TEXAS REALTORS®

Late Fees and the CARES Act

The CARES Act establishes a moratorium through July 24, 2020, that prohibits a landlord from not only filing evictions for nonpayment of rent or other amounts due under the lease but also from charging late fees, penalties, or other charges related to nonpayment of rent.

Which properties are subject to the temporary moratorium on eviction filings and late fees under the CARES Act?

The temporary moratorium on eviction filings and late fees under the CARES Act applies to a property occupied by a tenant pursuant to a residential lease if the property:

(1) Participates in a covered housing program or the rural housing voucher program; or
(2) Has a federally backed mortgage loan or a federally backed multifamily mortgage loan.

Can a landlord/property manager add late fees to the *COVID-19 Lease Payment Plan Agreement* form?

No. The CARES Act explicitly prohibits charging any fees for nonpayment during the moratorium. The *COVID-19 Lease Payment Plan Agreement* form is intended to avoid the tenant paying late fees by creating a payment plan. Once the moratorium ends, if the tenant is not current with their payments or the tenant breaches the agreement, the late fee provisions in the lease would apply.

What does this mean for late fees after the moratorium ends?

A close reading of the CARES Act indicates that late fees may be charged after the moratorium ends and the tenant is still late on rent.

For example, the Texas REALTORS® lease requires a tenant to pay the landlord either an initial late charge or a percentage of their monthly rent and daily charges if the rent continues to be late for each late payment. If, when the moratorium ends, a tenant is still late on April, May, June, and July rent, then on July 25, that tenant would be responsible for four months of initial late fees as stipulated by the lease. At that point, the daily charges for each late payment (each month) would start to be levied on the tenant.

It is unclear how courts will enforce late fee lease provisions should it come to that.