

# Who Qualifies for Federal Eviction Protection Under the CARES Act?

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Under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the Federal Government has issued an eviction moratorium for 120 days to help combat the effects of the COVID-19 pandemic. **This protection only applies to certain types of properties and lease agreements as explained below.** The 120 day moratorium went into effect on March 27, 2020.

The moratorium means landlords of covered dwellings cannot file for eviction on the grounds of non-payment of rent during the 120 days nor charge late fees. Specifically, it reads that landlords of covered properties cannot:

- (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.

The moratorium does not affect evictions filed prior to March 27, 2020, tenants living in non-covered properties, and eviction cases based on situations other than nonpayment of rent or fees.

In Idaho, this means landlords of covered properties cannot file to evict someone under Idaho Code 6-303(2) for nonpayment of rent or 6-303(3) for fees, penalties, or other nonpayment of rent charges. The rest of that statute is unaffected by the moratorium.

## Do I need to still pay rent during the moratorium?

**Yes**, you still need to pay rent if possible. There is nothing in CARES that stops rent from being *owed* during the moratorium, only that the landlord *cannot file* for an eviction based on nonpayment of rent and cannot charge you late fees during the moratorium.

If you are unable to pay your rent, contact your landlord about your situation and try to work out a rent reduction or payment plan. Idaho Legal Aid has a temporary rent reduction agreement form you can use or customize at

<https://www.idaholegalaid.org/node/2206/landlord-and-tenant-self-help-forms> (toward the bottom of the page).

You may also consider seeking community resources to help pay your rent, such as through <https://211.idaho.gov/> or <https://www.livebetteridaho.org/>.

Many utility companies have committed to no shut-offs during the pandemic. If you are behind on your utility costs or they are included in your rent, reach out to your utility provider to see what protections they are offering.

## Do I live in a covered property under CARES?

The CARES Act only applies to certain types of rentals. These properties are generally those that receive federal funding, assistance, or tax breaks. CARES expressly covers the following property and lease types:

### **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.)

### **Department of Agriculture**

- 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)
- Rural housing voucher program (42 U.S.C. 1490r)

### **Department of Treasury**

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

### **Properties with Federally Backed Mortgage Loans or Multifamily Mortgage Loans**

- If there is a federally backed mortgage on the rental property, tenants can qualify for the moratorium. This can include HUD, VA, USDA, or Fannie Mae or Freddie Mac loans.

Essentially, if you rent a property that receives federal assistance in some way, the 120 day eviction moratorium likely covers you.

## How do I know if I live in a covered property in Idaho?

**Read Your Lease.** You can start with reading your lease. Most federally subsidized housing includes a written lease which should address the subsidy.

*NOTE: You do not have to have a written lease to qualify for the CARES protections because Idaho recognizes oral leases and CARES defers to state law on that issue.*

**You have a Section 8 Voucher.** 42 U.S.C. § 1437f, which governs the Section 8 Voucher program is expressly covered by CARES. Landlords should continue to receive payments from Idaho Housing during the moratorium.

**Search HUD's Idaho Property List.** HUD also maintains a list of "Low-Rent Apartments" in Idaho available at [https://www.hud.gov/sites/dfiles/State/documents/0418\\_Low\\_Rent\\_Hsg\\_ID.pdf](https://www.hud.gov/sites/dfiles/State/documents/0418_Low_Rent_Hsg_ID.pdf). If you live in a property that opened after April 2018, it will not likely appear on that list because it has not been updated since then.

**Search USDA's Idaho Properties.** USDA maintains an online property list available at [https://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select\\_county.jsp?st=ID&state\\_name=Idaho&st\\_cd=16](https://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_county.jsp?st=ID&state_name=Idaho&st_cd=16). More information on USDA's response to COVID-19 is available at <https://rd.usda.gov/coronavirus>.

**Search the NHPD.** The National Housing Preservation Database is another search tool to look up your property on at <https://preservationdatabase.org/>.

**Ask your Landlord or Property Manager.** It may be difficult to find out if a property has a federally backed mortgage. You can ask your landlord for details. If the landlord does not know or will not answer, you can try contacting the County where the property is located.

## How can I use the protections in the CARES Act?

First, if you live in covered housing and receive a 3-day Notice to Pay or Quit, your landlord will not be able to enforce that notice by filing for eviction. **A 3-day notice to pay your rent does not mean your landlord has filed for eviction or has already evicted you.** Such notices are part of the eviction process under Idaho Code 6-303 but are not the same as an eviction order signed by a Judge. Your landlord cannot remove you from your home without a court order and

the assistance of the Sheriff. If your landlord takes steps to block access to your home or remove you, this is considered a self-help eviction and is illegal in Idaho.

If your landlord is attempting a self-help eviction as described above or is trying to unreasonably raise your rent during the COVID-19 pandemic, these could be violations of the Idaho Consumer Protection Act and should be reported to the Idaho Attorney General at <https://www.ag.idaho.gov/office-resources/online-forms/?form=File%20a%20Complaint&complaint=Consumer%20Complaint>.

If you rent a covered property and the landlord is evicting you for nonpayment of rent during the moratorium as described above, you could file an answer asserting the protections under the CARES Act as a defense. **A self-help eviction answer that includes CARES as a defense is available with the brochure.**

If you are unable to pay the filing fee for your answer, you may submit a fee waiver request using the self-help forms available at <https://courtselfhelp.idaho.gov/Forms/civil> (bottom of the page).

You should plan on attending the eviction hearing. There may be other state protections or defenses that could apply to how or if your hearing is held. You can consult the Idaho Supreme Court's website for current COVID-19 restriction at <https://isc.idaho.gov/Emergency%20Orders> or Idaho's official COVID-19 website at <https://coronavirus.idaho.gov/>. The civil clerk in your county would also likely have this information.

Idaho Legal Aid has a housing advice line and a COVID-19 advice line where you can get a phone appointment with an attorney to discuss your situation at no cost. You can apply for services online at <https://www.idaholegalaid.org/node/2413/apply-legal-assistance> or by calling 208-746-7541.

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## Work Cited

Full text of the CARES Act

<https://www.congress.gov/bill/116th-congress/house-bill/748/text?locr=bloglaw#toc-H5FCB77F196104E7394A52A8F1DC5D1C2>

National Housing Law Project Summary

<https://www.nhlp.org/wp-content/uploads/2020.03.27-NHLP-CARES-Act-Eviction-Moratorium-Summary.pdf>

CARES Act Section 4024 - Temporary Prohibition of Eviction on Properties Financed by Federally Backed Mortgage Loans

<https://www.arentfox.com/perspectives/alerts/cares-act-section-4024-temporary-prohibition-eviction-properties-financed>

CARES Act Considerations for Certain Multifamily Landlords and Tenants in the US

<https://www.mayerbrown.com/en/perspectives-events/publications/2020/03/cares-act-considerations-for-certain-multifamily-landlords-and-tenants-in-the-us>

The Idaho Attorney General's Landlord Tenant Guidebook

<https://www.ag.idaho.gov/content/uploads/2018/04/LandlordTenant.pdf>