

CARES Act and Dispossessories

Who/what is covered?

A landlord's rental property is covered by the Act if:

1. The rent is subsidized;
2. The underlying mortgage is backed by any agency of the federal government;
3. The underlying mortgage has been transferred to any federal agency even if still serviced by the original lender.

Federally backed mortgage loans are those:

1. Made, insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the federal government; or
2. Purchased or securitized by the Federal Home Loan Mortgage Corporation (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae).

What restrictions are there for dispossessories on covered properties?

For these properties, the landlord:

1. Cannot take any action for non-payment of rent until after the moratorium is lifted (July 25);
2. Cannot charge any additional fee related to the non-payment of rent;
3. Must give a tenant 30 days' notice before an eviction can be filed, and that notice can only be given after the moratorium is lifted.

The moratorium only applies to cases for non-payment of rent -- cases completely separate from rent are not covered by the moratorium. As an example, exceeding an occupancy clause, failing to recertify, not allowing a regularly scheduled inspection, are not covered. **If a landlord has absolutely NO federal ties to a mortgage (i.e. owns the property free and clear) and rent is not subsidized with any Federal money, then the moratorium does not apply.**

The 120 day moratorium ends on July 25, 2020, so the first day a landlord can act (send notice) is on July 27, 2020. Therefore, no cases will be ripe for filing until at least August 24, 2020.

Miscellaneous

There are three categories of cases:

1. Filed Pre-Judicial Order, up to March 26 = CARES Act has no effect.
2. Filed Post-CARES Act on covered properties (signed on March 27) = obviously covered.
3. Filed Post-CARES Act on all others = CARES Act has no effect.

Burden of proof is on the on landlord to show that moratorium does not apply.

Sunset

It isn't clear, but most provisions define the "covered period" (a term not found in § 4024) as the period commencing on March 27, 2020 and ending on the first to occur of (A) the termination date of the national emergency concerning the coronavirus disease outbreak declared by the President on March 13, 2020 and (B) December 31, 2020. So we are going with that.

CARES Act and Foreclosures on 1-4 Unit Dwellings

Who/what is covered?

A borrower is covered by the Act if:

1. During the covered period;
2. The underlying mortgage is backed by a federally backed mortgage;
3. The borrower requests forbearance by submitting a request to the servicer affirming the borrower is experiencing a financial hardship during the COVID-19 emergency.

Federally backed mortgage loans for 1-4 unit dwellings are those:

1. Insured by the Federal Housing Administration under Title II of the National Housing Act; or
2. Insured under section 255 of the National Housing Act; or
3. Guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992; or
4. Guaranteed or insured by the Department of Veterans Affairs; or
5. Made by the Department of Agriculture
6. Purchased or securitized by the Federal Home Loan Mortgage Corporation (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae).

What restrictions are there for dispossessories on covered properties?

For these properties, the servicer:

1. Shall grant forbearance for up to 180 days with an additional 180 days if borrower requests;
2. Cannot charge any additional fees, penalties or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments;
3. Shall not require anything from borrower other than borrower's attestation as to financial hardship.
4. Except for vacant or abandoned property, may not initiate any judicial foreclosure or execute a foreclosure-related eviction for not less than the 60-day period beginning on March 18, 2020. .

Therefore, no cases will be ripe for filing until at least May 18, 2020.

Burden of proof is on the on servicer to show that moratorium does not apply.

Sunset

The "covered period" is defined as the period commencing on March 27, 2020 and ending on the first to occur of (A) the termination date of the national emergency concerning the coronavirus disease outbreak declared by the President on March 13, 2020 and (B) December 31, 2020.

CARES Act and Foreclosures/Dispossessorios on 5 + Unit Dwellings

Who/what is covered?

A borrower is covered by the Act if:

1. During the covered period;
2. The underlying mortgage is backed by a federally backed mortgage;
3. Was current on its payments as of February 1, 2020;
4. The borrower requests orally or in writing forbearance by submitting a request to the servicer affirming the borrower is experiencing a financial hardship due directly or indirectly to the COVID-19 emergency.

Federally backed mortgage loans for 5 or more unit dwellings are those:

5. Made, insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the federal government; or
6. Purchased or securitized by the Federal Home Loan Mortgage Corporation (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae).

What restrictions are there for dispossessorios on covered properties?

For these properties, the servicer:

7. Shall document the financial hardship;
8. provide forbearance for up to 30 days
9. extend for up to 2 additional 30 day periods upon request by borrower as long as borrower makes request at least 15 days prior to the end of the forbearance period;
10. borrower can discontinue forbearance at any time;

For these properties, the borrower:

11. may not evict or initiate eviction for the unit or property for non-payment of rent or other fees or charges;
12. may not charge any late fees, penalties or other charges related to the non-payment of rent;
13. may not require a tenant to vacate a dwelling in the property before the date that is 30 days after the date on which the borrower provides tenant with a notice to vacate; AND
14. may not issue a notice to vacate until after the expiration of the forbearance;

Therefore, no cases will be ripe for filing until at least 30 days after the forbearance period ends.

Burden of proof is on the on servicer (for foreclosures) or borrower (for dispossessorios based on failure to pay rent) to show that moratorium does not apply.

Sunset

The "covered period" is defined as the period commencing on March 27, 2020 and ending on the first to occur of (A) the termination date of the national emergency concerning the coronavirus disease outbreak declared by the President on March 13, 2020 and (B) December 31, 2020.

DEADLINE CHEAT SHEET

The Statewide Judicial Emergency Order suspended, tolled, or otherwise extended all deadlines and statutes of limitation for the duration of the Order. The tolling began on Saturday, March 14, and will continue through Wednesday, May 13 (unless extended by statewide or local order).

When figuring out time periods:

- (1) The first day is not counted, but the last day is counted;
- (2) If the last day falls on a Saturday, Sunday, or legal holiday, the party has through the next business day; and
- (3) Intermediate Saturdays, Sundays, and legal holidays are counted when calculating the last day, unless the period of time prescribed is less than seven days.

OCGA § 1-3-1 (d)(3).

Think of the Statewide Judicial Emergency Order as a pause button – whatever amount of time remained before the filing was due prior to the date of the statewide declaration, that time will remain after the March 14 order expires. If the time had not commenced prior to the March 14 Order, it will commence once the Order expires.

EXAMPLE 1 – A dispossessory writ is granted on March 12, 2020. Assuming the Order is lifted on May 13, that means the losing party will have until May 19 within which to appeal.

Here's my math for Example 1 -- the first day is not counted, so the time within which to appeal started on March 13. It was paused on March 14, so one day had elapsed, leaving six days to file an appeal once the order is lifted. If the time recommences on May 14, the seventh day would fall on May 19.

EXAMPLE 2 – A dispossessory writ is granted on March 9, 2020. Assuming the Order is lifted on May 13, that means the losing party will have until May 18 within which to appeal.

Here's my math for Example 2 -- the first day is not counted, so the time within which to appeal started on March 10. It was paused on March 14, so four days had elapsed, leaving three days to file an appeal once the order is lifted. If the time recommences on May 14, the seventh day would fall on Saturday, April 16. By law, that deadline carries over to Monday, May 18.

EXAMPLE 3 – A dispossessory is served on a tenant on March 16, after the Order was entered. The time to answer does not begin until May 15.

EXAMPLE 4 – A judgment is entered on March 16, after the Order was entered. The time to appeal does not begin until May 15.

Here's my math for Examples 3 and 4 – when figuring out time periods, the first day is not counted, but the last day is counted. Since the time to answer did not commence until the stay was lifted, the first day (May 14) is not counted. Therefore, start counting on May 15.