

RE: Coronavirus (COVID-19) - What is the “CARES Act” and how does it affect you?

On Friday, March 27, 2020, President Donald Trump signed the Coronavirus Aid, Relief, and Economic Security Act, known commonly as the CARES Act, into law. The CARES Act is an extensive federal relief package intended to alleviate some of the tremendous economic effects of the COVID-19 pandemic on the economy. This advisory is limited to the CARES Act’s potential impacts and restrictions on landlord-tenant matters, including notices, late fees, and evictions. The CARES Act is 854 pages in length but the terms most relevant to multifamily properties and management of such can be found in Section 4023 (which begins on page 557) and Section 4024 (which begins on page 561). You may access the full text of the CARES Act here: <https://www.congress.gov/116/bills/hr748/BILLS-116hr748eas.pdf>.

I. What does the CARES Act prohibit?

Section 4023 of the CARES Act allows multi-family owners that have a federally backed multi-family mortgage loan to seek forbearance because of a financial hardship during the COVID-19 emergency, for up to 90 days. This provision of the law prohibits issuing a notice to vacate, initiating an eviction filing, or assessing fees, penalties or other charges on residents for nonpayment or a late payment of rent during the landlord’s forbearance period. Additionally, a multi-family borrower that receives forbearance under this section may not issue a notice to vacate until after the expiration of the forbearance period or require a renter to vacate until 30 days after the notice to vacate has been issued.

Section 4024 of the CARES Act imposes a 120-day moratorium on new eviction filings for “non-payment of rent or other fees or charges” by “covered properties” and further prohibits a “covered property” (outlined below) from charging “fees, penalties, or other charges to the tenant related to nonpayment of rent.” Additionally, a “covered property” may not issue a notice to vacate until after the expiration of the moratorium or require a renter to vacate his or her unit until 30 days after the notice to vacate has been issued.

II. Who is a “Covered Property”?

The moratorium is not a blanket prohibition, but rather impacts only those multifamily communities meeting the specific definition of a “covered property”. In short, the act includes those who participate in a “Covered Housing Program” as defined by the Violence Against Women’s Act; participate in the Rural Voucher Housing Program under section 542 The Housing Act of 1949; have a federally backed mortgage loan; or have a federally backed multifamily mortgage loan. Most commonly, and as a non-exhaustive list (a detailed list is included below), this would include properties that participate in the Section 8 Housing Choice Voucher Program, HOME properties, Low-Income Housing Tax Credit properties, and any property that is insured, guaranteed, supplemented, protected or assisted in any way by HUD, Fannie Mae or Freddie Mac. The CARES Act lists and defines the following 4 categories of “covered properties”:

A. VAWA Covered Housing Programs

The Violence Against Women Act of 1994 (VAWA) lists most federally assisted rental housing programs, including the following:

- HUD Programs

- Public housing (42 U.S.C. § 1437d)
 - Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f)
 - Section 8 project-based housing (42 U.S.C. § 1437f)
 - Section 202 housing for the elderly (12 U.S.C. § 1701q)3
 - Section 811 housing for people with disabilities (42 U.S.C. § 8013)
 - Section 236 multifamily rental housing (12 U.S.C. § 1715z-1)
 - Section 221(d)(3) Below Market Interest Rate (BMIR) housing (12 U.S.C. § 17151(d))
 - HOME (42 U.S.C. § 12741 et seq.)
 - Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.)
 - McKinney-Vento Act homelessness programs (42 U.S.C. § 11360, et seq.)
- Department of Agriculture Programs
 - Section 515 Rural Rental Housing (42 U.S.C. § 1485)
 - Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)
 - Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)
 - Section 538 multifamily rental housing (42 U.S.C. § 1490p-2)
 - Department of Treasury Programs
 - Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)

B. Rural Housing Voucher Program

Properties participating in the Rural Housing Voucher Program under Section 542 of the Housing Act of 1949 are covered properties.

C. Federally Backed Mortgage Loans (1-4 Units)

This includes a property with 1-4 units that is secured by loans that are “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 [HUD] 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.”

D. Federally Backed Multifamily Mortgage Loans (5+ Units)

The CARES Act defines a federally backed multi-family mortgage loan in the same manner as a “federally-backed mortgage loan,” but is one that is secured by a property with five or more dwelling units.

III. What does it mean if I am a “Covered Property”?

If you are a covered property, the CARES Act provides that you may not charge late fees to your tenants during the moratorium time period. Further, you will not be able to file an eviction based on non-payment of rent until the moratorium has expired. Additionally, you may not issue a notice to vacate until

after the expiration of the moratorium or require a renter to vacate until 30 days after a notice to vacate has been issued.

IV. Am I impacted if I am not a “Covered Property”?

If you have determined that you are not a covered property under the CARES Act, you may still file evictions for non-payment of rent, subject to the restrictions currently being imposed by your specific state, county and local court.

In closing, the CARES Act is brand new, and subject to judicial interpretation and review, and cases and scenarios should be evaluated on a case by cases basis. The majority of the Act is clear and provides great guidance, whereas other sections are a bit unclear, and may require further review, clarification and interpretation, so we as an industry and Association will need to continue to stay updated and educated on this matter.

Because SEFAA cannot offer or provide legal advice, we ask that you please consult your attorney if you have any specific questions or concerns relating to this issue or your company’s policies and procedures being in compliance with the law. The contents of this communication are provided for informational and reference purposes only and are not intended to substitute for legal advice from a qualified attorney.