



April 23, 2020

**UPDATE #16
HUD ISSUES GUIDANCE ON THE CARES ACT EVICTION
MORATORIUM FOR PUBLIC HOUSING AGENCIES**

Friends:

Yesterday, the U.S. Department of Housing and Urban Development (HUD) issued guidance for public housing agencies (PHA) on the application of the CARES Act (the “Act”) eviction moratorium during the Covid-19 crisis. Specifically, HUD issued a document entitled “Eviction Moratorium: COVID19 FAQs for Public Housing Agencies.” The FAQ is attached and is posted on our Landlord Portal. Highlights include:

- Late Notices
- Conduct Evictions
- Eviction of tenants who were behind on rent prior to the moratorium
- Late fees
- Market rate properties that include voucher-assisted units; and
- Low Income Housing Tax Credit properties

Each of these areas will be addressed below.

Late Notices for Non-Payment of Rent

A PHA or owner may send a reminder notice for late rent to tenants during the Covid-19 crisis, but the notice cannot include fees or charges related to the non-payment of rent and cannot advise the tenant that he or she must vacate the unit. After the eviction moratorium expires on July 24, 2020, a PHA or owner may initiate eviction for non-payment of rent, but in order to do so, the PHA or owner must give the tenant a 30-day notice to vacate before filing the eviction.

Conduct Evictions

The eviction moratorium only applies to evictions based on non-payment of rent or non-payment of fees or other charges related to non-payment of rent. Accordingly, PHAs or landlords may continue filing conduct-based evictions during the eviction moratorium, including evictions for drug abuse, criminal activity, or other lease violations. While landlords can file conduct-based evictions during the moratorium, HUD is encouraging the delay of any conduct-based eviction until after the Covid-19 crisis ends.

Dwight E. Tarwater¹

Thomas A. Bickers¹

John W. Elder^{1*2*3}

Michael J. King^{1*4}

Taylor A. Williams¹

Catherine W. Anglin¹

Lindsey M. Collins¹

Barbara K. Doolittle^{1*5}

Kendell M. Garrett¹

Thomas H. Jarvis¹

Kelsey C. Osborne^{1*6}

Donald F. Paine
(1939 - 2013)

¹ Licensed in Tennessee

² Licensed in Illinois

³ Licensed in New York

⁴ Licensed in North Carolina

⁵ Licensed in Pennsylvania

⁶ Licensed in Texas

Eviction of Tenants Behind on Rent Prior to the Moratorium

If an eviction was filed prior to initiation of the moratorium on March 27, 2020, the proceeding is not covered under the Act and the eviction can continue. However, if a tenant was late on rent prior to the date the moratorium began but an eviction has not yet been filed, the Act applies, and the eviction cannot be filed until after the moratorium expires on July 24, 2020, and then, only after a 30-day notice to vacate is sent to the tenant.

Late Fees

A PHA may collect late fees that were charged prior to March 27, 2020, though the PHA may not assess interest on January or February 2020 late fees. However, a PHA may not charge new late fees for nonpayment of rent from March 27, 2020 to July 24, 2020.

Market Rate Properties That Include Voucher-Assisted Units

If there is an HCV holder in one unit of a market rate property and the market rate property has a federally-backed mortgage, then the entire property falls under the Act and the property owner must comply with the eviction moratorium. If there is an HCV holder in one unit of a market rate property and the property does NOT have a federally-backed mortgage, then only the HCV holder's unit falls under the Act and the property owner must comply with the eviction moratorium only with respect to that unit.

Low Income Housing Tax Credit Properties

The eviction moratorium applies to private owners of properties that receive housing assistance payments and therefore applies to mixed-finance projects as well. If the mixed-finance property's financing includes an FHA-insured mortgage or equity from Low Income Housing Tax Credits ("LIHTC"), then the property falls within the Act and is subject to the eviction moratorium provision. In units that are assisted with LIHTC only, evictions are limited to where a landlord can show "good cause" according to state or local law. HUD recommends that owners and management agents consult their State Housing Finance Agency or the IRS for guidance on "good cause" evictions under state law and other rulemaking related to Covid-19.

If you have any questions, please feel free to contact our office.

Mike King	mjk@painerwater.com	(865) 342-9970 (direct)
Barbara Doolittle	bkd@painerwater.com	(865) 342-9946 (direct)
Kendell Garrett	kmg@painerwater.com	(865) 342-9960 (direct)
Cathi Wormsbacher	crw@painerwater.com	(865) 342-9949 (direct)

Sincerely,

Mike

Michael J. King

Paine Tarwater Bickers LLP

Eviction Moratorium

COVID-19 FAQs for Public Housing Agencies



April 21, 2020

Eviction Moratorium (EM)

The following FAQs provide guidance on Section 4024 of the CARES Act. Section 4024 of the CARES Act imposes a temporary moratorium on evictions, as well as a moratorium on fees and penalties related to nonpayment of rent. The eviction moratorium is in effect for a 120-day period beginning on March 27, 2020, the date the CARES Act was enacted. The temporary eviction moratorium applies to the Public Housing Program, the Section 8 HCV and PBV Programs, and the Section 8 Moderate Rehabilitation (Mod Rehab) Programs administered by the Office of Public and Indian Housing.

EM1. Does the ban on evictions apply to all tenants or only those tenants whose employment has been affected by the COVID-19 Virus? We have tenants on a fixed income choosing not to pay rent based on the recent announcement.

A. The temporary moratorium on: (1) evictions for nonpayment of rent and (2) fees and penalties related to nonpayment of rent, applies to all tenants, regardless if employment was affected by COVID-19. HUD encourages PHAs to alert residents that any rent missed during the moratorium will accumulate and still be due at the end of the 120 days (HUD will provide PHAs with a flyer that can be provided to tenants). For any unpaid rent during the moratorium, the family must repay the PHA or sign a repayment agreement to pay any amount owed after the moratorium has ended. If the amount owed is not repaid, the PHA may terminate the family's assistance and proceed with a legal action to evict.

EM2. With the eviction moratorium, should we still send late notices to residents? Or wait until the 120-day moratorium is over?

A. A PHA/owner may send a reminder notice of the late rent. However, the reminder notice must not include fees/charges for the nonpayment of rent, and the reminder notice cannot be a notice to vacate. After the moratorium expires, the PHA can proceed with their standard process. Residents cannot be required to vacate for at least 30 days after the end of the moratorium, and the PHA cannot issue a notice to vacate until July 24, 2020 (expiration of the moratorium). Residents retain their rights for due process and grievance proceedings under 24 CFR 966 Subpart B and 24 CFR 982.555.

EM3. Can a Public Housing Authority (PHA)/owner evict for drug abuse and other criminal activity? How about for other lease or program violations, like failure to report income or severe damage to the unit?

A. Yes. The eviction moratorium found in Section 4024(b) of the CARES Act only applies to evictions related to nonpayment of rent or nonpayment of other charges to the tenant related to nonpayment of rent. The moratorium also prohibits the charging of other fees, penalties, or other charges due to the nonpayment of rent. Therefore, the PHA/owner can still undertake an eviction/termination of assistance action against a tenant for drug abuse and/or other criminal activity, as those are unrelated to nonpayment of rent. The same is true for other lease violations,

although HUD encourages PHAs to consider delaying the initiation or completion of evictions for non-drug or non-crime related reasons until after state or local emergencies are over.

EM4. “Abandonment” of a unit is generally distinguished from “absence” from the unit by tenant’s failure to pay rent and failure to acknowledge or respond to notices from the PHA/owner regarding overdue rent. If the family abandons their unit and does not pay rent, does the PHA/owner have to wait to evict?

A. The term “abandonment” requires a fact-specific determination to be made as to the reasons behind the family not being in the unit. A family could have decided to quarantine with other family members, could be hospitalized, or could be prevented from returning to the unit due to an emergency declaration by the state. The PHA must take additional steps to ensure that the unit is in fact “abandoned” by the family before an eviction/termination of assistance action is taken against the household.

EM5. One of my assisted tenants was behind on rent payments prior to the CARES Act. Can I still proceed with termination and eviction?

A. If the eviction proceeding was initiated before March 27, 2020, the proceeding would not be covered under the CARES Act and the eviction action can continue. However, HUD encourages PHAs to consider delaying the completion of evictions for non-drug or non-crime related reasons until after state or local emergencies are over. If an eviction proceeding was not initiated before March 27, 2020 for a household who was behind on rent, then the household is covered under the CARES Act and the PHA/owner cannot initiate a new eviction proceeding until after the moratorium. However, PHAs should review their state and local laws, as many are also enacting their own moratorium on evictions.

EM6. My tenant was late on rent prior to March 27, 2020 and was charged a late fee in January and February. Can I collect fees for nonpayment of rent that were charged prior to the moratorium?

A. Yes, fees that were charged for nonpayment of rent prior to March 27, 2020 may be collected during the moratorium. However, a PHA cannot charge new fees for nonpayment of rent from March 27, 2020 – July 24, 2020; a PHA cannot assess interest on late fees charged in January and February.

EM7. During the moratorium, can fees for late payments accumulate and be charged after the moratorium?

A. No. Per Section 4024(b)(2) of the CARES Act, fees in relation to nonpayment of rent cannot be charged. Therefore, fees cannot accrue. There should be no charges/fees, or accrual of charges/fees, for rent due the first of the month in April, May, June and July 2020.

EM8. I initiated an eviction prior to the moratorium. Can I continue?

A. Yes, if you filed with the court of jurisdiction, you can continue the action if the court is operating, subject to any local eviction moratorium requirements.

EM9. Our courthouse is closed and there are no hearing evictions at this time. If a tenant participates in a criminal activity and the owners desire to evict, should we continue assistance?

A. PHAs can proceed with standard notifications, hearings and program terminations for matters unrelated to nonpayment of rent. If the resident does not vacate voluntarily, the final eviction would be delayed until the court of jurisdiction reopens.

EM10. If there is a conflict between the requirements in the eviction moratorium and the requirements in a state or local law, does the state or local law prevail?

A. This answer would depend on the language in the state or local law. For example, if the state has prohibited **all** evictions, then that more stringent requirement would apply to the PHA and HCV landlords in that state. If the state has ordered an eviction ban, there may also be a limit on court enforcement of evictions.

EM11. Can the PHA terminate a voucher participant family's assistance if they do not pay their portion of the rent during the eviction moratorium (March 27, 2020 – July 24, 2020)?

A. Normally, the PHA could terminate a family's voucher assistance if the family owes their landlord rent. However, during the eviction moratorium, PHAs shall not terminate assistance for nonpayment of rent. It is important for voucher program participants to report changes in income to the PHA so their rent portion can be adjusted based on their current income. This will help families keep up with their rent and avoid facing eviction and/or losing assistance after the eviction moratorium ends on July 24th.

EM12. If a market rate property has an HCV holder in one unit, does Section 4024 of the CARES Act extend to the entire property or only the voucher holder?

A. If the market rate property has a federally backed mortgage, then Section 4024 of the CARES Act applies to the entire property. If the market rate property does not have a federally backed mortgage, then Section 4024 of the CARES Act only applies to the voucher holder. HUD does not have the authority to extend jurisdiction over unassisted tenants or the property that does not have a federal backed mortgage. However, owners should review their state and local laws, as many are also enacting their own moratorium on evictions.

EM13: Does the ban on evictions apply to mixed-finance public housing properties that are owned by third parties? What if the property has an FHA-insured mortgage? What about Low Income Housing Tax Credit (LIHTC) properties?

A: All mixed-finance public housing properties owned by third parties are covered under Section 4024 of the CARES Act. The moratorium on evictions would apply to private owners of properties that receive housing assistance payments under a PIH assisted housing program, so mixed-finance projects must comply with the eviction provisions. If the financing of a mixed-financed project includes an FHA-insured mortgage or equity from an allocation of LIHTCs, the project is subject to the eviction moratorium. LIHTC projects are governed by individual state Qualified Allocation Plans and state landlord-tenant law. For units assisted with LIHTC only,

evictions are limited to where the owner can demonstrate “good cause” in accordance with state or local law. HUD recommends that owners and management agents consult their State Housing Finance Agency or the IRS for guidance on “good cause” evictions under state legislation or rulemaking related to COVID-19.

The following FAQ is specific to the foreclosure moratorium in Section 4022 of the CARES Act. Section 4022 of the CARES Act grants forbearance rights and protections against foreclosure to borrowers with a “federally backed mortgage loan.” This section would apply to the HCV homeownership and PH homeowner programs to the extent that the family has a federally backed mortgage.

EM14. Does the forbearance and foreclosure language in Section 4022 of the CARES Act apply to the HCV Homeownership and PH homeownership programs?

A. The foreclosure moratorium in Section 4022 of the CARES Act only applies to a borrower with a federally backed mortgage loan and is for 60-days beginning on March 18, 2020. This section would only apply to the HCV and Public Housing homeownership programs to the extent that the family has a federally backed mortgage (as defined in Section 4022(a)(2)). The FHA Single Family COVID-19 Q&A for mortgagees and other interested parties in FHA has been updated and is available on the [Single Family main page](#) on hud.gov.