

5 Things Independent Rental Owners Should Do to Protect their Businesses

Many small business owners may be uncertain about what steps to take to mitigate risk, protect employees and support customers in the face of the unique challenges presented by COVID-19. For Independent Rental Owners (IROs), the guidance below provides an overview of new federal relief available to you and compliance responsibilities to consider as you continue to operate assets during this unprecedented public health emergency.

Further information on COVID-19-related best practices, guidance or legal compliance resources is [available](#). In addition, NAA highly recommends you contact your [state or local apartment association](#) to learn more about the state and local resources available to you.

1. **Relief for Businesses:** Federally-funded programs are available to assist you during these uncertain times. In addition to these programs, you may be eligible for state, city and county resources. The below programs are just a few worth further exploration.
 - a. **Small Business Administration (SBA) Disaster Loans**
 - i. **Paycheck Protection Program (PPP):** PPP loans are intended to be partially forgivable and help businesses to maintain payroll or make mortgage, lease and utility payments. While initial funds from this program ran out 13 days after launch, lawmakers are expected to approve expanding the program soon. Information is [available](#) for assistance in better understanding eligibility restrictions and other requirements that affect the apartment industry.
 - ii. **SBA Debt Relief Measures:** The SBA will provide [debt relief](#) to small businesses during the COVID-19 pandemic. For *current* 7(a), 504 and microloans, the SBA will automatically pay the principal, interest and fees for a period of six months. The SBA will also automatically pay the principal, interest and fees of *new* 7(a), 504 and microloans issued prior to September 27, 2020. For current SBA Serviced Disaster (Home and Business) Loans, additional debt relief is available.
 - iii. **Economic Injury Disaster Loans (EIDL) & Emergency Economic Injury Grants:** Up to \$2 million in [EIDLs](#) are available to qualifying small businesses and nonprofits, at an interest rate of up to 3.75 percent for small businesses. Additionally, small businesses are eligible for a one-time, emergency advance of up to \$10,000 to those harmed by COVID-19 within three days of an EIDL application. The advance does not need to be repaid under any circumstance, and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs because of supply chain disruptions or pay business obligations, including debts, rent and mortgage payments.
 - b. **Main Street Lending Program:** A new forthcoming program, funded through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, is the Federal Reserve's [Main Street Lending Program](#), which will provide up to \$600 billion of loans to small- and medium-size businesses. The program is expected to launch on May 1. Be on the lookout for details as they become available.
 - c. **Tax Credits and Deferrals**
 - i. Options for tax relief include:
 1. Income tax deadlines for filing and payment are extended until July 15.

2. The employer portion of payroll taxes may be deferred to 2021 or 2022 if you do not take a PPP loan.
- ii. The Treasury Department and the Internal Revenue Service launched the Employee Retention Credit, designed to encourage businesses to keep employees on their payroll. The refundable tax credit is 50 percent of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19. Learn more about qualification standards [here](#).
- iii. To learn more about tax benefits available to the industry through Congress' COVID-19 relief packages, review NAA's recently produced member webinar, "[Tax Resources for Weathering the COVID-19 Emergency](#)."
- d. In addition to NAA's litany of resources, utilize the U.S. Chamber of Commerce's [coronavirus toolkit](#) with a compilation of the Centers for Disease Control and Prevention's (CDC) recommendations for businesses and employees across the country.

2. New Responsibilities and Benefits for Employers

- a. **Expanded Emergency Family and Medical Leave and Paid Sick Leave Requirements.** [New federal law](#) requires employers to provide paid family and medical leave for COVID-19-related reasons, an expansion of the Family and Medical Leave Act (FMLA). The law also created new paid-leave obligations for many employers and provides employer tax credits to help pay for new paid leave requirements. Listen to NAA's "[Coronavirus Outbreak: What Employers Should Know](#)" webinar to learn more. □
 - i. More helpful resources can be found below:
 1. [Answers to Questions Asked During the Webinar](#)
 2. [Remote Work Considerations](#)
 3. [Layoffs, Furloughs and Pay Reductions in Response to the COVID-19 Pandemic](#)
 4. [Accommodations & Medical Inquiries – COVID-19](#)

3. Consumer Reporting, Eviction and Rent Restrictions

- a. **Consumer Reporting:** Apartment owners and operators that furnishes information about their residents to credit reporting agencies are restricted by new federal law. If a furnisher agrees to modified payments (a rent payment plan) with respect to an obligation or account of a consumer that has been affected by COVID-19, the furnisher must report such obligation or account as "current" or as the status reported prior to the accommodation during the period of accommodation, unless the consumer becomes current. Remember, this restriction applies to the acceptance of partial payments. Such credit protection ends at the later of 120 days after enactment of the legislation or 120 days after the date the national emergency declaration related to COVID-19 is terminated.
- b. **Eviction:** The CARES Act created a 120-day moratorium on evictions, late fees and other penalties for covered properties.
 - i. **Definition of Covered Properties:**
 1. The temporary moratorium applies to properties:
 - a. With a federally backed mortgage or multifamily mortgage loan through the Department of Veterans Affairs (VA), the Department of Agriculture (USDA), the Federal Housing

Administration (FHA), the Department of Housing and Urban Development (HUD), Fannie Mae or Freddie Mac; or

- b. Occupied by a resident who participates in a covered housing program or the rural housing voucher program.*

- i. *Covered housing programs include:

- 1. Public Housing;
 - 2. Section 8 Housing Choice Vouchers;
 - 3. Section 8 Project-Based Rental Assistance;
 - 4. Section 202 Supportive Housing for the Elderly;
 - 5. Section 811 Supportive Housing for Persons with Disabilities;
 - 6. Housing Opportunities for Persons with AIDS (HOPWA);
 - 7. McKinney-Vento Act Homeless Assistance grants
 - 8. Section 236 Preservation Program;
 - 9. HOME Investment Partnerships;
 - 10. Rural Development multifamily housing (Section 516 Farm Labor Housing Grants, Section 542 Rural Development Vouchers, Section 521 Rural Rental Assistance, Section 533 Housing Preservation grants); and
 - 11. Low Income Housing Tax Credit (LIHTC) properties.

- 2. **NOTE:** While many within the real estate sector interpret the applicability of the CARES Act eviction moratorium to be limited to covered properties and, further, specific dwellings within some covered properties, as was [Congress' intent](#), Section 4024 of the CARES Act as written leaves room for an expanded interpretation. NAA is working to close any loopholes created by ambiguities in the language in its advocacy efforts around Phase 4 relief.

- 3. In the absence of clarity codified into the law, this issue will be decided by the courts. To ensure compliance with the CARES Act in its current form, NAA highly suggests you work with local counsel to better understand your unique responsibilities for the properties in your portfolio in light of the CARES Act and any other state and local eviction mandates stemming from COVID-19.

- ii. **Application and Scope:** The temporary moratorium on eviction filings and late fees only applies to evictions for nonpayment of rent, not for other causes.

- iii. **Late Fees:** The Act specifically prohibits owners from collecting late fees during the moratorium period. If, when the moratorium ends, the resident is not current with payments, the late fee provision under the lease would apply.

- iv. **Notice Requirement:** According to the CARES Act, owners of covered properties may not issue a notice to vacate until after the expiration of the moratorium period. Further, owners may not require the resident to vacate the covered dwelling unit before 30 days after the date on which the owner provided the resident with a notice to vacate.

- 1. **NOTE:** Congress applied a one-size-fits-all approach to the language in Section 4024, however, the result is a different application depending on where you operate because of hyper-localized eviction

laws and judicial processes. Please keep in mind “notice to vacate” has a specific legal meaning depending on the jurisdiction in which you operate. Therefore, it is critical that you consult with your local legal counsel to understand how to proceed.

- c. In addition to the federal eviction moratorium, other state and local eviction requirements may apply. [State and local laws](#) may also restrict your ability to assess rent increases or mandate other renter protections. We highly recommend you work with local counsel to understand how these laws intersect and your unique responsibilities.
4. **Create a business continuity plan to assist with addressing future business considerations.** This plan should consider the long-term market implications for your portfolio. Some factors include:
 - a. Property cash flow;
 - b. Occupancy rates;
 - c. Loans or leverage on the property;
 - d. Lender cooperation — covenant deferral or waiver, payment restructure, interest-only payments; and
 - e. Rental interruption or other insurance without pandemic/epidemic as an exclusion.
5. **As we look toward the future, additional operational guidance should be considered:**
 - a. Transparency in communication is key to reducing unnecessary stress and anxiety for employees and residents. Provide weekly updates to employees so they understand what changes are being made and how everyone is affected.
 - b. Routine maintenance requests may have been placed on hold to reduce employee and resident exposure. It is important to have a plan in place to address deferred maintenance and how your employees will handle the backlog, in addition to other items such as capital expenditures post-COVID-19.
 - c. Obtaining the necessary equipment and personal protective equipment (PPE) for employees may prove difficult for many owners, especially if there are numerous apartments in the portfolio. As recommendations continue to change, NAA encourages members to follow the CDC for updates. Before deciding to use or make PPE available, be sure to review business policies for compliance with the Occupational Safety and Health Administration’s (OSHA) standards. It is important to train staff on proper usage of such items to include removal to prevent further exposure.
 - d. Rent collection may continue to be challenging in the months ahead. IROs should consider offering payment plans to residents and should make sure that any assessment of late fees does not run afoul of the federal CARES Act, or any other state or local executive or emergency order. Staying in contact with residents regarding payment status is key. Providing a list of local assistance programs for residents also is helpful.
 - e. NAA stresses grassroots advocacy, to include contacting your local Member of Congress. Emails are good, but phone calls and virtual meetings are better. This is critical for small business owners, as Members of Congress do not always understand the direct effects that legislative changes have on independent rental owners. Open and ongoing communication between Congress and owners will assist in creating an understanding of our industry and address concerns for upcoming programs.