

**CHEROKEE COUNTY MAGISTRATE COURT**  
**90 North Street, Suite 150**  
**Canton, Georgia 30114-2786**

DATE: \_\_\_\_\_

CASE NO.: \_\_\_\_\_

RE: **Incomplete Dispossession Filing - Information Required**

Dear Landlord:

**Please fill out and file with the Court the enclosed CARES Act Affidavit. Your dispossession case cannot move forward until the Court has received the Affidavit. The Affidavit must be signed under oath before a notary public.**

On April 30, 2020, the Georgia Supreme Court promulgated Uniform Magistrate Court Rule 46. The Rule requires landlords who file dispossession actions between March 27, 2020 and August 25, 2020 to verify they are not prohibited from filing under the moratorium imposed by the federal CARES Act, Public Law No. 116-136, which was signed into law on March 27, 2020.

The following documents, which can be found on the Georgia Supreme Court's web site at [www.gasupreme.us](http://www.gasupreme.us), are enclosed with this notice:

1. Required CARES Act Affidavit;
2. Uniform Magistrate Court Rule 46, "Emergency Dispossession;"
3. Relevant portion of the federal CARES Act.

|                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>The Clerk's Office cannot provide legal advice. If you have questions about the CARES Act, please consult with your lawyer.</b></p> |
|-------------------------------------------------------------------------------------------------------------------------------------------|

\_\_\_\_\_  
/s/  
Deputy Clerk, Magistrate Court

IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY  
STATE OF GEORGIA  
CARES ACT AFFIDAVIT

Case No. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Defendant(s)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Property Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Email Address

Personally appeared before me, the undersigned officer, the Plaintiff, his agent or attorney who on oath deposes and says as follows:

(1)

I am personally familiar with the residential property occupied by the Defendant, the Defendant's tenancy, the property's ownership, the financing arrangements and any and all liens that may exist on the property.

(2)

The property is not a "covered property" as defined by section 4024 (a) (2) of the CARES Act, or the property is otherwise exempt from the moratorium imposed therein.

(3)

It is not part of a covered housing program (as defined in section 41411 (a) of the Violence Against Women Act of 1994 (34 USC § 12491 (a)) or the rural housing voucher program under section 542 of the Housing Act of 1949 (42 USC § 1490r).

(4)

There are no mortgages, deeds to secure debt, nor liens of any other sort which are made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the United States Government or in connection with a housing or urban development program administered by the U.S. Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(5)

The debt on the property is not receiving a forbearance pursuant to section 4023 of the CARES Act.

(6)

I swear under penalty of perjury that the above information is true and correct and made of my own personal knowledge. I understand further proof may be required at trial.

Sworn to /Subscribed/ filed before me

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Deputy Clerk/ Notary Public

\_\_\_\_\_  
Attorney/ Owner/ Agent Phone#



## SUPREME COURT OF GEORGIA

April 30, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

### IN RE: MAGISTRATE COURT RULE 46

It is ordered that new Uniform Magistrate Court Rule 46 (emergency dispossession) be approved, effective May 4, 2020, as follows:

### PART III. CIVIL RULES

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#### **Rule 46. Emergency Dispossession**

(A) A landlord who files a dispossession before August 25, 2020 under OCGA § 44-7-50 (a) seeking possession of a residential premises for nonpayment of rent shall submit verification, filed and served with the complaint, indicating whether the property is exempt from the moratorium provided for in the federal Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) (Public Law No. 116-136). In the event that the dispossession action was filed prior to the enactment of this rule, the required verification shall be submitted to the court prior to or during the dispossession hearing; if the tenant does not file an answer, the required verification shall be submitted prior to the writ of possession being issued.

(B) A landlord shall use the affidavit in this rule if the property is not defined as a “covered property” under section 4024 (a) (2) of the CARES

Act or otherwise exempt from the moratorium provided for in the CARES Act.

(C) If the property is a covered property, a landlord shall comply with the 30-day notice requirement contained within section 4024 (c) of the CARES Act prior to filing any proceeding for nonpayment of rent pursuant to OCGA § 44-7-50. The required 30-day notice shall not be sent prior to July 26, 2020.

**CARES Act, P.L. 116-136, enacted 03/27/2020**

**SEC. 4024. TEMPORARY MORATORIUM ON EVICTION FILINGS.**

(a) Definitions.—In this section:

(1) COVERED DWELLING.—The term “covered dwelling” means a dwelling that—

(A) is occupied by a tenant—

(i) pursuant to a residential lease; or

(ii) without a lease or with a lease terminable under State law; and

(B) is on or in a covered property.

(2) COVERED PROPERTY.—The term “covered property” means any property that—

(A) participates in—

(i) a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a))); or

(ii) the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r); or

(B) has a—

(i) Federally backed mortgage loan; or

(ii) Federally backed multifamily mortgage loan.

(3) DWELLING.—The term “dwelling”—

(A) has the meaning given the term in section 802 of the Fair Housing Act (42 U.S.C. 3602); and

(B) includes houses and dwellings described in section 803(b) of such Act (42 U.S.C. 3603(b)).

(4) FEDERALLY BACKED MORTGAGE LOAN.—The term “Federally backed mortgage loan” includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(5) **FEDERALLY BACKED MULTIFAMILY MORTGAGE LOAN.**—The term “Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) **Moratorium.**—During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not—

(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.

(c) Notice.—The lessor of a covered dwelling unit—

(1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and

(2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).