

## FAQ

Are all evictions banned?

The complicated answer is it is uncertain.

On Wednesday (March 18), President Donald Trump announced a new measure to protect tenants and homeowners, suspending all eviction and foreclosure action for non-payment of rent or fees for properties owned by the Department of Housing and Urban Development. HUD has asked for this to apply to Section 8 recipients, but Congress would have to pass that measure.

On March 25th, to keep renters in multifamily properties in their home and to support multifamily property owners during the coronavirus national emergency, the Federal Housing Finance Agency (FHFA) is announcing that Fannie Mae and Freddie Mac (the Enterprises) will offer multifamily property owners mortgage forbearance with the condition that they suspend all evictions for renters unable to pay rent due to the impact of coronavirus. The eviction suspensions are in place for the entire duration of time that a property owner remains in forbearance. The forbearance is available to all multifamily properties with an Enterprise-backed performing multifamily mortgage negatively affected by the coronavirus national emergency.

<https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Moves-to-Provide-Eviction-Suspension-Relief-for-Renters-in-Multifamily-Properties.aspx>

On March 27th The Ohio Supreme Court issued a tolling order. Click here to read the complete FAQ on that order. The most pressing of the Q&A are the below:

Q: WHAT IMPACT DOES THE PROPOSED FEDERAL CARES ACT HAVE ON EVICTION ACTIONS?

A: As currently proposed, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act would prevent some landlords that accept federal aid from bringing legal causes of action to recover possession from a tenant for nonpayment of rent or other fees or charges for 120 days if the dwelling is a property insured, guaranteed, supplemented, protected, or assisted in any way by the U.S. Department of Housing, Fannie Mae, Freddie Mac, the rural housing voucher program or the Violence Against Women Act of 1994.

Courts should consider the possible application of the CARES Act in eviction proceedings.

Q: WHAT IS THE EFFECT OF AM. SUB. H.B. 197 AND THE SUPREME COURT'S ORDER ON EVICTION ACTIONS?

A: There are two key provisions in the legislation and Supreme Court order:

(1) Section 22(A)(10) of Am. Sub. H.B. 197 tolls any "criminal, civil, or administrative time limitation under the Revised Code" (emphasis added) that is set to expire between March 9, 2020 and July 30, 2020.

(2) The Supreme Court's order tolls any "time requirements imposed by the rules of the [Supreme] Court" (emphasis added) set to expire during this same timeframe. However, in cases that require immediate attention, the Court's order still allows a local court to issue orders requiring filing in

accordance with existing rules and setting a specific schedule, which would supersede the rule-based tolling provisions of the Supreme Court's order.

However, these orders would not supersede the General Assembly's tolling of statutory timelines.

Nothing in the legislation or the Supreme Court's order prevents the filing of an eviction action during the emergency period. In deciding whether an eviction action should proceed, the court must consider Am. Sub. H.B. 197 and the potential application of the proposed federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act). In deciding whether to issue a scheduling order, the court should consider all relevant factors and circumstances, to include the reason for the eviction action; the orders and recommendations of the Ohio Dept. of Health and local health department, such as stay-at-home orders; social distancing and the court's ability to conform such as with the use of technology; and any other reason made known to the court.

Q: DOES THE SUPREME COURT OF OHIO'S (What's the rest of the question?)

The concern accompanying the federal ban is that local judges will take this as a directive of sorts and follow suit, not permitting evictions in the area for some limited amount of time.

Discussion amongst the group was the consequence of evicting someone during the height of the crisis, specifically if the eviction is COVID related. Two opinions were presented. Some owners are being proactive to reach out to residents to ask them to contact the management if they were concerned about being able to meet rent obligations. Both the NAA statement and the sample email correspondence are available on the GCNKAA website.

Others were adopting a policy to wait until the resident contacts them to work out a solution and possible payment plan. Many plan to point their residents to the many resources available for those out of work. These resources are also available on the GCNKAA website.

Most recommendations from those on the call were to continue to file evictions, specifically non-COVID evictions so that if courts close when they re-open, your case will be first in the queue.

In Kentucky, the Governor and Supreme Court of Kentucky ordered no new eviction proceedings until April 10.

Please note: Local jurisdictions have also issued their own orders or guidance. For example, several local judges Middletown and Hamilton Municipal have also banned the filing of evictions.

As importantly, the concern accompanying the federal ban and subsequent state orders is that local judges will take this as a directive of sorts and follow suit, not permitting evictions in the area for some limited amount of time.

Can the Association provide "guidance" documents on policies that owners and managers can follow for a variety of issues?

If the Association sets the "guidance," it could set a precedent used to measure the actions of all during this crisis. Everyone would need to follow it. As each company should have their own attorneys for specific legal questions, we are trying to make suggestions that are locally reflective of city standards.

### Late Fees and Payment Plans:

NAA and Blue Moon have developed policies and documents to help our members work with their residents. You can access those on the NAA website at <https://www.naahq.org/coronavirus-guidance/payment-plan-agreement-and-notice-temporary-waiver-late-fees>

General guidance from NAA is as follows:

1. Notice of Temporary Waiver of Late Fees
  - o Allows operators to waive late fees incurred by residents who, as a result of COVID-19, are experiencing loss of wages, unemployment, or medical expenses.
2. Payment Plan Agreement (COVID-19 Pandemic)
  - o Allows a resident who, as a result of COVID-19, is experiencing loss of wages, unemployment, or medical expenses to pay rent and other sums at a later date.

Are we to keep operations running and employees working during the time for non-essential businesses to close?

Housing is generally considered an essential business. Certainly, maintenance dealing with health and safety issues is essential.

The delay of non-essential maintenance should follow the guidelines from the CDC.

You can find guidance here <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>.

### Pest Control

As some pest control issues will include roach and bed bug treatment, it may fall under a health issue. Check with your local health department, but if both the resident and vendor are willing moving forward, be sure to follow social distancing and CDC guidelines.

### Maintenance

As stated above, non-essential maintenance needs to be delayed until the CDC changes their guidelines. Stay updated on these changes by visiting the CDC site or at <https://www.gcnkaa.org/coronavirus-guidelines.html>.

You may want to issue a specific statement to residents informing them of your policies during the COVID crisis. You may also want to develop an "Essential Maintenance" Work Order Request form, outlining general considerations of what you believe to be essential and allowing them to then submit the work order request for review.

## Allowing Vendors onto properties during COVID-19

Limiting vendor access to the property is prudent. Those who provide essential services relating to health and safety issues will obviously need to be accommodated.

Property owners and landlords should stay in constant contact with vendors who provide building services, including maintenance, sanitation, and security. Ask vendor companies about their disease management measures and their plans and ability to provide services in the event of personnel shortages. You will also want to ask for their statement of how they are following CDC guidelines while providing their services.

## Working with your Maintenance Employees

Some members have asked if they should ask their maintenance technicians if they are high risk so they can remove them from work order duties in units. Under several federal and state laws, this would be a violation of privacy and possibly, depending upon how approached, violate HIPAA laws.

You should, however, have an open-door policy for workers to feel comfortable talking with you about their concerns and any health issues they have that may make them more susceptible.

## Closing Amenities and Services on Property

Under most government directives, gyms of any kind have been closed. CDC guidelines limiting no more than 10 people in an area, and requiring social distancing would also mean closing most club houses, coffee bars, and the like.

Laundry rooms, as they could be considered a service to protect health, should remain open. However, consider signage explaining social distancing and limiting the area to no more than 10 people at one time.