



Essential information for nonprofits navigating COVID-19

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CARES ACT: RELIEF FOR THE RESIDENTIAL RENTAL MARKET?

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INTRODUCTION

- **CARES Act**

- Coronavirus Aid, Relief, and Economic Security (CARES) Act
- Signed into law March 27th
- \$2 trillion economic relief package
- Targeted relief for workers and families, businesses (large and small) and state/local governments

CARES ACT

- **General Eviction Moratorium**

- **120-day moratorium** from date of CARES Act enactment on court filings to initiate actions to recover possession for nonpayment.
- Cannot charge fees, penalties, or other charges related to nonpayment of rent.
- Cannot give a notice to vacate until after expiration of the 120-day period and cannot require tenant to vacate until date that is **30 days after notice**.

CARES ACT

- **General Eviction Moratorium**

- Applies to any dwelling that is **occupied by a tenant** (with or without a written lease) located at a property that participates in certain **federal housing programs** or that is subject to a **federally backed mortgage loan** or **federally backed *multifamily* mortgage loan**
 - Covered housing program under Violence Against Women Act of 1994
 - Rural housing voucher program under section 542 of Housing Act of 1949

CARES ACT

- **Federally Backed Mortgage Loan**
 - Includes any first or subordinate lien on **residential property** (including individual units and condo co-ops) principally designed for occupancy of **1 to 4 families** and is **made, insured, guaranteed, supplemented or assisted** in any way by an officer or agency of the Federal government 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 that is purchased or secured by the **Federal National Mortgage Association** (Fannie Mae) or the **Federal Home Loan Mortgage Corporation** (Freddie Mac)

CARES ACT

- **Federally Backed *Multifamily* Mortgage Loan**
 - Includes any first or subordinate lien on **residential multifamily property** principally designed for occupancy of **5 or more families** and is **made, insured, guaranteed, supplemented or assisted** in any way by an officer or agency of the Federal government 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 that is purchased or secured by the **Federal National Mortgage Association** (Fannie Mae) or the **Federal Home Loan Mortgage Corporation** (Freddie Mac)

MULTIFAMILY HOUSING

- **Basics**

- According to National Multifamily Housing Council, nearly 40 million people live in apartments of 5 or more units.
- Typical structure, particularly for ownership of large apartment complexes is for asset to be owned in a SPE or special purpose entity.
 - 51% of 5-49 unit properties and 75% of 50 unit properties are owned by LLPs, LPs, LLCs, GPs or real estate corporations.
- Rental income is used to service debt secured by the asset.

MULTIFAMILY HOUSING

- Financing Basics

- Government-Sponsored Enterprise (GSE)
 - Federal National Mortgage Association (FNMA/Fannie Mae)
 - Federal Home Loan Mortgage Corporation (FHLMC/Freddie Mac)
 - Each account for ~20% of multifamily financings annually
- Other sources: FHA, Private CMBS, Life Company and CRE CLO

CARES ACT

- **Loan Forbearance**

- Any multifamily borrower with a federally backed multifamily mortgage loan current on payment as of February 1, 2020 now experiencing financial hardship due to the COVID-19 emergency
- From enactment of CARES Act through the earlier to occur of the declared termination of the COVID-19 national emergency and December 31, 2020
- Request must affirm that the borrower is experiencing financial hardship during the COVID-19 emergency
- 30 days, with 2 additional, 30-day extensions available upon request from the borrower (total of 90 days)

CARES ACT

- **Forbearance Related Eviction Moratorium**

- For the duration of any forbearance, the borrower cannot:
 - (1) evict or initiate the eviction of a tenant at the property subject of the forbearance solely for nonpayment,
 - (2) charge the tenant any late fees or penalties on account of late payment, or
 - (3) give a notice to vacate to any tenant at the property.
- Following the forbearance period, the borrower cannot require the tenant to vacate the applicable property before a date that is 30 days after delivery of a notice to vacate.

FANNIE MAE IMPLEMENTATION

- Repayment in equal installments over 12 months following the end of the forbearance period. If business interruption/rent loss or any other financial assistance is received by borrower, the obligation to bring the loan current is accelerated.
- Until the loan is current, borrower is permitted to apply revenue only toward normal operating expenses, approved capex and management fees.
- Borrower must provide eviction relief until the later of the date required under the CARES Act (120 days from enactment), the forbearance period or such longer period mandated by law (consider impact of state/local laws and possible subsequent extension of the 120-day moratorium).

FREDDIE MAC IMPLEMENTATION



- Similar requirements to Fannie Mae, however:
 - Other sources of relief will not shorten repayment period
 - Borrower must keep servicer informed of material impacts due to COVID-19
- Recent revisions to Freddie Mac program expand forbearance and eviction protection consistent with CARES Act:
 - Tenants are not required demonstrate that their nonpayment is due to COVID-19
 - Last day to enter the program extended from August 1st to December 31st

STATE/LOCAL EVICTION RELIEF

- Varies widely and in some cases more robust from a tenant-protection perspective than CARES Act
 - Court closures make evictions practically impossible in many states
 - Other states have expressly prohibited eviction actions and/or exercise of other landlord remedies (with some carve outs) for the period of the COVID-19 crisis or until some specified date (some expiring soon)
 - Prohibitions on increasing rents or initiating collections
 - Late fees

PA EVICTION RELIEF

- The Pennsylvania Supreme Court has closed all state courts, banning “eviction, ejectment, or other displacement from a residence based on the failure to make a rent, loan, or similar payment” until at least April 30.
- Pennsylvania Housing Finance Authority is strongly encouraging owners of multifamily buildings to be flexible with late payments and to refrain from eviction actions.



CARES Act Help to Individuals Associated with Nonprofits

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Charitable Giving

- ▶ Temporary Universal Charitable Contribution Deduction in 2020 of \$300 cash – excludes Donor Advised Funds and Private Foundations
- ▶ Eliminates Sixty Percent Ceiling on cash gifts to public charities in 2020 (excludes Supporting Orgs & DAFs)
- ▶ Increases Ten Percent Corporate Cap on deductible donations to Twenty Five Percent
- ▶ Those help Charities seeking deductions, but note Retirement changes waiving minimum distributions from IRA should negatively impact giving
- ▶ Increased limit of deduction of food from fifteen percent net income to twenty five percent net income



Retirement Provisions



Waives minimum distribution requirements for IRAs in 2020, including for inherited IRAs

- For those who already took a distribution – possibility of 60-day rollover

Eliminates 10% penalty for SOME withdrawals from retirement accounts of up to \$100,000 for those under 59 ½

- You or spouse or a dependent must have been diagnosed with Covid-19 OR you have suffered financial consequences & employer must allow
- Retroactive to January 1, 2020

Doubles amount you can borrow from qualified employer plan to lesser of \$100,000 or 100% of plan balance


- Delays repayment dates scheduled for 2020

Unemployment Provisions

- ▶ Created Pandemic Unemployment Assistance – available to those not eligible for regular UI, such as the self-employed. Some Nonprofit employees may find themselves in this category. 39 weeks, ends 12/31/20
 - ▶ Need show Covid-19 impact
- ▶ Increased the weekly benefit for Unemployment Insurance by \$600 from as early as March 29th through July 31, 2020.
 - ▶ Your state must enter into an agreement with the Department of Labor; depending on your state the start date is different.
- ▶ Unemployment Insurance extended for 13 weeks
- ▶ Provides federal funds for work-sharing arrangements – short term compensation program



Other Nonprofit Issues



Nonprofits with unrelated trades and businesses should consider whether they are able to use NOLs to generate refunds.

The challenge is that the UBIT silo law enacted in the 2017 Tax Act is still applicable and makes tracing those NOLs challenging. Still awaiting Treasury guidance on how to appropriately segregate unrelated trades and businesses.

Grants for community health centers, substance abuse and mental health services, child care providers, community service organizations for social service and emergency efforts.

Higher Ed provisions: Increased ability to provide emergency grants to students under Federal Supplemental Educational and Opportunity program for unexpected expenses for students with financial need & IHEs can continue to pay students under Federal Work Study programs if there is a qualifying emergency



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