

In the last month, several developments have occurred at the Federal, State and local levels of government related to the permission and processing of current and future eviction proceedings in light of the COVID-19 crisis. In an effort to continue to provide AAA members with regulatory updates, legal opinion and best practices, we held a free and open webinar for members on this topic, and in conjunction, have prepared the subsequent industry guidance below. As you know, this is a very fluid situation with more information and government action coming out every day. AAA is committed to providing you with new information as it becomes available, and as always will make every effort to respond and answer any question you and your team may have regarding this topic or others during these unprecedented times.

CURRENT LEGISLATIVE ACTIONS

LOCAL

Atlanta Mayor Executive Order Calling for 60 Day Moratorium on Evictions

- Intent: 60 day temporary moratorium on residential evictions and filings for non-payment of rent, as well as prohibits the imposition of late fees or other charges due to late or non-payment of rent during the 60 day period for the following public entities that provide or subsidize housing: Atlanta Housing Authority, Atlanta Beltline Inc., the Land Bank Authority, Partners for Home, Invest Atlanta and the City's Department of Grants and Community Development.
- Effective Date: Monday, March 16th
- Duration: 60 days
- Types of Properties Impacted: Properties owned, managed or subsidized by the public or quasi-governmental entities listed above, including units within a private community that were set aside for inclusionary zoning, housing voucher recipients or other affordable housing programs.

Atlanta City Council Resolution

- Intent: requests a commitment from the Atlanta business community to pledge assistance to city residents impacted by school closures due to COVID-19, and specifically asks landlords to suspend any eviction proceedings for 30 days to accommodate for the suspension of employment instituted to stop the spread of COVID-19. * Note – the Atlanta Apartment Association was specifically called out as a potential partner in the legislation.
- Effective Date: Tuesday, March 17th
- Duration: 30 days
- Types of Properties Impacted: The request is for all rental property owners in the City of Atlanta to suspend all eviction actions.

DeKalb County State of Emergency

- Intent: DeKalb County CEO issued an Executive Order declaring a county-wide State of Emergency, during which the County calls for a moratorium on evictions. The moratorium is aligned with, and essentially reiterating the State-wide Judicial State of Emergency, during which eviction cases will not be heard or processed.

- Effective Date: Monday, March 23th
- Duration: Continuing until revoked or amended by subsequent Executive Order
- Types of Properties Impacted: All properties in DeKalb County

STATE

Georgia Supreme Court Suspension of Civil Court Cases

- Effective Date: Friday, March 13th
- Duration: 30 days *EXTENDED THROUGH MAY 13th
- Intent: Georgia's Supreme Court declared a Judicial State of Emergency, during which the courts are ordered to remain open only for essential functions (criminal case arrest and search warrants). The Courts will not be conducting business on civil trials or hearing dispossessory cases. This order also suspends, tolls, extends, and otherwise grants relief from any deadlines or time schedules or filing requirements imposed by statute or law, which extends the deadline for a tenant to file an answer until the order is lifted.

FEDERAL

FEDERAL CARES ACT – Eviction Moratorium

- Date Adopted: Wednesday, March 27th
- Duration: 120 Days
- Intent: As part of the Federal CARES Act, which provides mortgage forbearance to Federally funded or backed multifamily properties including those privately owned market rate properties with **enterprise-backed (Fannie Mae and Freddie Mac) financing, those properties must also suspend all eviction activities for non-payment of rent for 120 days, regardless of whether the owner is seeking forbearance.** Covered properties must not file an eviction for non payment of rent or charge or collect late fees from any resident during the 120 day period.
- Types of Properties Impacted: All multifamily properties with Federally-backed mortgages or receiving Federal Funding (including: VAWA Housing Programs, Section 8, Section 202, Section 8111, Section 236, Section 221(d), Section 542, Section 42-LIHTC, HOME Program, HOPWA, McKinney-Vento Act Programs, Rural Development Multifamily Housing Program,

FHA/FHFA EVICTION AND FORECLOSURE MORATORIUM

- Date Adopted: Wednesday, March 18th
- Duration: 60 days
- Intent: the U.S. Department of Housing and Urban Development (HUD) authorized the Federal Housing Administration (FHA) to implement an immediate foreclosure and eviction moratorium for **single-family homeowners with FHA-insured mortgages** for the next 60 days. Additionally, the Federal Housing Finance Agency's (FHFA) has directed Fannie Mae and Freddie Mac to suspend foreclosures and evictions for at least 60 days for **homeowners with an Enterprise-backed single-family mortgage.** Additionally, HUD is encouraging public housing authorities and rental housing providers who serve rent assisted (Housing Choice Voucher) residents to prevent the displacement of families through eviction.

- Types of Properties Impacted: Properties with FHA-insured or enterprise-backed mortgages.

FHFA MORTGAGE RELIEF FOR MULTIFAMILY PROPERTIES THAT SUSPEND EVICTIONS

- Date Adopted: Monday, March 23rd
- Intent: the Federal Housing Finance Agency (FHFA) announced yesterday that Fannie Mae and Freddie Mac will offer multifamily property owners financed through the enterprises, mortgage forbearance with the condition that they suspend all evictions for renters unable to pay rent due to the impact of coronavirus. The eviction suspensions must remain in place for the entire duration of time that a property owner remains in forbearance. The forbearance is available to all multifamily properties with an Enterprise-backed performing multifamily mortgage negatively affected by the coronavirus national emergency.
- Types of Properties Impacted: The forbearance is available to all multifamily properties with an Enterprise-backed performing multifamily mortgage negatively affected by the coronavirus national emergency.

LEGAL GUIDANCE

STATUS OF DISPOSSESSORY CASES ALREADY IN PROCESS:

- Due to the Supreme Court's order to close all civil courts, no dispossession cases will be heard, and most set outs will not occur until the judicial state of emergency has been lifted.
- Suspends, tolls, extends deadlines, or time schedules or filing requirements imposed by statute or law, and answers are not due until 48 hours after May 13, 2020 (or upon expiration of the judicial emergency).
- Property owners can still file new cases if you choose to, however, no answers or action will be due until 48 hours after the judicial state of emergency has been lifted.
- As predicted, the order was extended beyond the initial deadline of May 13, 2020, and may even be extended further depending on statewide circumstances related to COVID-19. Further, there will likely be political pressure to legislatively protect residents impacted by COVID-19 from eviction.
- If there is a case of a serious, material lease violation, contact your legal counsel to determine possible emergency processing.

NEW NON-PAYMENT OF RENT SCENARIOS & ESTABLISHING LEGAL PAYMENT

AGREEMENT POLICIES

- Whether to delay filing a new dispossession or file on a typical timeline in order to "Get in Line" when courts open (as there will certainly be a rush to file) is a business decision.
- It may be advantageous to make the business decision to work with residents in taking partial payments. In doing so it is important to determine a policy and maintain consistent application to all residents to avoid any Fair Housing claims. This also shows the courts and elected officials contemplating legislation that the property owner was working in good faith in trying

to work with the resident to avoid eviction, if you end up needing to file on the resident at a later date.

- All payment agreements with residents should be carefully documented in writing and contain each of the following essential terms:
 - Identify the purpose: The COVID-19 crisis;
 - Set for the total amount due and owing through the month entered into;
 - Set forth the amounts and dates that payments are due;
 - Provide that if any payment is missed, the lease may be terminated, or a dispossessory action could be filed for non-payment of rent.
 - State that the agreement does not serve to waive full enforcement of the original lease agreement once this identified period (COVID-19 Crisis) ends.
- Note – in developing a policy to offer payment agreements for those residents who's income has been affected by the COVID-19 Crisis, you may ask for documentation from the resident showing they are out of work or had to miss a significant amount of work, but should not ask any health related questions to avoid HIPPA violations.

RESIDENT REQUESTS FOR LEASE TERMINATION DUE TO COVID-19

- All lease termination requests from residents should follow the normal early lease termination clause (GAA lease) or buy-out addendum (NAA lease).
- *Some residents may attempt to reference the Force Majeure Provision in the NAA Lease, however, this does NOT apply to a resident request to terminate a lease agreement or in failure to pay rent. This provision was included in the NAA lease as a protection for the property owner in such an event.*
- The following statement is an example of what can be stated in response to a resident request for termination:

“We understand that the cancellations and shutdowns in connection with COVID-19 have created new burdens for our residents. Please understand that our company has not escaped the consequences either. At this time, neither the government nor our lenders have enacted any mortgage payment relief. As a result, we are unable to change our policy on allowing residents to terminate their leases without further obligation. In the event that circumstances change, we may revisit that decision. Until that time, it is our expectation that our residents will honor their contracts, just as we are being required to honor ours. Please do not hesitate to contact us with further questions.”