

# CARES Act, Eviction Restrictions and Mortgage Relief

**Go to:** Eviction Restrictions, Generally | Mortgage Payment Forbearance | Landlords with Section 8 Voucher Tenants | Recommendation  
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by Thomas Major, Offit Kurman

This article explains eviction restrictions and mortgage relief contained in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)(116 P.L. 136).

## Eviction Restrictions, Generally

The Cares Act preempts any state law or executive action which may have permitted the filing of nonpayment cases but stayed the execution of a judgment for possession. For example, New Jersey Governor Murphy’s EO106 permitted the filing of a nonpayment case, but the CARES Act does not. The CARES Act specifically prohibits “any filing” or “initiat[ion] of legal action to recover possession” involving a covered property.

### Covered Properties

The CARES Act restricts evictions involving “covered properties.” The categories of “covered properties” are so broad they cover nearly every property.

“Covered properties” are: (1) properties that participate in a federal housing program and (2) properties that have a “federally backed mortgage loan” or “federally backed multi-family mortgage loan. The below table identifies the types of covered properties. The **bolded** terms are more common federal programs.

Federal Housing Program	Federally Backed Mortgage Loan/Multi-Family
<ul style="list-style-type: none"> <li>• Public housing (42 U.S.C. § 1437d)</li> <li>• <b>Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f)</b></li> <li>• <b>Section 8 project-based housing (42 U.S.C. § 1437f)</b></li> <li>• Section 202 housing for the elderly (12 U.S.C. § 1701q)3</li> <li>• Section 811 housing for people with disabilities (42 U.S.C. § 8013)</li> <li>• Section 236 multifamily rental housing (12 U.S.C. § 1715z–1)</li> <li>• Section 221(d)(3) Below Market Interest Rate (BMIR) housing (12 U.S.C. § 17151(d))</li> <li>• HOME (42 U.S.C. § 12741 et seq.)</li> <li>• Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.)</li> <li>• McKinney-Vento Act homelessness programs (42 U.S.C. § 11360, et seq.)</li> <li>• Section 515 Rural Rental Housing (42 U.S.C. § 1485)</li> <li>• Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)</li> <li>• Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)</li> <li>• Section 538 multifamily rental housing (42 U.S.C. § 1490p-2)</li> <li>• <b>Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)</b></li> <li>• The Rural Housing Voucher Program (42 USC §</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Federally Backed Mortgage Loan, 1-4 Family purchased or securitized by Fannie/Freddie</b> (Note: Fannie and Freddie purchase the overwhelming majority of 1-4 family mortgages on the secondary market)</li> <li>• Federally Backed Mortgage Loan, 5+ family purchased or securitized by Fannie/Freddie</li> <li>• Federally Backed Mortgage Loan <b>insured, guaranteed, supplemented, or assisted in any way</b> by the Federal Government.</li> </ul>

### ***Eviction Restrictions***

For 120 days, measured from March 27, 2020 (in other words until July 25, 2020) landlords of covered properties cannot:

- 1 Initiate/file any non-payment of rent proceedings against tenants in covered properties
- 2 Charge/collect late fees from tenants
- 3 Terminate a tenancy with less than 30 days prior notice for nonpayment of rent

### ***Key Takeaway***

If you are a landlord of a covered property, you cannot initiate a nonpayment of rent case nor can you collect late fees from tenants until July 25, 2020.

### ***Mortgage Payment Forbearance***

Presumably in consideration of the above eviction moratorium, Section 4022 (1-4 family mortgage loans) and Section 4023 (5+ family mortgage loans) of the CARES Act provide some relief to multi-family borrowers. To qualify for the relief, a borrower/landlord must fall into any of the below categories:

- 1 Borrowers with “Federally Backed Mortgage Loan” meaning, a 1-4 family property with mortgage bought by Fannie/Freddie (above) or involving FHA, VA, and other related federal agencies.
- 2 Borrowers with “Federally Backed *Multi-Family* Mortgage Loans”
  - i. “Federally Backed Multi-Family Mortgage Loan” is a mortgage:
    1. Secured by a 5 family or greater property —and—
    2. “is 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 the Secretary of Housing and Urban Development 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.”

### ***Plain Language***

If you have a mortgage on a property from a bank there is a good chance you qualify for this assistance. To determine whether your loan is “purchased or securitized” by Fannie or Freddie you should contact your loan servicer and ask that specific question.

### ***Relief***

If your loan is a “federally backed mortgage loan” or a “federally backed multi-family mortgage loan” then you can request a 30-day payment forbearance. This forbearance can be renewed for two 30 day intervals, totaling 90 days of forbearance. You can make this request orally or in writing to your loan servicer.

### ***Landlords with Section 8 Voucher Tenants***

If your property does not fall into a covered property category but your tenants received Section 8 assistance, only those tenants are protected by the eviction moratorium above.

**Recommendation**

If you are a landlord/borrower of a covered property, you should seriously consider taking advantage of the forbearance described above. The only decision making is whether to trigger the forbearance beginning April 2020 or May 2020. Depending on your individual rent-roll and its performance, it may be best to trigger the forbearance beginning May 2020 thereby covering May, June, July 2020 (until the eviction moratorium concludes).

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