



April 3, 2020

Update # 12
Guidance on Evictions and Defaults during the Covid-19 Pandemic

Friends:

We have received numerous requests for guidance on how to deal with evictions and tenant defaults in light of the various changes to the law due to the Covid-19 pandemic. This memorandum is intended to provide general guidance on these changes. **The law keeps changing - so our advice may change!** Please be sure to check the Landlord Portal for additional updates.

What evictions are restricted under the CARES Act?

As a refresher, Section 4024 of the CARES Act imposes a 120-day period that began on March 27, 2020, in which landlords of a “covered property” **cannot** evict tenants for nonpayment of rent and cannot charge late fees or penalties related to such non-payment.

What properties are covered by the CARES Act?

As set forth in Update #10, almost every property participating in a subsidized housing program as well as tax credit properties are covered by CARES. The million dollar question involves which conventional properties fall within the program. The Act uses the term “federally backed.” As of the date of this Update, **HUD has not provided clarification on what constitutes a “federally backed property.”** Based on our research, our best advice as to what constitutes a “federally backed property” covered by CARES include:

- Mortgage loans through Freddie Mac or Fannie Mae;
- Loans guaranteed, directly provided by, or insured by HUD;
- Loans guaranteed, directly provided by, or insured by FHA;
- Loans guaranteed, directly provided by, or insured by the Department of Veterans Affairs (VA);
- Loans guaranteed, directly provided by, or insured by the Department of Agriculture (USDA);
- Loans guaranteed under HUD’s Native American or Native Hawaiian Home Loan Guarantee programs.

IF YOU ARE UNSURE WHETHER YOUR PROPERTY FALLS UNDER THE CARES ACT, CHECK WITH YOUR BANK OR MORTGAGE SERVICER!!!

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Are there also state restrictions on evictions in Tennessee?

Yes, the Tennessee Supreme Court has ordered that rental evictions will not be processed or served until May 1, 2020 at the earliest. Rental evictions that were already filed are also on hold until sometime in May. Most conduct evictions will also not likely be heard until May; however, if you have an eviction due to violence, threat of violence or destruction of property by a tenant (or tenant's guest) we will work to obtain a trial date prior to May.

My property is covered by CARES, what can I do if I have a judgment based on nonpayment, but the Tenant has not vacated?

The CARES Act eviction moratorium does not appear to impact evictions that were filed before the moratorium took effect. Nevertheless, under the Tennessee Supreme Court order, no writs of possession will be issued or served in non-payment cases until May 1, 2020 at the earliest.

My property is covered by CARES, what can I do if I have a judgment based on conduct, but the Tenant has not vacated?

The Supreme Court order does not specifically prevent writs being issued on these types of cases; however, some clerks and sheriff's departments are balking at issuing and serving these writs. Please contact us directly if you have such an eviction.

My property is covered by CARES, what if I have a new case of tenant misconduct?

The CARES Act eviction moratorium does not appear to impact evictions based on conduct, even for "covered properties." If tenant misconduct occurs, issue the proper notice and if the tenant fails to vacate, process the eviction through Nationwide. Because of the Tennessee Supreme Court order, many conduct evictions will not be heard until May, 2020. If you have an eviction due to violence, threat of violence or destruction of property by a tenant (or tenant's guest) we will work to obtain a trial date prior to May.

My property is covered by CARES, how do I handle tenants who fail to pay April rent?

Properties covered by the CARES Act face 120-day moratorium on evictions. Additionally, if your property is covered, you cannot charge "fees or penalties" on pending evictions. You also cannot send any eviction notice based on non-payment of rent to any tenant(s) during the 120-day period. When the period expires and the tenant is in default, you must give the tenant a 30 day notice to vacate the property.

THE CARES ACT DOES NOT WAIVE THE TENANT'S OBLIGATION TO PAY RENT!!

Some tenants believe the Act magically makes their rental obligation disappear. They are incorrect. All the Act does is bar landlords from initiating evictions based on nonpayment during the 120 day period. The tenants still owe the money.

If my property is covered by CARES, can I still give tenants default notices based on nonpayment?

Yes! However, you may not threaten to terminate their lease for nonpayment during the 120 day period. **For properties covered by CARES we have placed sample notices in the Landlord Portal for you to download.**

My property is in the CARES program, may I still report tenants who have entered into repayment agreements with me to credit reporting agencies?

If a tenant was otherwise current on their account when they entered the agreement, they should be reported as “current” or “up-to-date” to the credit rating agencies. However, a tenant who was already reported to be behind on payments prior to the payment arrangement can continue to be reported as “late.” In short, this provision protects those who are making arrangements with their creditors (landlords) from having their credit score negatively impacted as they weather the pandemic.

My property intends to participate in the mortgage forbearance program, does that impact my ability to evict tenants?

Yes. You cannot evict tenants for failing to pay rent while in the program. The time period of the eviction moratorium differs if you participate in the program. Depending upon when you take the loan and when it is paid off, the moratorium for rent evictions may be longer. We suggest you contact our firm directly if your property elects to participate in the mortgage forbearance program.

My property is not covered by CARES, how do I handle tenants who do not pay rent?

You may continue to issue your standard default notices and if the tenant fails to pay, process the eviction on Nationwide. We strongly encourage you to speak with your tenants who fall behind on their rent due to employment issues, sickness, or other expenses related to the Covid-19 pandemic. The NAA and other apartment groups have requested apartments to work with tenants negatively impacted by Covid-19 and do what is possible to avoid eviction during this time.

My property is not covered by CARES, how do I handle conduct evictions?

Same as you always have. If tenant misconduct occurs, issue the proper notice, and if the tenant fails to vacate, process the eviction through Nationwide. Because of the Tennessee Supreme Court order, many conduct evictions will not be heard until May, 2020. If you have an eviction due to violence, threat of violence or destruction of property by a tenant (or tenant’s guest) we will work to obtain a trial date prior to May.

How do I handle tenants who want to terminate their lease or refuse to pay rent due to Covid-19?

The CARES Act is not intended to provide rent forgiveness or permit tenants to terminate their lease agreement. One U.S. House Committee provided specific guidance on this issue: “Renters should also be advised that although they may be protected from eviction proceedings temporarily under this bill, the bill does not treat nonpayment of rent during this period as forgiven and these unpaid amounts will accrue during this period even if fees are not assessed.”

Some tenants may seek to invoke provisions of their lease or other legal devices in an attempt to terminate their lease due to Covid-19. If your tenant tries to do so, please contact us immediately for further guidance.

Do you have suggestions for tenants who cannot pay rent due to the impact of Covid-19?

The effects of the Covid-19 pandemic are far-reaching. Many Americans have suffered job losses, reduction in the hours worked, experienced increased childcare expenses due to school closures, or are experiencing some other type of hardship that is affecting their financial stability. The NAA, HUD and many multifamily property organizations are urging properties to work with their tenants during this time if possible.

The NAA and other organizations have created repayment agreements for use during the Covid-19 crisis. If you would like our firm to create a form for your property or review a form created by your management team, we are happy to do so. Although not required, we believe it is good practice to take these additional steps when working with your tenants who are experiencing financial difficulties:

1. Verification of Covid-19 Hardship

You should request the tenant provide information about the hardship is-i.e. job loss, layoff, hour cut, increased expense in childcare, etc. You should also obtain information on the income for the tenant if they claim to be unemployed. Factor in the money received by the tenant including unemployment checks and federal stimulus money. Feel free to use The Covid-19 assistance form available on the website.

2. Waiver of Late Fees

If you are a CARES Act covered property, you cannot charge late fees or penalties such as termination or reletting fees related to non-payment of rent. If your property is not subject to the CARES moratorium, please consider waiving fees for tenants impacted by Covid-19.

3. Repayment Plans

Regardless of whether you are covered by the CARES Act, consider offering repayment plans to your residents. Tennessee has stopped rent evictions related to Covid-19 through at least April. Even if the nonpayment of rent is unrelated to Covid-19, the earliest court date will be sometime in May. We suggest that you handle repayment agreements on a month-to-month basis. For example, if a tenant misses April rent, implement a repayment agreement for April rent. Do not assume that the tenant will also miss the May rent. You can make that determination in May.

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We hope you find this guidance helpful. If you have any questions, concerns, or other specific questions that we have not answered, please do not hesitate to contact us. As a reminder, you may also check our website at painetarwater.com/landlord_portal for updates.

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Sincerely,

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