

# CARES Act Notice Requirement



4024 (c) of the CARES Act also indicates that the landlord of a “covered property” may not evict a tenant for non-payment after the moratorium expires on 30 days’ notice, which the landlord may not issue until after the moratorium period has expired.

The CARES Act defines a “covered property” as any of the following:

- Has a federally backed multifamily loan;
- Has a federally backed mortgage loan;
- Participates in a rural housing voucher program under § 542 of the Housing Act of 1949; or
- Participates in a “covered housing program” under the Violence Against Women Act of 1994

The Violence Against Women Act of 1994 “covered housing program” includes the Section 8 Housing Choice Voucher program (42 U.S.C § 1437f). This means that any landlord that has tenants that participate in the Section 8 housing program are a “covered property” under the CARES Act and are subject to the moratorium on filing new eviction actions until after July 25, 2020. This applies even if the tenant who has failed to pay rent is not one that is participating in the Section 8 Housing Choice Voucher program, so long as one or more of the landlord’s other tenants is participating in the program.

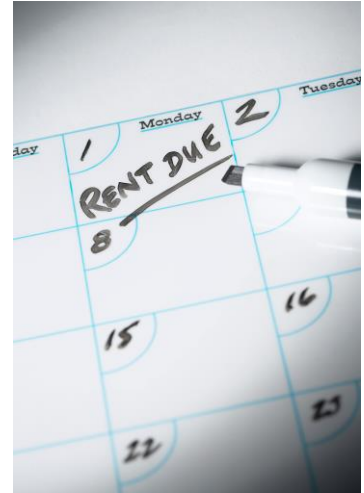
## The Lingering 30-Day Notice

- The battle over the lingering CARES Act 30-day notice-to-vacate goes on.
  - See the updated Q&A below from the HUD Office of Multifamily Housing Programs. NAA continues to pursue a legislative solution to this issue.
  - [https://www.hud.gov/sites/dfiles/Housing/documents/MF\\_COVID-19%20QA\\_4\\_26\\_21.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/MF_COVID-19%20QA_4_26_21.pdf)
  - “Q25: Although the eviction moratorium in the CARES Act expired, is the 30-day notice to vacate requirement still in effect for CARES Act covered properties?”
  - A: Notwithstanding the expiration of the CARES Act eviction moratorium, the CARES Act 30-day notice to vacate requirement for nonpayment of rent, in Section 4024 (c)(1), is still in effect for all CARES Act covered properties.
- (Added on 4/26/21)”

## What's the big problem?

- A large number of residents are well informed of the 30-day requirement and ignore the provisions in the Lease making rent due on or before the 1<sup>st</sup>.
- Many clients are reporting outstanding rent rolls in the six figures when they pull reports between the 5th and 20th of the month.
- Adding this notice requirement further delays any action for possession thereby delaying you removing a non-paying resident to put a paying resident in place.

So, will it ever end...



## HR 9062 Respect State Housing Laws Act

- This may be one of the shortest bills in Congressional history as it simply states that Section 4024 of the CARES Act is amended by striking subsection (c).
- As you can imagine, despite having 8 sponsors for this Bill it is not likely to gain traction when you juxtapose it against the language found in the White House's blue-print for a tenants' bill of rights which included a proposal for a permanent 30-day notice for PHAs and project based programs.

## What things are looking like in court...



- Despite what the media would have you believe, there has not been a tsunami of eviction filings when compared to pre-pandemic numbers.
- However, there has been increased funding to Legal Aid of North Carolina and their attorneys are providing representation at increased rates in many counties throughout the state.
- This is having the tendency to drive up costs of litigation on housing providers which may or may not be able to be recouped from the resident.

What is driving up those costs?

## Costs of Appeals

- More and more cases are being appealed from Small Claims Court to District Court – especially where Legal Aid has stepped in to provide representation.
- We have seen more requests for jury trials combined with either habitability or debt collection violation claims (many being frivolous in nature).
  - Requesting the jury trial delays removal and increases costs.
- Opposition is then serving discovery even though the resident already has much of the information being requested.
- All of these mechanisms push the cost of an eviction into the range of several thousand dollars (at a minimum).

## Things to be aware of in an Appeal

- The resident must pay a rent bond to remain in possession. This is the ongoing monthly rent during the pendency of the appeal.
- If the resident is a market rate resident they normally have to pay the outstanding rent together with the pro-rated rent from the date of appeal forward or you can get a writ.
- Most counties disburse the rent bond as it is received but at least one county (Mecklenburg) has now elected to hold all funds until the case is concluded.
  - When you combine this policy with jury trial requests it can create a period of no rental income for as much as 6 months or more.



## Why does this matter?

- Litigation costs for housing providers are going up exponentially.
- When you combine factors like the CARES Act notice delay on filing, appearance of representation by Legal Aid, increased appeal filings and requests for jury trials it all has a significant impact on the bottom line.
- It impacts the time value of money that you are not receiving from the resident in question, the inability to put a paying resident in possession and increases the cost of removing a non-paying or bad actor resident all costing the housing industry more money which impacts housing affordability going forward.
- If you can't recover your losses from the bad apple, all the apples end up paying that recovery.

## Source of Income as a Protected Class



- This serves to mandate housing providers consider Section 8 Housing Choice Vouchers as income for purposes of qualifying potential residents.
- In theoretical application, it could force housing providers to participate in the Section 8 program even though the program is designed to be voluntary in nature.
- Thus far, only Charlotte and Mecklenburg County have dipped their toes in the water making it a requirement for all properties within their jurisdictional limits receiving city or county funding.
- This is a trend that is growing in momentum with a number of States addressing proposed legislation on the topic.