



MEMORANDUM

From: Julie Anderson

Re: CARES Act – Notice Provision (§4024(c)(1)) and HUD Interim Final

Date: January 1, 2024

Applicability of this Memorandum

On March 27, 2020, the president signed the Coronavirus Aid, Relief, and Economic Security Act (“**CARES Act**”) into law. It applies to properties that participate in a “covered housing program” as defined by the Violence Against Women Act (VAWA), including Section 8 Housing Choice Voucher Program, Section 8 Project-Based Housing and Low-Income Housing Tax Credit (LIHTC). It also covers properties that have a federally backed multifamily mortgage loan (HUD, VA, USDA, Freddie Mac, Fannie Mae).

On November 8, 2021, a new HUD rule (the “**Interim Rule**”) became effective that requires properties with *project-based rental assistance* to provide the following when “funding is available to assist tenants with nonpayment of rent during a national emergency, such as the current COVID-19 pandemic”:

- (1) Information as required by HUD for accessing funds that are being made available related to the emergency; and
- (2) Adequate opportunity to access emergency funding in the form of abstaining from lease termination for 30 days following delivery of the above-described notification.

The Interim Rule applies to properties with project-based rental assistance, including Section 8, Section 8 Moderate Rehabilitation, Section 202/162 Project Assistance Contract, Section 202 Project Rental Assistance Contract (PRAC), Section 811 PRAC, Section 236 Housing Assistance Program and Rent Supplement.

If the property is not covered by the CARES Act or the Interim Rule, your eviction matters for non-payment of rent may proceed as normal.

Expiration of the CARES Act Moratorium: Surviving Notice Provision

Section 4024(b) of the CARES Act provided a blanket moratorium on non-payment of rent eviction filings, which was invalidated by the U.S. Supreme Court on August 26, 2021. Accordingly, eviction filings for the non-payment of rent for properties covered by the CARES Act have resumed.

However, Section 4024(c) of the Act provides some special notice requirements outside of the usual state-specific required procedures. The White House, Consumer Finance Protection Bureau (CFPB) and HUD, among others, have taken the position that the notice requirement did not expire along with the moratorium. It provides that 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).”

The applicability and interpretation of that provision is subject to debate, but the following are our current recommendations for Kansas and Missouri.

KANSAS

Kansas state law (KSA §58-2564) requires a notice be delivered to the tenant informing them that rent must be paid within three (3) days or the tenancy is terminated and the tenant must vacate (a “**3- Day Notice**”). For properties covered by the CARES Act, we recommend that the normal 3-Day Notice be *combined* with an additional Thirty Day “Notice to Vacate” as referenced in the CARES Act. Alternatively, you may send two separate notices to tenants to begin the eviction process: (1) a standard 3 day notice for the tenant to pay their balance in full or vacate the premises within 3 days; and if the tenant fails to comply (2) a notice which states that, if the tenant fails to vacate the premises within 30 days, a lawsuit may be filed to recover the delinquent balance and possession of the premises. As further outlined above, the CFPB and HUD are also requiring certain rental assistance information be provided to tenants.

Our proposed Kansas notice is available at www.mokslaw.com/forms for your use. The lessor or his/her manager should fill out the notice and deliver it to the tenant(s). The server of the notice should keep a copy and fill out the Certificate of Service portion on the last page of the Notice. If the tenant fails to pay within the 3 days, then the tenancy is terminated and the tenant(s) is required to vacate within 30 days after the initial 3-day period expired. If the tenant(s) fails to vacate after the 30-day period, and you wish to proceed with an eviction filing, then please (1) complete the eviction intake process located at www.mokslaw.com under the “File a Case” tab; (2) upload a copy of the notice and; (3) upload a copy of the applicable lease agreement.

PLEASE NOTE: If the tenant makes any payment after the 3-day period, you must provide the tenant with a Reservation of Rights letter (a free form is available at www.mokslaw.com/forms).

MISSOURI

Missouri state law does not require a “termination notice” or “notice to vacate” be delivered to a tenant before commencing an eviction for non-payment of rent. However, for properties covered by the CARES Act, whether a “notice to vacate” must be provided and when that notice must be provided are currently a subject of debate.

Evictions for non-payment of rent may be filed unless the lessor has a federally backed mortgage (ie. Fannie Mae, Freddie Mac, FHA) *and* the lessor is receiving mortgage help (forbearance). For

properties covered by the CARES Act or the Interim Rule, the above-described prerequisite notice requirements must be satisfied before an eviction for the non- payment of rent may be filed.

Our proposed Kanas notice is available at www.mokslaw.com/forms for your use. The lessor or his/her manager should fill out the notice and deliver it to the tenant(s). The server of the notice should keep a copy and fill out the Certificate of Service portion on the last page of the Notice. After the notice is delivered to the tenant and you wish to proceed with an eviction filing, then please (1) complete the eviction intake process located at www.mokslaw.com under the “File a Case” tab; (2) upload a copy of the notice and; (3) upload a copy of the applicable lease agreement.

As of the date of this Memorandum, neither the Missouri nor Kansas Courts have squarely decided whether a lessor must wait for the 30-day CARES Notice to expire before filing a lawsuit. The majority of other State Courts in the USA that have addressed the issue have determined that a lessor must wait at least 30 days after delivering the CARES Notice to a tenant before filing a lawsuit to recover possession of the premises if the lawsuit is based on the non-payment of rent. We are also currently aware that a handful of attorneys who regularly represent tenants are looking into potentially filing a class-action lawsuit against lessors that violate the terms of the CARES Act. If the CARES Act applies to your property as described above, we recommend delaying filing of new cases for rent and possession until at least 30 days after the CARES Notice is delivered to the tenant(s).

Please reach out for a consultation if you have any questions or concerns regarding how the CARES Act may impact your real estate investment business.