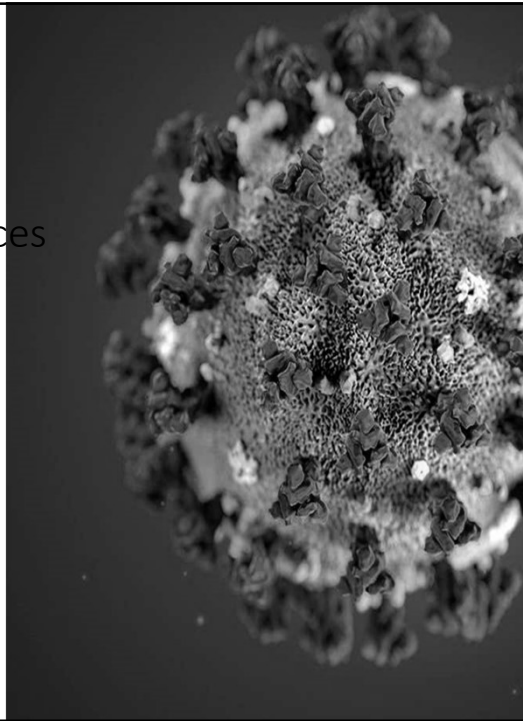


# CARES Act: Update and Best Practices

July 30, 2020

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Where are we  
under the CARES  
ACT?

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## Is the Moratorium Over?

- The CARES Act went into effect on March 27.
- It prohibited the filing of an eviction suit:
  - based on non-payment of rent or other fees and charges
  - for the properties covered by the Act
  - for 120 days from the effective date of the Act.

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## Is the Moratorium Over?

- The 120<sup>th</sup> day after the effective date (counting March 27 as the first day) was:  
July 24!
- So the moratorium is over, right?
- Not quite!

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## Notice to Vacate!

- The Act says NO notices to vacate may be issued for any of the properties covered by the Act for evictions based on non-payment of rent or other fees or charges **until after the 120-day period expires!**
  - This means the first day a notice to vacate could be served was **July 25!**
  - And it has to be for **30 days!**

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So the First Day an  
Eviction Case May be Filed is . . .

- **August 25, 2020!**
  - 30 days after July 25 is August 24.
  - Landlord must wait until notice to vacate period runs out before filing the eviction suit.

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When Does  
the 30-Day  
NTV  
Requirement  
Expire?

- It doesn't!
  - So if the landlord waits until August 15 to serve a notice to vacate, he may not file the eviction suit until Sept. 15.
- But remember: this only applies to properties covered by the CARES Act (explained below).

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What Cases Were  
Subject to the Moratorium?

- Eviction suits based upon non-payment of rent or other fees or charges (e.g. utility payments or parking fees).
  - But during the 120-day moratorium period the landlord may not charge the tenant fees, penalties or other charges related to non-payment of rent.

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### What Cases Were Subject to the Moratorium?

- The moratorium did not apply to eviction suits:
  - Based on grounds other than non-payment of rent or other fees or charges;
  - Filed before March 27; or
  - That are not for properties covered by the Act.

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### What Cases Were Subject to the Moratorium?

- The moratorium also applies to a borrower of a federally backed multifamily mortgage loan who has received “forbearance” assistance – meaning he won’t be foreclosed upon.
- But while he is under forbearance he may not evict a tenant from a covered property for nonpayment of rent or other fees or charges.
  - This is still in effect; it did not end on July 24.

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One Issue Has  
Come Up  
Concerning  
the 30-Day  
NTV  
Requirement

- Does it apply to ALL evictions for any covered property?
  - For example, the tenant has a pet.
- Or does it only apply to evictions for nonpayment of rent and other fees and charges?
- CARES Act is not entirely clear.
  - HUD says only for nonpayment evictions.
  - TJCTC has followed HUD position.

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What  
Properties Are  
Covered?

- The Act applies **if** the property or tenant receives any federal assistance or the property has a federally-backed mortgage.
- This includes all federally subsidized housing programs including:
  - public housing
  - project-based Section 8 housing
  - Section 8 Housing Choice Vouchers
  - Low Income Housing Tax Credit (LIHTC) properties and
  - the rural voucher program.

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## What Properties Are Covered?

- It also includes all properties with federally-backed mortgages (such as HUD, VA, FHA, USDA, Fannie Mae or Freddie Mac) including properties:
  - with loans that were made in whole or in part, insured guaranteed, supplemented, or assisted in any way by the federal government, and
  - that were purchased or securitized by Fannie Mae or Freddie Mac.

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## How Do You Know Whether a Property is Covered by the Act?

- **The plaintiff must include a sworn statement in their petition (or amend the petition after filing) stating whether or not:**

- the premises is a “covered” dwelling;
- the plaintiff is a “multifamily borrower” under forbearance of a federal mortgage; and
- the plaintiff has provided the defendant with 30 days’ notice to vacate.

-- Twentieth Emergency Order (July 21, 2020)

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## How Do You Know Whether a Property is Covered by the Act?

- The Texas Supreme Court has stated:

**"A judge continues to have the authority under Texas Rule of Civil Procedure 500.6 to develop the facts of the case, including whether or not the premises is a 'covered dwelling' and the plaintiff is a 'multifamily borrower' under forbearance . . . ."**

-- Twentieth Emergency Order (July 21, 2020)

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Sworn  
Statement by  
Plaintiff

- Best practice is to provide the plaintiff with an affidavit to submit to the court regarding coverage of the CARES Act.

- Here is the Affidavit (available on the TJCTC website at <https://www.tjctc.org/coronavirus> > Determining if an Eviction Case is Subject to Federal Moratorium):

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CAUSE NO. \_\_\_\_\_

PLAINTIFF \_\_\_\_\_

v. \_\_\_\_\_

DEFENDANT \_\_\_\_\_

§ IN THE JUSTICE COURT

§

§ PRECINCT NO. \_\_\_\_\_

§

§ \_\_\_\_\_ COUNTY, TEXAS

§

**VERIFICATION OF COMPLIANCE**  
**WITH SECTIONS 4023 AND 4024 OF THE CARES ACT**

My name is: \_\_\_\_\_

First Middle Last

I am (check one) ☐ the Plaintiff or ☐ an authorized agent of the Plaintiff in the eviction case described at the top of this page. I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

**1. Verification:**

a. Plaintiff is seeking to recover possession of the following property:

Name of Apartment Complex (if any) \_\_\_\_\_

Street Address & Unit No. (if any) \_\_\_\_\_ City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

b. I verify that this property (select the one that applies): ☐ is ☐ is not a "covered dwelling" as defined by Section 4024(a)(1) of the CARES Act. The facts on which I base my conclusion are as follows:  
(Please identify whether the property has a federally backed mortgage loan or federally backed multifamily mortgage loan, and if not, which database or information you have used to determine that fact.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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(If the property does not have a federally backed mortgage loan or federally backed multifamily mortgage loan, please state whether or not: (1) the property is a Low Income Housing Tax Credit (LIHTC) property; (2) the property is federally subsidized under any HUD program; or (3) the property leases to persons with Section 8 vouchers.)

\_\_\_\_\_

c. I verify that plaintiff (select the one that applies): ☐ is ☐ is not a "multifamily borrower" currently under forbearance under Section 4023 of the CARES Act.

d. I verify that plaintiff (select the one that applies):  
☐ has provided the defendant with 30 days' notice to vacate as required under Section 4024(c) and 4023(e) of the CARES Act.  
☐ has not provided the 30 days' notice, because the property is not a "covered dwelling."

**2. Declaration or Notary:** Complete only one of the two following sections:

a. **Declaration:** I declare under penalty of perjury that everything in this verification is true and correct. My name is \_\_\_\_\_

My birthdate is: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month Day Year

My address is: \_\_\_\_\_

Street Address & Unit No. (if any) \_\_\_\_\_ City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Signed on \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ in \_\_\_\_\_ County, Texas.  
Month Day Year

OR

**b. Notary:** I declare under penalty of perjury that everything in this verification is true and correct

Your Printed Name \_\_\_\_\_ Your Signature (sign only before a notary) \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CLERK OF THE COURT OR NOTARY \_\_\_\_\_

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## How do Landlords Know if the Property is Covered?

- They should know whether it has a federally-backed mortgage or financing.
- They can go to the TDCHA website and click on "HTC Property Inventory (XLSX)" under Additional Guidance and Resources to search a database to determine if their property is subject to the LIHTC restrictions, and they can go to a separate website to check their property against a multi-family housing database.
  - Both websites may be linked from the TJCTC website.

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## Remote Hearings

- Courts must continue to hold hearings remotely via Zoom or telephone unless the parties and court are unable to do so.
- In person hearings may only be held consistent with the Mandatory Operating Plan and OCA Guidance.

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## Jury Trials

- **No jury trials until after Sept. 1, 2020.**

-- Eighteenth Emergency Order  
(June 29, 2020)

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## Helpful Resources

- TJCTC Coronavirus webpage at <https://www.tjctc.org/coronavirus>
- Practical Guide to the Supreme Court of Texas's 18<sup>th</sup> Emergency Order, available at TJCTC or OCA webpage (<https://www.txcourts.gov/oca/>)
- OCA Guidance Regarding Handling Court Cases, available at TJCTC or OCA webpage.
- Livestream Bench Card, available at TJCTC or OCA webpage.

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- The deadlines and terms of the Emergency Orders may change!

Check the TJCTC coronavirus webpage frequently for updates!  
[www.tjctc.org/coronavirus](http://www.tjctc.org/coronavirus)

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**THANK YOU!**

**STAY SAFE!**

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