



March 24, 2023

UPDATE #43

CARES Act Long Lasting Impact: Is a Thirty-Day Notice to Vacate Required for Nonpayment Evictions for Covered Properties?

Friends:

I'm sure many of you recall the Coronavirus Aid, Relief and Economic Security Act ("the CARES Act" or "the Act"). The Act imposed a moratorium on rent evictions through July 24, 2020, and further required a 30-day notice to terminate the lease for non-payment of rent if a property was "covered" by the Act. Properties "covered" by the Act included:

- Any property participating in a Violence Against Women Act ("VAWA") Covered Housing Program;
- Any property participating in the rural housing voucher program under Section 542 of the housing Act of 1949;
- Any property with a federally backed mortgage loan; and
- Properties with a federally backed multifamily mortgage loan.

While the plain language of the Act appeared to indicate the requirement of the 30-day notice only applied to nonpayment cases arising during the moratorium, the Act did not include an explicit expiration date. This update is intended to inform you that the federal government has taken the position that the 30-day notice requirement for nonpayment evictions for "covered properties" remains in effect today.

The U.S. Department of Housing and Urban Development's Office of Multifamily Housing has stated that, "[n]otwithstanding the expiration of the CARES Act eviction moratorium, the CARES Act 30-day notice to vacate requirement for nonpayment of rent ... is still in effect for all CARES Act covered properties." HUD also published an interim final rule which requires HUD-housing providers to give a 30-day notice to public housing and project-based rental assistance tenants prior to eviction for non-payment of rent.

In addition to HUD, courts in other jurisdictions outside of Knox County and Tennessee have indicated the 30-day requirement remains in effect. The National Apartment Association ("NAA") initially indicated that it did not believe the Act's 30-day notice requirement remained in effect for covered properties. However, the NAA has changed its position by releasing a statement indicating that there is a drafting error in the CARES Act and that it would be lobbying for Congress to clarify the language of the Act and to implement an explicit expiration date for the notice requirement.

Dwight E. Tarwater¹
Thomas A. Bickers¹
John W. Elder^{1*2*3}
Michael J. King^{1*4}
Taylor A. Williams¹
Catherine W. Anglin¹
Lindsey M. Collins¹
Kendell G. Vonckx¹
Thomas H. Jarvis¹
Kelsey C. Osborne^{1*5}
Kathryn V. Haaquist¹
Michael S. Deel¹
Morgan W. Fitzgerald¹

Donald F. Paine
(1939 - 2013)

¹ Licensed in Tennessee

² Licensed in Illinois

³ Licensed in New York

⁴ Licensed in North Carolina

⁵ Licensed in Texas

Because of the positions taken by HUD and other federal agencies, all properties covered by VAWA (which includes all subsidized and tax credit properties) should provide tenants a 30-day notice for nonpayment of rent instead of the 14-day notice you would normally use. All other properties (including conventional housing and student properties) should check with their owners to determine whether the property is financed by a federally backed mortgage or federally backed multifamily backed mortgage. If so, those properties will also need to provide the 30-day notice.

We have attached a sample 30-day notice to this Update. In addition, you may download a sample notice from the landlord portal on our website.

If you have additional questions, please let us know.

Very Truly Yours,

Mike

Michael J. King

APARTMENT NAME
ADDRESS
CITY, STATE, ZIP
TELEPHONE

(DATE)

VIA HAND DELIVERY AND U.S. MAIL

Tenant Name(s)
Address
Apartment Number
City, State, Zip

Amount Currently Owed: _____

Lease Termination Date: _____

RE: CARES Act – Thirty Day Notice of Termination of Lease

Dear (Tenant Name/s):

You are currently in default for nonpayment of rent in the amount set forth above. Due to your default, management has elected to terminate your lease. Please be advised that you must vacate the unit by the Lease Termination Date. If you fail to vacate the unit by the lease termination date, eviction proceedings will be initiated. If this matter is turned over to an attorney, be advised that you are responsible for any attorney's fees and costs. All payments of rents made after the date of this letter are accepted only with a full reservation of the landlord's rights to proceed hereunder.

If you have any questions, please do not hesitate to contact management.

Very truly yours,

Manager
XYZ Apartments