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IMPLICATIONS OF THE CARES ACT FOR LANDLORDS AND RESIDENTIAL TENANTS

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Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) to aid individuals and businesses harmed by the ongoing coronavirus (COVID-19) pandemic. Section 4024 includes a temporary moratorium on efforts to evict tenants of certain residential rental properties and the ability to assess late fees and penalties for nonpayment of rent during the moratorium.

What Actions Are Prohibited?

Section 4024(b) of the CARES Act prohibits landlords of “covered dwellings” from initiating eviction proceedings or “charg[ing] fees, penalties, or other charges” against a tenant for the nonpayment of rent during a 120-day period that began on March 27, 2020. The CARES Act does not absolve tenants of their legal responsibility to pay rent during the moratorium period. Instead, tenants who do not pay rent may still face financial and legal liabilities, including eviction, after the moratorium period ends on July 25, 2020.

Section 4024(c) of the CARES Act also provides that lessors of a “covered dwelling” cannot issue a notice to vacate until expiration of the moratorium period, nor require the tenant to vacate a “covered dwelling” unit before 30 days after issuing the notice to vacate. This notice requirement does not appear to be tied only to nonpayment of rent. Therefore, the requirement to provide and the timing for such notice may be read to apply broadly to evictions for any reason.

Which Properties Are Covered?

Section 4024 of the CARES Act only applies to certain residential properties. The protections are based on the status of the property (specifically, the funding for the property), not that of the tenant. All tenants in “covered dwellings” are protected by Section 4024, regardless of whether the particular tenant receives federal assistance or is eligible for other COVID-19-related relief.

A “dwelling” is “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families[.]” (Fair Housing Act; 42 U.S.C. 3602(b)). A “covered dwelling” is one that:

(A) is occupied by a tenant—

- (i) pursuant to a residential lease; or
 - (ii) without a lease or with a lease terminable under state law; and
- (B) is on or in a covered property.

A “covered property” is one that:

(A) Participates in a covered housing program as defined in section 41411(a) of the Violence Against Women Act (VAWA) of 1994 (34 U.S.C. 12491(a)[1]); or the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 14904); or

(B) A property that has a federally backed mortgage loan; or federally backed multifamily mortgage loan.

The term “federally backed mortgage loan” includes any loan (other than temporary financing such as a construction loan) that:

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is 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 the Secretary of Housing and Urban Development 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.

A “federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that:

(A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of five or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is 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 the Secretary of Housing and Urban Development 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.

What Effect on State Restrictions?

Section 4024 supplements any existing state or local eviction moratoria and rent freezes. Currently, North Carolina has not issued a specific eviction or rental payment moratorium. However, North Carolina Supreme Court Chief Justice Beasley recently issued an Order containing Emergency Directives that suspended or postponed nearly all court proceedings until June 1, 2020. Therefore, eviction proceedings likely cannot be

commenced until June 1, 2020 unless it is “for the purpose of obtaining emergency relief” such as a domestic violence protection order, a temporary restraining order, or other similar relief.

Likewise, North Carolina Governor Roy Cooper issued **Executive Order No. 124** which provided guidance regarding evictions during the ongoing pandemic. Governor Cooper interpreted **Chief Justice Beasley’s Order** as prohibiting new eviction proceedings until the Order expires. The Governor strongly encouraged property owners to cancel pending evictions and work with tenants to implement payment plans to avoid evictions. Existing Writs of Possession of Real Property (filed after the Court grants an eviction) can but do not necessarily have to be held back until expiration of the orders.

What Can Landlords Do During the Moratorium?

Subject to the Orders from Chief Justice Beasley and Governor Cooper, the CARES Act does not prevent landlords from pursuing eviction proceedings that were initiated before the moratorium took effect, nor prevent landlords from evicting any tenants in non-covered properties.

Landlords can, and should, document instances of nonpayment of rent or other valid reasons for eviction arising during the moratorium. Landlords should review the lease and take steps to follow applicable notice and cure provisions, short of actually initiating legal action to evict the tenant until after the moratorium period expires.

Landlords can likely send notices to tenants of covered dwellings notifying them of the continued obligation to pay rent and the financial and legal liability they may face for failure to do so. While the CARES Act does not impose an affirmative duty for a landlord to disclose to tenants that they reside in a covered dwelling, if a landlord elects to send written notices to tenants of nonpayment of rent or other violations that would support grounds for eviction, the landlord should consider citing the CARES Act as the basis for temporarily suspending late fees and penalties or for not proceeding with an eviction during the moratorium period so as not to risk a potential waiver of any rights. While the CARES Act prevents charging fees or penalties for nonpayment of rent during the moratorium period, it is unclear whether fees or penalties for nonpayment of rent can accrue and later be assessed. Given the apparent intent of the prohibition, it seems unlikely that landlords will be permitted later to assess such fees and penalties. Nevertheless, it would be prudent for landlords to keep track of any unpaid rent payments, fees or penalties that accrue pursuant to the lease during the moratorium period.

The CARES Act does not include penalties for a landlord who acts in violation of the moratorium. However, it is likely that a Court would look unfavorably on a landlord doing so and, at a minimum, would rely on the CARES Act in denying the eviction request. It is possible that the Court would entertain imposing certain sanctions, such as awarding a tenant attorney’s fees, in such a situation.

In the event a landlord wants to evict a tenant from a covered dwelling for a reason other than nonpayment of rent, the impact of Section 4024 of the CARES Act and the Orders from Chief Justice Beasley and Governor Cooper remains unclear. The CARES Act could be read to mean that the eviction moratorium applies only to evictions due to nonpayment, while the notice to vacate provisions may apply more broadly to evictions for any reason. Absent compelling reasons to protect persons or property, even if the CARES Act does not prohibit evictions more broadly, the Orders from Chief Justice Beasley and Governor Cooper suggest that evictions for non-emergency reasons cannot be initiated until June 1, 2020 at the earliest.

If you have any questions related to this alert, please do not hesitate to contact your regular Smith Anderson lawyer or any other member of our firm. Additionally, please visit and bookmark our firm's [Coronavirus \(COVID-19\) Business Resource Center](#) which is continuously updated with useful materials and resources related to COVID-19. This tool has been made available to ensure that our clients and the broader business community stay informed on key issues that may impact their operations and to navigate the related business and legal issues during these challenging times.

Special thanks to [Grace Gregson](#), contributing writer.

[1] The reference to VAWA arguably extends the CARES Act eviction moratorium's coverage to most federally-assisted rental housing programs.

* View [Realtor.com](#) and [SFGate](#) articles referencing this Smith Anderson article.

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