

Nonpayment evictions here usually are with 3 days notice, not 30.

EGD Answer: all or nearly all states allow eviction for nonpayment of rent on fewer than 30 days' notice. However, the CARES Act is a federal statute that requires 30 days' notice, which cannot be given until after July 24, at least for eviction based on nonpayment of rent or other charges (possibly for other cases as well). Therefore, even if a landlord complies with the state law procedures to commence an eviction lawsuit, the tenant may not be holding over until after expiration of the federally-required notices=.

Also: Eric, can you please further explain the argument or position that all eviction actions - even those for reasons other than nonpayment of rent - should fall under the requirements of the Act (especially the notice requirement)?

EGD Answer: Not clear. The text of the 4024(c) does not limit the notice requirement to nonpayment evictions or any other type of evictions. However, landlords could argue that since Sec. 4024(b) prohibited only nonpayment evictions, Sec. 4024(c) should be interpreted to require 30 days' notice only in non-payment evictions as well. I expect courts will reach different results in this question.

So to be clear: a state eviction moratorium (for non payment of rent) which ends Sep 1 AND the CARES Act 30-day notice can both be complied with?

EGD Answer: would depend on the terms of the state moratorium. But if the state moratorium did not prevent issuance of eviction notices prior to its end date, then I suppose a LL could give 30 days' notice between July 25 and August 1 to vacate by August 31.

what defense can you use for someone who has been receiving unemployment benefits and the additional \$600 per week but still didn't pay their rent?

EGD Answer: so far as I know, there is no requirement that tenants who receive unemployment benefits forfeit any eviction defenses should they use those benefits for things other than rent. So any defenses otherwise available to the tenant should apply. Arguably Rule of Evidence 403 could be used to exclude evidence on this matter from an eviction case, as such information likely has no probative value and could unfairly prejudice the tribunal against the tenant.

Accepting that there will be some large number of evictions that will take place, is there any exploration of the possibility of housing evicted tenants at "closed" military facilities?

EGD Answer: I have not heard this idea. Personally I would invite everybody to camp out on Mitch McConnell's front lawn.

You mentioned that landlord who served tenant an eviction notice prior to March 27th should be required to issue a new 30 day notice after the expiration of the

moratorium even if the notice period expired prior to March 27th - can you please reiterate the argument you would present to a court to justify that position? Thank you!

EGD Answer: Section 4024(c) of the CARES Act states that a LL cannot require a tenant to vacate any sooner than a 30-day notice to vacate is given. That 30-day notice also cannot be given until after the 120-day period under Sec. 4024(b) has expired. Therefore, any notice to vacate given before July 25 is essentially ineffective. The tenant cannot be holding over unlawfully on rental premises until the 120-day period has expired (July 25), then a notice was given, then the notice expired. The earliest that could possibly happen in August 25. State laws almost uniformly provide that an eviction lawsuit is premature and improper if filed before the tenant is holding over.

Have any cases filed against courts for due process violations during the pandemic? Thank you.

EGD Answer: In Virginia, advocates filed petitions for writs of prohibition to stop eviction proceedings on due process grounds. The pleadings are on NHLP's website. Other due process claims have been presented in Louisiana, Idaho, Missouri, and other states. Documents from many of these cases are also on NHLP's Covid-19 page.

Would be interesting to know how many forbearances have been issued, if anyone knows.

LS Answer: Yes, we're working on gathering and tracking that information. We know there are about 50 multifamily HUD loans in forbearance currently (with 5,847 units affected). RD said recently it had processed 4,000 payment deferrals, but no info yet on # units affected. No numbers yet for the GSEs' portfolios, but it will be much larger than the HUD number b/c they back many more loans than HUD does. We'll send out additional info and updates over HJN listserv.

So, for tenants, is it safe to say that the latest "end date" for the CARES Act provisions to be in play will be May 1, 2021 (i.e. Act remains in play until December 31st; forbearance granted to owner/landlord on December 31st; forbearance expires on March 31st; landlord issues 30 day notice on April 1st)? Now that I see the slide on the forbearance extensions, scratch the timeline from the prior question...so, do we know what would be the appropriate "end date" for the CARES Act to be in play for tenants?

LS Answer: It depends which type of protection you're talking about and which agency. The eviction moratoriums are tied to the end date of forbearances, so the latest date someone might have that protection would correspond to the latest date a COVID forbearance extension could end. For HUD, we don't know exactly b/c they don't prescribe a specific maximum extension period. For the GSEs, it would be 6 months after start of the CARES Act

forbearance, so June 30, 2021 (assuming the national emergency is not declared over before December 31, 2020). That said, it is possible that HUD and/or the GSEs might allow owner-borrowers to start COVID-related forbearances even after Sec. 4023 expires, but that is not clear yet. For USDA-RD, end date is 3 months after CARES Act forbearance start date, so latest would be March 31, 2021.

For HUD and GSE-backed loans two protections last through the repayment period (i.e., remain in force until owner-borrower brings the loan current after forbearance): no late fees and required 30-day notice to vacate. Latest end date for those where the loan is GSE-backed would be 30 months after start date of forbearance (6 months forbearance + 24 months maximum repayment plan), so June 30, 2023. If the loan is HUD-backed, the maximum repayment period is not specified, but unlikely to be longer than the GSE timeline.

Keep in mind that an owner-borrower is free to end a forbearance early or bring the loan current before the scheduled end of the repayment plan, so these end dates are not necessarily fixed even if we are able to get all the relevant information about forbearance start day and repayment plan end date.

Sitkin slide p 7 the most recent HUD notice is 07 and the original slide is 09? that is confusing is this an error or correct?

LS Answer: The most recent notice, issued July 1, 2020, is HUD Notice H 20-07. The original CARES Act implementation notice, issued in April, is HUD Mortgagee Letter 20-09. The numbers seem out of order because the notices are part of two different series of notices that HUD puts out.

No late fees or penalties until owner pays his past due amounts, does this mean no charges period or the charges accrue and charged later?

LS Answer: My understanding is that this is meant to extend the CARES Act bar on late fees during the forbearance period, which means the fees should not be charged at all for that time period. I would expect disputes to arise over that issue, though.