

AANC FAQ: Eviction Moratorium & Liability

UPDATED 8/3/2020

The following general information is not legal advice and should not be relied on as such. Also, the following information is subject to change as both the federal and state rules, orders and laws are subject to change.

● WHEN CAN EVICTION PROCEEDINGS FOR NONPAYMENT OF RENT BEGIN?

Properties that are not designated as "Covered Properties" under the CARES Act, can file for eviction for nonpayment, with the exception to June rent. Under Executive Order 142 landlords are prohibited from filing for nonpayment between May 30th and June 20th. Landlords must enter into reasonable payment arrangement to payoff rent due between May 30th and June 20th allowing for six-month repayment period. Thus, landlords must allow payment plans extending through at least December 21, 2020 Additionally, the landlord cannot charge a late fee for June 2020 rent.

The federal CARES Act eviction moratorium ends **July 25th** for Covered Properties, unless the property is in loan forbearance. The CARES Act further requires landlords to provide tenants a 30-day notice to vacate prior to filing for eviction which cannot be sent prior to **July 26**, or later if the property is in loan forbearance. The earliest a landlord can file under the CARES Act is **August 25th** if the notice to vacate was provided on July 26th.

The CARES Act defines a “covered property” as a property that: (1) participates in a “covered housing program” as defined by the Violence Against Women Act (VAWA) (as amended through the 2013 reauthorization); (2) participates in the “rural housing voucher program under section 542 of the Housing Act of 1949”; (3) has a federally backed mortgage loan; or (4) has a federally backed multifamily mortgage loan. See Sec. 4024(a)(2)

As a practical matter, to avoid the potential of not being compliant with Executive Order 142, the notice to vacate required by the CARES Act should not demand payment of June 2020 rent until at least December 21st.

● CAN EVICTIONS BE FILED BY COVERED PROPERTIES DURING THE MORATORIUM?

This depends, according to the CARES Act, covered properties are prohibited from filing for late or nonpayment of rent until the moratorium expires and a 30-day notice to vacate has been provided. The CARES Act requires landlords to provide tenants a 30-day notice to vacate prior to filing for eviction. The North Carolina Administrative Office of the Courts has determined that the Notice to Vacate is only required for failure to pay rent or fees coming due during the moratorium period of March 27th through July 25th or the end of the forbearance period for the property if in loan forbearance. Vacate notices cannot be provided until after the moratorium ends. Under the interpretation of HUD and the North Carolina Administrative Office of the Courts other types of evictions, such as conduct-based evictions, can proceed during the moratorium.

AANC FAQ: Eviction Moratorium & Liability

● CAN I FILE FOR NONPAYMENT OF RENT FOR JUNE?

Not until at least December 22, 2020. Executive Order 142 prohibits landlords from filing for nonpayment during the effective period May 30th- June 20th. Under this order, tenants have the opportunity to make reasonable payment arrangements with a six (6) month repayment period.

● DOES THE TENANT HAVE TO TELL THE LANDLORD THEY INTEND TO USE THE SIX-MONTH REPAYMENT PERIOD?

The Executive Order is unclear on the execution of the repayment provision. However, it states that “Residential Tenants shall be provided the opportunity to make reasonable payment arrangements to pay off, over at least a six (6) month period.” If a tenant does not express that they intend to use the 6-month repayment plan, they are still entitled to the provision. Landlords should provide a repayment option for any rent that became due between May 30th and June 20th and was not paid during that time. Presumably a tenant could tell the landlord they want to exercise the repayment option during a summary ejectment hearing and the landlord would have to allow the tenant at least the six (6) months from June 21 to pay June’s rent.

● CAN LATE FEES BE CHARGED ON THE PAST DUE RENT?

Under Executive Order 142 late fees, interest, and other penalties cannot be applied during the covered period of the order (May 30th -June 20th). If a tenant had existing in fees, or other penalties when this Executive Order came into effect, fees, or other penalties are paused from My 30th - June 20th.

● IS THERE ANY NEW GUIDANCE ON WRITS FILED BEFORE 3/16?

As of June 30th, the Sheriff offices can resume carrying out writs of possession.

● ARE FITNESS CENTERS NOT ALLOWED TO BE OPENED AT APARTMENT COMMUNITIES?

Under Governor Coopers directive fitness centers should remain closed. All attempts to pass legislation into law to reopen gyms in the state have been vetoed by Governor Cooper.

AANC FAQ: Eviction Moratorium & Liability

- IS THE CARES ACT AFFIDAVIT REQUIRED WITH EVERY FILING?

Under Emergency Directive 18, Chief Justice Beasley affirms that the CARES Act Affidavit is only required for summary ejection actions that include to nonpayment of rent, late fees and other charges that occurred during the covered period of the moratorium, March 27th through July 25th or the period for which the property is in loan forbearance, whichever is later. As a practical matter it is prudent to file the CARES Act Affidavit for all matters and to state in Section 6 that "the eviction is not sought for nonpayment of rent or other fees or charges" if it is not.