State of North Carolina

ROY COOPER

GOVERNOR

March 31, 2020

EXECUTIVE ORDER NO. 124

ASSISTING NORTH CAROLINIANS BY PROHIBITING UTILITY SHUT-OFFS, LATE FEES, AND RECONNECTION FEES; PROVIDING GUIDANCE ABOUT RESTRICTIONS ON EVICTIONS; AND ENCOURAGING TELECOMMUNICATIONS PROVIDERS, BANKS, AND MORTGAGE SERVICERS TO PROVIDE ASSISTANCE AND FLEXIBILITY TO THEIR CUSTOMERS

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117 – 122 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") has confirmed the number of cases of COVID-19 in North Carolina continues to rise and has lab documentation that community spread has occurred; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, to mitigate further community spread of COVID-19 and to reduce the burden on the state's health care providers and facilities, it is necessary to limit person-to-person contact in workplaces and communities; and

WHEREAS, such limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, due to the State of Emergency, many North Carolinians must stay home, many must also work from home, and many businesses have been ordered closed, to slow the spread of COVID-19, and any dislocations that require people to leave their homes increase the risk of spread; and

WHEREAS, any disruptions or dislocations that would require people to leave their homes increase the risk of spread of COVID-19; and

WHEREAS, the economic effects of the pandemic have broadly affected utility customers across the state; and

WHEREAS, utility services are essential to the continued health and safety of residential utility customers, to the ability of workers and employers to engage in teleworking, and to the continued economic viability of business utility customers, even as the economic effects of the pandemic threaten customers' ability to pay for those utility services; and

WHEREAS, on March 19, 2020, the North Carolina Utilities Commission ("Utilities Commission" or "Commission") issued an Order Suspending Utility Disconnections for Non-Payment, Allowing Reconnection, and Waiving Certain Fees; and

WHEREAS, the Utilities Commission's March 19, 2020 order applied to only some of the utilities that are necessary for the continued well-being of North Carolina residents and the continued viability of North Carolina businesses; and

WHEREAS, the undersigned has determined that it is in the best interest of the people of North Carolina to enact, for all utilities, prohibitions and restrictions similar to and consistent with the Utilities Commission's March 19, 2020 order; and

WHEREAS, during this emergency, North Carolinians rely heavily on mass media and telecommunications systems as part of multiple critical activities, including (1) the public dissemination of critical information regarding governmental orders and advisories in response to COVID-19, including stay at home orders, shifts in the public school calendar, and announcements regarding the availability of resources; (2) educational activities, as students and educators have been required to stay at home but are continuing to participate in educational and instructional activities, many of which require the use of online resources and means of communication; (3) the provision of remote tele-medicine services, as urged by NCDHHS, to preserve healthcare system capacity to address the COVID-19 pandemic; and (4) teleworking that allows many businesses, non-profits, governmental agencies, and other organizations to continue to carry out their essential functions; and

WHEREAS, to minimize the possibility of mandatory measures that may need to be taken in the future, the undersigned urges all telecommunications companies serving North Carolina customers to voluntarily provide flexibility to their customers, including through the measures set forth below; and

WHEREAS, the economic effects of the COVID-19 pandemic have led to loss of income for many in North Carolina, making it difficult for many to make timely rental housing payments, creating a risk of eviction; and

WHEREAS, evictions and disconnections of utility services would exacerbate public health and safety risks because of dislocated customers; and

WHEREAS, in orders issued on March 13 and March 19, 2020, the Chief Justice of the Supreme Court of North Carolina exercised her authority under N.C. Gen. Stat. § 7A-39(b)(2) to order most district court and superior court proceedings to be scheduled or rescheduled no sooner than April 17, 2020; and to order that pleadings, motions, notices, and other documents and papers that were or are due to be filed in any county of this state on or after March 16, 2020 and before the close of business on April 17, 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely filed if they are filed before the close of business on April 17, 2020; and to order that all other acts that were or are due to be done in any county of this state on or after March 16, 2020 and before the close of business on 17 April 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely done if they are done before the close of business on April 17, 2020; and

WHEREAS, the U.S. Department of Housing and Urban Development issued an order dated March 18, 2020, imposing a sixty (60) day moratorium on evictions and foreclosures for single family homeowners with FHA-insured mortgages; and

WHEREAS, the undersigned and the Attorney General wish to provide clear guidance to the public about the effect of the Chief Justice's order on evictions; and

WHEREAS, because of the economic effects of the COVID-19 pandemic, many North Carolinians are enduring financial hardship and financial insecurity; and

WHEREAS, the undersigned encourages North Carolina-licensed or North Carolina-regulated financial institutions, including but not limited to banks and mortgage servicers, to provide assistance and flexibility to their customers; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of political subdivisions, and their officers and personnel are required to cooperate with and extend such services and facilities to the undersigned upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 75-14, 75-15, 114-2(2), and 114-2(8), the Attorney General has the authority to bring civil actions to enforce compliance with the State's Unfair or Deceptive Trade Practices Act, to represent State agencies in litigation, and to institute or intervene in proceedings before any courts and regulatory bodies on behalf of the State and the using and consuming public; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article"; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(3), the undersigned may take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the undersigned, with the concurrence of the Council of State, may regulate and control the maintenance, extension, and operation of public utility services and facilities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a State agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30; and

WHEREAS, under the terms of N.C. Gen. Stat. § 166A-19.70(a), utilities are considered critical infrastructure for the State of North Carolina.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Assistance for North Carolina Utility Customers

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Definitions

1. In this Section of this Executive Order, "Utility Service Providers" means all political subdivisions, organizations, quasi-governmental entities, and businesses that provide directly to end-user residential customers electric, natural gas, water, or wastewater services, as well as all providers of a combination of these services.

2. This Section applies to all Utility Service Providers, regardless whether they are investor-owned public utilities, are private companies, are member-owned cooperatives, or are owned or operated by a political subdivision of the State or a quasi-governmental agency. This Section applies whether services are pre-paid or post-paid.

3. The restrictions placed on Utility Service Providers by this Section should, in cases of any ambiguity, be interpreted to be consistent with the restrictions imposed upon certain Utility Service Providers by the North Carolina Utilities Commission in its March 19, 2020 Order Suspending Utility Disconnections for Non-Payment, Allowing Reconnection, and Waiving Certain Fees, Docket M-2, Sub 158.

B. **Prohibiting utilities from terminating service.** No Utility Service Provider shall terminate the service of a residential customer for nonpayment. Utility Service Providers may terminate service of a customer when necessary as a matter of safety or when requested by the customer.

C. **Late fees and payment arrangements.** A Utility Service Provider shall not bill or collect any fee, charge, penalty, or interest for a late or otherwise untimely payment that becomes due from the date of this Executive Order. Customers shall be provided the opportunity to make reasonable payment arrangements to pay off over at least a six (6) month period any arrearages accumulated during the effective period of this Executive Order and any order extending this Executive Order and 180 days thereafter. The six (6) month payoff period shall be calculated from the date of termination of this Section of this Executive Order or, if other applicable Executive Orders extend the protections of this Section, from the date of termination of the last Order that extends such protections; provided, however, that Utility Service Providers subject to the Utilities Commission's March 19, 2020 Order shall remain subject to the terms of that order after this Executive Order expires. No interest or late fee shall be charged on arrearages. No provision in this Executive Order shall be construed as relieving a customer of their obligation to pay bills for receipt of any service covered by this Executive Order.

D. **Reconnection of service.** A Utility Service Provider is encouraged to reconnect previously disconnected service to the extent practicable and waive any penalties or reconnection fees, and any policies or ordinances that prevent re-connection of disconnected customers are suspended.

E. **Payment assistance.** NCDHHS and the North Carolina Department of Environmental Quality shall work with Utility Service Providers to publicize payment assistance programs to aid customers, particularly customers qualified for the Low Income Energy Assistance Program, in the payment of their utility bills.

F. **Notification.** Utility Service Providers shall reasonably inform their customers of the applicable provisions contained in this Executive Order through the means those providers most typically use to communicate urgent messages to customers, such as print, email, SMS text message, Internet, and phone calls. Utility Service Providers shall maintain reasonable records that show the notifications provided under this Section of this Executive Order and to whom those notifications were delivered.

G. **Duration.** This Section shall remain in effect for sixty (60) days, unless rescinded or superseded by another applicable Executive Order; provided, however, that after that date, the provisions of this Section shall continue to apply to arrearages that accumulated while this Executive Order was in effect.

H. **Limitations on this Section**

1. This Section applies to all ordinary monthly (or other periodically-issued) charges for service to residential customer locations in North Carolina by all Utility Service Providers, whether for their customers' business or personal use.

2. This Section does not apply to additional optional services ordered by customers above their usual periodic charges, including, by means of example, options or services that the customer added on or after the date of this Executive Order in addition to their normal services.

3. This Section does not apply to issuance or collection of special fees or penalties issued to customers for unusual use, such as fines or penalties for improper disposal or charges for extraordinary discharges of wastewater.

I. **Effect on regulations and ordinances.** The effect of any regulation, policy, or ordinance of a political subdivision or agency of the state inconsistent with this Section is hereby suspended.

J. **Implementation and enforcement.** The undersigned directs that the North Carolina Utilities Commission monitor responses and provide assistance and guidance to Utility Service Providers, including to the extent possible Utility Service Providers not under the Commission's regulatory jurisdiction, in implementing the provisions of this Section of this Executive Order. Utility Service Providers shall report implementation information weekly to the North Carolina Utilities Commission, including the following: (1) number of accounts by type (e.g., residential or business account) for which service termination was forborne, (2) number of reconnections by type of account, (3) amount of late fees and other penalties not collected, (4) number of accounts on an extended repayment plan, (5) customer notification information, and any other information determined by the Utilities Commission. The Utilities Commission and the Attorney General shall have the authority to enforce the provisions of this Executive Order through any methods provided by current law. The Utilities Commission, and to the extent necessary for any Utility Service Providers not within the Utilities Commission's jurisdiction, the Attorney General may waive provisions in their discretion and order an effective alternative. The Commission shall provide a weekly report to the Governor's Office on implementation of this Executive Order.

Section 2. Guidance on Cable, Telecommunications, and Related Services

A. Telecommunications, mobile telecommunications, cable, Internet, and wi-fi or wireless Internet service providers are urged to follow the guidelines outlined in Section 1 of this Executive Order, including the following measures:

1. Ceasing, for the duration of this State of Emergency, termination of customers' service for nonpayment; and

2. Waiving any fee, charge, penalty, or interest for a late or otherwise untimely payment that has come due or becomes due during the State of Emergency; and

3. Allowing customers to make reasonable payment arrangements to pay off, over at least a six (6) month period, any arrearages that accumulate during the effective period of this Executive Order, starting after the end of this State of Emergency; and

4. Reconnect, to the extent feasible, practicable and appropriate, any customers who wish to be re-connected during the duration of this State of Emergency, with penalties and reconnection fees waived.

B. In addition to the provisions included in this Section, all telecommunications service providers are urged to lift or greatly expand data caps where they have not done so already.

C. The undersigned requests that the Attorney General convene cable, telecommunications, and related service providers in the state to identify specific and effective measures they can take individually and collectively to ensure that necessary services continue to be provided to people in the State of North Carolina to the maximum extent practicable.

Section 3. Guidance Concerning Eviction Proceedings

As guidance to North Carolinians, the undersigned highlights and explains the effect on evictions of the March 13, 2020 and March 19, 2020 orders by the Chief Justice of the North Carolina Supreme Court. The Attorney General has consulted with the undersigned on this Section of this Executive Order and joins in this guidance.

Pursuant to the Chief Justice's orders referenced above, there should be no new eviction proceedings until the orders expire. The current expiration date is April 17, 2020, unless extended by further order of the Chief Justice.

During this time period, there should also be no new rental bonds due.

The Clerks of Superior Court may, in their discretion, delay, until regular court operations resume, issuing Writs of Possession for Real Property, which are the legal documents under which sheriffs perform evictions. The undersigned and the Attorney General strongly encourage all Clerks of Superior Court to follow the spirit of the Chief Justice's order and to hold the issuance of all Writs of Possession of Real Property until April 17 or any later date subsequently ordered.

Further, the undersigned and the Attorney General strongly encourage sheriffs to delay, until regular court operations resume, the execution of any Writs of Possession for Real Property that have already been issued, consistent with the spirit of the order and in support of public health and public safety.

Finally, the undersigned and the Attorney General strongly encourage all property owners to work with tenants to the best of their abilities to implement payment plans and avoid evictions, in light of the State of Emergency in North Carolina, including cancelling pending evictions by notifying the relevant Sheriff's Office. Similarly, the undersigned and the Attorney General strongly encourage all lenders to work with property owners to the best of their abilities to provide loan payment flexibility that enables property owners to avoid evictions of tenants, in light of the State of Emergency in North Carolina.

Section 4. Assistance for Bank and Mortgage Companies' Customers

For the reasons and pursuant to the authority set forth above:

A. The undersigned urges that all North Carolina-licensed or -regulated (i) banks, (ii) savings banks, (iii) savings and loan associations, (iv) trust companies, (v) mortgage-lenders, (vi) servicers, (vii) brokers and mortgage loan originators, (viii) consumer finance companies, (ix) check cashers, (x) money transmitters or prepaid card providers, (xi) tax refund anticipation loan facilitators, and (xii) credit unions operating in the State of North Carolina should immediately implement the following reasonable and prudent measures for individual and business customers who are North Carolina residents and can demonstrate financial hardship caused by COVID-19.

1. Waive overdraft fees.

2. Extend new credit to creditworthy borrowers on lenient terms, subject to safety and soundness considerations.

3. Waive late fees for credit card and other loan balances.

4. Waive automated teller machine (ATM) fees.

5. Increase daily ATM daily cash withdrawal limits.

6. Increase credit card limits for creditworthy customers.

7. Lower or waive fees on prepaid credit or debit cards.

8. Waive early withdrawal penalties on time deposits.

9. Offer payment accommodations, such as allowing loan customers to defer payments at no cost, extending the payment due dates or otherwise adjusting or altering terms of existing loans, which would avoid delinquencies, trigger events of default or similar adverse consequences.

10. Cease reporting derogatory information (e.g., late payments, but not including forbearances) to credit reporting agencies for a period of ninety (90) days.

11. Ensure that customers do not experience a disruption of service if financial institutions close their physical offices. This may include shifting call centers to teleworking, making services available through Internet chat, or other electronic avenues for customers to continue to manage their accounts and to make inquiries.

12. Alert customers to the heightened risk of scams and price gouging during the COVID-19 pandemic.

13. Notify customers by various means, including but not limited to the entity's website, apps, and (if authorized by the customer) texts or emails, to explain the above-listed assistance being offered to customers.

B. The undersigned urges that all entities covered by Subsection A of this Section that service mortgages ("mortgage servicing entities") shall voluntarily, but immediately take actions to alleviate the adverse impact caused by COVID-19 on those North Carolina resident mortgage borrowers ("mortgagors") who attest that they are not able to make timely payments. Mortgage servicing entities are urged to take the following reasonable and prudent actions to support those adversely impacted mortgagors:

1. Forbear mortgage payments for at least 180 days from their due dates and give mortgagors the option to extend loan terms by that number of days without a lump sum payment due at the end of the forbearance period.

2. Refrain from reporting late payments to credit reporting agencies for at least 180 days.

3. To the extent possible under existing law, offer mortgagors an additional ninety (90) day grace period to complete trial loan modifications, and ensure that late payments during the COVID-19 pandemic do not affect their ability to obtain permanent loan modifications.

4. Waive late payment fees and any online or telephonic payment fees for a period of ninety (90) days.

5. Postpone foreclosures and evictions for at least ninety (90) days.

6. Notify customers by various means, including but not limited to the entity's website, apps, and (if authorized by the customer) texts or emails, to explain the above-listed assistance being offered to customers.

Section 5. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 6. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 7. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect for sixty (60) days unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 31st day of March in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox
Chief Deputy Secretary of State