Note Signors: It is best practice to have any borrower on the underlying debt also sign the note for this emergency loan. Remember that the borrower(s) on the underlying debt’s note might be different than the parties listed on the mortgage! Spouses are not required to sign the emergency loan note, but at a minimum, anyone who has access to the new “holding account” should sign a document that he or she will not access the emergency loan proceeds. For business members, it is best practice to obtain at least one personal guarantor as noted on that form.
5. Maximize Recovery: For an emergency loan, it is recommended that a credit union create a new savings account for the member. The proceeds from the emergency loan will be deposited into that account for autopay towards the underlying debt and to hold the proceeds. If allowed by the credit union’s policy, do not allow this new account to cover any overdrafts from other accounts. This will reduce the chances that the member may become overdrawn inadvertently by other EFTs during the member’s financial strain. It does not shield funds from garnishment from a third party, however.
6. Compliance: It is important to continue to follow all normal protocols and policies for opening a new sub-account and opening this loan (i.e. TILA disclosures would still be required for the emergency loan). Additionally, if a credit union has any federally funded loans, it is advisable to review the new CARES Act to see the additional requirements and forbearances put in place for those members.
7. Corporate Resolution: Since board meetings obviously involve more than 5 people, in person meetings are likely prohibited (or at least strongly discouraged) under the governor’s most recent order for much of eastern Iowa. As such, it is very important that credit unions consult their legal counsel to ensure that their bylaws allow for meetings, voting and other corporate business to be handled electronically and to ensure that such actions have been properly authorized as is necessary during this pandemic. If not already allowed, this should be authorized by a separate resolution from any other resolutions and may require a “supermajority” vote from the board (depending on the particular bylaws). Other issues may also arise that need board approval; some of those issues highlighted in the last template provided.
8. Use of Documents: This packet is being provided as both a PDF which can be easily shared without having formatting “drama” and as a Word document so a credit union can “cut & paste” to get started on their plans for assisting members. Anyone who receives this packet is free to share it openly and freely.

**Stay safe (and sane) out there!**

*Your friends at Trent Law*

*—Brooke Trent, Virginia Wilber, Rebecca Feiereisen & Aaron Blair as attorneys  
and Amanda Stack, Malynda Arnold & Emily Sheerer as legal assistants*

*This resource was created for use by credit union members of the Iowa Credit Union League.*

**FORM 1: PROMISSORY NOTE TEMPLATE FOR INDIVIDUAL MEMBERS.**

**PROMISSORY NOTE FOR COVID-19 EMERGENCY FUNDS**

The undersigned parties (“Members”) enter into this Promissory Note for Covid-19 Emergency Funds (“Agreement”) with [NAME] Credit Union, [ADDRESS] (“Credit Union”) under the following terms:

1. **Background:** Members are members of Credit Union in good standing. However, due to the Covid-19 pandemic, Members are currently experiencing a shortage of funds necessary to pay certain underlying debt (“Underlying Debt”). As such, Credit Union has agreed to make a loan under these conditions to Members.
2. **Loan:** Credit Union is offering to make a loan of \$[AMOUNT] (hereinafter “Emergency Loan”) to Members. Members promise to pay to the order of Credit Union the sum of \$[AMOUNT] with interest from [REDACTED], 2020 payable monthly at a rate of [INTEREST RATE]% per annum. The first payment of \$[AMOUNT] will begin on [REDACTED], 2020 and payments will be made monthly on the 1<sup>st</sup> of the month for a period of 12 months until paid in full.
3. **Proceeds of Loan:** The proceeds from this Emergency Loan will be deposited in a newly-created, interest-bearing savings account of Member. Credit Union will set up automatic recurring transfers of Emergency Loan to make the minimum required payments to Members’ Underlying Debt with the Credit Union on the due dates for that debt. Members agree not to remove loan proceeds from Emergency Loan from Members’ account at any time without the written permission of Credit Union. Nothing in this Agreement modifies the terms of any the Underlying Debt or other debts that Members have with the Credit Union.
4. **Application of Payments:** Interest shall first be deducted from the payment and any balance shall be applied on principal.
5. **Default:** Principal and interest not paid when due shall draw interest at the rate of [INTEREST RATE]% per annum. Upon default in payment of any interest, or any installment of principal, the whole amount then unpaid shall become immediately due and payable at the option of Credit Union without notice, except as required by Iowa law.
6. **Security:** This Agreement is unsecured. This Agreement does not change any terms of Underlying Debt.
7. **Enforceability:** The terms of this Agreement should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained in this written contract may be legally enforced.
8. **Modification:** This Agreement may only be modified in writing signed by both parties. Nothing in this Agreement modifies the terms of any the Underlying Debt or other debts that Members have with the Credit Union.
9. **Copy:** The undersigned parties acknowledges the receipt of a copy of this document at the time it was signed.
10. **Plural Use:** The parties understand that the term “Members” is used to refer to the undersigned parties. If only one individual has signed below, the plural use of the term Members should be ignored and replaced with the singular Member.
11. **Joint & Several Liability:** The undersigned parties understand that this Agreement provides that they are jointly and severally liable for this debt. That means that each party remains responsibility for payment of the entire liability as long as any part is unpaid.

Member Number to Deposit Emergency Loan Proceeds: [REDACTED]

Underlying Debt: Mortgage payment of \$[AMOUNT]/month (Loan Number [REDACTED])

\_\_\_\_\_  
Date

\_\_\_\_\_  
[MEMBER NAME]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[MEMBER NAME]

Member Number (if different): \_\_\_\_\_

**FORM 2: PROMISSORY NOTE TEMPLATE FOR ENTITY MEMBERS**

**PROMISSORY NOTE FOR COVID-19 EMERGENCY FUNDS**

The undersigned parties (“Members”) enter into this Promissory Note for Covid-19 Emergency Funds (“Agreement”) with [NAME] Credit Union, [ADDRESS] (“Credit Union”) under the following terms:

1. **Background:** Members are members of Credit Union in good standing. However, due to the Covid-19 pandemic, Members are currently experiencing a shortage of funds necessary to pay certain underlying debt (“Underlying Debt”). As such, Credit Union has agreed to make a loan under these conditions to Members.
2. **Loan:** Credit Union is offering to make a loan of \$[AMOUNT] (hereinafter “Emergency Loan”) to Members. Members promise to pay to the order of Credit Union the sum of \$[AMOUNT] with interest from [REDACTED], 2020 payable monthly at a rate of [INTEREST RATE]% per annum. The first payment of \$[AMOUNT] will begin on [REDACTED], 2020 and payments will be made monthly on the 1<sup>st</sup> of the month for a period of 12 months until paid in full.
3. **Proceeds of Loan:** The proceeds from this Emergency Loan will be deposited in a newly-created, interest-bearing savings account of Member. Credit Union will set up automatic recurring transfers of Emergency Loan to make the minimum required payments to Members’ Underlying Debt with the Credit Union on the due dates for that debt. Members agree not to remove loan proceeds from Emergency Loan from Members’ account at any time without the written permission of Credit Union.
4. **Application of Payments:** Interest shall first be deducted from the payment and any balance shall be applied on principal.
5. **Default:** Principal and interest not paid when due shall draw interest at the rate of [INTEREST RATE]% per annum. Upon default in payment of any interest, or any installment of principal, the whole amount then unpaid shall become immediately due and payable at the option of Credit Union without notice, except as required by Iowa law.
6. **Security:** This Agreement is unsecured. This Agreement does not change any terms of Underlying Debt.
7. **Enforceability:** The terms of this Agreement should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained in this written contract may be legally enforced.
8. **Modification:** This Agreement may only be modified in writing signed by both parties. Nothing in this Agreement modifies the terms of any the Underlying Debt or other debts that Members have with the Credit Union.
9. **Copy:** The undersigned parties acknowledges the receipt of a copy of this document at the time it was signed.
10. **Plural Use:** The parties understand that the term “Members” is used to refer to the undersigned parties. If only one individual has signed below, the plural use of the term Members should be ignored and replaced with the singular Member.
11. **Joint & Several Liability:** The undersigned parties understand that this Agreement provides that they are jointly and severally liable for this debt. That means that each party remains responsibility for payment of the entire liability as long as any part is unpaid.

Member Number to Deposit Emergency Loan Proceeds: [REDACTED]

Underlying Debt: Mortgage payment of \$[AMOUNT]/month (Loan Number [REDACTED])

\_\_\_\_\_  
Date [NAME], authorized signer  
[NAME OF BUSINESS ENTITY]

\_\_\_\_\_  
Date [NAME], in his individual capacity as a personal guarantor  
Member Number (if different): \_\_\_\_\_

**FORM 3: TEMPLATE FOR CORPORATE RESOLUTION AUTHORIZING ELECTRONIC MEETINGS**

**CORPORATE RESOLUTION OF BOARD OF DIRECTORS OF  
[NAME] CREDIT UNION**

Pursuant to the bylaws of [NAME] Credit Union, a special meeting of the Board of Directors was held at the Credit Union’s corporate office. All directors were present except for [NAME]. [NAME] provided her Consent in Lieu of Meeting via email to the Chairperson. The meeting was duly called and a quorum was present for voting. The directors unanimously waived any irregularities for notice of the meeting due to these unprecedented circumstances from the Covid-19 pandemic.

The Credit Union’s attorney [NAME] presented on his review of the existing bylaws. He has indicated that a resolution will be necessary in order to allow future meetings, voting and other corporate business from the Board of Directors to be handled electronically.

Upon the consent and approval of the directors of the Credit Union, the following resolutions have been made:

BE IT RESOLVED, that the bylaws are hereby amended as follows. Article III, Section F shall be replaced with the following: *“Conduct of Meeting. All Directors, to the extent possible, shall personally attend regular and special meetings of the Board of Directors. However, any Director may participate in any regular or special meeting by any means of communication—telephone or electronically--by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.”* To that end, it is encouraged that any meeting, voting and all other corporate business to be handled electronically to the greatest extent possible during this pandemic.

IN WITNESS WHEREOF, I have hereunto affixed my name as Chairperson of the Board of Directors on [REDACTED], 2020.

\_\_\_\_\_  
[NAME], Chairperson

I hereby certify that I am the Secretary of the Board of Directors of [NAME] Credit Union and that the foregoing is a true and correct copy of the resolution duly adopted as set forth therein and that the same is now in full force.

\_\_\_\_\_  
[NAME], Secretary

**FORM 4: TEMPLATE FOR CORPORATE RESOLUTION ADDRESSING MEMBERS IN GOOD STANDING, EMERGENCY LOANS AND NOT REQUESTING MEDICAL DOCUMENTATION**

**CORPORATE RESOLUTION OF BOARD OF DIRECTORS OF  
[NAME] CREDIT UNION**

Pursuant to the bylaws of [NAME] Credit Union, a special meeting of the Board of Directors was held via a video conference call on the below signed date. An in-person meeting was not advisable due to the Covid-19 related prohibitions against gatherings of a certain size. However, all directors were present on the video call. The meeting was duly called and a quorum was present for voting. The directors unanimously waived any irregularities for notice of the meeting due to these unprecedented circumstances.

Upon the consent and approval of the directors of the Credit Union, the following resolutions have been made:

BE IT RESOLVED, that any member who causes the credit union a financial loss at any point in the months of April, May or June 2020 shall still be considered a member in good standing as long a) said member enters into a payment plan agreeable to the Credit Union to recover from such loss on or before July 15, 2020 and b) said member did not cause a financial loss to the Credit Union at any time prior to April 1, 2020.

BE IT RESOLVED, that the written proposal from [NAME] as Vice President of Lending to provide for emergency loans of up to \$X for up to X number of members has been approved. It protects the safety and soundness of the institution while still recognizing the financial crisis that many members are facing. The removal of the income requirements for qualification are key to ensure that the funds can help those members who really need it.

BE IT RESOLVED, that in an effort to minimize the risks of any future claim of discriminatory action and to reduce paperwork involved, the Credit Union will not solicit medical information or request medical documentation from any member who seeks payment relief from any Credit Union obligation on the basis of any Covid-19 related financial crisis.

IN WITNESS WHEREOF, I have hereunto affixed my name as Chairperson of the Board of Directors on [REDACTED], 2020.

\_\_\_\_\_  
[NAME], Chairperson

I hereby certify that I am the Secretary of the Board of Directors of [NAME] Credit Union and that the foregoing is a true and correct copy of the resolution duly adopted as set forth therein and that the same is now in full force.

\_\_\_\_\_  
[NAME], Secretary