



Enforcing the CARES Act 30-Day Eviction Notice Requirement

The federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), took effect on March 27, 2020, and imposed a partial residential eviction moratorium that restricted lessors of “covered properties” from filing new eviction lawsuits for non-payment of rent or other charges.¹ The CARES Act also prohibited “fees, penalties, or other charges to the tenant related to such nonpayment of rent,” and state that the lessor of a covered property could not require a tenant to vacate except on 30 days’ notice—which notice could not be given until the original moratorium period expired.²

The initial 120-day moratorium period was never extended and expired on July 24, 2020. Yet the 30-day CARES Act notice requirement remains in effect. Nevertheless, advocates continue to report widespread noncompliance with this notice provision and a troubling lack of consistency in judicial enforcement. A poll of Housing Justice Network members taken in the fall of 2021 found that 78% of respondents observed seeing courts in their service areas either sometimes or always fail to enforce the notice requirement—including 20% of respondents seeing courts in their service areas decline to enforce the provision at all.³ In Spring 2022, NHLP again surveyed HJN and found that a staggering 88% of respondents reported inconsistent or no court enforcement of the CARES Act notice requirements.

Determining whether a property is covered

Since the CARES Act’s initial passage, probably the most challenging aspect of the law has been determining whether a particular tenant’s rental unit is a “covered dwelling.”⁴ The Act defines “covered dwelling” to include substantially any type of residential tenancy, so long as the premises is in a “covered property” and the tenant actually occupies the premises.⁵ The term “covered property” then includes any property that participates in certain federal housing programs or that has a federal backed mortgage loan.⁶

¹ See 15 U.S.C. § 9058(b).

² See 15 U.S.C. § 9058(c).

³ National Housing Law Project, “Evictions Survey: What’s Happening on the Ground” at 4 (Fall 2021), <https://www.nhlp.org/wp-content/uploads/NHLP-evictions-survey-2021.pdf>

⁴ See 15 U.S.C. § 9058(a)(1).

⁵ See 15 U.S.C. § 9058(a)(1)(A).

⁶ See 15 U.S.C. § 9058(a)(2).

- *Coverage via participation in a federal housing program*

Under the participation in federal housing programs prong, a “covered property” includes any property that is covered by the Violence Against Women Act.⁷ Note that VAWA coverage extends not only to HUD-subsidized low-income housing programs (such as public housing and housing choice vouchers) but also reaches properties participating in the (U.S. Department of Agriculture’s) Rural Development housing programs and the Low-Income Housing Tax Credit program (administered through the U.S. Department of Treasury). Note that while RD vouchers were not covered under VAWA at the time of passage, such tenancies separately have CARES Act coverage.⁸

Under the 2022 reauthorization of VAWA, the definition of “covered property” will expand not only to include several additional programs by name (including the Section 202 Direct Loan Program,⁹ RD vouchers,¹⁰ the federal housing trust fund,¹¹ VASH vouchers and other programs for providing federal housing assistance to veteran families,¹² and transitional housing for victims of domestic violence, dating violence, sexual assault, or stalking¹³), but also a catch-all provision that makes VAWA applicable to:

“any other Federal housing programs providing affordable housing to low- and moderate-income persons by means of restricted rents or rental assistance, or more generally providing affordable housing opportunities, as identified by the appropriate agency through regulations, notices, or any other means.” Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(A), to be codified at 34 U.S.C. § 12491(a)(3)(P).

The changes in the 2022 VAWA reauthorization take effect on October 1, 2022.

Under 15 U.S.C. § 9058(a)(2)(A), participation (in a federal housing program affording coverage) on behalf of any resident makes the entire property a “covered property.” That means if there

⁷ The VAWA -covered housing programs include: Public housing (42 U.S.C. § 1437d), Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f), Section 8 project-based housing (42 U.S.C. § 1437f), Section 202 housing for the elderly (12 U.S.C. § 1701q), Section 811 housing for people with disabilities (42 U.S.C. § 8013), Section 236 multifamily rental housing (12 U.S.C. § 1715z-1), Section 221(d)(3) Below Market Interest Rate (BMIR) housing (12 U.S.C. § 17151(d)), HOME (42 U.S.C. § 12741 et seq.), Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.), McKinney-Vento Act homelessness programs (42 U.S.C. § 11360, et seq.), Section 515 Rural Rental Housing (42 U.S.C. § 1485), Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486), Section 533 Housing Preservation Grants (42 U.S.C. § 1490m), Section 538 multifamily rental housing (42 U.S.C. § 1490p-2), and Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42). See 34 U.S.C. § 12491(a)(3).

⁸ See 15 U.S.C. § 9058(a)(2)(A)(ii).

⁹ See Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(A).

¹⁰ See Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(C).

¹¹ See 12 U.S.C. § 4568; see Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(K).

¹² See Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(L-N).

¹³ See Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(O).

is one participating tenant in a property, then all of the other, non-participating tenants in the same property also qualify as occupants of “covered dwellings” entitled to the notice required by the Act.¹⁴

- *Coverage based on a federally-backed mortgage or multifamily mortgage loan*

Federally-backed mortgage loans include loans secured by any lien on a residential property with 1-4 units that 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 [HUD] 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.”¹⁵ While the Fannie Mae and Freddie Mac-owned loans are best-known for being covered under the CARES Act, other federally-backed loans include those insured by the Federal Housing Administration, Veterans Administration, U.S. Department of Agriculture and HUD’s Section 184 Indian Home Loan Guarantee program. A federally-backed multifamily mortgage loan has the same definition, except that is secured by a property with five or more dwelling units.¹⁶

For advocates representing tenants who themselves participate in housing subsidy programs or benefit from low-income housing tax credit rent limits, determining that the CARES Act notice requirement applies should not be difficult. But discerning whether a property has a federally-backed mortgage loan, receives voucher subsidies on behalf of other residents, or participates in VAWA-covered programs with respect to tenants other than the advocate’s client can be considerably more difficult.

Finding out whether a multifamily property is covered by the CARES Act

For multifamily (i.e., 5+ selling unit) properties, a number of public and private databases are available by which advocates may look up whether they have coverage:

- [National Low-Income Housing Coalition](#)¹⁷
- [HUD Multifamily Assisted Properties](#)¹⁸
- [FHA-insured Multifamily Properties](#)¹⁹

¹⁴ See 15 U.S.C. § 9058(b); see also *Stacy Burleson v. Sun Plaza Ltd. P’ship*, No. D-202-CV-02851 (Bernalillo Cty, New Mexico, July 13, 2021), <https://www.nhlp.org/wp-content/uploads/NM-Order.pdf>

¹⁵ 15 U.S.C. § 9058(a)(4).

¹⁶ See 15 U.S.C. § 9058(a)(5).

¹⁷ <https://nlihc.org/cares-act>

¹⁸ https://www.hud.gov/program_offices/housing/mfh/hsgrent/mfhpropertysearch

¹⁹ <https://hudgishud.opendata.arcgis.com/datasets/hud-insured-multifamily-properties>

- [Fannie Mae Multifamily Lookup Tool](#)²⁰
- [Freddie Mac Multifamily Lookup Tool](#)²¹

Note that advocates and reporters reported significant numbers of errors, omissions, and outdated entries in at least some of these databases—yet these are the best tools available for ascertaining coverage without cooperation from the housing provider. Of arguably even greater concern than inaccuracies, some significant potential sources of CARES Act coverage are simply absent from these lookup tools altogether. This includes multifamily properties that participate in tenant-based voucher programs (such as housing choice vouchers, RD vouchers, or the Shelter+Care program) but which receive no other federal financial assistance, as well as some multifamily properties financed through loans backed by the Government National Mortgage Association (“Ginnie Mae”)—such a USDA or VA loans. While Ginnie Mae does have a lookup tool available:

- [Ginnie Mae Multifamily Search Pool Search](#)²²

...the tool is not user-friendly and may not be searched by identifiers commonly available to tenants, such as street address, development name, or even owner or legal description.

Tenants will also generally not know or have access to information from which to determine whether other residents participate in tenant-based subsidy programs, particularly as tenant privacy protections may limit housing authorities or other administrators in disclosing or identifying properties where participants reside. In one case, a Nebraska trial court relied on a landlord’s statement in advertising materials that it accepts housing choice vouchers as establishing participation in that program for purpose of CARES Act coverage.²³

Finding out whether a 1-4 unit property is covered by the CARES Act

Single-family homes and other rental properties with fewer than five units are generally not listed in publicly-available databases that reveal CARES Act coverage. Though Fannie Mae and Freddie Mac both maintain lookup tools that borrowers can use to find out if their loans are owned by either enterprise, running a search in either database requires a user to include the last four digits of the borrower’s social security number and check a box confirming the user either owns the property or has the owner’s consent to access the information.²⁴

An advocate might also be able to detect the presence of a federally-related loan by reviewing

²⁰ <https://www.knowyouroptions.com/rentersresourcefinder>

²¹ <https://myhome.freddie.mac.com/renting/lookup>

²² https://www.ginniemae.gov/investors/investor_search_tools/Pages/multifamily.aspx

²³ See William C. Stanek v. Jessie Reed, No. C120-9102 (Douglas Cty., Nebraska, June 12, 2020), <https://www.nhlp.org/wp-content/uploads/Douglas-County-Order-of-Dismissal.pdf>

²⁴ See <https://ww3.freddie.mac.com/loanlookup/> and <https://www.knowyouroptions.com/loanlookup#>.

the contents of any mortgages, deeds of trust, or other instruments recorded for a property—but mortgage loans seldom require public filings that identify loans as federally-backed, and public documents also do not necessarily indicate the involvement or subsequent acquisition by a relevant federal enterprise or the cancellation of federal insurance. And tenants in 2-4 unit buildings, as in (5+ unit) multifamily properties, will often neither know nor be able to find out whether other tenants have tenant-based vouchers.

Though tenants will often lack the ability to determine whether a property is subject to CARES Act coverage, a landlord should know or have access to the documents from which to find out. For federal housing programs, these may include housing assistance payments contracts, HUD lease addenda, or other documents or correspondence with public housing agencies, voucher administrators, or other such entities. For mortgage loans, landlords should have copies of the notes or mortgage instruments themselves, other closing documents, servicing notices, account statements, or other correspondence. As noted above, both Fannie Mae and Freddie Mac maintain websites that borrowers (but not others) may use to look-up whether each enterprise owns their loan.¹¹ Landlords can also contact their servicers to ask about the presence of federal mortgage insurance.²⁵

Given this discrepancy in access to information, courts should find that landlords who file eviction actions (for nonpayment of rent or other charges) bear the burden of proving and pleading either that the tenant was given 30 days' notice or else that the premises is not covered under the CARES Act. Consistent with this interpretation, a number of state and local court systems implemented rules and pleading forms for landlords to verify non-application of the CARES Act during the original 120-day eviction moratorium.²⁶

Whether or not such a rule is in effect in the jurisdiction, advocates should move to dismiss any eviction complaint that does not aver the lack of participation in a VAWA-covered program or RD voucher program or the absence of a federally-backed mortgage loan (for a property with four or fewer dwelling units) or federally-backed multifamily mortgage loan (for a property with five or more units). And even if the pleadings contain such averments, advocates should not accept such claims at face value.

Before trial, advocates should zealously endeavor to learn whether a property is covered using whatever means are available. This includes conducting formal discovery (if allowed) into the presence of any contracts the landlord may have with PHAs or federal housing contract administrators or participation in any tenant-based voucher or subsidy programs, as well as regarding any financing, liens, or security interests on the property. Even if such investigation is

²⁵ See, e.g., Joey Campbell, "How do I know if my loan is FHA insured?" *Sapling.com*, <https://www.sapling.com/6030875/do-loan-fha-insured>, last visited June 13, 2022

²⁶ See, e.g., Iowa's CARES Act Landlord Verification Form, https://www.iowacourts.gov/static/media/cms/CARES_Act_Landlord_Verification_5_D550A0B615603.pdf, and Michigan Form DC 540, <https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/dc504.pdf>. Advocates in jurisdictions that adopted such rules and forms should review the relevant Covid-19 emergency orders to determine whether these requirements remain in effect.

not successful, courts will likely be more inclined to require landlords to plead or prove the absence of CARES moratorium coverage when tenants can show they were unable to verify coverage despite diligent efforts.

When cases come to trial, advocates should utilize cross-examination to ensure that landlords who fail to give 30 days' notice have verified the lack of coverage through every possible means. The general approach should entail asking landlords, as to each federal housing or loan program it might plausibly participate in, if (i) the landlord knows whether the property participates in the program and (ii) if the landlord claims to know that the property does not participate, how and by what steps the landlord determined that lack of coverage. Advocates may consider using the following checklist to guide such cross-examinations (through September 30, 2022):

- Public housing;
- Project-based Section 8 housing or other HUD-subsidized multifamily;
- Housing Choice Voucher program;
- Section 202 housing for the elderly;
- Section 221 below market rate housing;
- Section 236 multifamily housing;
- Section 811 housing for people with disabilities;
- HOME Investment Partnership Program;
- Housing Opportunities for People with Aids;
- McKinney-Vento Act housing programs (including Shelter+Care voucher);
- Section 515 Rural Development rural rental housing;
- Section 514/516 farm labor housing;
- Section 533 USDA preservation grant housing;
- Section 538 USDA multifamily housing;
- Rural housing voucher program;
- Low-income housing tax credit program
- Fannie Mae owned mortgage loan;
- Freddie Mac owned mortgage loan;
- HUD Section 184 Indian Home Loan Guarantee
- Ginnie Mae backed mortgage loan:
 - Federal Housing Administration
 - Veterans Administration
 - USDA direct or guarantee loan

Beginning on October 1, 2022, advocates should add the additional VAWA-covered programs to this list:

- Section 202 direct loan program
- Federal housing trust fund program
- VASH vouchers (or any other program that provides federal housing assistance to veteran families);
- Transitional housing for survivors of domestic violence, dating violence, sexual assault, or stalking;

- Any other federal program providing affordable housing to low- or moderate-income persons:
 - by means of restricted rents or rental assistance, or
 - otherwise providing affordable housing opportunities as identified through agency regulations, notices, or any other means.”

If at any time a landlord denies knowledge as to whether the property is covered through any particular path, or claims the property is not covered under a particular path but demonstrates an insufficient basis for reaching that conclusion, the court should dismiss the case (for the landlord will have failed to meet its burden to prove the immediate right to possession). In preliminary proceedings the possibility that a property *might* be covered tends to at least raise a triable fact issue, meaning the court should at minimum set a trial date that allows an opportunity for the parties to investigate and determine whether the property is covered.

What about courts that don't enforce the statute?

With the initial 120-day filing moratorium having long expired, many landlords, attorneys, and courts appear to have presumed that the CARES Act notice provision must have also have expired some time in the past. This is, of course, inaccurate; the notice provision carries no expiration date or sunset clause and remains in force as a federal statute codified at 15 U.S.C. § 9058(c). Yet as spotty compliance and inconsistent enforcement of the CARES Act notice requirement remains problematic, advocates should be prepared to correct such misplaced assumptions about the notice requirement's duration or other contributing information deficiencies.

To date, two available court decisions reflect judicial acknowledgement of the CARES Act notice provision. Both primarily concerned the question of whether compliance the 30-day notice is required for eviction cases based on grounds other than nonpayment of rent (or other charges)—but in answering that question, backhandedly acknowledged the duty to give that notice in nonpayment cases. One of those decisions is *West Haven Housing Authority v. Armstrong*, in which the court ruled on a statutory construction analysis that that “the 30-day notice requirement is applicable to nonpayment of rent cases only and not to cases such as this one brought for serious nuisance.”²⁷

The second case, *Watson v. Vici Community Development Corp.*, was a disability discrimination action in U.S. District Court.²⁸ But the case also involved a separate claim seeking a declaratory judgment to invalidate an eviction lawsuit the defendant had filed against the tenant in August 2020 without having given the 30 days' notice required by the CARES Act. The defendant admitted having filed the eviction suit without serving the CARES Act notice but claimed that

²⁷ See *West Haven Housing Authority v. Armstrong*, 2021 WL 2775095 (Conn. Super. Ct. Mar. 16, 2021), citing *Nwagwu v. Dawkins*, BPH-C-21-5004438S (March 2, 2021, Spader, J.).

²⁸ See *Watson v. Vici Cmty. Dev. Corp.*, No. CIV-20-1011-F, 2022 WL 910155 at 9-10 (W.D. Okla. Mar. 28, 2022).

notice was not required because the action was not based on nonpayment of rent:

"Instead, they assert that section 9058(c)'s notice requirement does not apply because its eviction filing was not based upon the "nonpayment of rent." See, 15 U.S.C. § 9058(b). Defendants maintain that they commenced the August 25, 2020 eviction proceeding because there was no valid lease agreement in existence (the lease agreement had been non-renewed in March, 2019 and it expired at the end of May, 2019) and they sought to remedy an alleged jurisdictional defect in the July 2019 eviction filing."²⁹

The court found that the landlord's reason for filing the eviction case was a question of fact that precluded summary judgment for either party—effectively holding that, if the eviction was motivated by nonpayment of rent (or other charges), then it was unlawful due to noncompliance with the CARES Act.³⁰

In addition to court decisions, advocates may wish to consider drawing attention to various administrative or regulatory materials reflecting the continuing viability of the CARES Act notice. For instance, the HUD Office of Multifamily Housing Programs issued guidance to multifamily owners on April 26, 2021, making clear that "[n]otwithstanding the expiration of the CARES Act eviction moratorium, the CARES Act 30-day notice to vacate requirement for nonpayment of rent, in [15 U.S.C. § 9058](c)(1), is still in effect for all CARES Act covered properties."³¹ HUD's Office of Public and Indian Housing issued a notice on October 7, 2021, directed to the special attention of housing authorities, multifamily housing owners and operators, and other stakeholders, stating similarly that, as of then, "the CARES Act provision requiring 30-days' notice to vacate for nonpayment of rent remains in effect for all CARES Act-covered properties, including both public housing and properties assisted under HUD's project-based rental assistance programs."³²

The Consumer Financial Protection Bureau has posted extensive information on its website advising tenants that they may "have the right to a CARES Act 30-day notice before [a] landlord can ask [them] to leave or file an eviction" and describing different types of covered tenancies and resources to find out if a property is covered.³³ These federal resources exist in addition to information and materials from many states and local governments and nonprofit organizations advising of the CARES Act notice requirement and to whom it pertains.

²⁹ *Watson*, 2022 WL 910155 at *10.

³⁰ *Id.* at 10 ("The court concludes the issue as to defendants' reason for commencing the August 25, 2020 eviction proceeding and whether they violated the CARES Act is for one trial.").

³¹ HUD Office of Multifamily Housing Programs, "Questions and Answers for Office of Multifamily Housing Stakeholders" at 18 (Q. 25) (Last Updated Aug. 9, 2021), https://www.hud.gov/sites/dfiles/Housing/documents/MF_COVID-19%20QA_8_4_21.pdf

³² HUD PIH Notice 2021-29 (Oct. 7, 2021), <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2021-29.pdf>

³³ See Consumer Financial Protection Bureau, "Protections for renters in multi-family housing or federally subsidized housing," <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/federally-subsidized/#30-day-notice>, last visited June 14, 2022.

Alternative grounds that require 30-day notice prior to eviction for some HUD tenants

HUD published an interim final rule (IFR), Extension of Time and Required Disclosures for Notification of Nonpayment of rent, which went into effect on November 8, 2021.³⁴ The IFR mandates HUD housing providers to give 30-day notice to public housing and PBRA tenants prior to eviction for nonpayment of rent. The 30-day notice must include information about local emergency rental assistance programs. The IFR applies when HUD determines an extended notice period is necessary to allow tenants more time to access federal funding when the President has declared a national emergency. In the case of the Coronavirus pandemic, HUD published supplemental guidance detailing the Secretary's determination for making the IFR effective during the current public health crisis.³⁵ The notice is still in effect.

³⁴ [86 Fed. Reg. 55693](#) (Oct. 7, 2021).

³⁵ DEP'T. OF HOUS. & URBAN DEV., [Supplemental Guidance to the Interim Final Rule, Extension of Time and Required Disclosures for Notification of Nonpayment of Rent PIH 2021-29](#) (Oct. 7, 2021).