

AANC FAQ: Eviction Moratorium & Liability

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. Landlord's must enter into reasonable payment arrangement to payoff rent due during the effective period for six-months, so they must allow payment plans through 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**

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 within the 30-day period.

● 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. Vacate notices cannot be administered until after the moratorium ends. Other types of evictions, such as conduct-based evictions, can proceed during the moratorium.



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● 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-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 in the effective period 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 interest, fees, or other penalties when this Executive Order came into effect, all accumulation of additional interest, fees, or other penalties is paused during the Effective Period.

● 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 Cooper’s directive fitness centers should remain closed. All attempts to pass legislation into law to reopen gyms in the state have been vetoed by Gov. Cooper.



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- HOW QUICKLY DOES A LANDLORD NEED TO RESPOND TO REPORTED MOLD IF THE RESIDENT HAS ALSO COMMUNICATED, THEY HAVE BEEN IN CONTACT WITH A POSITIVE CASE OF COVID AND ARE AWAITING TEST RESULTS?

NAA has operational guidance in a variety of Micro-webinars that address best practices for safety and maintenance management during COVID-19 that will be very useful in addressing maintenance needs. Please see the links below and be sure to visit [NAA's Coronavirus resource page](#).

[Maintenance During COVID-19 - Protecting Residents and Ourselves](#)
[How to Handle Maintenance During COVID-19](#)