

## **A Guide to Resources Available to Property Owners and Renters Under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)**

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In response to the looming economic crisis created by the novel coronavirus, Congress quickly assembled an omnibus relief package for American businesses and consumers. Named the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Bill infused the American economy with more than two trillion Dollars in various stimulus programs. One program included in the Act provides protections for renters who have become unemployed, lost wages, or are under financial strain due to the coronavirus. The Act further provides relief for property owners of federally funded housing or federally backed mortgages. With the Oklahoma Courts set to resume operations on May 18, 2020, the housing provisions of the CARES Act are certain to have a profound impact on thousands of Oklahomans. If you are a renter or a homeowner facing financial insecurity, or if you have clients who are at risk of losing their homes due to the coronavirus, this article will provide a brief overview of the housing relief for properties covered under the Act.

As a prefatory note, the forms of housing relief included in the CARES Act are policies directed at easing the financial burden of the pandemic placed on renters and property owners.<sup>1</sup> Perhaps the most salient provisions of the Act's housing relief are the moratoria on evictions and foreclosures for covered properties. At its most basic, the eviction moratorium prohibits landlords of properties covered under the Act from initiating eviction proceedings, including providing notice to the renter to vacate the property, for 120 days, which will expire on July 25, 2020; between the 120-day stay on eviction proceedings and a mandatory 30-day notice to quit requirement, the Act effectively bars most evictions until at least August 23, 2020.<sup>2</sup> Likewise, the Act provides a shorter moratorium on foreclosures, which is set to expire on May 17; however, property owners covered by the Act may also request a forbearance on mortgage repayment for up to 180 days.<sup>3</sup> In short, while CARES Act did not specifically carve out money for renters or property owners, the moratoria will nevertheless provide protection to millions of Americans at risk of losing their homes due to financial insecurity.

There are four main sections within the Act that provide assistance for renters and property owners, which are as follows:

- Credit Reporting During COVID-19 (Section 4021);
- Foreclosure Moratorium and Consumer Right to Request Forbearance (Section 4022);

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<sup>1</sup> CARES Act, H.R. 748, 116th Cong. § 4021-24 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/748/text?loclr=bloglaw> (last visited May 12, 2020).

<sup>2</sup> *Id.* at § 4024.

<sup>3</sup> *Id.* at § 4022.

- Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans (Section 4023); and
- Temporary Moratorium on Eviction Filings (Section 4024).

Descriptions of these policies and the properties they cover are spelled out in further detail below:

### **Credit Reporting During COVID-19:**

Section 4021 of the CARES Act places new requirements on credit reporting companies during the COVID-19 pandemic.<sup>4</sup> As outlined by the Consumer Financial Protection Bureau (CFPB), these requirements are to protect consumers from being reported as delinquent if they choose to take advantage of payment accommodations afforded by lenders during the crisis.<sup>5</sup> In regards to these requirements and to the consumer accommodations they apply to, the CFPB states as follows:

“If your account is current and you make an agreement to make a partial payment, skip a payment, or other accommodation, then the creditor is to report to credit reporting companies that you are current on your loan or account. This applies only if you are meeting the terms of the agreement. If your account is already delinquent and you make an agreement, then your account will maintain that status during the agreement until you bring the account current. If your account is already delinquent and you make an agreement, and you bring your account current, the creditor must report that you are current on your loan or account.”<sup>6</sup>

These accommodations include any such “agreement to defer one or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer who is affected by the coronavirus.”<sup>7</sup> These new credit reporting requirements will last 120 days past March 27<sup>th</sup>, 2020 or 120 days after Congress declares the Coronavirus crisis over.<sup>8</sup>

### **Foreclosure Moratorium and Consumer Right to Request Forbearance:**

As mentioned earlier, Section 4022 of the CARES Act places a moratorium on foreclosures and grants borrowers of federally backed mortgage loans the right to request forbearance, regardless of their delinquency status.<sup>9</sup> These provisions apply primarily to single-family

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<sup>4</sup> *Id.* at § 4021.

<sup>5</sup> Liane Fiano, *Protecting your credit during the coronavirus pandemic*, Consumer Financial Protection Bureau (April 6, 2020), <https://www.consumerfinance.gov/about-us/blog/protecting-your-credit-during-coronavirus-pandemic/> (last visited May 12, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> H.R. 748 at § 4021.

<sup>8</sup> Liane Fiano, *supra* note 5.

<sup>9</sup> H.R. 748 at § 4022.

properties and housing.<sup>10</sup> In regard to the moratorium on foreclosures, the CARES Act states in Section 4022 (c)(2) that “except with respect to a vacant or abandoned property, a servicer of a Federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020.”<sup>11</sup> Consequently, foreclosures on federally backed loans are barred by the CARES Act until after May 17<sup>th</sup>, 2020.

Section 4022 (b) provides that a forbearance may be requested regardless of delinquency status.<sup>12</sup> This forbearance may last up to 180 days with the option that it “may be extended for an additional period of up to 180 days at the request of the borrower, provided that, the borrower’s request for an extension is made during the covered period.”<sup>13</sup> No fees, penalties, or interest “beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full” may be applied during the forbearance.<sup>14</sup> Thus, Section 4022 (b) provides up to one year of security for borrowers—regardless of delinquency status.

It is important to note that the relief provided under the CARES Act thus far only applies to federally backed loans. However, the National Housing Law Project (NHLP) found that roughly 70% of outstanding mortgage loans in the U.S. are federally owned or federally backed, including Rural Development Single Family Housing Direct Home Loans. Accordingly, upwards of 70% of borrowers may be eligible for forbearance and the panoply of property owner protections under the CARES Act.<sup>15</sup>

### **Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans:**

Section 4023 of the CARES Act extends forbearance protections to owners of a rental property that is comprised of 5 or more residential units—or, as they are termed under the Act, “multifamily” properties.<sup>16</sup> Specifically, Section 4023 provides that a multifamily borrower who is current on their payments as of February 1<sup>st</sup>, 2020 may request a forbearance of 30 days under the Act, and may extend the forbearance for “up to 2 additional 30 day periods upon the request of the borrower provided that, the borrower’s request for an extension is made during the covered period, and, at least 15 days prior to the end of the forbearance period.”<sup>17</sup> The duration of the forbearance for multifamily borrowers, 30 days, is significantly shorter than the duration of the 180 day forbearance allotted to single family borrowers.<sup>18</sup> This distinction is important to keep in mind when determining applicable avenues of financial relief to loan payments under the CARES Act.

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<sup>10</sup> *Foreclosure Protection and Mortgage Payment Relief for Homeowners*, National Housing Law Project (April 10, 2020), <https://www.nhlp.org/wp-content/uploads/2020.04.10-NHLP-Homeowner-Relief-Info-Sheet-Update2.pdf> (last visited May 12, 2020).

<sup>11</sup> H.R. 748 at § 4022.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> National Housing Law Project, *supra* note 10,

<sup>16</sup> H.R. 748 at § 4023.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

Multifamily borrowers who receive a forbearance under the act may not evict persons on the multifamily property or charge penalties, late fees, or other charges for the late payment of rent during the duration of the forbearance.<sup>19</sup> Furthermore, they cannot issue a notice to vacate the premises to tenants until after the duration of the forbearance and may not evict the tenant until after 30 days' notice of the order to vacate.<sup>20</sup> These eviction and order to vacate requirements are buttressed by the additional provisions of the moratorium on evictions enacted under Section 4024 of the CARES Act.<sup>21</sup> The provisions of Section 4024 are outlined below.

### **Temporary Moratorium on Eviction Filings:**

Section 4024 of the CARES Act places a temporary moratorium on eviction filings and proceedings during the COVID-19 crisis.<sup>22</sup> As stated at the beginning of this article, this provision is perhaps the most significant for families at risk of losing their homes during the pandemic. This moratorium applies to covered dwellings occupied by tenants pursuant to a residential lease and covered properties backed by federally backed mortgage loans or federally backed multifamily mortgage loans.<sup>23</sup> This moratorium also applies to dwellings as designated by Section 802 and 803(b) of the Fair Housing Act under 43 U.S.C. 3602-03.<sup>24</sup> Covered properties participating in the Violence Against Women Act under 34 U.S.C. 12491(a) or that are participating in a Housing Act of 1949 rural housing voucher program under 42 U.S.C. 1490r are also included.<sup>25</sup>

A report by the Congressional Research Service from April 7<sup>th</sup>, 2020 summarizes the provisions of the Section 4024 Eviction Moratorium of the CARES Act relating to lessors and lessees of covered dwellings as follows:

CARES Act Section 4024(b) prohibits landlords of certain rental 'covered dwellings' from initiating eviction proceedings or "charg[ing] fees, penalties, or other charges" against a tenant for the nonpayment of rent. These protections extend for 120 days from enactment (March 27, 2020). Section 4024(c) requires landlords of the same properties to provide tenants at least 30 days-notice before they must vacate the property. It also bars those landlords from issuing a notice to vacate during the 120-day period. In contrast to the eviction and late fee protections of Section 4024(b), which are expressly limited to nonpayment, Section 4024(c) does not expressly tie the notice to vacate requirement to a particular cause. Thus, Section 4024(c) arguably prohibits landlords from being able to force a tenant to vacate a covered dwelling for nonpayment or any

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> H.R. 748 at § 4023-24.

<sup>22</sup> H.R. 748 at § 4024.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

other reason until August 23, 2020 (i.e., 120 days after enactment, plus 30 days after notice is provided).<sup>26</sup>

Consequently, Section 4024 of the CARES Act protects tenants from eviction for non-payment or other conduct during the 120 day of the moratorium as provided by the Act, plus 30 days' notice.<sup>27</sup> The CARES Act does not absolve tenants of their responsibility to pay rent—it merely prevents their eviction for non-payment during the 120 day moratorium.<sup>28</sup> Furthermore, while Section 4024 prevents the initiation of eviction proceedings during the moratorium, it “does not prohibit filing of cases that: a) that were filed before the moratorium took effect or that are filed after it sunsets; b) that involve non-covered tenancies (see below); or c) where the eviction is based on another reason besides nonpayment of rent or nonpayment of other fees or charges.”<sup>29</sup>

This provision of the Act touches on one of the most heavily trafficked dockets in courthouses across Oklahoma. If you are a renter, landlord, or attorney advising a party to an eviction proceeding, it is possible that the eviction is subject to the moratorium and further restrictions. If you are unsure whether your property is covered, the National Low Income Housing Coalition has compiled a database of all properties subject to the moratorium. The database can be found at <https://nlihc.org/federal-moratoriums>.<sup>30</sup> There, you can search under city or zip code and can be viewed as a database or a map. If you are a renter or a landlord and find your property listed on this website, then you should speak with an attorney who specializes in landlord-tenant practice to inquire about your rights and obligations under the CARES Act.

## **The Paycheck Protection Program and Property Management Entities**

The above outlined provisions of the CARES Act are the sections of the legislation targeted directly at property owners and renters in order to ease the financial impact inflicted upon them by the COVID-19 pandemic. But what about direct financial relief to property owners or property management companies? Section 1102 of the CARES Act institutes the Paycheck Protection Program (PPP), which provides loans to small businesses in order to allow them to continue paying employees during the coronavirus crisis.<sup>31</sup> Understandably, many landlords and property management companies were interested in applying for the PPP in order to ease their financial burdens imposed by the economic fallout of the pandemic.<sup>32</sup> However, the Small Business Administration (SBA) issued its interim final rule on the businesses eligible to apply for the PPP

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<sup>26</sup> Congressional Research Service, CARES Act Eviction Moratorium, CRS Insight at 1 (April 7, 2020), <https://crsreports.congress.gov/product/pdf/IN/IN11320> (last visited May 12, 2020).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Summary and Analysis of Federal CARES Act Eviction Moratorium*, National Housing Law Project (April 28, 2020), <https://www.nhlp.org/wp-content/uploads/2020.03.27-NHLP-CARES-Act-Eviction-Moratorium-Summary.pdf> (last visited March 13, 2020).

<sup>30</sup> Multifamily Properties Subject to Federal Eviction Moratoriums, National Low Income Housing Coalition (2020), <https://nlihc.org/federal-moratoriums> (last visited May 14, 2020).

<sup>31</sup> H.R. 748 at § 1102.

<sup>32</sup> Robert Finkel, *SBA Rules Carve Out Passive Real Estate Activities From PPP Eligibility*, JDSupra (April 14, 2020), <https://www.jdsupra.com/legalnews/sba-rules-carve-out-passive-real-estate-79306/> (last visited May 13, 2020).

in 13 C.F.R. 120 on April 15<sup>th</sup>, 2020.<sup>33</sup> The final rule deems “passive companies” ineligible to receive funds under the PPP.<sup>34</sup> Passive companies for the purposes of the SBA are defined under 13 C.F.R. 120.110(c) which states that “passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds.” Consequently, landlords and developers who only passively use their property assets or lease them to others are not eligible to receive loans under the PPP. However, 13 C.F.R. 120.111 carves out exceptions to the 120.110 under “eligible passive businesses.”<sup>35</sup> This exception is outlined in 13 C.F.R. 120.111 as follows:

“An Eligible Passive Company must use loan proceeds to acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing), that it leases to one or more Operating Companies for conducting the Operating Company’s business . . . Any ownership structure or legal form may qualify as an Eligible Passive Company.”<sup>36</sup>

Further conditions are elaborated on in the SBA’s Standard Operating Procedure Manual 50 10 5(F), but are summarized into the following points: the property owner and the operating company must both be classified as eligible small business and 100% of the eligible passive company’s real property must be leased; the lease held by the eligible passive company must be equal or greater to the term of the loan; the eligible passive company cannot make a profit from the lease payments made by the eligible operating company; and the eligible operating company must be a co-borrower or guarantor on the loan.<sup>37</sup>

Consequently, funds from the PPP are not available to typical passive landlords or property management companies under the CARES Act or the SBA’s interim final rule as defined by 13 C.F.R. 120.110.<sup>38</sup> However, PPP loans can be obtained by eligible passive companies as outlined by 13 C.F.R. 120.111.<sup>39</sup>

## Conclusion

The avenues of relief described above for individuals and businesses impacted by the COVID-19 pandemic are those currently available under the legislation congress has passed in response to the crisis. Sections 4021-4024 of the CARES Act are primarily focused on forbearing payments related to property and preventing evictions during the pandemic, thus easing the

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<sup>33</sup> 13 C.F.R. § 120 (2020), [https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule\\_0.pdf](https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule_0.pdf) (last visited May 13, 2020).

<sup>34</sup> *Id.* at § 120.110.

<sup>35</sup> *Id.* at § 120.111.

<sup>36</sup> *Id.*

<sup>37</sup> U.S. Small Business Administration Office of Financial Assistance, FOP 50 10 5(F): Lender and Development Company Loan Program at 104-06 (Jan. 1, 2014), <https://www.sba.gov/sites/default/files/Clean%20FINAL%20SOP%2050%2010%205%20%28F%29.pdf> (last visited May 13, 2020).

<sup>38</sup> 13 C.F.R. § 120.110.

<sup>39</sup> *Id.* at § 120.111.

financial burden levied on individuals by loan payments and housing insecurity.<sup>40</sup> The PPP, meanwhile, does furnish applicants with immediate funds through small business loans, but the availability of those loans is limited to entities who are not passive companies under 13 C.F.R. 120.110, or to those who are considered eligible passive businesses under 13 C.F.R. 120.111.<sup>41</sup> Consequently, little is available to renters and property owners by way of direct funds from the federal government and clients should be advised that relief under the CARES Act will primarily be afforded to them by way of deferred payments or suspended eviction. The regulatory landscape of the COVID-19 constantly changing, however, and on May 13<sup>th</sup>, 2020 the House of Representatives unveiled their next proposed relief package, the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act).<sup>42</sup> It is unclear what provisions of the HEROES Act will ultimately be enacted into law after it has been reviewed by the Senate, but attorneys will need to stay abreast of these changes in order to effectively advise their clients through the financial insecurity imposed by the COVID-19 pandemic.

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<sup>40</sup> H.R. 748 at § 4021-24.

<sup>41</sup> 13 C.F.R. § 120.110-111 (2020).

<sup>42</sup> HEROES Act, H.R. 6800, 116th Cong. (2020), <https://docs.house.gov/billsthisweek/20200511/BILLS-116hr6800ih.pdf> (last visited May 13, 2020).