

COVID-19 Eviction Moratoriums: Need-To-Know Information for NC Landlords and Tenants

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The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress and signed into law by President Trump on March 27, 2020.

The CARES Act provided immediate economic assistance for American workers, families, and small businesses. More specifically, it prohibited the eviction of tenants

living in certain types of housing for nonpayment of rent for a period of 120 days.

The tenants protected by the CARES Act are those in properties with federally-backed mortgage loans such as, loans owned or securitized by Fannie Mac or Freddie Mac, or loans that are insured by HUD or the VA.

Additionally, tenants in properties that participate in various federal affordable housing programs may be protected from eviction.

The eviction moratorium imposed by the CARES Act was limited to the filing of new eviction actions for nonpayment of rent or other fees and charges and to the "covered properties" described above. It did not prohibit action in cases that:

1. Were filed prior to the CARES Act taking effect or after the 120-day moratorium period ends;
2. Involve non-covered properties; or,
3. Involve evictions based on reasons other than the nonpayment of rent or the nonpayment of fees and other charges.

A summary and analysis of the Federal CARES Act eviction moratorium provisions can be found [here](#).

At least in North Carolina, however, the protections provided for tenants as a result of the COVID-19 pandemic do not end with the CARES Act.

On May 30, 2020, North Carolina Governor Roy Cooper entered Executive Order No. 142. This Order provides additional protections for residential and commercial tenants between May 30, 2020, and June 21, 2020. As to residential leases, the Order prevents the following:

1. Residential landlords from initiating **or furthering** summary ejectment or other eviction proceedings

against tenants for nonpayment **or late payment of rent** .

2. Residential landlords from assessing late fees, interest, or other penalties for late payment or nonpayment.
3. Residential landlords from accumulating additional interest, fees, or other penalties for existing late fees during the effective period of the Order.

On the commercial side, the Order only prevents the following:

1. Commercial landlords from using "self-help" eviction procedures or terminating a lease for **late payment or nonpayment of rent that was caused by COVID-19**.
2. Commercial landlords from assessing late fees, interest, or other penalties for late payment or nonpayment.
3. Commercial landlords from accumulating additional interest, fees, or other penalties for existing late fees during the effective period of the Order.

A copy of Executive Order No. 142, issued by Governor Roy Cooper, can be found [here](#).

Governor Cooper's Order expands the CARES Act moratorium by temporarily freezing all residential evictions that are based on the failure to pay rent, fees or other charges, and by adding restrictions that apply to the evictions of commercial tenants. The main difference between the restrictions placed on residential landlords and commercial landlords is that residential landlords cannot evict for **any** late payment or nonpayment of rent regardless of when late or nonpayment occurred, whereas commercial landlords cannot evict for late payment or nonpayment **caused by COVID-19** but can evict for late payment or nonpayment of rent that occurred pre-COVID-19. In short, nothing in the CARES Act or Governor Cooper's Order prohibits evictions for reasons other than late payment or nonpayment of rent, such as evictions related to health, safety, or criminal activity. These types of evictions by a landlord would not violate the Order.

Governor Cooper's Order also makes clear that, during the effective period, rent is still due and will accrue. Therefore, both residential and commercial tenants are still responsible for paying their rent and performing any other obligations set forth in their leases. The Order encourages tenants to notify landlords if they are unable to pay rent as it becomes due under the lease and to make rental payments during this period to the extent the tenants are financially able to do so. Although the eviction moratoriums and restrictions imposed by the CARES Act and by Governor Cooper's Order were limited in scope, a third Order was issued, which further expands the moratorium on evictions in North Carolina.

Shortly after Governor Cooper released his Order, the Chief Justice of the North Carolina Supreme Court issued an Order addressing how the North Carolina courts should handle evictions during the effective period of Governor Cooper's Order. The Chief Justice's Order goes much further than the CARES Act or Governor Cooper's Order. The Chief Justice's Order temporarily freezes **all residential and commercial evictions** until June 21, 2020. Additionally, the Chief Justice's Order requires a finding by the court that the eviction is not related to a federally-subsidized lease before it can proceed with the eviction action. The Order also directs North Carolina courts to create a new affidavit that must be filed with any new eviction matter, which certifies that the property at issue is not subject to a federally-subsidized lease. An affidavit form has been published by the Courts, and a copy of it can be found [here](#).

A copy of Order of the Chief Justice of the Supreme Court of North Carolina (Emergency Directives 17-19) can be found [here](#).

In summary, the Chief Justice's Order goes much further than the CARES Act or Governor Cooper's Order and temporarily stops **all evictions** for **any reason** from May 30, 2020, to June 21, 2020. At this time, the Chief

Justice has not provided any insight as to whether she will amend her recent Order to align with the CARES Act and Governor Cooper's Order.

We are monitoring this situation closely and will provide updates as soon as any new information on this issue is published by the federal government, Governor Cooper, or the Chief Justice of the North Carolina Supreme Court. If you need legal guidance with regard to residential or commercial evictions or lease disputes, contact our Litigation Practice Section.

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