

# NORTH CAROLINA **PRO BONO** RESOURCE CENTER

## COVID-19 Landlord/Tenant Fact Sheet

Thank you to Courtney C. Shytle, McGuireWoods LLP, for preparing this material.

If you cannot pay your rent during this crisis, don't panic. You should contact your landlord to discuss your situation calmly and honestly and try to work out an affordable repayment schedule. If that is not possible, or your landlord threatens to evict you, then you have certain rights as a tenant, including additional protections recently enacted by the North Carolina Supreme Court in response to the COVID-19 pandemic.

To evict you, North Carolina law requires your landlord to take you to court. Your landlord cannot use self-help measures such as changing the locks or terminating the utilities to force you from your home.

1. You can only be evicted by the Sheriff's Office, and only after the Court has entered a judgment against you and the Clerk issues a Writ of Possession.
2. In most cases, your landlord must either give you some advance notice to terminate your lease or make a demand for your past-due rent before starting the eviction process.
3. To begin an eviction proceeding, your landlord must file a Magistrate's Summons and a Complaint in Summary Ejectment with the Clerk of Court.
4. Your landlord must then serve you with the Summons and Complaint by paying the Sheriff's Office or a process server to deliver it to you personally; mail it by registered or certified mail, return receipt requested or by signature confirmation; or mail it by a certified delivery service such as Fed Ex or UPS. ***Your landlord cannot personally deliver the Summons and Complaint to you.***
5. The Magistrate's Summons will notify you of your court date. You will have an opportunity to appear and contest the eviction. There are several ways to defend against an eviction in Court, including if your landlord fails to give you proper notice, fails to properly serve you, begins the eviction process too soon, has accepted some rent from you, or failed to keep the property fit and habitable by making necessary repairs.

Normally, the eviction process takes approximately three weeks.

On May 30, the Chief Justice of the Supreme Court of North Carolina issued Emergency Directives 17, 18 and 19 related to evictions of tenants during the COVID-19 pandemic.

Emergency Directive 17 extends the moratorium on all evictions pending in the trial divisions until June 21, 2020. Sheriffs shall not be required to execute pending ejection orders entered until June 30, 2020.

Emergency Directive 18 provides that for all eviction proceedings filed on or after March 27, 2020, no eviction order shall be issued unless a finding is made that the property is not a covered property under

the CARES Act. A “covered dwelling” under the CARES Act are rental units in properties: (1) that participate in federal assistance programs, (2) are subject to a “federally backed mortgage loan,” or (3) are subject to a “federally backed multifamily mortgage loan.”

Emergency Directive 19 establishes a voluntary mediation program for eviction actions. The rules governing this program and the date of implementation have not yet been set and remain pending.

On March 27, 2020, Congress passed the CARES Act in response to the COVID-19 pandemic. 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) or until Saturday, July 25, 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 other reason* until August 23, 2020 (i.e., 120 days after enactment, plus 30 days after notice is provided).

Critical limitations to the CARES Act legislation:

(1) The CARES Act’s eviction protections only apply to “covered dwellings,” which are rental units in properties: (1) that participate in federal assistance programs, (2) are subject to a “federally backed mortgage loan,” or (3) are subject to a “federally backed multifamily mortgage loan.” Covered federal assistance programs include most rental assistance and housing grant programs, including public housing, Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, rural housing programs, and the Low Income Housing Tax Credit (LIHTC) program. A “federally backed mortgage loan” is a single-family (1-4 units) residential mortgage owned or securitized by Fannie Mae or Freddie Mac or insured, guaranteed, or otherwise assisted by the federal government. The term includes mortgages insured by the Federal Housing Administration and the Department of Veterans Affairs, and the Department of Agriculture’s direct and guaranteed loans.

(2) Section 4024(b)’s and (c)’s protections do not absolve tenants of their legal responsibilities to pay rent. Tenants who do not pay rent during the eviction grace period may still face financial and legal liabilities, including eviction, after the moratorium ends.

(3) As noted above, it is not clear whether the CARES Act moratorium applies to evictions for non-payment of rent only, or for any reason otherwise covered.

As the eviction process is time-consuming and costly, your landlord probably wants to avoid having to evict you. Do not ignore telephone calls or be hostile. Instead, if you are satisfied with your living conditions, then you should contact your landlord and try to negotiate to repay and stay.

Note: Under the law and the COVID-19 orders, the tricky issue is the enforcement of eviction orders entered prior to the moratorium on filing deadlines. Under the law, the Sheriff’s office is required to execute writs of possession within five days. The latest order gives the Sheriff the discretion to not enforce writs until June 1 and still comply with the law. Although it extends the five-day requirement, it

Updated June 8, 2020

COVID-19 Landlord Tenant Fact Sheet 2

does not prohibit a sheriff's office from enforcing the eviction. As a result, at the moment, the execution of those writs varies from county to county, and you should check with your local Sheriff's Department if you are awaiting the execution of a writ issued prior to March 15.