

BURR ALERT

North Carolina Braces for the Real Estate Litigation Tidal Wave

By Will Campbell

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Like many states around the country, North Carolina placed a moratorium on eviction proceedings to allow its citizens to stay in place during the shelter-in-place order due to the Coronavirus pandemic. Also like many other states, that moratorium came to an end and after the federal moratorium ended, the state saw a massive influx of eviction filings.

North Carolina and Federal Orders

North Carolina Governor Roy Cooper created the moratorium by executive order on May 30, but the freeze on both residential and commercial evictions was only scheduled to last three weeks, until June 21. The federal order associated with the CARES Act was broader and expired July 24, allowing landlords to begin issuing 30 days' notice for tenants to vacate properties. However, the CARES Act moratorium only prevented residential landlords from initiating proceedings if those landlords had federally backed mortgages.

Residential Tenants and Landlords Overwhelming the System

Even though there was a moratorium on eviction proceedings, the executive order did not preclude landlords from filing cases in the system which led to a backlog of over 10,500 cases throughout the state according to N.C. Supreme Court Chief Justice Cheri Beasley. On July 20, the Charlotte Observer reported, over 1,600 eviction proceedings have been filed in Mecklenburg County alone since mid-March. That number has surely increased dramatically since with both the Federal and North Carolina eviction moratoriums expiring. In New Hanover County, to try and curb the backlog, the courthouse which typically only has one courtroom dedicated to eviction proceedings, has had multiple courtrooms since mid-July according to the Port City Daily.

The [Eviction Lab](#), an evictions database developed by Princeton University, ranks North Carolina as one of the worst states for residential renters currently facing eviction. Using a five category scorecard, North Carolina scores only a 0.19 out of 5.00, which has them as the 14th worst state in the country. Presently, the only differences in eviction proceedings from the pre-pandemic time period, other than delay due to backlog, is a CARES Act certification requiring an affidavit that the dwelling is not subject to the CARES Act, utilities could not be disconnected, renters were given a grace period of 6 months to pay back rent that accrued during the moratorium, and no late fees were to be charged on rent that accrued during the moratorium.

Commercial Properties not Exempt Either. Different Ending Though?

The same moratorium and restrictions that North Carolina placed on residential evictions could also be applied to commercial real estate landlords as well. Landlords were to not initiate or take any further summary ejection against a commercial tenant for reasons caused by the COVID-19 pandemic. One aspect that does seem unique to North Carolina found in Governor Cooper's Executive Order from May that was similar to the residential rule was the requirement to allow commercial tenants to make a payment arrangement with their landlord to pay off any accrued rent that became due between the "Effective Period" of the Order, which was May 30th through June 20th, over at least a six month period.

It is virtually impossible to differentiate residential vs. commercial eviction proceedings currently in the pipeline, but like residential instances, commercial evictions are almost certainly increasing rapidly as well. However, unlike residential landlords, commercial landlords are likely trying to avoid the eviction route due to the difficulty in finding a replacement tenant during the pandemic. Most commercial landlords are asking tenants to come to the negotiation table to workout rent deferrals or lease amendments to avoid litigation measures. When those discussions fall through however, those landlords are often forced to take necessary steps to recoup what is owed through their leases. Burr Forman McNair has seen one client alone file more than 20 complaints against multiple tenants to begin collection efforts after negotiations did not materialize.

While North Carolina and Governor Cooper gave a good faith effort to alleviate the stress tenants faced during the COVID pandemic, ultimately it seems the Executive Order did not have any lasting effect as the state is now experiencing a backlog of eviction and collection proceedings the likes of which the state has never seen.

To discuss this further, please contact:

[Will Campbell](#) at (803) 753-3216 or wcampbell@burr.com or the Burr & Forman attorney with whom you normally consult.

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