

The CARES Act & Residential Tenants

How does the CARES Act impact evictions and late fees for residential tenants?

For certain properties, the CARES Act establishes a moratorium through July 24, 2020 that prohibits a landlord from:

- Filing evictions for nonpayment of rent or other amounts due under the lease
- Charging late fees, penalties, or other charges related to nonpayment of rent.

Additionally, a landlord of such properties must provide at least a 30-day notice to vacate—issued after this period expires—before the landlord may require the tenant to vacate the property.

This means that the earliest that a tenant in a covered property could be required to leave the property for nonpayment of rent or other amounts due under the lease would be August 24, 2020 (i.e., the deadline to vacate if a landlord provides the tenant a 30-day notice to vacate on July 25, 2020).

Which properties are subject to the temporary moratorium on eviction filings and late fees under the CARES Act?

The temporary moratorium on eviction filings and late fees under the CARES Act applies to a property occupied by a tenant pursuant to a residential lease if the property participates in a covered housing program or the rural housing voucher program or has a federally backed mortgage loan or a federally backed multifamily mortgage loan.

Specifically, this includes rental housing supported by the following federal housing programs:

- Public housing
- Section 8 Housing Choice Vouchers
- Section 8 Project-Based Rental Assistance
- Section 202 Supportive Housing for the Elderly
- Section 811 Supportive Housing for Persons with Disabilities
- Housing Opportunities for Persons With AIDS (HOPWA)
- McKinney-Vento Homeless Assistance grants
- Section 236 Preservation program
- HOME investment partnerships
- Rural Development multifamily housing (Section 516 Farm Labor Housing Grants, Section 542 Rural Development Vouchers, Section 521 Rural Rental Assistance, Section 533 Housing Preservation grants)
- Low Income Housing Tax Credit (LIHTC) program.

It also includes rental housing with a single-family or multifamily mortgage that is:

- purchased or securitized by Fannie Mae or Freddie Mac
- insured by the Federal Housing Administration (FHA)
- guaranteed, directly provided by, or insured by the Department of Veterans Affairs (VA)
- guaranteed, directly provided by, or insured by the Department of Agriculture (USDA)
- guaranteed under HUD's Native American or Native Hawaiian Home Loan Guarantee programs.

Some landlords will know that their home is included because they recognize the name of a federal housing program on the list above that they had to apply and qualify for. However, many landlords of 1-4 residential properties may not realize that their property has a federally backed mortgage, because even if a landlord obtained a loan from a bank or credit union and makes payments to a mortgage company that does not appear to be related to the government, the loan may have been sold shortly after closing to Freddie Mac or Fannie Mae. A landlord can use the the Freddie Mac or Fannie Mae look-up tools to determine if either of these government-sponsored enterprises now own their loan. (Property managers should note that these loan searches can only be conducted by or with permission from the borrower.) Other look-up tools have been provided by the National Preservation Database (affordable housing only) and the National Low Income Housing Coalition (multifamily only). Taken together, these four websites include most, but not necessarily all, of the properties covered by the CARES Act.

For a tenant in a covered property, is the tenant required to provide any proof of financial hardship due to COVID-19 for the temporary moratorium on evictions to apply?

No, the moratorium through July 24, 2020, on filing evictions for nonpayment of rent or other amounts due under the lease is not conditioned on the proof of (or even the existence of) financial hardship due to COVID-19. Rather, the moratorium applies based on the characteristics of the property.

Does the CARES Act impact evictions that are not based on nonpayment of rent or other amounts due under the lease?

No, the temporary moratorium on eviction filings under the CARES Act only impacts evictions that are based on nonpayment of rent or other amounts due under the lease. For instance, if a tenant has a pet that is not authorized under the lease, the CARES Act does not prohibit the landlord from filing for an eviction on that basis at any time.

However, the Texas Supreme Court now requires the landlord to file a sworn statement that the property is not subject to the moratorium on evictions imposed by the CARES Act for eviction proceedings filed from March 27, 2020, through July 25, 2020. It is unclear at this time how courts will handle an eviction petition based on reasons that are not associated with nonpayment of fees if the petition includes with a sworn statement that the property is subject to the CARES Act.

Additionally, some local governments have taken action to limit evictions that goes beyond the actions taken by the CARES Act and the Texas Supreme Court. Therefore, while the CARES Act may not prohibit a landlord from filing a particular eviction, the eviction may nevertheless be placed on hold or restricted due to other legal authority.

How is the order on residential evictions issued by the Texas Supreme Court impacted by the CARES Act?

The Texas Supreme Court has lifted the eviction suspension, allowing evictions proceedings to resume on May 19, with eviction notices and warnings allowed to be posted on properties beginning May 26. Although residential evictions may resume on May 19, the Texas Supreme Court now requires that the landlord file a sworn statement that the property is not subject to the moratorium on evictions imposed by the CARES Act for eviction proceedings filed from March 27, 2020, through July 25, 2020. Though the CARES Act prohibits landlords of certain residential properties from making filings based on nonpayment of fees due under the lease, it is unclear at this time how courts will handle an eviction petition based on other reasons if the petition includes a sworn statement that the property is subject to the CARES Act.

For the lifting of this suspension to impact properties covered by the CARES Act, the eviction suit would have had to be filed before March 27, 2020, which is the date the CARES Act was enacted.

Can a local government take action to limit evictions beyond the restrictions put in place by the CARES Act and the Texas Supreme Court?

Yes. Therefore, it is important for property managers to continue to monitor actions taken by cities and counties relating to evictions.