

**A Webinar presented by the  
Louisiana State Bar Association and  
Lafayette Bar Association**

*CURRENT AS OF JBE-59-2020 (March 16 to June 5, 2020)*

*“I CAN’T HEAR AN EVICTION UNTIL  
WHEN!”*

**TRAVERSING THE MAZE OF COVID-19  
EVICTION STAYS AND MORATORIUMS**

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**EVICCTIONS DURING THE COVID-19 QUARANTINE PERIOD**  
**March 16, 2020 (Governor’s order suspending legal deadlines) to August 24, 2020**  
**(expiration of required 30 day notice for covered properties under the CARES Act)**

Updated May 16, 2020

**Question: What state and federal laws, orders, and mandates, affect evictions during Covid-19?**

- a. Gov. John Bel Edwards Proclamation Number JBE 2020-30 - March 16, 2020 (available at <https://gov.louisiana.gov/assets/Proclamations/2020/modified/30-JBE-2020-Public-Health-Emergency-COVID-19.pdf>); extended to May 15, 2020 by Proclamation Number JBE 2020-52 – April 30, 2020 (available at <https://gov.louisiana.gov/assets/Proclamations/2020/modified/52-JBE-2020-State-of-Emergency-COVID-19-Extension-to-May-15.pdf>), now extended to June 5, 2020 by Proclamation Number JBE 2020-59 - May 14, 2020 (available at <https://gov.louisiana.gov/assets/Proclamations/2020/58-JBE-2020.pdf>).
  - Suspends all legal and administrative deadlines under the Civil Code and Code of Civil Procedure, which would include La. Civ. Code 2728, La. Code Civ. P. art. 4701, and La. Code Civ. P. art. 4732 *et seq.*)
  
- b. LA Supreme Court Order of March 16, 2020 (available at [https://www.lasc.org/COVID19/Orders/2020-03-16\\_LASCOrder.pdf](https://www.lasc.org/COVID19/Orders/2020-03-16_LASCOrder.pdf)); modified by LASC Order of April 6, 2020 (available at [https://www.lasc.org/COVID19/Orders/2020-04-06\\_LASC\\_ORDER.pdf](https://www.lasc.org/COVID19/Orders/2020-04-06_LASC_ORDER.pdf)) and extended until May 18, 2020 by LASC Order of April 29, 2020 (available at [https://www.lasc.org/COVID19/Orders/2020-04-29\\_LASC\\_ORDER.pdf](https://www.lasc.org/COVID19/Orders/2020-04-29_LASC_ORDER.pdf)); further extended until June 5, 2020 by LASC Order of May 15, 2020 (available at [https://www.lasc.org/COVID19/Orders/2020-05-15\\_LASC\\_Order.pdf](https://www.lasc.org/COVID19/Orders/2020-05-15_LASC_Order.pdf)).
  - Continuing/Prohibiting all jury trials and evictions, but allowing most other in-person court proceedings.
  
- c. Coronavirus Aid, Relief, and Economic Security (“CARES”) Act signed March 27, 2020, PL 116-136 (with possible extensions, expires July 25, 2020) (full text available at <https://www.congress.gov/bill/116th-congress/house-bill/748/text#toc-H3A5541A869FA42ABB1BC52330D24DDFA>)
  - §4024(b) Moratorium on evictions for nonpayment of rent, fees, or other charges from Covered Properties from March 27 through July 25, 2020)
  - §4024(c) Prohibits notices to vacate from March 27 through July 25, 2020 and then, landlord must give new 30-day notice after July 25. Note, §4024(c) is silent as to whether this notice prohibition and 30-day notice requirement applies to evictions for cause other than nonpayment of rent. This is an issue to be determined by the trial court.

- §4023(d) Prohibits evictions during forbearance period from multifamily properties with federally backed mortgages that received forbearance.
  - Covered Properties are:
    - a. Properties with federally subsidized mortgage (Single or Multifamily);
    - b. Federally subsidized properties (participates in VAWA-covered housing program or rural housing voucher program)
- d. State eviction laws
- Code Civ. P. art. 4701 (5-day notice);
  - Code Civ. P. art. 4732 (delay for hearing until third day after service);
  - Code Civ. P. art. 4733 (24 hours for warrant)
  - Civ. Code art. 2728 (notice for nonrenewal)
  - Code Civ. P. 5059 (Periods under 7 days exclude holidays and weekends)
- e. Public housing grievance procedures
- 24 C.F.R. §§ 966.4; 966.54; 966.56
  - PHA Admissions and Continued Occupancy Policy (ACOP)
- f. Considerations under the Bankruptcy Code

**Question: What properties are covered by the Governor John Bel Edwards' March 16, 2020 Order and/or the federal CARES Act?**

- a. All properties are subject to the suspension of legal deadlines in Gov. John Bel Edwards' Executive Order of March 16, 2020, as extended. This order expires on June 5, 2020 unless extended.
- b. The CARES Act moratorium applies to the following federally subsidized housing and properties with federally backed mortgages:
  - Properties that participate in the Section 8 ("Housing Choice Voucher") program
  - Properties that participate in the US Dept. of Agriculture Rural Housing Voucher program
  - HUD-subsidized multifamily properties like Section 8 or public housing.
  - USDA-subsidized multifamily properties
  - Properties that receive Low-Income Housing Tax Credits
  - Properties with a mortgage made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way by the federal government, including an FHA-insured mortgage, a mortgage purchased/owned by Fannie Mae/Freddie Mac, or a mortgage made, guaranteed or insured by the Department of Veterans Affairs (VA);

Department of Agriculture (USDA); or Department of Housing and Urban Development (HUD).

**Question: What evictions are barred by the federal CARES Act for covered properties? (see CARES Act bench card and PowerPoint in materials)**

- a. Applicable provisions
  - §4024(b) Evictions for nonpayment of rent, fees, or other charges are barred from March 27, 2020 through July 25, 2020
  - §4024(b) Late fees are barred from March 27, 2020 through July 25, 2020
  - §4024(c) After July 25, 2020, a 30 day notice to vacate is required; 30 day notice cannot be issued before July 25.
    - i. Note: Unlike §4024(b), §4024(c) is silent as to whether this notice prohibition and 30-day notice requirement applies to evictions for cause other than nonpayment of rent. This is an issue to be determined by the trial court.
  - §4023(d) Multifamily properties with federally backed mortgages cannot evict for nonpayment of rent, fees, or other charges during the forbearance period, or charge late fees.
  
- g. Evictions that can proceed when courts reopen (see Cheat Sheet)
  - Eviction filed prior to March 27, 2020
    - i. Regardless of mortgage or subsidized rental
    - ii. Possible 4024(C) issue
  - Evictions from properties with no mortgage (owned free and clear)/no subsidized rental
  - Evictions from properties with non-federally backed mortgage/no subsidized rental
  
- h. Evictions that may be covered and require CARES Act analysis (see Cheat Sheet)
  - Properties with federally-backed mortgage
  - Properties with rental subsidy

**Question: How does the Governor's order suspending legal deadlines affect the timing of Notices to Vacate, service and scheduling of hearings on Rules for Possession, and execution of warrants/writs of possession?**

- a. As of now, all legal deadlines suspended from March 16, 2020 until June 5, 2020, regardless of Cares Act;

- b. First business day after expiration is June 8, 2020.
- c. If Governor/LASC orders are not extended after June 5, 2020, then following must be considered:
  - La. Code Civ. P. art. 4701: 5-day notice period, if not waived (if notice period suspended by Governor's order, it begins again on June 8 wherever it left off and must run before eviction can be filed)
  - La. Civ. Code art. 2728: Notice of nonrenewal (if notice period suspended by Governor's order, it begins again on June 6 wherever it left off and must run before eviction can be filed)
  - La. Code Civ. P. art. 4732: 3<sup>rd</sup> day after service notice of hearing period (if notice period suspended by Governor's order, it begins again on June 8 wherever it left off and must run before eviction can be filed)
  - La. Code Civ. P. art. 4733: 24-hour warrant period (if notice period suspended by Governor's order, it begins again on June 8 wherever it left off and must run before eviction can be filed)
  - Note: Under Code Civ. P. 5059, legal time periods under 7 days exclude holidays and weekends

**Question: What other issues must the Court consider in adjudicating evictions during the Covid-19 crisis?**

- a. Burden of proof re: CARES Act coverage.
- b. Can Court raise CARES Act coverage on its own?
  - i. Art. 202. Judicial notice of legal matters. A. Mandatory. A court, whether requested to do so or not, shall take judicial notice of the laws of the United States, of every state, territory, and other jurisdiction of the United States, and of the ordinances enacted by any political subdivision within the court's territorial jurisdiction whenever certified copies of the ordinances have been filed with the clerk of that court.
- c. Lack of time for discovery; problem that tenant cannot access all information needed to defend themselves (ex. whether property receives federal subsidy if tenant is unsubsidized, and whether single family property has Fannie/Freddie mortgage).
- d. Ownership issues (proper party): i.e. purchase, inheritance papers and/or mortgage information.
- e. Many evictions are filed by property managers; can they answer 4022 & 4023 and 4024 questions?
- f. For evictions filed during moratorium, must court determine that the non-renewal is not motivated by non-payment of rent, fees, or other charges?
- g. Lease provisions including 5-day notice waiver, cease and desist/right to cure clauses.
- h. Was rent collected or default cured during the suspension period? Acceptance of rent or cure of default may vitiate prior cause and eviction process. If landlord originally filed before March 27 and must now re-file, eviction would now be subject to CARES Act moratorium.
- i. Was owner granted a forbearance?

- j. If applicable, have all grievance protocols and/or all Violence Against Women Act (VAWA) protections or state domestic violence eviction restrictions (LRS 9:3261.1) become final? See Addendum 4 (Grievance Protocols) or Addendum 5 (VAWA Protections) for more information.

**Question: How can you tell if a property is a covered property under the CARES Act §4024?**

- a. This information may be recorded in public land records or appear in the original mortgage or closing documents.
- b. Anyone can access the following:**
- The National Low Income Housing Coalition’s database of covered multifamily properties: <https://www.nlihc.org/federal-moratoriums>. (Note: This database does not cover single-family properties with 1-4 units and does not reflect *all* multifamily properties with Fannie Mae and Freddie Mac mortgages).
  - Databases to determine whether a multifamily property has a Fannie Mae or Freddie Mac mortgage on resources released by the Federal Housing Finance Agency. (Note: These tools do not cover single-family properties with 1-4 units).
    - Fannie Mae: <https://www.knowyouroptions.com/rentersresourcefinder>
    - Freddie Mac: <https://myhome.freddiemac.com/renting/lookup.html>
- c. The National Housing Preservation Database of multifamily properties with certain federal subsidies: <https://preservationdatabase.org/>.
- d. Landlords can:**
- Call the FHA, VA, USDA, Fannie Mae, or Freddie Mac escalation number to inquire as to the status of their mortgage:  
<https://www.hmpadmin.com/portal/resources/advisors/escalation.jsp>.
  - Look up if Fannie Mae or Freddie Mac owns their mortgage at:
    - <https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>
    - Fannie Mae: <https://www.knowyouroptions.com/loanlookup>
    - Freddie Mac: <https://ww3.freddiemac.com/loanlookup/>

**EVICTIONS DURING THE COVID-19 QUARANTINE PERIOD  
March 16, 2020 to August 24, 2020**

**CARES ACT AND LOUISIANA STATE MORATORIUM FLOW CHART**

**CARES Act + LA State Moratorium Timing “Cheat Sheet”**

Is leased property CARES Act “covered property”?	What is the reason for eviction?	When was notice given or was notice waived?	When was the Rule for Possession filed?	When is the earliest day eviction hearing can be scheduled?	Explanation and citations  <b>Key:</b> Federal CARES Act considerations State law considerations
No. Then, CARES Act moratorium does not apply and eviction can be filed and hearing scheduled with the following timing considerations:	Nonpayment of rent, fees, or other charges  OR  Other reason	Proper notice given and notice period satisfied before filing Rule for Possession  OR  Notice waived in lease	RFP filed on or <u>before</u> March 16 BUT hearing was not held before March 16 Governor’s order  RFP = Petition for Eviction	<b>June 10, 2020</b> (if service of new hearing date made on or before June 5)	CARES Act PL 116-136 §4024 moratorium only applies to “covered properties.”  Regardless of whether RFP with hearing date was served previously, a new RFP must be served because the hearing must be reset. La. CCP 4732 states that the hearing may not be held sooner than the third day after service. La. CCP 5059(b)(3) excludes legal holidays in computation of time if the time period in the law is less than 7 days, so the “third day after service” would exclude weekends and holidays.  Governor’s Proclamation JBE 2020-30 §5 suspended legal deadlines on March 16, and JBE 2020-59 extended the suspension to June 5, so the three days cannot begin to run until the first day after June 5 excluding holidays, or June 8. The third day is June 10.
No. Then, CARES Act moratorium does not apply and eviction can be filed and hearing scheduled with the following timing considerations:	Nonpayment of rent, fees, or other charges  OR  Other reason	5 Day Notice given <u>before</u> March 16 Governor’s moratorium*  *Caution: Check lease for “cease and desist” or “cure” clause that requires additional notice	RFP <u>not</u> filed before March 16 Governor’s order	Depends on when 5-Day Notice was given.  5 Day Notice given before March 6 and court accepted filing and completed service during moratorium: First day 3-day notice of hearing period under La. CCP 4732 can begin to run is June 8 (first legal day after June 5). First day hearing can be scheduled is <b>June 10</b>	CARES Act PL 116-136 §4024 moratorium only applies to “covered properties.”  5-Day Notice required under La. CCP 4701 does not include weekends and holidays. La. CCP 5059(b)(3) excludes legal holidays in computation of time if the time period in the law is less than 7 days.  Governor’s Proclamation JBE 2020-30 §5 suspended legal deadlines on March 16, and JBE 2020-59 extended the suspension to June 5, so all or

				<p>5 Day Notice given March 6, 7 or 8: First day RFP can be filed and served is June 8; First day hearing can be scheduled is <b>June 10</b></p> <p>5 Day Notice given on March 9: First day RFP can be filed and served is June 9; First day hearing can be scheduled is <b>June 11</b></p> <p>5 Day Notice given on March 10: First day RFP can be filed and served is June 10. First day hearing can be scheduled is <b>June 12 (Friday)</b></p> <p>5 Day Notice given on March 11: First day RFP can be filed and served is June 11. First day hearing can be scheduled is <b>June 15 (Monday)</b> ... and so on</p>	<p>a portion of 5 day notice period was suspended on that day and begins to run again on June 8.</p> <p>La. CCP 4732 states that the hearing may not be held sooner than the third day after service. La. CCP 5059(b)(3) excludes legal holidays in computation of time if the time period in the law is less than 7 days, so the “third day after service” would exclude weekends and holidays.</p>
No. Then. CARES Act moratorium does not apply and eviction can be filed and hearing scheduled with the following timing considerations:	Lease nonrenewal	Proper notice given and notice period completed before filing RFP. (Appropriate notice period is either provided in the lease or determined by Civil Code art. 2728)	RFP filed <u>before</u> March 16 BUT hearing not held before March 16 Governor’s order	<p><b>June 10</b> (if new hearing date is served on or before June 5)*</p> <p>*Caution: if rent has been accepted prior to hearing, then the lease is reinstated and new notice must be given and process starts anew.</p>	<p>CARES Act PL 116-136 §4024 moratorium only applies to “covered properties.”</p> <p>Regardless of whether RFP with hearing date was served previously, a new RFP must be served because the hearing must be reset. La. CCP 4732 states that the hearing may not be held sooner than the third day after service. La. CCP 5059(b)(3) excludes legal holidays in computation of time if the time period in the law is less than 7 days, so the “third day after service” would exclude weekends and holidays.</p> <p>Governor’s Proclamation JBE 2020-30 §5 suspended legal deadlines on March 16, and JBE 2020-59 extended the suspension to June 5, so the three days cannot begin to run until the first day after June 5 excluding holidays, so June 8. The third day is June 10.</p>
No. Then, CARES Act moratorium does not apply and eviction can be filed and hearing scheduled with the	Lease nonrenewal	Notice period not complete before March 16 and may be	RFP <u>not</u> filed before March 16 Governor’s order	<p>RFP can be filed after the expiration of the appropriate notice period.*</p> <p>For example, if 15 calendar days were left on notice period when legal deadlines</p>	<p>CARES Act PL 116-136 §4024 does not cover properties that are not “covered properties.”</p> <p>Governor’s Proclamation JBE 2020-30 §5 suspended legal deadlines on March 16, and JBE 2020-59 extended the suspension to June 5, so any</p>



<p>following timing considerations:</p>		<p>interrupted on March 16 by Governor’s suspension of legal deadlines. (Appropriate notice period is either provided in the lease or determined by Civil Code art. 2728)</p>		<p>suspended on March 16, that period begins to run again on June 6, and expires June 20. The First day the RFP can be filed is June 22, and the first day a hearing can be held is June 24.</p> <p>*Caution: If rent has been accepted prior to hearing the lease is reinstated and new notice must be given and process starts anew.</p>	<p>notice period under the Civil Code was suspended on that day and begins to run again on June 8. The notice period for nonrenewal is inclusive of legal holidays because it is more than 7 days, so weekends count.</p> <p>La. CCP 4732 states that the hearing may not be held sooner than the third day after service. La. CCP 5059(b)(3) excludes legal holidays in computation of time if the time period in the law is less than 7 days, so the “third day after service” would exclude weekends and holidays.</p>
<p>Yes. The property is a “covered property” but the moratorium only applies if the RFP was filed after March 27, 2020.</p>	<p>Nonpayment of rent, fees, or other charges OR Other reason</p>	<p>Proper notice given and notice period completed on or before filing RFP OR Notice waived in lease</p>	<p>RFP was <u>filed before</u> March 27.</p>	<p><b>June 10</b> (if new hearing date is served on or before June 5)</p>	<p>CARES Act PL 116-136 §4024 does not cover evictions filed before March 27.</p> <p>La. CCP 4732 states that the hearing may not be held sooner than the third day after service.</p> <p>La. CCP 5059(b)(3) excludes legal holidays in computation of time if the time period in the law is less than 7 days, so the “third day after service” would exclude weekends and holidays.</p> <p>Governor’s Proclamation JBE 2020-30 §5 suspended legal deadlines on March 16, and JBE 2020-59 extended the suspension to June 5, so the three days cannot begin to run until the first day after June 5 excluding holidays, so June 8. The third day is June 10.</p>
<p>Yes. The property is a “covered property” and the moratorium applies since the RFP was filed after March 27, 2020.</p>	<p>Nonpayment of rent, fees, or other charges</p>	<p>When notice given/whether notice waived immaterial</p>	<p>RFP was <u>not</u> filed before March 27.</p>	<p><b>August 28</b> (if RFP filed and service made on August 25)</p>	<p>CARES Act PL 116-136 §4024(b)(1) prohibits the filing of evictions for nonpayment of rent, fees, or other charges for 120 days from March 27, or until July 25.</p>

					<p>Regardless of whether prior notice was given, if the RFP was not filed before March 27 the CARES Act moratorium applies. Therefore landlord must give <i>new</i> 30 day notice after July 25 under CARES Act PL 116-136 §4024(c), which means the first day the eviction can be filed is August 25.</p> <p>La. CCP 4732 states that the hearing may not be held sooner than the third day after service.</p> <p>La. CCP 5059(b)(3) excludes legal holidays in computation of time if the time period in the law is less than 7 days, so the “third day after service” would exclude weekends and holidays.</p>
<p>Yes. The property is a “covered property” but the moratorium only applies if the RFP was filed after March 27, 2020.</p>	<p>Other reason</p> <p>*If the reason is nonrenewal for no cause, Court must determine that the nonrenewal is not motivated by nonpayment of rent, fees, or other charges under the CARES Act</p>	<p>Notice to vacate given and complete before March 16, 2020</p> <p>OR</p> <p>Notice waived in lease</p>	<p>Date of RFP filing immaterial</p>	<p>Depends on when 5 Day Notice was given.</p> <p>5 Day Notice given on or before March 8 and court accepted filing and completed service during moratorium: First day 3-day notice of hearing period under La. CCP 4732 can begin to run is June 8. First day hearing can be scheduled is <b>June 10</b>.</p> <p>5 Day Notice given on March 9: First day RFP can be filed and served is June 9; First day hearing can be scheduled is <b>June 11</b></p> <p>5 Day Notice given on March 10: First day RFP can be filed and served is June 10. First day hearing can be scheduled is <b>June 12</b> (Friday)</p> <p>5 Day Notice given on March 11: First day RFP can be filed and served is June 11. First day hearing can be scheduled is June 15 (Monday)</p>	<p>CARES Act considerations for evictions NOT based on nonpayment of rent, fees, or other charges: CARES Act PL 116-136 §4024(c) prohibits notices to vacate from date of enactment, or March 27, through July 25, 2020. Therefore if the notice to vacate was given before March 27, or if there is a waiver of notice, the eviction would not be subject to the moratorium or affected by the §4024(c) notice to vacate prohibition.</p> <p>5 Day Notice required under La. CCP 4701 does not include weekends and holidays. La. CCP 5059(b)(3) excludes legal holidays in computation of time if the time period in the law is less than 7 days.</p> <p>Governor’s Proclamation JBE 2020-30 §5 suspended legal deadlines on March 16, and JBE 2020-59 extended the suspension to June 5, so any 5 day notice period was suspended on that day and begins to run again on June 8.</p> <p>La. CCP 4732 states that the hearing may not be held sooner than the third day after service. La. CCP 5059(b)(3) excludes legal holidays in computation of time if the time period in the law is less than 7 days, so the “third day after service” would exclude weekends and holidays</p>

				... and so on through March 26.	
<p>Yes. The property is a covered property; however, the court must consider whether the grounds are subject to the moratorium or not.</p>	<p>Other reason</p> <p>*If the reason is nonrenewal for no cause, Court must determine that the nonrenewal is not motivated by nonpayment of rent, fees, or other charges under the CARES Act</p>	<p>Notice to vacate given on OR after March 27, 2020</p> <p>AND</p> <p>with or without waiver of notice</p>	<p>Date of RFP filing immaterial</p>	<p>CARES Act PL 116-136 §4024(c) prohibits notices to vacate from March 27 through July 25, 2020 and then, landlord must give new 30-day notice after July 25. §4024(c) is silent as to whether this notice prohibition and 30 day notice requirement applies to evictions for cause other than nonpayment of rent.</p> <p><b>If the court finds that §4024(c) applies,</b> then the first day the eviction can be filed is August 25 and a hearing set for <b>August 28</b>.</p> <p><b>If the court finds that §4024(c) does not apply,</b> then the eviction can be filed after the completion of any remaining notice to vacate period under La. CCP 4701 (keeping in mind the notice period was suspended from March 16 until June 5), and heard after the 3-day notice of hearing period under La. CCP 4732.</p>	<p>CARES Act PL 116-136 §4024(c) prohibits notices to vacate from March 27 through July 25, 2020 and then, landlord must give new 30-day notice after July 25. §4024(c) is silent as to whether this notice prohibition and 30 day notice requirement applies to evictions for cause other than nonpayment of rent.</p> <p>La. CCP 4732 states that the hearing may not be held sooner than the third day after service.</p> <p>La. CCP 5059(b)(3) excludes legal holidays in computation of time if the time period in the law is less than 7 days, so the “third day after service” would exclude weekends and holidays.</p>

# Federal Coronavirus Aid, Relief, & Economic Security (“CARES”) Act § 4024 Eviction Moratorium

Judicial Bench Card for Louisiana Judges for Evictions Filed Between March 27, 2020 & July 25, 2020

NOTE: The CARES Act does not apply to evictions filed before March 27, 2020 and reset due to state moratoriums.

Excerpt from “CARES” Act, Public Law 116-136

Effective Date: March 27, 2020

## §4024. TEMPORARY MORATORIUM ON EVICTION FILINGS.

(a) DEFINITIONS. —In this section:

(1) COVERED DWELLING. —The term “covered dwelling” means a dwelling that—

(A) is occupied by a tenant—

- (i) pursuant to a residential lease; or
- (ii) without a lease or with a lease terminable under State law; and

(B) is on or in a covered property.

(2) COVERED PROPERTY. —The term “covered property” means any property that—

(A) participates in—

- (i) a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 ([34 U.S.C. 12491\(a\)](#))); or
- (ii) the rural housing voucher program under section 542 of the Housing Act of 1949 ([42 U.S.C. 1490r](#)); or

(B) has a—

- (i) Federally backed mortgage loan; or
- (ii) Federally backed multifamily mortgage loan.

(3) DWELLING. —The term “dwelling”—

(A) has the meaning given the term in section 802 of the Fair Housing Act ([42 U.S.C. 3602](#)); and

(B) includes houses and dwellings described in section 803(b) of such Act ([42 U.S.C. 3603\(b\)](#)).

(4) FEDERALLY BACKED MORTGAGE LOAN. —The term “Federally backed mortgage loan” includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(5) FEDERALLY BACKED MULTIFAMILY MORTGAGE LOAN. —The term “Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) MORATORIUM. —During the 120-day period beginning on the date of enactment of this Act,\* the lessor of a covered dwelling may not—

- (1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or
- (2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

(c) NOTICE. —The lessor of a covered dwelling unit—

- (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
- (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection b.

\*From March 27, 2020 through July 25, 2020

### Potential Resources to Determine if the Property is a “COVERED PROPERTY”

- This information may be recorded in public land records or appear in the original mortgage or closing documents.
- Anyone can access the following:
  - The National Low Income Housing Coalition’s database of covered multifamily properties: <https://www.nlihc.org/federal-moratoriums>. (Note: This database does not cover single-family properties with 1-4 units and does not reflect *all* multifamily properties with Fannie Mae and Freddie Mac mortgages).
  - Databases to determine whether a multifamily property has a Fannie Mae or Freddie Mac mortgage on resources released by the Federal Housing Finance Agency. (Note: These tools do not cover single-family properties with 1-4 units).
    - Fannie Mae: <https://www.knowyouroptions.com/rentersresourcefinder>
    - Freddie Mac: <https://myhome.freddie.com/renting/lookup.html>
  - The National Housing Preservation Database of multifamily properties with certain federal subsidies: <https://preservationdatabase.org/>.
- Landlords can:
  - Call the FHA, VA, USDA, Fannie Mae, or Freddie Mac escalation number to inquire as to the status of their mortgage: <https://www.hmpadmin.com/portal/resources/advisors/escalation.jsp>.
  - Look up if Fannie Mae or Freddie Mac own their mortgage at:
    - <https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>
    - Fannie Mae: <https://www.knowyouroptions.com/loanlookup>
    - Freddie Mac: <https://ww3.freddie.com/loanlookup/>

**Federal Coronavirus Aid, Relief, & Economic Security (“CARES”) Act § 4024 Eviction Moratorium**  
Judicial Bench Card for Louisiana Judges for Evictions Filed Between March 27, 2020 & July 25, 2020

**DOES THE “CARES” ACT EVICTION MORATORIUM APPLY TO THIS PROCEEDING?**

**Section A.**

**Is it a Covered Dwelling?** See CARES Act §4024(a)(1).

1. Does the tenant occupy the property?
2. Is the occupancy pursuant to a written lease agreement or other lease “terminable by State Law” (including an oral lease under Louisiana Civ. Code art. 2681)?

If “YES” to any of Section A, then go to Section B. If “NO,” then the eviction may proceed as normal.

**Section B.**

**Is the dwelling located in a Covered Property?** See CARES Act §4024(a)(1).

1. Does the property “participate in” a subsidy program covered by the Violence Against Women Act, or “VAWA” (34 U.S. Code § 12491(a)(3)), or “participate in” the Section 542 Rural Housing Voucher program?

*Questions to ask landlord under oath:*

- Do you have *any* tenant at this property who uses a Section 8 Housing Choice Voucher (“HCV”), a VASH (HUD-Veterans Affairs), or a Rural Housing voucher?
- Does the property contain *any* Section 8 Project-Based Voucher (PBV) units?
- Does the property contain *any* Public Housing units?
- Does the property contain *any* HOME (HOME Investment Partnership) units?
- Does the property contain *any* HOPWA (Housing Opportunities for Persons with AIDS) units?
- Does the property have *any* Permanent Supportive Housing (PSH) units, or any tenants that use a PSH or Shelter Plus Care voucher?
- Does the property have *any* federal Low Income Housing Tax Credit (LIHTC or “tax credit”) units?
- Does the property receive a project-based subsidy through HUD?
- Does the property receive a project-based subsidy through the U.S. Department of Agriculture?

*Questions to ask tenant under oath:*

- Do you receive government assistance to pay you rent? Through what program?
- Do you recertify your income every year with your landlord or housing authority?

**OR**

2. Does the property have a federally backed single family (1-4 units) or multifamily mortgage?

*Questions to ask landlord under oath:*

- Does the property have a mortgage insured by the FHA? Where did you obtain this information?
- Does the property have a mortgage guaranteed, provided by, or insured by HUD, the Department of Veterans Affairs (VA), or Department of Agriculture (USDA)? Where did you obtain this information?
- Is the mortgage owned by Fannie Mae or Freddie Mac? Where did you obtain this information?

If “YES” to any of Section B, then go to Section C. If “NO,” then the eviction may proceed as normal.

**Section C.**

**Under the CARES Act §§ 4024(b)-(c), a landlord of a covered dwelling in a covered property may not:**

1. File an eviction for nonpayment of rent, fees, or other charges between March 27, 2020 and July 25, 2020; \*\*
2. Give a notice to vacate between March 27, 2020 and July 25, 2020; \*\*\* and
3. Charge late fees for late rent that accrues during the period of time from March 27, 2020 through July 25, 2020.

\*\* Under the CARES Act §4023, landlords with federally-backed multifamily mortgages have access to forbearance for up to 90 days. If a qualifying landlord chooses forbearance, an eviction for nonpayment of rent may not be filed during the forbearance period. See §4023(d).

\*\*\* CARES Act §4024(c) is silent as to whether eviction prohibition and 30 day notice requirement applies to evictions for cause other than non-payment of rent. If the court finds that §4024(c) applies, then the first day the eviction can be filed is August 25 and a hearing set for August 28. If the court finds that §4024(c) does not apply, then the eviction can be filed after the completion of any remaining notice to vacate period (may have been suspended).

**Resources for Landlords**

- The CARES Act § 4022 provides for 180 days of forbearance for landlords with federally-backed single-family (1-4 unit) mortgages, with the option to extend for another 180 days. Servicers of these mortgages are prohibited from initiating foreclosure proceedings for not less than the 60 day period beginning March 18, 2020 under § 4022(c)(2).
- The CARES Act § 4023 provides for 30 days of forbearance for landlords with federally-backed multifamily (5+ unit) mortgages who were current on payments as of February 1, 2020, with the option to extend for two additional 30 day periods.
- The Small Business Association (SBA) “Paycheck Protection Program” loan program may provide relief to landlords with management and maintenance staff: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.
- Detailed FAQ for property owners on foreclosure protections in Louisiana can be found at: [https://slls.org/covid\\_foreclosure\\_prevention/](https://slls.org/covid_foreclosure_prevention/).
- The Consumer Financial Protection Bureau provides COVID-19-related mortgage relief options: <https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/>.
- The National Consumer Law Center provides COVID -19-related consumer protections at: <https://www.nclc.org/special-projects/covid-19-consumer-protections.html>.
- Locate a HUD-approved housing counseling agency at: <https://www.consumerfinance.gov/find-a-housing-counselor/>.
- Information for how homeowners can avoid a COVID -19-related scam: <https://www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Pages/Coronavirus-Fraud-Prevention.aspx>.

# The CARES Act and Evictions: An Overview

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# What is the CARES Act?

- Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, otherwise known as federal stimulus law
- Passed on March 27, 2020
- Public Law 116-136
- Full text available at <https://www.congress.gov/bill/116th-congress/house-bill/748>

# How does the CARES Act affect evictions?

- § 4024 Temporary moratorium on evictions for “covered properties”
- § 4023(d) Moratorium on evictions for multifamily properties with federally-backed mortgages in forbearance



# CARES Act § 4024- What properties are covered?

§4024 (a) (1) COVERED DWELLING. —The term “covered dwelling” means a dwelling that

(A) is occupied by a tenant—

(i) pursuant to a residential lease; or

(ii) without a lease or with a lease terminable under State law\*; and

\* would include oral or month-to-month lease under Louisiana Civ. Code art. 2681

(B) is on or in a covered property.

# CARES Act § 4024- What properties are covered?

§4024(a)(2) COVERED PROPERTY. —The term “covered property” means any property that—

(A) participates in—

(i) a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a))); or

(ii) the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r); or

(B) has a—

(i) Federally backed mortgage loan; or

(ii) Federally backed multifamily mortgage loan.

# CARES Act § 4024- What properties are covered?

Because the language is “any property that participates in” NOT “any tenant that participates in,” the plain language suggests that all tenants at the property are protected, not just those with subsidies.

# Violence Against Women Act (VAWA) covered housing programs

## Department of Housing and Urban Development (HUD)

- Public housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f)
- Section 8 project-based housing (42 U.S.C. § 1437f)
- Section 202 housing for the elderly (12 U.S.C. § 1701q)
- Section 811 housing for people with disabilities (42 U.S.C. § 8013)
- Section 236 multifamily rental housing (12 U.S.C. § 1715z-1)
- Section 221(d)(3) Below Market Interest Rate (BMIR) housing (12 U.S.C. § 17151(d))
- HOME (42 U.S.C. § 12741 et seq.)
- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.)
- McKinney-Vento Act homelessness programs (42 U.S.C. § 11360, et seq.) (Permanent Supportive Housing, Shelter + Care)

# Violence Against Women Act (VAWA) covered housing programs

## Department of Agriculture (USDA)

- Section 515 Rural Rental Housing (42 U.S.C. § 1485)
- Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)
- Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)
- Section 538 multifamily rental housing (42 U.S.C. § 1490p-2)

# Violence Against Women Act (VAWA) covered housing programs

## Department of Treasury

- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)

# Rural housing voucher program

The evictions moratorium also extends to “the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r).” Sec. 4024(a)(2)(A)(ii). The separate inclusion of this program was necessary because the Rural Housing Voucher Program was omitted from the covered housing programs in the 2013 VAWA reauthorization statute.

# Federally-backed mortgage

- Single family (1-4 units) or multifamily (5+ units)
- Loan “made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by [HUD] or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.”



# Federally-backed mortgage

- FHA mortgage
- Other HUD mortgage
- USDA mortgage
- VA mortgage
- Mortgage purchased or owned by Fannie Mae or Freddie Mac

# Moratorium on evictions

§4024 (b) MORATORIUM. —During the 120-day period\* beginning on the date of enactment of this Act, the lessor of a covered dwelling may not—

(1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or

(2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

§4024 (c) NOTICE. —The lessor of a covered dwelling unit—

(1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and

(2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection b.

\* March 27, 2020 – July 25, 2020

# Issue for Judges to decide

- §4024 (b) prohibits only eviction filings for nonpayment of rent, fees, and other charges
- §4024 (c) is silent as to whether notices to vacate are prohibited where the reason for eviction is something other than nonpayment (does not contain limiting language as in §4024(b))

If §4024 (c) is interpreted to bar notices to vacate for any reason from March 27 through July 25, then most evictions from covered properties will be barred unless there is a waiver of notice, or notice was issued prior to March 27.

If §4024 (c) is interpreted to bar notices to vacate only for nonpayment, then evictions for reasons other than nonpayment can be filed before July 25 after any applicable notice period has run (noting that all notice periods suspended from March 16 until June 5 by the Governor's order).

# Resources to find out if property is “covered property”

- This information may be recorded in public land records or appear in the original mortgage or closing documents.
- Anyone can access the following:
  - The National Low Income Housing Coalition’s database of covered multifamily properties: <https://www.nlihc.org/federal-moratoriums>. (Note: This database does not cover single-family properties with 1-4 units and does not reflect *all* multifamily properties with Fannie Mae and Freddie Mac mortgages).
  - Databases to determine whether a multifamily property has a Fannie Mae or Freddie Mac mortgage on resources released by the Federal Housing Finance Agency. (Note: These tools do not cover single-family properties with 1-4 units).
    - Fannie Mae: <https://www.knowyouroptions.com/rentersresourcefinder>
    - Freddie Mac: <https://myhome.freddie.com/renting/lookup.html>
  - The National Housing Preservation Database of multifamily properties with certain federal subsidies: <https://preservationdatabase.org/>. (Note: Not exhaustive).

# Resources to find out if property is “covered property”

Landlords can:

- Call the FHA, VA, USDA, Fannie Mae, or Freddie Mac escalation number to inquire as to the status of their mortgage:  
<https://www.hmpadmin.com/portal/resources/advisors/escalation.jsp>.
- Look up if Fannie Mae or Freddie Mac own their mortgage at:
  - <https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>
  - Fannie Mae: <https://www.knowyouroptions.com/loanlookup>
  - Freddie Mac: <https://ww3.freddiemac.com/loanlookup/>

Note: Tenants of single family dwellings (1-4 units) do not typically have access to information about their landlord’s mortgage that is not publicly recorded. Nor do unsubsidized tenants have access to information about whether their landlord participates in a covered subsidy program that is not project-based.

# CARES Act §4023(d)

- Many properties with federally-backed multifamily mortgages are eligible for forbearance for up to 90 days under §4023
- During the forbearance period, tenants are protected from eviction
- Depending when the forbearance period begins, this period could, in theory, extend beyond July 25, 2020, thereby extending renter protection beyond date in §4024.

# CARES Act §4023(d)

(d) Renter Protections During Forbearance Period.—A multifamily borrower that receives a forbearance under this section may not, for the duration of the forbearance—

(1) evict or initiate the eviction of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges; or

(2) charge any late fees, penalties, or other charges to a tenant described in paragraph (1) for late payment of rent.

(e) Notice.—A multifamily borrower that receives a forbearance under this section—

(1) may not require a tenant to vacate a dwelling unit located in or on the applicable property before the date that is 30 days after the date on which the borrower provides the tenant with a notice to vacate; and

(2) may not issue a notice to vacate under paragraph (1) until after the expiration of the forbearance.

# Questions on this presentation?

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\_\_\_\_\_ COURT

FOR THE PARISH OF \_\_\_\_\_

STATE OF LOUISIANA

Case # \_\_\_\_\_

\_\_\_\_\_  
Plaintiff (Landlord)

v.

\_\_\_\_\_  
Defendant (Tenant)

**SWORN VERIFICATION OF NON-COVERAGE UNDER § 4023(d) and § 4024 OF THE  
CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (“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.

I am seeking to recover possession of the following property:

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

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

**Note: Providing false information on this affidavit is perjury punishable by fine or imprisonment. La. R.S. 14:123.**

I verify that this property 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 based on the following:

**Federally-Backed Mortgage**

\_\_\_\_\_ I have verified that my mortgage is not owned by Fannie Mae or Freddie Mac and have attached verification from the following sites:

<https://www.knowyouroptions.com/loanlookup> (Fannie Mae)

<https://ww3.freddie.com/loanlookup/> (Freddie Mac)

*Note: Verification MUST be attached*

\_\_\_\_\_ I have verified that my mortgage is not insured by the Federal Housing Administration:  
*(Please identify which database or the other information you have used to determine that your mortgage is not insured by the FHA.)*

\_\_\_\_\_  
*Form continues on next page.*

\_\_\_\_\_ I have verified that my mortgage is not “insured, guaranteed, supplemented, or assisted in any way” by the U.S. Department of Housing and Urban Development (“HUD”), the Veterans Administration (“VA”), or the U.S. Department of Agriculture (“USDA”):

*(Please identify which database or the other information you have used to determine that your mortgage is not federally-backed.)*

\_\_\_\_\_ Multifamily properties only (5 or more units):

\_\_\_\_\_ I have searched for my property in the following non-exhaustive database and my property does not appear in the database as a property covered by the CARES Act:

<https://nlihc.org/federal-moratoriums>

\_\_\_\_\_ I have not been granted a forbearance and am not currently in the forbearance period.

**Participation in Federal Subsidy Program**

\_\_\_\_\_ My property does not receive Low Income Housing Tax Credits (“LIHTC”)

\_\_\_\_\_ My property does not lease to anyone with Section 8 vouchers, VASH (VA) vouchers, or U.S. Department of Agriculture Rural Housing vouchers

\_\_\_\_\_ My property is not federally subsidized by HUD or the USDA

Examples of HUD and USDA federal subsidy programs:

U.S. Department of Housing and Urban Development (“HUD”):

- Public housing
- Section 8 project-based housing
- Section 202 housing for the elderly
- Section 811 housing for people with disabilities
- Section 236 multifamily rental housing
- Section 221(d)(3) Below Market Interest Rate housing
- HOME Investment Partnerships Program
- Housing Opportunities for Persons with AIDS (“HOPWA”)
- McKinney-Vento Act homelessness programs including Permanent Supportive Housing and Shelter + Care

U.S. Department of Agriculture (“USDA”):

- Section 515 Rural Rental Housing
- Section 514 and 516 Farm Labor Housing
- Section 533 Housing Preservation Grants
- Section 538 multifamily rental housing

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Date

**SWORN AND SUBSCRIBED BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.**

\_\_\_\_\_  
Notary Public

Name:

Notary ID #:

## GRIEVANCE PROTOCOL

### **I. General<sup>1</sup>.**

- Residents are encouraged to bring to the attention of HANO or its Agents any issues which they feel adversely affect their tenancy.
- Every effort shall be made to resolve differences orally prior to initiation of Grievance Proceedings.

### **II. Instances where Grievance Proceedings are not required.**

- If requested more than ten (10) days of the action or failure to act of which the resident is disputing (ACOP).
- HUD has issued a due process determination (footnote 1, Federal Register) stating that Louisiana affords an opportunity for a hearing in court which provides the basic elements of due process for an eviction hearing<sup>2</sup>.
- Based on this due process determination, a Public Housing Agency (PHA) may exclude from the grievance procedure any grievance concerning a termination of tenancy or eviction which involves:
  - Any criminal activity threatening the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA, HANO or its Agents;
  - Any violent or drug-related criminal activity on or off such premises;
  - Any criminal activity resulting in a felony conviction of a household member;
  - Disputes between tenants not involving the PHA, HANO or its Agents or to class grievances; or,
  - Violations of the Violence Against Women's Act.

### **III. Commencement of Grievance Process.**

- Must be personally presented in writing at HANO or at housing community within ten (10) days of action or failure to act.
  - Grievance form must be available.

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<sup>1</sup> Basic information from HANO ACOP (amended and revised as of October 18, 2011), Chapter 13, Section F, 24 C.F.R. 966.50 *et seq.* and Volume 62 Federal Register No. 166, 62 F.R. 45434, August 27, 1997.

<sup>2</sup> Specific eviction notice letter must be sent. Simple notice under lease and under Louisiana eviction law is not sufficient. 24 C.F.R. 966.4(I)(3)(V).

- Oral grievance allowed for disabled residents or those with reading and writing hardship.
- Date-stamped copy following receipt must be given to resident.
- If site manager determines after review of complaint that it would be excluded, site manager must notify resident in writing within five (5)<sup>3</sup> days from receipt of request of exclusion and no grievance hearing.

#### **IV. Informal Settlement of Grievances.**

- Unless excluded, site manager must notify resident in writing to arrange for informal interview; must be done in ten (10)<sup>4</sup> days from receipt of complaint.
- Site manager must attempt to settle the dispute without a formal hearing.
- Informal Interview Summary.
  - Summary of discussions prepared within five (5)<sup>5</sup> days of informal interview.
  - Summary must contain:
    - Names of participants;
    - Date of meeting;
    - Proposed disposition of grievance;
    - Justification for the disposition; and,
    - Right of resident to request formal hearing.
  - One copy given to resident, one retained for file.

#### **V. Formal Grievance Hearing.**

- Resident may seek formal grievance hearing upon receipt of summary of informal meeting.
  - Must be in writing to HANO or its Agent.

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<sup>3</sup> Per ACOP; not in Federal Regulations.

<sup>4</sup> Per ACOP; not in Federal Regulations.

<sup>5</sup> Per ACOP; not in Federal Regulations.

- Must be requested “within a reasonable time”.<sup>6</sup>
- Selection of hearing officer and panel.<sup>7</sup>
  - Three persons shall comprise the Hearing Panel.
    - One (1) resident;
    - One (1) HANO employee;
    - Hearing officer.
  - Hearing officer:
    - Must be impartial person and cannot be person who made or approved the action or their subordinate.
    - HANO shall consult with the City Wide Resident Organizations before appointment and notify each Resident Council.
  - Resident member:
    - Cannot be a resident at the property where the complainant resides.
  - HANO employee:
    - Cannot be currently employed in the Housing Management Department.
  - Procedure:
    - Quorum of two (2) needed for formal grievance hearing.
    - Hearing officer will render decision if both panel members cannot agree on a hearing decision.

**VI. Failure to Request Hearing.**

- HANO or its Agents disposition of grievance is final.
- HANO’s action of disposing of complaint can still be judicially challenged.

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<sup>6</sup> Per Federal regulations; no time requirement under ACOP. Further, Federal regulations provide for expedited grievance procedure 24 C.F.R. 966.55(a) and (g) if allowed by PHA. ACOP does not contain right for expedited grievance process.

<sup>7</sup> Done under ACOP procedure as Federal regulations allow appointment under PHA grievance procedure.

**VII. Informal Hearing is Prerequisite to Formal Hearing.**

- Hearing officer may waive this only on hearing for good cause.

**VIII. Escrow Deposit.**

- Before hearing is scheduled in any grievance involving rent as defined in lease<sup>8</sup> resident shall pay rent due as of first of the month preceding the month in which the act or failure to act took place.
  - Goes into escrow account until ruling by hearing officer.
  - May be waived in “extenuating circumstances”.
  - Unless waived failure to pay terminates grievance procedure.
- Failure to make payment is not waiver of right of tenant to proceed judicially.
- Must pay each month during grievance process.
- Mandatory waiver of escrow deposits.<sup>9</sup>
  - PHA must waive requirement for escrow deposit if due to financial hardship exemption from minimum rent requirements or due to effect of welfare benefits reduction in calculation of family income.

**IX. Scheduling of Hearings.<sup>10</sup>**

- Hearings shall be set by the hearing officer.<sup>11</sup>
  - Sets time and place.
  - Written notification delivered to complainant, HANO and Agents.
- Hearing shall take place not later than forty-five (45) days after presentation of the written request for the hearing.

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<sup>8</sup> Includes rent under lease as required by HUD regulations and other requirements, PHA charges, late payment penalties and security deposits per Federal regulations. 24 C.F.R. 966.4(b).

<sup>9</sup> Not in ACOP; only per Federal regulations. 24 C.F.R. 966.55(e)(2) (see attached).

<sup>10</sup> Per ACOP guidelines.

<sup>11</sup> This section reflects an inconsistency in the ACOP procedures. It states that the hearing officer shall schedule the grievance hearing. The same section states that HANO or its Agents' failure to schedule hearing is final, binding and non-appealable. “Schedule” may actually be “attend”.

- If not conducted within forty-five (45) days then the grievance shall be resolved in accordance with the position stated by the complainant in the written request for the hearing.
- Prior to the hearing the complainant has the right to review all records and documents “directly relevant” to the hearing. Copies made at complainant’s expense.
- Complainant may be represented by legal counsel or other representative.
- Hearing is private unless complainant wants public hearing.
- Complainant may present evidence and argument and may cross-examine witnesses.

**X. Failure to Attend Hearing.**

- If complainant or HANO or its Agents fail to attend the first set hearing it will be rescheduled within five (5) business days.<sup>12</sup>
- If not attended for second hearing party failing to attend waives their rights in the hearing.
- Judicial proceedings can still be used.

**XI. Hearing Procedure.**

- Complainant must first make showing of entitlement to the relief sought.
- Burden shifts to HANO or Agents to justify its actions or failure to act.
- Hearing is conducted informally. Testimony and evidence will be considered without regard to rules of evidence.
- Any party to the hearing may arrange for a transcript.
- Stages of the hearing process:<sup>13</sup>
  - Opening statements: complainant and HANO or its Agents each get five (5) minutes.
  - Complainant’s case: use of witnesses and exhibits to satisfy burden of proof of violation(s).

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<sup>12</sup> Federal regulations do not limit the number of repeat hearings.

<sup>13</sup> Solely per ACOP, not Federal regulations.

- Cross examination and re-direct allowed.
- HANO or its AGENTS case: use of witnesses and exhibits to satisfy burden of proof that its actions were justified.
- Cross examination and re-direct allowed.
- Complainant may call rebuttal witnesses.
- Closing argument: Each side has ten (10) minutes.
- Special provisions for complaints involving Eviction or other Adverse Action:
  - HANO or its Agents shall present its evidence first.
  - HANO or its Agents have right to call rebuttal witnesses.

**XII. Decision of Hearing Officer.**

- Hearing officer shall present a written decision with reasons within ten (10) days<sup>14</sup> after the hearing.
  - Time can be extended by agreement of complainant and HANO or its Agents.
  - Copy sent to complainant and HANO or its Agents (for placement in complainant’s file).
- If timely ruling is not made complainant<sup>15</sup> may ask for new hearing or advise HANO or its Agents that no decision has been rendered.

**XIII. Post-Ruling Issues.**

- HANO or its Agents must take all action or refrain from action necessary to carry out decision within forty-five (45) days of said decision.
- Decision will not be binding if HANO or its Agents notifies complainant that:
  - The grievance does not concern HANO or its Agents;
  - Decision is contrary to Federal, State or local law, HUD regulations or requirements of the Annual Contributions Contract between HUD and HANO or its Agents.

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<sup>14</sup> Federal regulations allow “reasonable time”.

<sup>15</sup> This right does not go to HANO or its Agents.



## **Violence Against Women Act**

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## I. Introduction.

The Violence Against Women Act (“VAWA”) is a set of laws (federal and state) which provide legal protection to victims of domestic violence, dating violence and stalking.

## II. Creation and Background.

- The current legislation has been modified, amended and expanded beyond its original scope and purpose.
- Based on an extensive grass roots effort from the late 1980s President Clinton signed into law the initial version of the legislation to allocate funds towards investigation and prosecution of violent crimes against women, orders for mandatory restitution upon offenders and to allow for civil remedies.
  - Numerous grant programs were created to provide funding, including grants to combat abuses in public housing.
  - In 2000 part of the VAWA was stricken as the U.S. Supreme Court disallowed women the right to sue their attackers in Federal Court. *United States v. Morrison*.
- The original VAWA expired in 2011.
  - Renewal was severely challenged particularly by conservative groups.
  - Attempts were made to limit rights for Native Americans, LGBT individuals, same sex couples and battered undocumented individuals seeking temporary visas.
- On March 7, 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013.
  - More expansive and inclusive than original law.
  - Maintained protection for victims who are evicted because of events related to domestic violence or stalking.
  - The current law is gender-neutral, providing coverage for male victims as well.<sup>1</sup>
- In addition to housing, the VAWA provides programs and services including:

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<sup>1</sup> A 2005 reauthorization of the VAWA added a non-discrimination provision which clarified the title so it would not be construed to prohibit male victims from receiving benefits.

- Federal rape shield law.
- Community violence prevention programs.
- Victim assistance programs (for example rape crisis centers and hotlines).
- Programs to meet the needs of immigrant women.
- Programs and services for victims with disabilities.
- Legal aid for survivors of domestic violence.

**III. Housing Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking – Federal Version.<sup>2</sup>**

- General standard: An applicant for or tenant of housing assistance under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in or evicted from housing on the basis that the applicant or tenant has been a victim of domestic violence, dating violence, sexual assault or stalking if the applicant or tenant otherwise qualifies for admission, assistance, participation or occupancy.
  - Originally the VAWA did not cover all federally subsidized housing programs but the reauthorization of the law in 2013 expanded these protections to individuals in all federally subsidized housing programs.
  - An incident of actual or threatened domestic violence, dating violence, sexual assault or stalking shall not be construed as a basis for a lease default or as good cause to terminate a lease.
- Termination or denial of rights by a co-occupant:
  - Assistance, tenancy or occupancy rights may not be denied to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking which is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.
    - The goal is to protect tenants abused or assaulted by others lawfully occupying covered housing units.

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<sup>2</sup> 42 USC 14043e-11.

- Applies to and protects “affiliated individual” who is the spouse, parent, sibling or child of that individual.
- Bifurcation:
  - A lease may be bifurcated to evict, remove or terminate lease assistance to a tenant or lawful occupant who engages in domestic violence, dating violence, sexual assault or stalking against the tenant or affiliated individual without evicting, removing or otherwise penalizing the victim of the criminal activity who is a tenant or lawful occupant.
  - If the person removed is the sole tenant eligible to receive assistance the public housing agency (PHA) owner or manager shall provide the remaining tenant an opportunity to establish eligibility for the covered housing program.
    - If eligibility cannot be established the PHA, owner or manager shall provide the tenant a reasonable time to find new housing or to establish eligibility for housing under another covered housing program.
  - Goal is to offer reasonable benefits or protection for victim.
- Rights/duties of lessor:
  - Must abide by court orders relating to access to the premises to protect victims of domestic violence, dating violence, sexual assault or stalking.
  - Can evict a tenant who has been a victim of domestic violence, dating violence, sexual assault or stalking for any lease violation not premised on the act of violence against the tenant or affiliated individual.
    - Provided it does not subject the victim to a more demanding standard than other tenants in determining whether to evict.
  - Can evict a tenant who is a victim of domestic violence, dating violence, sexual assault or stalking if there is an actual or imminent threat to other tenants or employees of the entity performing services unless the tenant is evicted.
  - Burden is on PHA, owner or agency to establish such rights.
  - Frequent defense is “pretext” or using other grounds to evict the victim.

- Documentation:
  - If an applicant or tenant seeks protection under the VAWA, the PHA, owner or agent may request in writing specific documentation.
  - Forms (any of the following):
    - Certification form stating that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault or stalking, states that the incident(s) meets the requirements of the VAWA and includes the name of the person who committed the domestic violence, dating violence, sexual assault or stalking if the name is known and safe to provide (see attached).
    - Alternate documentation being a document signed by employee, agent or volunteer of a victim service provider, attorney, medical professional or mental health professional from whom the victim has sought assistance relating to the incident and also signed by the applicant or tenant (see attached).
    - Certification and alternative document:
      - Gives narrative of events.
      - Establishes protection under the VAWA.
      - Signed under penalty of perjury.
      - Must be dated.
    - Record of court, tribal or territorial or local law enforcement or administrative agency.
    - Or at the discretion of the PHA, owner or agent, a statement or other evidence provided by the applicant or tenant.
  - Failure to provide documentation:
    - If applicant or tenant fails to provide the above items within fourteen (14) business days after the tenant receives a request in writing for such documentation then the PHA, owner or agent may:
      - Deny admission to the applicant or tenant to the covered program.

- Deny assistance to the applicant or tenant under covered programs.
- Evict a tenant who has committed a lease violation.
  - Failure to submit in 14 days by itself is not a lease violation.
  - Cannot be built into a lease as a default.
- The PHA, owner or agent may extend the time period at its discretion.
- Timing is generally the key as the PHA, owner or agent must give a request to obtain documentation or certification that tenant is a victim.
- The key for the tenant or applicant is to provide documentation or certification timely upon request to receive protection under the VAWA.
- If documentation or certification upon review by the PHA, owner or agent contains conflicting information the applicant or tenant may be required to submit supporting third-party documentation.
- Confidentiality: All submissions to the PHA, owner or agent shall be maintained in confidence by the PHA, owner or agent, cannot be placed into a shared database or disclosed to any person or entity except:
  - If requested by and consented to by said individual.
  - For use in eviction.
  - When required by law (for example court order or subpoena).
- Notification: VAWA notification and rights must be provided to applicants and tenants.
  - Forms attached.
  - Given when:
    - Applicant is denied residency.
    - Applicant is admitted into residency.
    - With any notification of eviction or termination of assistance.

- In multiple languages if applicable (for persons with limited English proficiency).
- Emergency transfers.
  - Model emergency transfer plan has to be adopted which allows tenants who are victims of domestic violence, dating violence, sexual assault or stalking to transfer to another available and safe dwelling unit under a covered housing program if:
    - The tenant expressly requests the transfer AND;
    - The tenant either:
      - Believes themselves to be threatened with imminent harm from further violence if the tenant remains in the same dwelling; or,
      - Is a victim of sexual assault in the premises during the 90 day period preceding the request for a transfer.
  - Confidentiality measures must be in place to disallow disclosure of new location to person who committed the domestic violence, dating violence, sexual assault or stalking.

**IV. Lease Agreement for Certain Residential Dwellings; Domestic Abuse Victims – State Version.<sup>3</sup>**

- Applicability.
  - Applies only to leases for a residential dwelling in a building consisting of six or more separate dwellings.
    - Does not apply to structure with ten or fewer units when one of the units is occupied by the lessor.
- Will be subject to federal statute if covered housing is involved.
- Could supersede federal law if rights and protections of lessee are greater under state law.
- General provisions (basically similar to federal VAWA):

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<sup>3</sup> Section 3261.1, Title 9, Louisiana Revised Statutes.

- Lessor cannot refuse to enter into a lease solely on the basis that the applicant or a member of the applicant’s household is or has been a victim of domestic abuse.
  - Must provide “reasonable documentation” to support the statements of the victim.
  - Must otherwise qualify to enter into the lease.
- This does not apply if the applicant has previously been evicted by the lessor for any reason.
- The lessor cannot terminate the lease, fail to renew it or issue an eviction notice on the basis that an act of domestic abuse or activity directly related to domestic abuse:
  - Has occurred on the leased premises AND;
  - The victim is a lessee or a member of lessee’s household.
- Exceptions to allow eviction.
  - If the domestic abuse offender is in close proximity to the lessee’s unit should there be additional disturbances relating to the lessee but which pose a threat to other residents, the lessor can nonetheless evict the lessee.
    - Even if the domestic abuse offender is not invited to the lessee’s dwelling.
  - The lessor has the discretion to allow the lessee to move to another apartment if available and if the lease requirements are met.
- An applicant who is a victim of domestic violence shall provide to the lessor reasonable documentation prior to application, lease termination, lease nonrenewal or judgment of eviction.
  - No 14 day rule as under federal law.
  - Failure to provide documentation shall preclude actions by the lessee against the lessor.
  - Form attached (in statute).
- Eviction issues.
  - Without documentation notice, the lessor may evict (must have grounds to evict).



- If the lessor does have notice and the basis to evict was an alleged act of domestic violence (and no other reason) the lessor shall rescind the eviction notice.
- Eviction of a victim can still occur if other grounds (for lease violation) can be established.
- Early termination.
  - The lessee advises the lessor in writing of being a domestic violence victim within the prior 30 days (or a household member was).
  - The lessee agrees to not allow the offender access to the dwelling.
  - The lessee provides the name and address of the offender if requested.
  - The lease terminated within 30 days of request and the lessee must leave the premises. The lease is due to that date.
- Immunity.
  - Lessors who evict domestic abuse offenders are granted statutory immunity for all claims against them brought by the offender.

**V. Recommendations.**

- Owners should update rules and tenant selection plans to incorporate VAWA policies and protections.
- The ACOP should include VAWA information.
- Consider establishing policies to support or assist victims of domestic violence.
- Ensure timely requests for certification.
- Ensure certification forms are updated and provided to applicants and tenants per VAWA standards.
- Ensure lease (or addendum if necessary) with VAWA information is executed by lessees.
- Be aware of rights to request certification or documents to be submitted within 14 business days.
- Have separate confidential files in use for specific submissions.

- Be aware of obligations to execute lease addendum with VAWA information. When sent to a tenant they have 30 days to opt out of the lease and must be advised. If there is no action within 30 days the lease remains in place.
- Be aware of rights under bifurcation to remove the offender but also must deal with victim. If not on lease must go through interim recertification to reflect the change in household composition.
- Reminder that victims can still be evicted when:
  - There is noncompliance within 14 days of certification or documentation.
  - Separate criminal activity is committed.
  - A threat is posed to other residents or service providers.
  - The standard imposed cannot be different than that upon other tenants.