

## Summary and Analysis of the CARES act Passed by Congress on March 27, 2020 -Eviction Moratorium

The eviction moratorium has several different elements which affect different groups of property owners. A “Covered Property” is prohibited from **filing** eviction actions for non-payment of rent, and also prohibited from charging “fees, penalties, or other charges to the tenant related to such nonpayment of rent.” Finally, this act also provides that a landlord of a Covered Property may not evict a tenant after the moratorium expires except on 30 days’ notice – which may not be given until after the moratorium period expires.

The moratorium begins on March 27, 2020 and lasts for 120 days, or through July 24, 2020 which would mean **new** summary possession actions based only upon non-payment of rent can proceed as of July 25, 2020.

The CARES act does not affect cases: (1) that were filed before the moratorium took effect; (2) that involve non-covered tenancies; or (3) where the eviction is based on another reason besides nonpayment of rent or nonpayment of other fees or charges.

### A. Covered Properties

In order to be as clear as possible, I have broken down each sub-category and compiled the various definitions into one place. This act defines “Covered Properties” as a property that:

- (1) Participates in a “Covered Housing Program” as defined by the Violence Against Women Act. VAWA covers the following housing programs. If a community falls under any one or more of these programs, the CARES act, and eviction moratorium will apply.
  - a. Public Housing
  - b. Section 8 Housing Choice Voucher Program
  - c. Section 8 project-based housing
  - d. Section 202 housing for the elderly
  - e. Section 811 housing for people with disabilities
  - f. Section 236 multifamily rental housing
  - g. Section 221(d)(3) Below Market Interest Rate housing
  - h. HOME
  - i. Housing Opportunities for Persons with AIDS
  - j. McKinney-Vento Act homelessness programs
  - k. Section 515 Rural Rental Housing
  - l. Sections 514 and 516 Farm Labor Housing
  - m. Section 553 Housing Preservation Grants
  - n. Section 538 multifamily rental housing
  - o. Low Income Housing Tax Credit

- (2) Participates in the “rural housing voucher program under section 542 of the Housing Act of 1949;
- (3) Has a federally backed mortgage loan
  - a. 1-4 Units
    - i. Any loan secured by any lien on residential properties having 1-4 units and that are “made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by HUD or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.”
- (4) Has a federally backed multifamily mortgage loan
  - a. Same definition as “federally backed mortgage” above but is secured by a property with 5 or more units.

In order to assess whether your property(ies) falls under one of these provisions, you should review your note, mortgage or other closing documents, servicing notices, account statements. Freddie Mac and Fannie Mae also have websites where you are able to look up your loan to confirm whether it falls under their backing.

Please also be aware that the CARES act also contains provisions regarding a landlord’s ability to request and receive a forbearance on mortgage payments. Specifically, until the sooner of the termination date of the coronavirus national emergency or December 31, 2020, multifamily borrowers of federally backed multifamily mortgage loans (which include loans encumbering residential real property designed principally for the occupancy of five or more families) that face economic difficulties and were current on their loan payments as of February 1, 2020, can seek up to 90 days of forbearance. These borrowers may not evict or charge late fees or penalties to tenants during the forbearance period. This forbearance period could be substantially longer than the 120 moratorium described above depending on when the forbearance period starts.

To summarize, a non-covered landlord need not comply with the federal moratorium, but must still be aware of any state or local moratorium. However, if a landlord falls under any of these provisions, they are not permitted to institute any summary possession action based upon non-payment of rent. **This act does not apply to rule violation cases, threats or acts of irreparable harm, or actions which constitute a threat to the health, safety or welfare of the community.**

This act does not address the non-renewal or termination of a rental agreement for “no cause”, nor does it explicitly reference summary possession actions based on prior non-payment, or a history of delinquency. Each of these types of cases will have to be reviewed on a case by case basis.

Various states and the federal government have enacted rental assistance programs that often provide for payments from a state fund directly to the landlord or a utility company. For information on Delaware's plan, please [click here](#). For information on federal programs, please [click here](#).

Should you have any questions regarding this statute, its effect on your properties or any other questions, please do not hesitate to contact our firm.

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