

August 24, 2020

VIA EMAIL

The Honorable Glenn A. Grant, Administrative Director of the Courts
Jennifer Perez, Director of Trial Court Services
Taironda Phoenix, Assistant Director, Civil Practice Division
Lloyd Garner, Chief, Civil Practice Division, Special Civil Part
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Re: Ongoing CARES Act Compliance

Dear Judge Grant, Ms. Perez, Ms. Phoenix, and Mr. Garner:

I write again on behalf of a coalition of advocates for the rights of tenants. This coalition includes the signatories listed at the end of this letter. Thank you for working with us toward greater fairness in the landlord-tenant system during this period of looming mass eviction. We are especially encouraged that your guidance suggests a more active ongoing role for the judiciary in ensuring that eviction filings comply with federal, state, and local law.

In particular, we write to outline what we hope will be next steps in ensuring compliance with the CARES Act, 15 U.S.C. §§ 9057, 9058 (2020). The CARES Act certification appended as Attachment 6 to [Directive 20-20](#) will identify those landlords who are *not* covered by the CARES Act. Additional steps will be necessary, however, to ensure compliance by landlords who *are* covered by the CARES Act. Three provisions are especially relevant to ongoing compliance.

1. The Act requires covered landlords to give tenants 30 days' notice before "requir[ing] a tenant to vacate a dwelling unit." *Id.* §§ 9057(e), 9058(c).
2. The Act forbids covered landlords to charge fees related to a tenant's nonpayment of rent during the periods when eviction filings are prohibited. *Id.* §§ 9057(d)(2), 9058(b)(2).
3. The Act continues to ban eviction filings "solely for nonpayment of rent or other fees or charges" during any period of mortgage forbearance enjoyed by covered multifamily landlords. *Id.* § 9057(d).

Below, we suggest ways to enforce compliance with each of these provisions.

I. 30 Days' Notice Before Requiring a Tenant to Vacate

Two sections of the CARES Act require landlords to provide a tenant with a “notice to vacate” at least 30 days before “requir[ing] a tenant to vacate a dwelling unit.” *Id.* §§ 9057(e), 9058(c). The notice requirements apply when a covered landlord seeks to evict a tenant after a period of mortgage forbearance has expired, *id.* § 9057(e), as well as after the expiration of the Act’s general filing moratorium on July 24, *id.* § 9058(c). The notice provisions do not sunset; a covered landlord remains obligated indefinitely to provide 30 days’ notice before causing a tenant to be evicted.

For two main reasons, we read the CARES Act to require covered landlords to send the tenant a *written notice to vacate at least 30 days before filing an eviction complaint*. First, both Congress and the relevant federal agencies appear to read the provision this way, and several states have followed suit. Second, New Jersey law on notices for eviction, including notices mandated by federal rather than state law, typically requires notice before the action is filed.

A. Federal Interpretation of the CARES Act Notice Provisions and Interpretation by Other States

Leading federal agencies have interpreted the CARES Act to require 30 days’ notice before a covered landlord files an eviction action. Most importantly, the Department of Housing and Urban Development (HUD) Office of Affordable Housing Programs has created sample letters for use by its community partners to notify property owners and tenants about the CARES Act eviction moratorium. The sample letter to property owners states as follows: “If the amount owed for rent is not paid after July 24, 2020, owners/property managers may file for eviction in the court of jurisdiction 30 days after a notice of eviction is issued to the tenant, in accordance with state and local laws.” HUD Exchange, [HOME CARES Act Eviction Moratorium – Sample Letter to Owners](#). This interpretation is in line with the federal regulation that governs how landlords of HUD-subsidized properties must generally proceed to terminate a tenancy. The first step is written notice:

Requisites of Termination Notice. The landlord’s determination to terminate the tenancy shall be in writing and shall: (1) State that the tenancy is terminated on a date specified therein; (2) state the reasons for the landlord’s action with enough specificity so as to enable the tenant to prepare a defense; (3) *advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense*; and (4) be served on the tenant in the manner prescribed by paragraph (b) of this section.

[24 C.F.R. § 274.4(a) (emphasis added).]

Thus, HUD has interpreted the CARES Act notice requirement in accordance with its general notice requirement, which demands written notice to the tenant, and expiration of the notice

period without action by the tenant to cure the deficiency, before a landlord may file an eviction action.¹

Following the federal lead, states throughout the country have also interpreted the CARES Act to require covered landlords to put tenants on written notice at least 30 days before filing an eviction action. *E.g.*, Arizona Judicial Branch, [Guidance for Processing Eviction Matters During the COVID-19 Pandemic](#) at 4 (Aug. 12, 2020) (“The [CARES] Act included a 30-day notice requirement thus prohibiting landlords from filing eviction actions until after August 24, 2020.”); Supreme Court of Georgia, [In re: Superior Court Rule 49](#) (April 30, 2020) (“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.”); Commonwealth of Kentucky, Court of Justice, AOC-1027, [Verification of Compliance with CARES Act](#) (requiring covered landlords filing eviction actions to certify that “[t]enant was provided 30 days’ notice to vacate as required by Section 4024 of the CARES Act” and requiring landlord to attach notice to the complaint); District Court of Maryland, [Declaration of Compliance with the Coronavirus Aid, Relief, and Economic Security Act](#) (2020) (requiring covered landlords filing eviction complaints to certify that they “served tenant with the attached 30-day notice to vacate after expiration of” any forbearance period and after July 24); Supreme Court of Texas, [Twentieth Emergency Order Regarding the COVID-19 State of Disaster](#) ¶ 3.c. (July 21, 2020) (requiring covered landlords who filed eviction actions between March 27 and August 24 to certify that “the plaintiff has provided the defendant with 30 days’ notice to vacate under Sections 4024(c) and 4023(e) of the CARES Act”); Supreme Court of Vermont, [Admin. Order No. 49](#) ¶ 21 (last updated July 23, 2020), App. A, [Certification in Support of Compliance with the CARES Act](#) (requiring covered landlords to certify that “a notice to vacate was issued on or after [July 25, 2020] and at least 30 days before the filing of the eviction”).

These federal and state interpretations of the CARES Act notice provision should guide the AOC in determining how to direct our courts to implement the provision.

B. New Jersey Law on Notice of Impending Eviction

Fortunately, governing New Jersey law on notice in eviction cases aligns with the prevailing interpretation of the CARES Act provision, as described above. The notice provisions in the Anti-Eviction Act, N.J.S.A. 2A:18-61.2, make clear on their face that written notice is a prerequisite to filing the action. For example, the law prescribes “one month’s notice prior to institution of action” in cases alleging a tenant’s refusal to accept reasonable changes to the lease, *id.* § 2A:18-61.2(e);

¹ Similarly, in an April 7 explication of the CARES Act eviction moratorium, the Congressional Research Service (Congress’s nonpartisan research arm) wrote: “Section 4024(c) [codified at 15 U.S.C. § 9058(c)] arguably prohibits landlords from being able to force a tenant to vacate a covered dwelling for nonpayment or *any other reason* until after August 24, 2020 (i.e., 120 days after enactment, *plus 30 days after notice is provided*).” Maggie McCarty & David H. Carpenter, Cong. Research Serv., IN11320, [CARES Act Eviction Moratorium](#) at 1 (2020) (second emphasis added).

“three months’ notice prior to the institution of the action” in cases where eviction is necessitated by blight or substandard conditions that threaten health and safety, *id.* § 2A:18-61.2(c); and “18 months’ notice prior to the institution of the action” in cases where the property is to be permanently retired from the rental market, *id.* § 2A:18-61.2(d). Moreover, the Court Rules require landlords to attach all mandated notices to the complaint. R. 6:3-4(d) (“Complaints in all tenancy actions shall have attached thereto copies of all notices upon which the plaintiff intends to rely.”).

While New Jersey law does not require a notice to vacate (or “quit”) before a landlord files an eviction complaint for nonpayment of rent, *id.* § 2A:18-61.2, the courts have consistently enforced pre-filing notice in nonpayment cases when required by federal law. In *Riverview Towers Associates v. Jones*, 358 N.J.Super. 85 (App. Div. 2003), for instance, the Appellate Division vacated judgments for possession based on nonpayment of rent by tenants in a subsidized housing complex. The court held that the landlord had failed to provide pre-filing notice as required by the applicable federal regulation (24 C.F.R. § 247.4):

Although the complaint for summary dispossession is sufficient to confer jurisdiction on the court under New Jersey Law, *N.J.S.A.* 2A:18–61.1a, it is insufficient notice under federal law and the terms of the lease. “Like our state law, the federal statutes and attendant regulations reflect that the stern remedy of dispossession should be available to the landlord only when the landlord has afforded the tenant all the required pre-eviction statutory and regulatory protections.” *Housing Auth. of City of Newark v. Raindrop*, [287 N.J.Super. 222, 229 (App. Div. 1996)].

[*Id.* at 90.]

Likewise, in *Winns v. Rosado*, 440 N.J. Super. 98 (Law Div., Union County, Spec. Civ. Part 2014), the trial court enforced strict compliance with the federal regulations governing the eviction of Section 8 tenants for nonpayment of rent. Because the Section 8 regulations expressly permit a notice of termination to be provided in the complaint, 24 C.F.R. § 982.310(e)(2)(i), the court treated the nonpayment complaint as sufficient notice, 440 N.J. Super. at 102-03. Nevertheless, the court denied a judgment for possession because the landlord had failed to provide simultaneous notice to the relevant public housing authority, as required by the mandatory HUD lease addendum. *Id.* at 104-05.

In each of these cases, the courts emphasized that a landlord’s failure to provide notice in accordance with federal regulations deprives the state courts of jurisdiction to hear the eviction action. *Riverview Towers*, 358 N.J. Super. at 90; *Winns*, 440 N.J. Super. at 105; *see also Raindrop*, 287 N.J. Super. at 231. Like the federal notices required to evict federally subsidized tenants for nonpayment, the CARES Act notice “bespeaks recognition of the importance of affording a tenant the regulation-required notice when lease termination is considered by the landlord.” *Raindrop*, 287 N.J. Super. at 230. The CARES Act 30-day notice gives the tenant at least some time to try to raise funds and negotiate with the landlord before facing an eviction action.

No less than other mandatory federal notice in nonpayment cases, the CARES Act notice should be treated as a jurisdictional prerequisite to an eviction action and should be attached to the complaint in accordance with Rule 6:3-4(d). An additional certification for CARES Act-covered landlords² could include provisions like these, taken from the [Maryland Certification](#):

- Mortgage forbearance was granted to the borrower of a federally backed multifamily mortgage loan on this property under § 4023 of the CARES Act [codified at 15 U.S.C. § 9057].
 - Landlord/agent served tenant with the attached 30-day notice to vacate after expiration of the forbearance period granted to the borrower under § 4023 of the CARES Act [codified at 15 U.S.C. § 9057(e)].
- The property is a “covered property” under § 4024 of the CARES Act [codified at 15 U.S.C. § 9058].
 - Landlord/agent served tenant, after July 25, 2020, with the attached 30-day notice to vacate as required by § 4024(c) of the CARES Act [codified at 15 U.S.C. § 9058(c)].

II. Prohibition on Fees Related to Nonpayment of Rent

The CARES Act bars landlords from charging “fees, penalties, or other charges . . . related to . . . nonpayment of rent” by the tenant between March 27 and July 24. 15 U.S.C. § 9058(b)(2). The Act also bars covered multifamily landlords from charging “any late fees, penalties, or other charges” based on a tenant’s nonpayment of rent during a period when the landlord enjoys mortgage forbearance. *Id.* § 9057(d)(2). Covered landlords are not allowed to charge such fees once these periods expire. Both the text of the Act and its interpretation by federal agencies make clear that covered landlords may never collect fees related to tenants’ nonpayment of rent during the moratoria. HUD, Coronavirus Aid, Relief, and Economic Security (CARES) Act Eviction Moratorium, [Notice H 20-07](#) at 2 (July 1, 2020) (“[F]ees and charges the CARES Act prohibits from assessment during the moratorium may not be imposed after the moratorium ends on an accrued and delayed basis.”).

The [Kentucky CARES Act Verification](#) can serve as a model for ensuring that a covered landlord is not seeking prohibited fees. It asks landlords to certify as follows:

- Tenant is not being charged fees, penalties, or other charges related to nonpayment of rent that accrued during the period between March 27, 2020, and July 25, 2020.

² A CARES Act-covered landlord may be identified as one who did not or does not file the Federal CARES Act Compliance Certification Form (i.e., Attachment 6 to [AOC Directive 20-20](#)).

- Tenant is not being charged fees, penalties, or other charges related to nonpayment of rent that accrued during the period of forbearance.

New Jersey's form eviction complaint already asks landlords and their lawyers to certify that "[t]he late charges, attorney fees and other charges are permitted to be charged as rent for purposes of this action by federal, state and local law (including rent control and rent leveling) and by the lease." [Appendix XI-X Verified Complaint – Nonpayment of Rent](#) at 2; *see also* R. 6:3-4(c) (same). Unfortunately, this certification has proved largely ineffective in preventing landlords from charging fees prohibited by law in eviction cases, including fees not designated as rent in a written lease, *Cnty. Realty Mgmt. Grp. v. Harris*, 155 N.J. 212, 242 (1998); *Hodges v. Sasil Corp.*, 189 N.J. 210, 221 (2007); fees in excess of rent limits set by subsidy programs, *Harris*, 155 N.J. 212; *Hous. Auth. & Urban Redev. Agency v. Taylor*, 171 N.J. 580 (2002); *Hodges*, 189 N.J. 210; and fees in excess of limits set by rent control ordinances, *Ivy Hill Apartments v. Sidisin*, 258 N.J. Super. 19, 22-23 (App. Div. 1992); *Hudson View Gardens, LLC v. Reyes*, 2008 Westlaw 4648246, at *7-*8 (N.J. Super. App. Div. Oct. 15, 2008); *Opex Realty Mgmt. v. Taylor*, 460 N.J. Super. 287 (Law Div., Essex County, Spec. Civ. Part 2019). The problem results in part from the generality of the certification, which does not put landlords on notice of what fees are prohibited. The certification is also buried in the form complaint and does not require a check mark or other explicit affirmation by the landlord or the landlord's lawyer (beyond their signatures on the complaint). We urge the Court not to rely on this certification to implement the CARES Act's prohibition of certain fees.³

III. Filing Ban During Mortgage Forbearance

Under the CARES Act, a multifamily landlord – one whose property includes five or more units, 15 U.S.C. § 9057(f)(3) – may seek mortgage forbearance for up to 90 days, *id.* § 9057(c)(1).⁴ Such forbearance remains available throughout the “covered period,” which extends to the end of the national emergency or December 31, 2020, whichever is earlier. *Id.* § 9057(f)(5). During any period of mortgage forbearance, a covered multifamily landlord may not file an eviction action for nonpayment of rent. *Id.* § 9057(d). Thus, until year-end or the lifting of the national emergency, whichever comes first, it will be necessary to ascertain whether covered multifamily landlords who are filing eviction actions for nonpayment of rent presently enjoy mortgage forbearance.

The [Kentucky CARES Act Verification](#) includes a useful section on mortgage forbearance:

³ We also urge the Court to consider amendments to the form nonpayment complaint that would signal with greater clarity whether landlords have refrained from seeking fees in violation of preexisting law.

⁴ HUD has extended this period on the condition that landlords receiving mortgage forbearance agree not to file eviction actions during any extended forbearance period. HUD, Coronavirus Aid, Relief, and Economic Security (CARES) Act Eviction Moratorium, [Notice H 20-07](#) at 3-4 (July 1, 2020).

- Mortgage forbearance was granted to the borrower of a federally backed multifamily mortgage loan on this property under Section 4023 of the CARES Act; however, this eviction action is not solely for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent.
- Mortgage forbearance was granted to the borrower of a federally backed multifamily mortgage loan on this property under Section 4023 of the CARES Act and this eviction action is solely for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent. (Complete the following.)
 - Plaintiff filed this case after the expiration of the forbearance period granted to the multifamily borrower under Section 4023 of the CARES Act. Date of expiration: _____, 20____. AND
 - Tenant was provided 30 days’ notice to vacate as required by Section 4023 of the CARES Act. See attached notice, provided to Tenant on _____, 20____. (Attach notice.) AND
 - Tenant is not being charged fees, penalties, or other charges related to nonpayment of rent that accrued during the period of forbearance.

These or similar questions are necessary to ensure that covered multifamily landlords are not filing eviction complaints in violation of federal law.

* * * * *

Thank you, as always, for considering these requests. We look forward to hearing back from you and continuing to work with you on improving the landlord-tenant process.

Respectfully submitted,

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